

CRIMINAL CODE BILL COMMISSION.

R E P O R T

OF THE

ROYAL COMMISSION

APPOINTED TO CONSIDER

THE LAW RELATING TO INDICTABLE OFFENCES :

WITH AN APPENDIX

CONTAINING A

Draft Code embodying the Suggestions of the Commissioners.

Presented to both Houses of Parliament by Command of Her Majesty.



LONDON:

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COMMISSION.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To Our Right Trusty and Wellbeloved Councillor Colin Baron Blackburn, one of Our Lords of Appeal in Ordinary,—Our Right Trusty and Wellbeloved Councillor Charles Robert Barry, one of the Judges of Our High Court of Justice in Ireland,—Our Trusty and Wellbeloved Sir Robert Lush, Knight, one of the Judges of Our High Court of Justice,—and Our Trusty and Wellbeloved Sir James Fitzjames Stephen, Knight Commander of Our Most Exalted Order of the Star of India, one of Our Counsel Learned in the Law, Greeting :

Whereas We have deemed it expedient that a Commission should forthwith issue to inquire into and consider the provisions of a Draft Code relating to Indictable Offences prepared for the purpose of being submitted to Parliament during the ensuing Session, and to report thereon, and to suggest such alterations and amendments in the existing law as to Indictable Offences, and the procedure relating thereto, as may seem desirable and expedient.

Now Know Ye that We, reposing great Trust and Confidence in your Knowledge and Ability, have authorised and appointed, and do by these Presents authorise and appoint, you the said Colin Baron Blackburn, Charles Robert Barry, Sir Robert Lush, and Sir James Fitzjames Stephen to be Our Commissioners for the purposes aforesaid.

And for the better effecting the purposes of this Our Commission, We do by these Presents give and grant unto you, or any three of you, in case you shall think fit so to do, full power and authority to call before you such persons as you shall judge likely to afford you any information on the subject of this Our Commission.

And We do by these Presents Will and Ordain that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any three of you, may from time to time proceed in the execution thereof and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And We further ordain that you, or any three of you, may have liberty to report your proceedings under this Commission from time to time if you shall judge it expedient so to do.

And Our further Will and Pleasure is that you do with as little delay as possible report to Us, under your hands and seals, or under the hands and seals of any three of you, your opinion upon the several points herein submitted for your consideration.

And for your assistance in the execution of this Our Commission, We have made choice of Our Trusty and Wellbeloved Hugh Cowie, Esquire, Barrister-at-Law, to be Secretary to this Our Commission and to attend you, whose services and assistance We require you to use from time to time as occasion may require.

Given at Our Court at Saint James's, the Seventeenth day of August 1878, in the Forty-second year of Our Reign.

By Her Majesty's Command,
RICHARD ASSHETON CROSS.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, the Commissioners appointed to inquire into and consider the provisions of a Draft Code* relating to indictable offences prepared for the purpose of being submitted to Parliament, and to report thereon, and to suggest such alterations and amendments in the existing law as to indictable offences, and the procedure relating thereto, as may seem desirable and expedient, have in obedience to Your Majesty's commands proceeded to the best of our ability to consider the various matters referred to us.

The Draft Code of 1878 (hereinafter called the Bill) was prepared with reference to the law of England only; but it having since been resolved that the proposed legislation should extend to Ireland also, certain papers containing valuable information and suggestions with reference thereto have been drawn up and laid before us, under the directions of the Attorney General for Ireland.

The first step we took was to send copies of the Bill to Your Majesty's Judges, the Chairmen and Deputy Chairmen of Quarter Sessions, Recorders, and many members of the bar and other gentlemen having practical experience in the administration of the criminal law in both countries, with a circular requesting them to forward to us any suggestions which might occur to them on any subject within the scope of the Commission. Many answers were returned to us, containing suggestions which have been carefully considered.

We sat almost daily throughout the day from the early part of November 1878, till the 8th April last, and resumed our sittings during the month of May.

We considered the Bill referred to us with minute attention. We compared every one of its provisions with the authorities on which they were based, and we made such alterations as appeared to us desirable. We also considered such of the questions of policy raised by it as appeared to us to fall fairly within our Commission.

We have also considered and ascertained to the best of our ability what the unwritten criminal law is, so far as it is settled: and to what extent the law so settled can with practical advantage be declared and enacted in a Code, and in what respects it is expedient that it should be altered.

We have also considered on what points the unwritten law is at present doubtful; and how far it can with advantage be rendered certain and enacted in a Code.

We have also considered what alterations can practically and with advantage be made in such parts of the statute law as we deem it expedient and practicable to embody in a Code.

We have also taken into consideration certain acts and conduct at present not criminally punishable at all, or only punishable as common law misdemeanours by fine and imprisonment, but which have been found so highly mischievous that it is expedient to make them criminally punishable with severity.

Our suggestions on all these subjects will be found embodied in the Draft Code which we have appended to this Report. The references in the margin of the Draft Code will enable any one to compare it with the authorities on which it is founded, and also to see how far it corresponds with and how far it deviates from the existing law.

The question whether the reduction of the criminal law of England, written and unwritten, into one code is either desirable or practicable, is one which has been much considered. In 1833, 1836, and 1837, three different Commissions were issued, under which eight Reports were made. In 1845 a fourth Commission was issued, under which five Reports were made. In the Fourth Report of the Commissioners appointed in 1845, is a draft of a Bill for consolidating into one statute the written and unwritten law relating to the definition of crimes and punishments. This Bill was introduced into the House of Lords in 1848 by Lord Brougham, but was not further proceeded with.

* The Criminal Code Indictable Offences Bill, 1878.

In 1852 Lord St. Leonards, then Chancellor, took up the matter, and gave directions for preparing separate Bills for the codification of the criminal law on separate subjects. One Bill, for the codification of the law as to offences against the person, was accordingly prepared, and was introduced in the House of Lords by Lord St. Leonards, and referred to a Select Committee comprising (among others) Lords Lyndhurst, Brougham, Campbell, Truro, and Cranworth. That Select Committee considered the Bill, and made many amendments in it, but had not completely revised it when, on the change of Government, the matter dropped.

In 1853 the consideration of the subject was resumed, and Lord Cranworth (then Chancellor) sent a copy of the Bill as amended by the Select Committee to the judges, requesting their opinions on it. These opinions were unfavourable; and the Chancellor thereupon requested and received a memorandum in answer to the criticisms of the judges, from Messrs. Greaves and Lonsdale, the gentlemen who had prepared the Bill.

These papers were laid before the House of Lords, and are the Sessional Papers, No. 19 and No. 180 of 1854. The plan of codification was abandoned by Lord Cranworth, but eight Bills were prepared under his directions; and after much consideration nine other Bills were prepared in 1856.

Of these last, seven became, with some alterations, the Acts well known as Greaves' Criminal Consolidation Acts, 24 & 25 Vict. cc. 94, 95, 96, 97, 98, 99, and 100. These Acts have undoubtedly worked very well, and there have been few difficulties as to the interpretation of their clauses; but they make no attempt at codification. For example, c. 100, sect. 1, enacts that whosoever is convicted of murder shall suffer death, but leaves it to the common law to say what is murder; and sect. 20 enacts that whosoever shall unlawfully wound shall be liable to penal servitude, but leaves it to the common law to say under what circumstances wounding is not unlawful.

The Reports above-mentioned contain a great deal of very valuable information. We have consulted and referred to them; and though we dare not say we have considered everything of value to be found in such an immense mass of printed matter, we hope that nothing very material has escaped our notice.

We have also considered with care Lord St. Leonards' Bill as amended by the Select Committee, and the criticisms of the judges as found in the sessional paper of 1854. These criticisms (many of which were unsubstantial and needlessly refined) may be taken to show that to frame a Code properly is a very difficult task, but we do not think they by any means justify the conclusion that the undertaking is impracticable.

I.

CODIFICATION IN GENERAL.

Before proceeding to observe on the provisions of the Draft Code, we deem it expedient to make an attempt to remove certain misconceptions relating to codification, which we have reason to believe affect the judgment formed by many persons upon the possibility and the utility of the undertaking. These misconceptions seem to us to originate in a wrong estimate of what can be and is proposed to be effected by codification.

It is assumed that the object of the process is to reduce to writing the whole of the law upon a given subject, in such a manner that when the Code becomes law, every legal question which can arise upon the subject with which it deals will be provided for by its express language. When any particular attempt at codification is judged by this standard, it is easy to show that the standard is not attained.

It is also common to argue that even if such a standard were attained, the result would not be beneficial, as it would deprive the law of its "elasticity"; by which is understood the power which the Courts of Justice are said to possess of adjusting the law to changing circumstances by their decisions on particular cases. It is said that the law of this country is in a state of continual development; that judicial decisions make it more and more precise and definite by settling questions previously undetermined; and that the result is to adjust the law to the existing habits and wants of the country. To this process it is said that codification, so far as it goes, would put an end, and that the result would be to substitute a fixed inelastic system for one which possesses the power of adjustment to circumstances.

It appears to us that these observations may be answered by pointing out the object and limits of codification, and by examining the real nature of the change which codification would produce.

In the first place, it must be observed that codification merely means the reduction of the existing law to an orderly written system freed from the needless technicalities, obscurities, and other defects which the experience of its administration has disclosed. The process must be gradual. Not only must particular branches of the law be dealt with separately, but each separate measure intended to codify any particular branch must of necessity be more or less incomplete. No one great department of law is absolutely unconnected with any other. For instance, bigamy is a crime, but in order to know whether a person has committed bigamy, it is necessary to know whether his first marriage was valid. Thus the definition of the crime of bigamy cannot be completely understood by any one who is unacquainted with the law relating to marriage. The definition of theft again involves a knowledge of the law relating to property, and this connects itself with the law of contract, and many other subjects.

There are, moreover, principles underlying every branch of the law, which it would be impracticable to introduce into a Code dealing with a particular branch only. The principles which regulate the construction of statutes supply an illustration of this. A Criminal Code must of course be construed like any other Act of Parliament, but it would be incongruous to embody in a Criminal Code the general rules for the construction of statutes, even if it were considered desirable to reduce them to a definite form.

It is, however, easy to exaggerate the degree of this incompleteness. Practically the great leading branches of the law are to a great extent distinct from each other; and there is probably no department which is so nearly complete in itself as the Criminal Law. The experience of several foreign countries and of British India has proved that the law relating to crimes is capable of being reduced to writing in such a manner as to be highly useful. Indeed, a very large and important part of the criminal law of this country is already reduced to writing in statutes, and in particular that portion dealt with by the Consolidation Acts of 1861. And there is no distinction in the nature of the subject between the parts of the criminal law which are written and the parts which are not written. High treason is defined by statute, and so is bribery. Why should it be impossible to define murder or theft?

The unwritten portion of the criminal law includes the three following parts: (1) Principles relating to matter of excuse and justification for acts which are *prima facie* criminal; (2) the definitions of murder, manslaughter, assault, theft, forgery, perjury, libel, unlawful assembly, riot, and some other offences of less frequent occurrence and importance; and (3) certain parts of the law relating to procedure. To do for these parts of the criminal law what has already been done for the rest of it is no doubt a matter requiring labour and care; but when so much of the work has been already done, it seems unreasonable to doubt, either that the remaining part of the criminal law can be reduced to writing, or that when it is written down and made to form one body with the parts already written, the whole will not be improved.

The objection most frequently made to codification—that it would if successful deprive the present system of its “elasticity”—has, we have reason to believe, exercised considerable influence; but when it is carefully examined, it will we think turn out to be entitled to but little, if any, weight. The manner in which the law is at present adapted to circumstances is, first by legislation, and secondly by judicial decisions. Future legislation could of course be in no degree hampered by codification. It would on the other hand be much facilitated by it. The objection under consideration applies, therefore, exclusively to the effects of codification on the course of judicial decision. Those who consider that codification will deprive the common law of its “elasticity” appear to think that it will hamper the judges in the exercise of a discretion which they are at present supposed to possess, in the decision of new cases as they arise.

There is some apparent force in this objection, but its importance has to say the least been largely exaggerated, and it is in our opinion certainly not sufficient to constitute (as some people regard it) a fatal objection to codification. In order to appreciate the objection, it is necessary to consider the nature of this so-called discretion which is attributed to the judges.

It seems to be assumed that when a judge is called on to deal with a new combination of circumstances, he is at liberty to decide according to his own views of justice and expediency; whereas on the contrary he is bound to decide in accordance with principles already established, which he can neither disregard nor alter, whether they are to be found in previous judicial decisions or in books of recognized authority. The consequences of this are, first, that the elasticity of the common law is much smaller than it is often supposed to be; and secondly, that so

far as a Code represents the effect of decided cases and established principles, it takes from the judges nothing which they possess at present.

For example, it never could be suggested that a judge in this country has any discretion at the present day in determining what ingredients constitute the crime of murder, or what principles should be applied in dealing with such a charge under any possible state of circumstances: and yet the common law definition of murder has in its application received a remarkable amount of artificial interpretation. The same observation is applicable to every other known offence.

In fact the elasticity so often spoken of as a valuable quality would if it existed, be only another name for uncertainty. The great richness of the law of England in principles and rules, embodied in judicial decisions, no doubt involves the consequence that a Code adequately representing it must be elaborate and detailed; but such a Code would not (except perhaps in the few cases in which the law is obscure) limit any discretion now possessed by the judges. It would simply change the form of the rules by which they are bound.

The truth is that the expression "elasticity" is altogether misused when it is applied to English law. The great characteristic of the law of this country, at all events of its criminal law, is, that it is extremely detailed and explicit, and leaves hardly any discretion to the judges. This may be shown by comparing it with the law of France. The criminal law of France is founded upon the Code Pénal, but the decisions of the courts as to the meaning of the Code do not form binding precedents; and the result is that the French courts can (within the limits prescribed by the words of the Code Pénal) decide according to their own views of justice and expediency. In the exercise of this discretion they are of course guided, though they are not bound, by previous decisions. The result is that French criminal law under the Code Pénal is infinitely more elastic than the criminal law of England is or ever has been, although the latter is founded on unwritten definitions and principles. For instance, it is stated in a work of great authority (Chauveau et Hélie "Théorie du Code Pénal," III, 487-9, Edn. 1861), that, after holding for 27 years that to kill a man in a duel did not fall within the definition of "assassinat" given in the Code Pénal, the Court of Cassation decided in 1837 that such an act did fall within it. The authors of the work in question argue at great length that the earlier decisions were right, and ought to be followed. A comparison of the provisions contained in Part III of our Draft Code with the provisions on the same and similar subjects in the Code Pénal and the German Strafgesetzbuch will show how numerous and important are the questions which these Codes leave to be decided as they arise by judges and juries. We may observe, that it is this generality of language, leaving so much to be supplied by judicial discretion, which gives to the foreign Codes that appearance of completeness which creates so much misconception as to what can or ought to be effected by a Code for this country.

We think that the precise and explicit character of our own law is one of its most valuable qualities, and that one great advantage of codification would be that in giving the result of an immense amount of experience in the shape of definite rules, it would preserve this valuable quality.

We do not, however, mean to assert that this particularity is always necessary. Wherever precise and definite propositions are to be conveyed, our rules for the construction of statutes in many cases prohibit the employment of general language, and require elaboration and detail in the structure of a Code; but where the principles of our law admit of any matter being left to the so-called discretion of the judge or jury, as the case may be, this discretion can be preserved in a Code by the use of general language. An illustration is supplied by the Extradition Act (33 & 34 Vict. c. 52, s. 3) which enacts amongst other things that "a fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character." It is obvious that the employment of the expression "an offence of a political character" might, under circumstances easy to imagine, impose upon the tribunal the necessity of deciding questions of extreme delicacy and difficulty, towards the decision of which the mere words of the Legislature would contribute little or nothing. Another illustration may be found in Section 39 of 33 & 34 Vict. c. 9, where a crime is referred to as "of the character known as agrarian." Numerous instances occur in the Draft Code in which we have thus designedly and of necessity employed general language. In the Part on "Matter of excuse and justification," such expressions as the following frequently occur: "Force reasonably necessary for preventing the continuance or renewal of a breach of the peace;" "Force not disproportioned to the danger to be apprehended from the continuance of the riot." In the provision

relating to provocation, we speak of “an insult of such a nature as to deprive an ordinary person of the power of self-control;” and many other expressions of the like kind occur in different parts of the Draft Code. All of them leave, and are intended to leave, a considerable latitude to the jury in applying the provisions of the Draft Code to particular states of fact. In other cases a considerable amount of discretion is given to the Court. Thus for instance, it is declared to be a question of law whether a particular order given for the suppression of a riot is “manifestly unlawful;” whether the occasion of the sale, publishing, or exhibition of certain classes of books, engravings, &c. is such “as might be for the public good,” and whether there is evidence for the jury of “excess.” Again, all the provisions relating to libel are so drawn that wide latitude would be left to the jury in determining whether a given publication is or is not libellous.

We believe upon the whole that upon a detailed examination of the Draft Code, it will be found that in respect of elasticity it makes very little if any change in the existing law. It clears up many doubts and removes many technicalities, but it neither increases nor diminishes to any material extent, if at all, any discretion at present vested in either judges or juries.

It may be objected that Section 5 of the Draft Code constitutes an exception to this general remark. It provides that for the future all offences shall be prosecuted either under the Code or under some other statute, and not at common law. The result of this provision would be to put an end to a power attributed to the judges, in virtue of which they have (it has been said) declared acts to be offences at common law, although no such declaration was ever made before. And it is indeed the withdrawal of this supposed power of the judge, to which the argument of want of elasticity is mainly addressed. It is worth while to give instances of the manner in which at different times this doctrine has been put forward and acted upon. Of the weakness of the administration of justice in the Middle Ages, the impediments opposed to it by what was then called maintenance, the establishment of the Court of Star Chamber professedly to remedy its defects, and the abuses which led to the abolition of that court in Charles I.’s reign, it is unnecessary to speak. It would seem, however, that in early times the courts were so little disposed to exercise the supposed power of declaring new offences, that perjury by a witness was never treated as an offence (except under certain statutes of Henry VIII and Elizabeth), till it was declared to be one by the Court of Star Chamber.

After the Restoration the Court of King’s Bench took upon itself some of the functions of the Star Chamber. In the well-known case of Sir Charles Sedley for instance, who conducted himself in public with gross indecency, the justices told him that “notwithstanding there was not then any Star Chamber, yet they would have him know that the Court of King’s Bench was the *custos morum* of all the King’s subjects.” (17 St. Tri. 155.)

In the case of Edmund Curll, who was prosecuted for publishing obscene libels in 1727, the court seems to have proceeded upon a similar principle, and the same course appears also to have been taken in several instances upon the prosecution of blasphemous libels. The principle was stated in very wide terms in discussions upon the law of copyright, first by Mr. Justice Willes (Lord Mansfield’s colleague), and afterwards by Lord Chief Baron Pollock. Mr. Justice Willes spoke of “justice, moral fitness, and public convenience which when applied to a new subject make common law without a precedent” (*Millar v. Taylor*, 4 Burr. 2312). Lord Chief Baron Pollock, many years afterwards, referring to this passage, observed, “I entirely agree with the spirit of this passage so far as it regards the repressing what is a public evil, and preventing what would become a public mischief.” (*Jefferys v. Boosey*, 4 H.L.C. 936.) In the observations made by the judges on a scheme of codification prepared in 1854, the same view was stated. The following are the words of Mr. Justice Crompton: “I think it unadvisable to lose the advantage of the power of applying the principles of the common law to new offences and combinations arising from time to time, which it is hardly possible that any codification, however able and complete, should effectually anticipate.” In Sir William Erle’s *Treatise on the Law relating to Trades Unions*, there are several passages bearing on this subject. See pp. 31–36 and 47–53. Though the existence of this power as inherent in the judges has been asserted by several high authorities for a great length of time, we do not think that any attempt would be made to exercise it at the present day; and any such attempt would be received with great opposition, and would place the Bench in an invidious position.

In by-gone ages, when legislation was scanty and rare, the powers referred to may

have been useful and even necessary; but that is not the case at the present day. Parliament is regular in its sittings and active in its labours; and if the protection of society requires the enactment of additional penal laws, Parliament will soon supply them. If Parliament is not disposed to provide punishments for acts which are upon any ground objectionable or dangerous, the presumption is that they belong to that class of misconduct against which the moral feeling and good sense of the community are the best protection. Besides, there is every reason to believe that the criminal law is and for a considerable time has been sufficiently developed to provide all the protection for the public peace and for the property and persons of individuals, which they are likely to require under almost any circumstances which can be imagined; and this is an additional reason why its further development ought in our opinion to be left in the hands of Parliament. If it should turn out that we have overlooked some common law offence, we think it better to incur the risk of giving a temporary immunity to the offender than to leave any one liable to a prosecution for an act or omission which is not declared to be an offence by the Draft Code itself or some other Act of Parliament.

But whilst we exclude from the category of indictable offences any culpable act or omission not provided for by this or some other Act of Parliament, there is another branch of the unwritten law which introduces different considerations; namely, the principles which declare what circumstances amount to a justification or excuse for doing that which would be otherwise a crime, or at least would alter the quality of the crime. In the cases of ordinary occurrence, the decisions of the Courts and the opinions of great lawyers enable us to say how the principles of the law are to be applied. And so far the unwritten law may be digested without extreme difficulty and with practical advantage, and so far also it may be settled and rendered certain.

In our opinion the principles of the common law on such subjects, when rightly understood, are founded on sense and justice. There are a few points on which we venture to suggest alterations, which we shall afterwards state in detail. At present we desire to state that in our opinion it is, if not absolutely impossible, at least not practicable, to foresee all the various combinations of circumstances which may happen, but which are of so unfrequent occurrence that they have not hitherto been the subject of judicial consideration, although they might constitute a justification or excuse, and to use language at once so precise and clear and comprehensive as to include all cases that ought to be included, and not to include any case that ought to be excluded.

We have already expressed our opinion that it is on the whole expedient that no crimes not specified in the Draft Code should be punished, though in consequence some guilty persons may thus escape punishment. But we do not think it desirable that, if a particular combination of circumstances arises of so unusual a character that the law has never been decided with reference to it, there should be any risk of a Code being so framed as to deprive an accused person of a defence to which the common law entitles him, and that it might become the duty of the judge to direct the jury that they must find him guilty, although the facts proved did show that he had a defence on the merits, and would have an undoubted claim to be pardoned by the Crown. While, therefore, digesting and declaring the law as applicable to the ordinary cases, we think that the common law so far as it affords a defence should be preserved in all cases not expressly provided for. This we have endeavoured to do by Section 19 of the Draft Code.

Perhaps our meaning cannot be better explained than by stating the reasons why we have on revision altered the clause on Compulsion which formed the twenty-second section of the Bill, and have altogether struck out the clause on Necessity, which formed the twenty-third section. (These reasons will be found in Note A to this Report.)

The mode in which we suggest that the principles of the common law should be dealt with will be found in Part III of the Draft Code. It would be easy to enunciate in general terms and as abstract propositions the common law maxims which guide the judges in administering the law; and the adoption of such a course would much shorten any Code, but would be attended with the disadvantages we have already pointed out. The principle which is derived from a number of decisions is applied to a new state of things, not according to the words in which it was originally expressed, but according to its substance. But if it were laid down in a Code, it would either have to be applied as it was expressed in the Code, or a latitude would be left which would deprive the Code of all certainty. We have been guided in

framing this Part of the Draft Code by principles, several of which we may here enunciate with sufficient accuracy for the purpose of this Report.

We take one great principle of the common law to be, that though it sanctions the defence of a man's person, liberty, and property against illegal violence, and permits the use of force to prevent crimes, to preserve the public peace, and to bring offenders to justice, yet all this is subject to the restriction that the force used is necessary; that is, that the mischief sought to be prevented could not be prevented by less violent means; and that the mischief done by, or which might reasonably be anticipated from the force used is not disproportioned to the injury or mischief which it is intended to prevent. This last principle will explain and justify many of our suggestions. It does not seem to have been universally admitted*; and we have therefore thought it advisable to give our reasons for thinking that it not only ought to be recognised as the law in future, but that it is the law at present. But as this is in the nature of an argument, we have thought it better to print it as a note. (See Note B to this Report.)

Again, it is a principle of the common law that what the law requires it justifies—*Quando aliquid mandatur, mandatur et omne per quod percutitur ad illud* (5 Rep. 115 b.) It is also a principle of the common law that all powers, the exercise of which may do harm to others, must be exercised in a reasonable manner, and that if there is excess, the person guilty of such excess is liable for it according to the nature and quality of his act.† It may also be said to be a principle of the common law that where a person is under a legal duty on notice of certain facts to take certain action, he will be protected in acting on the honest belief, formed without negligence and on reasonable grounds, that those facts did exist, though that belief was mistaken.

For the reasons already given, instead of endeavouring to enunciate these principles in abstract and general terms, we have judged it better to declare expressly what the law is in cases of such frequent or probable occurrence, that the law in respect of them has been settled,—suggesting some few alterations,—and leaving the general principles to be applied to cases so extraordinary that the law as applicable to them has never yet been decided, when if ever they arise.

There is a difference in the language used in the sections in this Part which probably requires explanation. Sometimes it is said that the person doing an act is “justified” in so doing under particular circumstances. The effect of an enactment using that word would be not only to relieve him from punishment, but also to afford him a statutable defence against a civil action for what he had done. Sometimes it is said that the person doing an act “is protected from criminal responsibility” under particular circumstances. The effect of an enactment using this language is to relieve him from punishment, but to leave his liability to an action for damages to be determined on other grounds, the enactment neither giving a defence to such an action where it does not exist, nor taking it away where it does. This difference is rendered necessary by the proposed abolition of the distinction between felony and misdemeanour.

We think that in all cases where it is the duty of a peace officer to arrest, (as it is in cases of felony,) it is proper that he should be protected, as he now is, from civil as well as from criminal responsibility. And as it is proposed to abolish the distinction between felony and misdemeanour, on which most of the existing law as to arresting without a warrant depends, we think it is necessary to give a new protection from all liability (both civil and criminal) for arrest, in those cases which by the scheme of the Draft Code are (so far as the power of arrest is concerned) substituted for felonies. In those cases therefore which are provided for in sects. 32, 33, 34, 37, 38, the word “justified” is used. A private person is by the existing law protected from civil responsibility for arresting without warrant a person who is on reasonable grounds believed to have committed a felony, provided a felony has actually been committed, but not otherwise. In sect. 35, providing an equivalent for this law, the word used is “justified.” On the other hand, where we suggest an enactment which extends the existing law for the purpose of protecting the person from criminal proceedings, we have not thought it right that it should deprive the person injured of his right to damages. And in cases in which it is doubtful whether the enactment extends the existing law or not, we have thought it better not to prejudice the decision of the civil courts by the language used. In cases therefore such as those dealt with by sects. 29, 30, 31, 36, 39, 46, 47, we have used the words “protected from criminal responsibility.”

* See Lord St. Leonards' Bill of 1853 (No. 106).

II.

WHAT A CRIMINAL CODE SHOULD CONTAIN.

Assuming then that the criminal law is to be codified, or reduced to writing, the next question which arises is as to the limits of the undertaking. The Bill referred to us and the Draft Code appended to our Report deal only with indictable offences, and it is essential to a full comprehension of the scope of both the Bill and the Draft Code to bear in mind the fact that neither of them is intended to embody the whole of the law relating to all indictable offences whatever. The object is to frame a Code, including as far as practicable, all those crimes, whether at common law or created by statute, which in the ordinary course of affairs come to be tried in the Courts of criminal justice.

Crimes may be punished by Parliamentary impeachment; and some crimes if committed by persons having privilege of peerage, must be tried in a peculiar Court. Neither case is of frequent occurrence, and we have not thought it judicious to propose any alteration in either mode of procedure. Nor have we thought it expedient to interfere with those statutes by which official persons in the colonies and in India may be tried in this country for offences connected with their office.

But besides, there are many existing statutes under which persons may be indicted, which we think it better to leave untouched by the proposed Code. They are of different classes, and are left out for different reasons.

1. A certain number of statutes create indictable offences, which are rather historical monuments of the political and religious struggles of former times than parts of the ordinary Criminal Law. As instances we may refer to 1 Eliz. c. 2, which punishes "depraving or despising the Book of Common Prayer" on a third conviction by imprisonment for life; the 2 & 3 Edw. 6, c. 1, which inflicts the like punishment on clergymen who refuse to use the said *Book; the 13 Eliz. c. 2, which makes it high treason to "use or put in ure" certain kinds of Papal Bulls (as to which however see 9 & 10 Vict. c. 59); the 13 Chas. 2, c. 5, which punishes with fine and imprisonment all persons who collect more than twenty signatures to a petition to Parliament without leave from certain specified authorities.

2. A certain number of statutes create indictable offences, which cannot perhaps be said to be obsolete, but were passed under special circumstances, and which are seldom if ever enforced. To propose either to re-enact or to repeal them would be to revive, without any practical advantage, controversies which would probably be both bitter and useless. We propose, therefore, to leave them untouched. As instances of statutes of this class we may mention the Royal Marriage Act, 12 Geo. 3, c. 11, which subjects persons present at the celebration of certain marriages to a *præmunire*; the 21 Geo. 3, c. 49, the Lord's Day Observance Act, which declares certain places opened for amusement or discussion on Sundays to be disorderly houses; the 39 Geo. 3, c. 79, which subjects the members of certain societies to seven years' penal servitude; the 57 Geo. 3, c. 19, which forbids political meetings within a mile of Westminster Hall during the sitting of Parliament or the Courts of Justice; the clauses of the Catholic Emancipation Act, 10 Geo. 4, c. 7 (ss. 28, 29, &c.), which bring Jesuits, monks, &c. under extremely severe penalties, extending under some circumstances to penal servitude for life.

3. Many statutes which create indictable offences are of so special a nature, and are so closely connected with branches of law which have little or nothing to do with crimes, commonly so called, that it seems better to leave them as they stand than to introduce them into a Criminal Code. The following are the most important statutes of this class:—the Acts for the suppression of the Slave Trade (5 Geo. 4, c. 113, 36 & 37 Vict. c. 88), the Foreign Enlistment Act (33 & 34 Vict. c. 90), the Corrupt Practices Acts (17 & 18 Vict. c. 102, and some others), the Customs Act (39 & 40 Vict. c. 36), the Post Office Act (7 W. 4 & 1 Vict. c. 36), the Merchant Shipping Acts, (17 & 18 Vict. c. 104, &c.). These Acts are complete in themselves; and though each creates indictable offences, each would be mutilated and rendered far less convenient than it is at present if the parts which create offences were separated from the parts which deal with other matters; whilst if the offences were transferred to the proposed Code in a form intelligible and complete, they would necessitate the introduction of an amount of matter which would render it inconveniently cumbersome, without any corresponding advantage.

* These statutes are applied to the existing Prayer Book by 14 Ch. 2, c. 4, s. 20.

4. A large number of statutes contain clauses of a penal nature intended to sanction their other provisions, and scarcely intelligible apart from them. Thus, the 25 Hen. 8, c. 20 provides for the election of archbishops and bishops by deans and chapters upon the King's license, and section 6 enacts that persons refusing to elect shall be liable to a *præmunire*. The Marriage Acts of 1823 (4 Geo. 4, c. 76) and 1837 (6 & 7 W. 4, c. 85), both punish the celebration of marriages otherwise than in certain specified ways. The Acts which regulate lunatic asylums create several special offences, (*e.g.* 8 & 9 Vict. c. 100, s. 56, 18 & 19 Vict. c. 105, s. 18). The Acts which establish certain prisons give special powers to the keepers of the prisons, and subject the prisoners to special punishments for particular offences. (See as to Parkhurst Prison, 1 & 2 Vict. c. 82, s. 12; Pentonville, 5 & 6 Vict. c. 29, s. 24; Milbank, 6 & 7 Vict. c. 26, s. 22.) It is obvious that many clauses of this sort are more conveniently placed in the special Acts than they would be in a general Criminal Code.

It will be remembered however that after the Code shall have come into operation, if it is found expedient to incorporate any of these provisions in the general criminal law of the country, this can be done by legislation from time to time as occasion arises. Besides the classes of statutes referred to, there will be found unrepealed on the statute book many enactments bearing more or less directly upon the criminal law or its procedure, which have been rendered practically obsolete or have been superseded by subsequent legislation. These enactments lying dormant on the statute book simply increase its bulk, but cause no embarrassment or inconvenience to those who have to administer or who desire to study the criminal law. The removal of these enactments from the statute book will be more aptly accomplished by the revision of the statutes which is continuously in progress, and the task can be more safely and satisfactorily performed after the Code, if it becomes law, shall have been for some time in operation.

5. There are statutes relating to Ireland, generally known as the "Peace Preservation Acts." These Acts are temporary, and of course should find no place in the proposed Code.

6. There are also in force and applicable to Ireland certain statutes, usually called the "Whiteboy Acts," and certain enactments connected therewith. These statutes constitute a body of law of a highly penal and exceptional character, apparently intended to repress offences springing from a peculiar state of society. Some of the offences dealt with are offences under the ordinary laws; and these will be found to be comprised in the Draft Code. We have also adopted into the Draft Code, but with considerable modifications, especially as regards the amount of punishment, some provisions found in these statutes, which ought to have a place amongst indictable offences in both countries. See, for example, Sections 416, 417. If the Draft Code becomes law, we hope that it will be found upon these points amply sufficient for the maintenance of order, and that the severe and exceptional provisions of the Whiteboy Code may be removed from the Statute Book.

III.

ARRANGEMENT OF CODE.—FELONY AND MISDEMEANOUR.—MALICE.

We do not propose to attempt more in this Report than to give a general account of the contents of the Draft Code, pointing out as we proceed in what respects it differs from the existing law, and showing generally how it is related to the Bill which we are required to consider and report upon.

It may well be supposed that in preparing so extensive and elaborate a measure, some difference of opinion was unavoidable. To a great extent, however, such difference turned upon matters of style and arrangement, which vary at least as much in relation to the proper manner of drawing up Acts of Parliament as in relation to any other species of literary composition. With this qualification, we may state that we are unanimous in submitting the Draft in its present form, subject to the observations with which it is accompanied.

As to the relation between the Draft Code and the Bill we have a general observation to make. The Draft is founded on the Bill throughout, but the language of the Bill is altered in nearly every section; considerable parts of it are altogether redrawn, and in some parts of the Draft Code a different arrangement has been adopted. In a large proportion of cases the differences between the two are differences of style, the matter expressed being substantially the same. Many alterations made were in the direction of expanding the provisions of the Bill, which, with a view to brevity, were framed

in more general terms than was ultimately thought desirable. Single sections were thus in many instances divided into two or more, and the language was frequently elaborated in order to prevent possible misconceptions of the meaning.

A material alteration—to be found in Part III—consists in the elaboration of the provisions respecting justification and excuse; another will be observed in the Part relating to Forgery, where it was deemed expedient to retain, even at the risk of some prolixity, the elaborate provisions of the existing statute law on the subject. The result is, that the Draft Code is somewhat longer than the Bill.

The distribution of the subject adopted in the Bill, and followed with two exceptions in the Draft Code, is as follows: First come certain preliminary matters affecting every part of the subject. These are, (1) the application and general scope of the Code; (2) general provisions relating to punishments; (3) provisions as to matter of justification and excuse for acts which would otherwise be crimes; and (4) provisions as to the degree of participation in a crime which involves criminal responsibility for it.*

The definitions of the different crimes follow. All crimes affect the public, and most crimes specially affect individuals. But in some the injury to the public is most obvious, in others the injury to individuals. We place the former first, and then go on to the latter. As regards crimes principally affecting the public, we place first those offences which disturb the public peace, either by open force or by various kinds of unlawful engagements and conspiracies. Next come the offences which interfere either by corruption, deceit, or violence with the administration of justice. These are followed by offences against religion, morality, and public convenience. Passing to offences which principally affect individuals, we take first those which affect the person, next those which relate to rights inseparable from the person, such as marital and parental rights, and reputation. These are followed by offences against rights of property and rights arising from contract. The procedure by which the offences previously defined are to be punished forms the seventh Title, and the repeal of the Acts which it supersedes the eighth and last.

With respect to the general scope and contents of the measure, it is to be remembered that it is intended to contain and in our opinion does contain the whole of the law relating to indictable offences, except that portion of it which is contained in statutory enactments falling under one or other of the classes above specified, and except certain common law offences which we think ought no longer to be treated as such, and which will be referred to in the course of our observations.

There is some difference as to this matter between the Draft Code and the Bill. The Bill included several common law offences which we have thought it safe to abolish, and it also embodied some statutes which we have thought it best to exclude, leaving them as they stand on the statute book for one or more of the reasons already given. We have found only two or three statutory enactments which the Bill did not contain, and which we thought it desirable to embody in the Draft Code. The chief are 23 & 24 Vict. c. 75, s. 12, which punishes the offence of aiding the escape of criminal lunatics, and 50 Geo. 3, c. 59, s. 2, which punishes public officers who make false statements in their accounts. And we have not discovered any common law offence not provided for in the Bill, which we thought it desirable to preserve.

Both the Draft Code and the Bill in defining offences abolish the distinction between felony and misdemeanour, and avoid throughout the use of the word “malice.”

The distinction between felony and misdemeanour was in early times nearly, though not absolutely, identical with the distinction between crimes punishable with death and crimes not so punishable. For a long time past this has ceased to be the case. Most felonies are no longer punishable with death; and many misdemeanours are now punishable more severely than many felonies. The great changes which have taken place in our criminal law have made the distinction nearly if not altogether unmeaning. It is impossible to say on what principle embezzlement should be a felony, and the fraudulent appropriation of money by an agent or the obtaining of goods by false pretences a misdemeanour; why bigamy should be a felony, and perjury a misdemeanour; why child stealing should be a felony, and abduction a misdemeanour. The result of this arbitrary classification is that the right to be bailed, the liability to be arrested without warrant, and (to a certain extent) the right of the court to order the payment of the costs of prosecutions vary in a manner equally arbitrary and unreasonable.

* The Draft Code is divided into titles, parts, and sections. The Bill was divided into parts, chapters, and sections. We substituted “title” for “part,” and “part” for “chapter,” in order to avoid the use of the word “chapter” as the name of a sub-division of what might itself ultimately become a chapter of the statute book.

Moreover the old distinction still regulates the mode of trial. The person accused of felony has a right of peremptory challenge. The person accused of misdemeanour has in England no such right. The jury in cases of felony, however trifling it may be, must be kept together till they give their verdict; in cases of misdemeanour, however serious, they may be allowed to separate. We believe that crimes vary so greatly in their characteristics that it is practically impossible to suggest any principle of general classification to be substituted for that of the old distinction of felony and misdemeanour. The question whether a person accused of an offence should be entitled or not to be bailed as of right, and should be liable or not to summary arrest, can be more conveniently determined in reference to each particular offence than in reference to any classification which occurs to us. We have therefore specified in respect of each offence whether the accused is to be entitled to bail or not, and whether he is liable to be arrested without warrant or not; and as regards the right of challenging jurors, we propose that the number of challenges to be allowed shall be proportioned to the possible severity of the punishment which might follow on conviction. We have also provided for the jury being allowed to separate during the trial of all but capital cases. The Bill provided for the abolition of the distinction between felony and misdemeanour, by laying down a general rule making the liability to arrest and the right to bail dependent on the maximum punishment to which the offender would be exposed on conviction; but this we do not regard as satisfactory. With regard to challenges its provisions were not very different from those of the Draft Code.

We have avoided the use of the word "malice" throughout the Draft Code, because there is a considerable difference between its popular and its legal meaning. For example, the expression "malice aforethought" in reference to murder has received judicial interpretation which makes its use positively misleading.

We now proceed to explain and remark on the different provisions of the Draft Code, and to point out where they are intended to codify the unwritten law, and where to digest the statute law, indicating in each case those provisions which either alter or modify the existing law, and generally comparing the Draft Code and the Bill as we proceed. In doing so we shall follow the order of the Draft Code.

IV.

TITLE I.—INTRODUCTORY PROVISIONS.

Part I of the Draft defines the application of the Act. It is to apply to—

- (a) Piracy by the law of nations wherever committed, and all offences committed in England or Ireland, and certain offences committed by British subjects elsewhere;
- (b) All offences committed on board any British ship within the limits of the Admiralty jurisdiction, provided that such offences are tried in England or Ireland;
- (c) All offences committed within the limits defined by the Territorial Waters Jurisdiction Act, 1878, provided that they are tried in England or Ireland.

This provision naturally raises the question—where is an offence committed? A shot is fired in one place, which wounds a man in another place, who dies in a third place. In which of these places is the crime committed? Section 4 provides that in such cases the crime is to be deemed to have been committed in each of the three places in question. But this is qualified by a proviso intended to prevent what might be considered an infringement on the comity of nations, by assuming legislative power to punish in this country foreigners for acts done abroad. The proviso deals with a matter of some technicality, and is explained by a marginal note.

The following illustrations will show the operation which these provisions are intended to have:—

A sailor (whether a British subject or an alien) commits an offence on board a British ship out of the realm of England or Ireland, but within the jurisdiction of the Admiralty. If he is tried in England or Ireland, he must be tried according to the provisions of the Draft Code; but the Draft Code would not apply if he were tried in the High Court of Calcutta, or the Supreme Court at Melbourne or Sydney under Admiralty jurisdiction, or if he were tried in Scotland.

An alien commits a crime on board a foreign ship whilst passing within the territorial waters of the realm as defined in the Territorial Waters Jurisdiction Act.

1878. He is liable to be tried under the Draft Code in England or Ireland, with the leave of the Secretary of State.

Aliens and British subjects whilst in a foreign country procure a crime to be committed in England or Ireland. The British subjects are triable in England or Ireland under the Draft Code, though they remain abroad till after the offence is complete. The aliens are not triable in England or Ireland unless before the offence is complete they come into Your Majesty's dominions, and so become triable in the same way as British subjects.

We have already observed upon the operation of section 5. The corresponding section of the Bill repealed in effect all the common law definitions of offences for which it provided substitutes, but left untouched all common law offences for which it did not so provide.

We have taken the responsibility of recommending that crimes should no longer be indictable at common law, but only under the provisions of the Draft Code, or of some other Act in force for the time being. We have adopted this course because after a careful consideration of the subject we are unable to discover any offence unprovided for, except some which having become obsolete—*e.g.* champerty and common barratry—we think ought not to be retained.

Section 5 will thus have the effect of preventing indictments at common law for conspiracy. The sections of the Draft Code which deal with this subject comprise treasonable conspiracies (section 79), seditious conspiracies (section 102), conspiracies to bring false accusations (section 126), conspiracies to pervert justice (section 127), conspiracies to defile women (section 149), conspiracies to murder (section 180), conspiracies to defraud (section 284), conspiracies to commit indictable offences (sections 419, 420), and conspiracies to prevent by force the collection of rates and taxes (section 421). The law as to trade conspiracies we have left untouched; and to make it clear that we have done so, we have added a few words at the end of the clauses relating to conspiracies in Part XXXVI.

There is not perhaps any distinct authority for the proposition that there are at common law any criminal conspiracies other than those referred to, but some degree of obscurity exists on the subject. An agreement to do an "unlawful" act has been said to be a conspiracy; but as no definition is to be found of what constitutes "unlawfulness," it seems to us unsatisfactory that there should be any indictable offence of which the elements should be left in uncertainty and doubt.

Part II contains general provisions as to punishments. It makes the following alterations in the existing law.

Section 8 provides that the punishment of death shall be carried out in private in all cases, and not, as at present, in cases of murder only.

Section 13 gives the court power to discharge without conviction, persons who have committed acts which, though amounting in law to crimes, do not under the circumstances involve any moral turpitude. This provision was suggested partly by section 95 of the Indian Penal Code, which excepts from the class of offences acts causing harm "so slight that no person of ordinary sense and temper would complain of such harm," and partly by 18 & 19 Vict. c. 126, s. 1 (the Criminal Justice Act, 1855), which enables justices to dismiss charges of larceny if they are of opinion "that there are circumstances in the case which render it inexpedient to inflict any punishment." The same principle is recognised as to assaults "so trifling as not to merit any punishment" by 24 & 25 Vict. c. 100, ss. 44, 45. There seems no reason why the principle should not extend to a trial for an indictable offence. The conferring of such power on the judge but little enlarges the authority at present vested in him. He may now, on a conviction, award a punishment merely nominal, or discharge the person convicted on his own recognizance. This course, while exempting the person from punishment under a sentence, may still leave him subject to the most serious consequences; for example, upon a conviction for manslaughter committed under circumstances showing the person convicted, though technically guilty, to be entirely free from all moral blame, he would forfeit a pension or be disqualified from holding a beer or spirit license. A conviction for bigamy under certain circumstances might furnish another illustration.

Section 15 re-enacts the provision of the existing law (27 & 28 Vict. c. 48, s. 2) which prohibits a person sentenced to penal servitude after a previous conviction from being sentenced to less than seven years' penal servitude. We have not altered this provision, but we must not be taken to approve of it. It seems unreasonable, and is much complained of by many persons concerned in the administration of justice. Judges of various courts have represented to us that they have in many cases passed

sentences of imprisonment in lieu of penal servitude because they were prevented by this section from passing a sentence for less than seven years. Similar observations apply to the minimum period of five years as at present fixed, where there is no previous conviction. As a Commission is sitting on the whole subject of Penal Servitude, we have thought it sufficient to call attention to these points.

As to the effect of previous convictions, we propose to make a considerable change from the existing law. By the existing law (the provisions of which are intricate) every one who is convicted of felony after a previous conviction for felony is liable to penal servitude for life, or imprisonment for four years with hard labour, and to be whipped once, twice, or thrice (7 & 8 Geo. 4. c. 28, s. 11, and 9 Geo. 4. c. 54, s. 21, Ireland). The provisions of the Larceny Act (24 & 25 Vict. c. 96, ss. 7, 8, 9) seem to limit the maximum punishment to ten years' penal servitude if each offence is simple larceny, but they also provide a maximum punishment of seven years' penal servitude for a conviction of larceny after a previous conviction on an indictment for certain misdemeanours, or after two summary convictions for offences resembling larceny. As a substitute for this we propose that a person convicted of a crime involving dishonesty, for which he might be punished with penal servitude for five or seven years, shall be liable to fourteen years' penal servitude if he has been previously convicted of such a crime. This is the result of the definition of "offence involving dishonesty" given in section 6, combined with sections 275, 294, 308. Section 380 provides specially for the punishment of offences relating to the coin after previous convictions for such offences. The provisions of the Bill on this subject were the same in principle as the existing law.

By the present law a person convicted of more offences than one may be sentenced in respect of every such offence separately, each sentence to take effect on the expiration of the preceding sentence. Under this state of the law, imprisonment may, in the case of several convictions, be prolonged to an extent limited in effect only by the life of the offender, and in some instances sentences have been actually passed involving imprisonment for very long periods. As this appears objectionable, we have prohibited any continuous imprisonment of longer duration than two years; and in lieu of the present unrestricted power of cumulating periods of imprisonment, we have substituted a power by section 17 to pass a sentence of from five to seven years' penal servitude in cases in which sentences of four years' imprisonment with hard labour might now be passed, and sentences of from five to fourteen years' penal servitude in cases in which sentences of six years' imprisonment with hard labour might now be passed. The provisions of the Bill as to cumulative punishment were in effect not very different from those of the Draft Code.

It is always to be borne in mind that the punishments specified in the various sections of the Draft Code are the maximum punishments, the provisions of each particular section being controlled by section 12, which gives unlimited power of mitigation in all but capital cases. In every case where we have proposed to increase the existing maximum punishment, we have called attention to the fact in a marginal note.

Part III deals with matters of justification and excuse for acts which would otherwise be indictable offences. We regard this as one of the most difficult as well as most important portions of the Draft Code: and we have already explained our reasons for presenting it in the shape in which it stands.

As regards the excuse of immaturity of age, both the Draft Code and the Bill simply repeat the existing law.

Section 22, which relates to insanity, expresses the existing law. The obscurity which hangs over the subject cannot be altogether dispelled until our existing ignorance as to the nature of the will and the mind, the nature of the organs by which they operate, the manner and degree in which those operations are interfered with by disease, and the nature of the diseases which interfere with them, are greatly diminished. The framing of the definition has caused us much labour and anxiety; and though we cannot deem the definition to be altogether satisfactory, we consider it as satisfactory as the nature of the subject admits of. Much latitude must in any case be left to the tribunal which has to apply the law to the facts in each particular case. The principal substantial difference between section 22 of the Draft Code and the corresponding section of the Bill is that the latter recognizes as an excuse the existence of an impulse to commit a crime so violent that the offender would not be

prevented from doing the act by knowing that the greatest punishment permitted by law for the offence would be instantly inflicted, the theory being that it is useless to threaten a person over whom by the supposition threats can exercise no influence. This provision of the Bill assumes that the accused would not be protected by the preceding part of the section, and therefore that he was at the time he did the act capable of appreciating its nature and quality, and knew that what he was doing was wrong. The test proposed for distinguishing between such a state of mind and a criminal motive, the offspring of revenge, hatred, or ungoverned passion, appears to us on the whole not to be practicable or safe, and we are unable to suggest one which would satisfy these requisites and obviate the risk of a jury being misled by considerations of so metaphysical a character. It must be borne in mind, that, although insanity is a defence which is applicable to any criminal charge, it is most frequently put forward in trials for murder, and for this offence the law—and we think wisely—awards upon conviction a fixed punishment which the judge has no power to mitigate. In the case of any other offence, if it should appear that the offender was afflicted with some unsoundness of mind, but not to such a degree as to render him irresponsible,—in other words where the criminal element predominates, though mixed in a greater or less degree with the insane element,—the judge can apportion the punishment to the degree of criminality, making allowance for the weakened or disordered intellect. But in a case of murder this can only be done by an appeal to the executive; and we are of opinion that this difficulty cannot be successfully avoided by any definition of insanity which would be both safe and practicable, and that many cases must occur which cannot be satisfactorily dealt with otherwise than by such an appeal.

With regard to compulsion we have already expressed our views. We recommend the abolition of the presumption as to the coercion of married women by their husbands. Upon the matter of compulsion generally the Draft Code and the Bill differ, but we need not notice their difference.

We have thought it inadvisable to introduce any express reference to the well-known doctrine that drunkenness is no excuse for crime, though in particular instances its existence may show the absence of specific intention. Reference to the matter might suggest misunderstanding of a dangerous kind.

Sections 25 to 66, both inclusive, contain a series of provisions as to the circumstances which justify the application of force to the person of another against his will. To these we have already referred at some length. We believe that in the main these provisions embody the common law, though on some points they lay down a definite rule where the law is at present doubtful, and in others correct what appear to be defects in the existing law. We have noticed in marginal notes the points in which we conceive the law to be altered by these sections.

We would direct special attention to the sections relating to the suppression of riots, particularly to their suppression by the use of military force. We do not think that these sections differ from what would probably be held to be the law if cases should ever occur to raise the questions which they determine, but we cannot say that every proposition has been expressly held to be the law. We must observe, in regard to all these provisions, that the law upon the different matters to which they relate has never before, so far as we know, been reduced to an explicit or systematic form. One of the principal differences both in the arrangement and in the substance of the Draft Code and the Bill consists in the different way in which they deal with these subjects. As regards arrangement, the provisions which specify the cases in which summary arrest is lawful were placed in that part of the Bill which relates to procedure on the ground that the first step to be taken towards the punishment of an alleged offender is to arrest him. So far as the other matters referred to were dealt with at all, they were (with one exception) treated in that part of the Bill which dealt with offences against the person, as in all common cases the matters provided for would have to be inquired into in connexion with such offences. As regards the substance of the enactments, the whole subject was treated much more concisely in the Bill than in the Draft Code.

The Bill also contained a provision as to the effect of mistakes of fact upon the criminality of acts done in consequence of such mistakes, which if some qualifications had been made in it would have included under one general principle a

considerable number of the enactments contained in Part III of the Draft Code. The difficulty presented on the one hand by our rules of construction to expressing matters of such intricacy in general language, and the danger apparent on the other hand of losing the certainty essential for a Code, have induced us (at some sacrifice perhaps of brevity) to adopt a mode of dealing with these subjects which reduces to an intelligible and systematic form a great body of law on which precise rules are very desirable, and which is at present in an extremely obscure and fragmentary state.

Part IV corresponds in the main with Chapter IV of the Bill. Each effects a change, not so much in the substance as in the language of the existing law. The old law as to principal and accessory was technical and intricate, but it was practically superseded by 24 & 25 Vict. c. 94, which put accessories before the fact upon the same footing in all respects as principals. We have thought it better to discontinue the use of an expression which has ceased to have any appropriate meaning.

Section 74 in this Part deals with attempts to commit offences, and treats the act of a person who with the intention to carry off the money he believes to be there puts his hand into a pocket or breaks open a box, as an attempt to steal, though there was in fact no money in the pocket or in the box. This alters the law from what it has been held to be. The other sections are not believed to do more than declare the existing law.

With these observations on the preliminary Title, we pass to those which contain the definitions of indictable offences.

V.

TITLES II AND III.—OFFENCES AGAINST PUBLIC ORDER AND THE ADMINISTRATION OF JUSTICE.

Title II relates to offences against public order, internal and external, and deals in four successive Parts with high treason and other offences against Your Majesty's authority and person; unlawful assemblies; riots and breaches of the peace; unlawful oaths; seditious words, conspiracies, and libels; and piracy and piratical offences, which are included in this Title because they are of the nature of private war waged against the lawful authority of all nations.

Our definition of High Treason exactly follows the existing law, with one or two exceptions which we felt warranted in making. The existing law depends upon the old statute of 25 Ed. 3, st. 5, c. 2, and on the judicial construction put upon that Act. It is well explained in the opinion delivered by the late Mr. Justice Willes in *Mulcahy v. R.* (L.R. 3 H. of L. 318). It has been thought better to make the act of killing or wounding the Sovereign in itself an act of treason, instead of adopting the artificial construction by which cutting off the head of Charles the First was not treason in itself, but was an overt act evidencing the compassing of his death, which was treason within the statute of Edward 3. And we have also thought it right to make conspiring to levy war against the Sovereign in itself treason, instead of evidence of compassing the Sovereign's death. It would in the present day be absurd to re-enact the provisions which make it high treason to kill the Lord Chancellor or a Judge of the Superior Courts in the discharge of his duties. The ordinary law as to murder affords sufficient protection. A provision as to the King's eldest daughter we also ventured to omit. Section 76 preserves the existing law as to evidence, which has for centuries required two witnesses to prove treason. We have not thought it right to alter this, which has so long been the law, though many persons doubt whether there is ground at the present day either in expediency or reason for preserving the anomaly.

The Treason Felony Act (11 Vict. c. 12) and the Act intended to protect Your Majesty's person from insult (5 & 6 Vict. c. 57) are re-enacted by sections 79 and 80.

Section 81 represents 12 Geo. 3, c. 2, which punishes with death the offence of burning ships of war, &c. By 4 Geo. 4, c. 48, sentence of death may in this case be recorded,—a course which has the same effect as if the sentence had been passed and the prisoner reprieved. In practice, sentences of death so recorded are never executed. We have not ventured to alter this, but the proceeding seems objectionable on obvious grounds. If the punishment in this case were reduced to penal servitude for life as a maximum, the section might be dispensed with, as every offence falling under it would be punishable as arson.

The definition of an unlawful assembly in Part VI depends entirely on the common law.

The earliest definition of an unlawful assembly is in the Year Book 21 H. 7, 39. It would seem from it that the law was first adopted at a time when it was the practice for the gentry, who were on bad terms with each other, to go to market at the head of bands of armed retainers. It is obvious that no civilised government could permit this practice, the consequence of which was at the time that the assembled bands would probably fight, and certainly make peaceable people fear that they would fight. It was whilst the state of society was such as to render this a prevailing mischief that the earlier cases were decided; and consequently the duty of not provoking a breach of the peace has sometimes been so strongly laid down as almost to make it seem as if it was unlawful to take means to resist those who came to commit crimes. We have endeavoured in section 84 to enunciate the principles of the common law, although in declaring that an assembly may be unlawful if it causes persons in the neighbourhood to fear that it will needlessly and without reasonable occasion provoke others to disturb the peace tumultuously, we are declaring that which has not as yet been specifically decided in any particular case. The clause as to the defence of a man's house has been inserted because of a doubt expressed on the subject. Forcible entry and detainer are offences at common law; and section 95 we believe correctly states the existing law.

The greater portion of this Part is merely a re-enactment of a variety of statutes which are referred to in the margin.

The three first sections of Part VII, sections 99, 100, and 101, are a re-enactment of the existing statute law as to unlawful oaths.

Section 102, relating to seditious offences, is taken without alteration from the Bill. It appears to us to state accurately the existing law as stated in the authorities noted in the margin of the Draft Code. On this very delicate subject we do not undertake to suggest any alteration of the law. It is not easy to find explicit authority earlier than the case of *R. v. Frost* (22 St. Tr. 471, tried before Lord Kenyon in 1793), for the proposition that to speak seditious words is an indictable offence. A passage in the 3rd Institute (p. 14) certainly says, "But words without an overt deed are to be punished in another degree as an high misprision." This, however, is an incidental remark at the end of a passage, the main point of which is that mere words are not in general an overt act of treason.

The Bill contained a definition of "Piracy by the law of nations." We have thought it better to leave this offence undefined in Part VIII, as no definition of it would be satisfactory which is not recognised as such by other nations; and after careful consideration of the subject we have not been able to discover a definition fulfilling such a condition. We may observe as to this that the subject has been much discussed in the Courts of the United States, and the result appears to justify the course which we have adopted. We do not think it will lead to practical inconvenience.

Piracy is punished with death by the existing law if it is accompanied by personal violence, but sentence of death may be recorded. We need not repeat our observations on this procedure.

We will only further observe with regard to the contents of this Title that the corresponding part of the Bill included offences against the Acts for the suppression of the Slave Trade, several of which, according to the provisions of those Acts, are to be deemed to amount to piracy. We have, upon the whole, thought it best to omit these offences from the Draft Code. The Acts relating to the Slave Trade form a special code having a distinct object of their own, in which various foreign countries are interested. Offences against these Acts are extremely rare, and prosecutions for them do not form part of the usual routine of criminal justice.

Title III. deals with offences affecting the administration of justice, by way of corrupting judicial or ministerial officers, by disobeying lawful orders, by deceiving courts, by perjury and other means of the same kind, or by escaping or rescuing others from lawful custody. In a general Code of the criminal law we have thought it right to include the offence of judicial corruption, and to subject it to severe and infamous punishment. As no case of the kind has occurred (if we except the prosecutions of Lord Bacon and Lord Macclesfield), it is not surprising that the law on the subject should be somewhat vague. We have thought it right, in order to protect

persons holding judicial positions from malicious prosecutions, to provide that no prosecution for this offence shall be instituted except by the Attorney General, or in the case of judges of the Superior Courts (who since the Revolution have not been removable at the will of the Crown), without the resolution of one of the Houses of Parliament. We have also provided for the punishment of corruption in ministerial officers connected with the administration of justice. Recent experience has shown that the punishment awarded to such offences by the common law is not sufficiently severe.

We propose in Part X that perjury, the taking of false oaths otherwise than in judicial proceedings, the fabrication of evidence (which by the present law is perhaps not an offence, unless it amounts to a conspiracy), and conspiracies to bring false accusations or to defeat justice, should be punished more severely than at present. Perjury may be made the means of committing what amounts morally to murder or robbery of the worst kind, and it appears to us that in such cases the present maximum punishment (seven years' penal servitude) is not sufficiently severe. In framing section 119 we have proceeded on the principle that the guilt and danger of Perjury consist in attempting by falsehood to mislead a tribunal *de facto* exercising judicial functions. It seems to us not desirable that a person who has done this should escape from punishment, if he can show some defect in the constitution of the tribunal which he sought to mislead, or some error in the proceedings themselves.

False oaths, and false statements not on oath to which faith is given, are not perjury, unless taken or made in a judicial proceeding. They are at common law punishable by fine and imprisonment only. They are provided for by sections 122 and 123.

Fabricating evidence is an offence which is not so common as perjury, but which does occur and is sometimes detected. An instance occurred a few years ago on a trial for shooting at a man with intent to murder him, where the defence was that though the accused did fire off a pistol, it was not loaded with ball and the only intent was to frighten. Evidence was given that a pistol ball was found lodged in the trunk of a tree nearly in the line from where the accused fired to where the prosecutor stood. It was afterwards discovered that the ball had been placed in the tree by those concerned in the prosecution, in order to supply the missing link in the evidence. Such an offence is as wicked and as dangerous as perjury, but the punishment as a common law offence (if, irrespective of conspiracy, it be an offence) is only fine and imprisonment. This is provided for by section 125.

In reference to the somewhat intricate subject of escape and rescue dealt with in Part XI, we have made distinctions, which are, we think, insufficiently recognised by the existing law, between the commission of such offences by peace officers and gaolers, and by other persons.

This Title differs from the corresponding part of the Bill, principally in the circumstance that, for the reasons already assigned, it omits several obsolete common law offences included in this part of the Bill. The Bill also re-enacted the provisions of that part of the Corrupt Practices Act (17 & 18 Vict. c. 102) which creates indictable offences. These latter provisions appear to us hardly to deal with any part of the common routine of criminal justice; and being enacted for a limited time only, ought not to find a place in a Code intended to be permanent. The changes proposed by us in the punishment of judicial and official corruption, perjury, and conspiracies to make false accusations, or to defeat justice, are all contained in the Bill, though in some cases with slight differences. The part of the Draft Code which deals with escapes and rescues is rather more elaborate and detailed than the corresponding chapter of the Bill.

VI.

TITLE IV.—OFFENCES AGAINST RELIGION, MORALS, AND PUBLIC CONVENIENCE.

Title IV relates to offences against religion, morals, and public convenience, and corresponds with Part IV of the Bill.

Section 141 provides a punishment for blasphemous libels, which offence we deem it inexpedient to define otherwise than by the use of that expression. As, however, we consider that the essence of the offence (regarded as a subject for criminal punishment) lies in the outrage which it inflicts upon the religious feelings of the community, and not in the expression of erroneous opinions, we have added a proviso to the effect that no one shall be convicted of a blasphemous libel only for expressing in good faith and

decent language any opinion whatever upon any religious subject. We are informed that the law was stated by Mr. Justice Coleridge to this effect in the case of *R. v. Pooley*, tried at Bodmin in 1857. We are not aware of any later authority on the subject. This provision is taken with some alteration from the Bill.

With regard to offences against morality, we think it expedient to do away with the minimum punishment of ten years' penal servitude, at present inflicted in certain cases. It is the only, or almost the only, minimum punishment still retained, and experience shows that in this, as in other cases, circumstances greatly affect the nature of the offence.

We believe that section 147, as to obscene publications, expresses the existing law, but it puts it into a much more definite form than at present. We do not however think it desirable to attempt any definition of obscene libel other than that conveyed by the expression itself.

With regard to section 148, we may observe that 24 & 25 Vict. c. 100, s. 49, on which it is founded, is so widely drawn as (in terms at least) to appear to make the seduction of a woman under age a criminal offence in almost every case. We have qualified this by introducing the words "from motives of lucre," which will carry out what has been treated as and what we suppose to have been the intention of the Legislature.

With regard to nuisances, which form the subject of Part XIV, we have in section 151 and section 152 drawn a line between such nuisances as are and such as are not to be regarded as criminal offences. It seems to us anomalous and objectionable upon all grounds that the law should in any way countenance the proposition that it is a criminal offence not to repair a highway when the liability to do so is disputed in perfect good faith. Nuisances which endanger the life, safety, or health of the public stand on a different footing.

By the present law, when a civil right such as a right of way is claimed by one private person and denied by another, the mode to try the question is by an action. But when the right is claimed by the public, who are not competent to bring an action, the only mode of trying the question is by an indictment or information, which is in form the same as an indictment or information for a crime. But it was very early determined that, though it was in form a prosecution for a crime, yet that as it involved a remedy for a civil right, the Crown's pardon could not be pleaded in bar. See 3 Inst. 237. And the legislature, so recently as in the statute 40 & 41 Vict. c. 14, again recognised the distinction. The existing remedy in such cases is not convenient, but it is not within our province to suggest any amendment. The other sections are mostly re-enactments of statutes; but sections 153 and 158 are declaratory of the common law, though we have suggested the addition of hard labour to the punishment. The Bill contained nearly all the provisions upon this subject which are found in Part XIV of our Draft, though it does not draw the distinction to which we have just adverted; but it also embodied the provisions of 8 & 9 Vict. c. 109, s. 8, and 17 & 18 Vict. c. 38, s. 2, as to the facts by which a house may be proved to be a common gaming house. We have omitted these as having reference, if not exclusively, at all events principally, to summary proceedings before magistrates.

We now arrive at the part of the Draft Code which relates to offences against individuals.

VII.

TITLE V.—OFFENCES AGAINST THE PERSON.

Title V corresponds for the most part (as did Part V of the Bill) to 24 & 25 Vict. c. 100, supplemented by a reduction to writing of the common law doctrines and definitions, a knowledge of which is necessary to complete the subject. As homicide and the infliction of bodily injury may be effected as well by an omission to discharge a legal duty as by an illegal act, it is necessary to begin by defining the legal duties tending to the preservation of life, the neglect of which is criminal. This is the subject of Part XV of the Draft Code, and of Chapter XVIII of the Bill. We believe that this Part of the Draft Code will be found to state in a clear and compendious form the unwritten law upon the subject to which it relates.

Section 161 is a re-enactment of 24 & 25 Vict. c. 100, s. 26, which was itself a re-enactment of 14 & 15 Vict. c. 11. That statute was passed in the excitement con-

sequent on the case of *R. v. Sloane*,* and was framed so as to embrace all cases where there was a contract to supply a servant of whatever age with food, clothing, and lodging. It has been thought better to limit it to servants and apprentices under the age of 16, but it is right to point out that this is not the existing law. Section 160 puts the head of a family under the same criminal responsibility towards members of his household under the age of 16, as a master is to a servant of the same age.

The Draft Code deals next with murder, manslaughter, and some other offences to which we will refer specifically. Many of the doctrines of the common law bearing upon this subject relate equally to murder and manslaughter. Both the Draft Code (Part XVI) and the Bill (Chapter XIX) accordingly deal with homicide generically, and ascertain the cases in which it is culpable, before dealing specifically with murder and manslaughter. There is some difference in language and arrangement between this Part of the Draft Code and the Bill. The Draft Code preserves a rule of the common law which was repealed by the Bill, viz.: the rule that to render the homicide culpable, death must take place within a year and a day of the injury. It was thought desirable to fix some limit, and no sufficient reason occurred to us for departing from the ancient rule. In other respects there is little difference between the Draft Code and the Bill, and none between the former and the existing law. Having defined culpable (or, as it is called in the Bill, unlawful) homicide, both the Draft Code and the Bill proceed to the problem of defining murder and manslaughter. The common law definition of murder is "unlawfully killing with malice aforethought." Manslaughter may in effect be defined as "unlawful killing without malice aforethought." The objection to these definitions is that the expression "malice aforethought" is misleading. This expression taken in a popular sense would be understood to mean that in order that homicide may be murder, the act must be premeditated to a greater or less extent, the jury having in each case to determine whether such a degree of premeditation existed as deserved the name. This definition if so understood would be obviously too narrow, as without what would commonly be called premeditation, homicide might be committed which would involve public danger and moral guilt in the highest possible degree. Of course it can be pointed out that every intentional act may be said to be done aforethought, for the intention must precede the action. But even with this explanation, the expression is calculated to mislead anyone but a trained lawyer. The inaccuracy of the definition is still more apparent when we find it laid down that a person may be guilty of murder who had no intention to kill or injure the deceased or any other person, but only to commit some other felony, and the injury to the individual was a pure accident. This conclusion was arrived at by means of the doctrine of constructive or implied malice. In this case as in the case of other legal fictions it is difficult to say how far the doctrine extended. We do not propose on the present occasion to enter upon a discussion of this subject. It was carefully considered before a Committee of the House of Commons sitting on a Bill for the definition of Homicide, introduced by the late Mr. Russell Gurney in 1874. It was also considered by the Commission on Capital Punishments, which reported in 1866. Each of these bodies reported that the present condition of the law was unsatisfactory, though neither arrived at a definition which was considered satisfactory.

The present law may, we think, be stated with sufficient exactness for our present purpose somewhat as follows:—Murder is culpable homicide by any act done with malice aforethought. Malice aforethought is a common name for all the following states of mind:—(a) An intent preceding the act to kill or to do serious bodily injury to the person killed or to any other person; (b) Knowledge that the act done is likely to produce such consequences, whether coupled with an intention to produce them or not; (c) An intent to commit any felony; (d) An intent to resist an officer of justice in the execution of his duty. Whether (c) is too broadly stated or not is a question open to doubt, but Sir Michael Foster, perhaps the highest authority on the subject, says (p. 258) "A shooteth at the poultry of B, and by accident killeth a man; if his intention was to steal the poultry, which must be collected from circumstances, it will be murder by reason of that felonious intent; but if it was done wantonly and without that intention, it will be barely manslaughter."

It seems to us that the law upon this subject ought to be freed from the element

* Annual Register, vol. 92, p. 144.

of fiction introduced into it by the expression "malice aforethought," although the principle that murder may under certain circumstances be committed in the absence of an actual intention to cause death ought to be maintained. If a person intends to kill and does kill another, or if, without absolutely intending to kill, he voluntarily inflicts any bodily injury known to be likely to cause death, being reckless whether death ensues or not, he ought in our opinion to be considered a murderer if death ensues.

For practical purposes we can make no distinction between a man who shoots another through the head expressly meaning to kill him, a man who strikes another a violent blow with a sword, careless whether he dies of it or not, and a man who, intending for some object of his own, to stop the passage of a railway train, contrives an explosion of gunpowder or dynamite under the engine, hoping indeed that death may not be caused, but determined to effect his purpose whether it is so caused or not. This is the general object kept in view both in the Draft Code and in the Bill, but there is some difference in the extent to which they go. There is no difference as to the cases in which the death of the person killed or of some other person is intended. The Bill included in the definition of murder all cases in which the offender intended to cause, or knew that he probably would cause "grievous bodily harm" to any person. The Draft Code would include all such cases, substituting the expression "bodily injury known to the offender to be likely to cause death" for "grievous bodily harm," which to some extent narrows the definition given in the Bill. On the other hand, the Draft Code (section 175) includes all cases in which death is caused by the infliction of "grievous bodily injury" for the purpose of facilitating the commission of certain heinous offences. All these cases would fall within the definition of murder given in the Bill, according to which it is murder to kill by the intentional infliction of grievous bodily harm, irrespectively of the purpose for which it is used. Lastly, section 175 in sub-sections (b) and (c) provides that killing by the administration of stupefying things, or by wilfully stopping the breath, for the purpose in either case of committing any of the specified offences, shall be murder, whether the offender knows or not that death is likely to ensue. According to the provisions of the Bill these cases would amount to murder only if the offender knew their danger. The difference between the Draft Code and the Bill upon the whole comes to this. A, in order to facilitate robbery, pushes something into B's mouth to stop his breath and thus to prevent him from crying out; the death of B results. This is murder according to the Draft Code. According to the Bill it is murder if A knew that such an act would probably cause death; manslaughter if he did not. A few years ago a case occurred in the Western Circuit* which illustrates the principle on which this portion of the Draft Code is framed better than any hypothetical case. An innocent girl on her way to church had to pass over a stile into a narrow wooded lane and then go out of it by a stile on the other side. A ruffian who knew this lay in wait for her, muffled her head in a shawl to stifle her cries, and proceeded to drag her down the lane towards a wood. She died before she reached it. He was executed for the murder. It is plain he did not mean to kill her; indeed his object was frustrated in consequence of her not reaching the wood alive, and he probably was not aware that stifling her breath for so short a time was dangerous to life; but as the law at the time was and now is, the death having been occasioned by violence used to facilitate the commission of a rape, the offence was murder. And we believe there are few who would not think the law defective if such an offence was not murder.

Again, A stabs B in the leg, not intending to kill him; B dies. According to the Bill this would be murder if the jury thought the act showed an intent to do grievous bodily harm, or if without such intent it was done with knowledge that it would probably cause death or grievous bodily harm. According to the Draft Code it would be murder, if the jury thought the act was meant to cause to B an injury known to A to be likely to cause death, he being reckless whether it caused death or not. It will thus be seen that the Bill and the Draft Code approach other very closely.

There is no substantial difference between the provisions of the Draft Code and the Bill dealing with provocation, though the language and arrangement differ. Each introduces an alteration of considerable importance into the common law. By the existing law the infliction of a blow or the sight by the husband of adultery committed with his wife may amount to provocation which would reduce murder to manslaughter. It is possible that some other insufferable outrages might be held to have the same effect. There is no definite authoritative rule on the subject, but the authorities for saying that words can never amount to a provocation are weighty.

* Reg. v. Gilbert, known as the Fordingbridge murder. See "The Times," 19 July 1862.

We are of opinion that cases may be imagined where language would give a provocation greater than any ordinary blow. The question whether any particular act falls or not within this line appears to us to be pre-eminently a matter of degree for the consideration of the jury. By the present law suicide is murder, and a person who assists another to commit suicide is an accessory before the fact to murder, and liable to capital punishment. It appears to us that the abetment of suicide and attempts to commit suicide ought to be made specific offences. We provide for this in sections 183 and 184 (which correspond with sections 144 and 145 of the Bill).

The subject of child murder is one as to which the existing law seems to require alteration. At present no distinction is made between the murder of a new-born infant by its mother, and the murder of an adult. Practically this severity defeats itself, and offences which are really cases of child murder are often treated as cases of concealment of birth simply. The Bill proposed to meet this by an enactment which (as amended by the Attorney General) would have enabled a jury to convict a woman of manslaughter instead of murder who caused her new-born child's death by an act done when her power of self-control was greatly weakened. On the whole we have preferred to substitute for it the provisions contained in sections 185 and 186. (See marginal note to section 185.)

Parts XVIII–XXII correspond to 24 & 25 Vict. c. 100 and Chapters XXI–XXV of the Bill. Such alterations as they make in the existing law are marginally noted; they are not considerable. We may, however, observe that we provide by section 212 for the offence of killing a child in the act of birth, and before it is fully born. This seems not to be an offence by the present law. A similar provision was contained in the Bill.

The existing statute as to Bigamy is so worded as to have given rise to a difference of judicial opinion as to whether it does or does not, from motives of policy, make it a crime to marry again during the life of the husband or wife, though in the bonâ fide and reasonable belief that the first husband or wife was dead, unless seven years had elapsed since he or she was last heard of. We have thought it important that the law should be certain, and have accordingly framed the clause so as to leave no doubt what the law would be. In doing so, we have adopted the construction which has been more generally put on the existing statute. No doubt the conviction of a man marrying again within the seven years under the honest belief that his wife was dead, may be regarded as a hard case; but the hardship may at present be mitigated by the infliction of a nominal punishment, and will be capable of still further mitigation if section 13 of the Draft Code becomes law. On the other hand, care must be taken not to give encouragement to bigamous marriages by relaxing the rule that a man marrying within the prescribed seven years does so at his peril.

Among the suggestions furnished to us was one that clause 216 might subject a Hindoo coming to England to a prosecution for having a plurality of wives in his own country. So far as this point is concerned, the clause is taken from the Act of 1861, which re-enacted in terms the Act of 1828. We have merely altered the wording, so as to make it harmonize with the other sections of the Draft Code by changing "elsewhere than in England or Ireland" into "any part of the world." During the half century which has elapsed since the first of these statutes were passed, no attempt has ever been made to apply them to such a case as the one suggested,—for the reason we presume, that "marriage" in these statutes means the union for life of one man with one woman to the exclusion of all others, as is well expressed by Lord Penzance in *Hyde v. Hyde*, 35 Law J. Prob. 57. Whatever may be the ceremony by which a polygamist adopts a woman as one of his wives, the relation which it creates is essentially different from that which our criminal legislation contemplates by the word "marriage."

The law of libel is placed in this Title because, although a libel is not a bodily injury, it is an injury to reputation. Part XXIII, which relates to this subject, re-enacts in substance what we believe to be the existing law; we have so defined it as to dispense with the use of the word "maliciously."

VIII.

TITLE VI.—OFFENCES AGAINST RIGHTS OF PROPERTY AND BY CONTRACT.

Title VI, corresponding to Part VI of the Bill, relates to offences against rights of property and rights founded on contract. Offences against rights of property must be committed either by wrongfully taking property, by fraudulently deceiving the owners of property, or by the mischievous destruction of property, in other words, by theft,

cheating, or mischief. Theft may be either simple or aggravated. Simple theft is so closely connected with certain kinds of fraud that the two subjects run into each other. Theft aggravated by violence is either robbery or extortion. Theft accompanied by wilful trespass on a dwelling-house is either burglary or house-breaking. The receiving of goods dishonestly obtained is usually associated with theft. We have therefore placed it next after theft. Mischief is a distinct subject and follows fraud. Offences against rights of property are followed by the offences which are contained in the Acts for the punishment of fraudulent debtors.

This Title and the corresponding Part of the Bill include and re-enact in substance the provisions of the Larceny Act, the Forgery Act, the Coinage Offences Act, and the Malicious Mischief Act of 1861 (24 & 25 Vict. cc. 96, 97, 98, and 99). They also include some provisions less comprehensive which occur in other Acts, in particular the provisions of two sections of the Post Office Act (7 W. 4 & 1 Vict. c. 36, ss. 28, 47), part of the Trade Marks Act (25 & 26 Vict. c. 88), the Personation Act (37 & 38 Vict. c. 36), and the provisions of the Fraudulent Debtors Acts for England and Ireland (32 & 33 Vict. c. 62, and 35 & 36 Vict. c. 57). The minor alterations made in the provisions thus re-enacted can hardly be appreciated without comparing the wording of the Draft Code with that of the statutes on which it is founded, an operation for which our marginal notes are intended to give facilities. The changes made by this Title relate principally to the common law as to theft, and will be found in Parts XXIV and XXV.

The present statute law is substantially contained in the 24 & 25 Vict. c. 96. It recognises and continues the old (and, as it seems to us, unreasonable) distinctions between stealing animals *feræ nature* or things attached to or savouring of the realty, which were not at common law the subject of larceny, and stealing other property. There is good reason for holding that capturing wild animals in the enjoyment of their natural liberty, though on another's land, should not be considered stealing; but why should stealing one of the deer or valuable foreign birds in the Zoological Gardens, be treated differently from stealing a sheep or a hen? And why should it be a different offence to steal a log of timber, from that which it is to cut down the tree and carry it away? Again, the old law as to stealing required that the property should be taken out of the possession of the owner. This rule gave rise to many complicated and highly artificial decisions; and some statutes have included amongst thieves, bailees servants and others who, having lawfully obtained possession of property were not within the old definition, though they fraudulently appropriated to their own use the property entrusted to them; but many persons equally culpable are still beyond the reach of the criminal law. Even now a person who finds a purse and appropriates it under circumstances involving all the moral guilt of theft, may on technical grounds escape all criminal liability.

It is proposed to simplify the law by putting an end to all these distinctions, which are very subtle and many of them arbitrary. In order to understand their nature it is necessary to enter upon some explanations as to the history and present state of the law on this subject.

The things which are capable of being stolen, according to the common use of the word "steal," but which are not at common law the subjects of larceny, may be described as first, certain animals; secondly, documents evidencing certain rights; and thirdly, land and things fixed to or growing out of it. As to animals, one rule of the existing law is founded on the principle that to steal animals used for food or labour is a crime worthy of death, but that to steal animals kept for pleasure or curiosity is only a civil wrong. The principle has long since been practically abandoned. Sheep stealing is no longer a capital crime; and dog stealing is a statutory offence; but the distinction still gives its form to the law, and occasionally produces results of a very undesirable kind. It has been lately held, for instance, that as a dog is not the subject of larceny at common law, it is not a crime to obtain by false pretences two valuable pointers*. It seems to us that this rule is quite unreasonable, and that all animals which are the subject of property should also be the subject of larceny. This, however, suggests the question, What wild animals are the subject of property, and how long do they continue to be so? This question must be considered in reference to living animals *feræ nature* in the enjoyment of their natural liberty; living animals *feræ nature* escaped from captivity; and pigeons, which singularly enough form a class by themselves. The existing law upon this subject, is that a living wild animal in the enjoyment of its natural liberty, is not the subject of property; but that when dead it

* R. v. Robinson, Bell 34.

becomes the property of the person on whose land it dies, in such a sense that he is entitled to take it from a trespasser, but not in such a sense that the person who took it away on killing it is guilty of theft. This is specially important in reference to game. This state of the law we do not propose to alter. As to living animals *feræ naturæ* in captivity, we think they ought to be capable of being stolen. When such an animal escapes from captivity, a distinction appears to us to arise which deserves recognition. If the animal is one which is commonly found in a wild state in this country, it seems reasonable that on its escape it should cease to be property. A person seeing such an animal in a field may have no reasonable grounds for supposing that it had just escaped from captivity. If, however, a man were to fall in with an animal imported as a curiosity, at great expense, from the interior of Africa, he could hardly fail to know that it had escaped from some person to whom it would probably have a considerable money value. We think that a wild animal should, on escaping from confinement, still be the subject of larceny, unless it be one commonly found wild in this country.

Pigeons whilst in a dovecot or farmyard ought obviously to be as much capable of being stolen as poultry. But suppose they are away from their home, and are not distinguishable from wild pigeons? The law upon this point is not quite clear; but it appears from section 23 of 24 & 25 Vict. c. 96, that a bird so situated is not the subject of larceny, as that Act imposes a penalty of forty shillings on persons killing pigeons "under such circumstances as shall not amount to larceny at common law;" and no other circumstances can be imagined to which these words would apply. These distinctions will be found to be embodied in section 245.

Deer in an enclosed park, and hares and rabbits in an enclosed warren from which they cannot escape, would seem on principle to be as much property as sheep or cows in the same position. Such, however, has not been the scheme of legislation hitherto. We have framed sections 276 and 277 so as to preserve the existing law.

The rules that documents evidencing certain rights, and that land and things "savouring of the realty" are not capable of being stolen appear to us wholly indefensible. It is no doubt physically impossible to steal a legal right or to carry away a field, but this affords no ground at all for the rule that it shall be legally impossible to commit theft upon documents which afford evidence of legal rights, or upon things which, though fastened to, growing out of, or forming part of the soil, are capable of being detached from it and carried away. These rules have been qualified by statutory exceptions so wide and intricate that they are practically abolished, but they still give form to a considerable part of the law of theft, and occasionally produce failure of justice in cases in which the statutory exception is not quite co-extensive with the common law rule. These rules we propose to abolish absolutely.

In the next place it is essential to larceny at common law that there should be a felonious "taking," which has been understood to mean a taking out of the possession of the owner. This rule has given rise to vast technicality. First there is the question what is the precise meaning of the word "taking" or "carrying away," considered as a physical operation; and there are many cases on this point which run into very minute distinctions. In order to supersede them, the Bill enacted that theft by taking should be considered complete as soon as the thing taken was touched with intent to move it. On the whole it was thought desirable to require that, in order to constitute theft by taking, there should be at least an actual moving of the thing stolen. The existing law on that point is accordingly unaltered by the Draft Code. This is a matter of comparatively small importance, as such questions arise very rarely.

Technicalities of more importance connected with taking are those which have led to the distinction between theft and embezzlement. The immediate consequence of the doctrine that a wrongful taking is of the essence of theft, is, that if a person obtains possession of a thing innocently, and afterwards fraudulently misappropriates it, he is guilty of no offence. This doctrine has been qualified by a number of statutory exceptions, each of which has been attended with difficulties of its own. The first of them is contained in the statute which provides that a clerk or servant, or person employed in the capacity of a clerk or servant, who embezzles property received on behalf of his master, shall be deemed to have stolen it. This enactment was interpreted as creating a new offence distinct from ordinary theft; and a great number of cases involving considerations technical and subtle to the last degree have been decided on various points connected with it; and it was found necessary for the legislature to interfere further in order to prevent many failures of justice. Clerks and servants, however, formed only one class of persons who had opportunities of committing

breaches of trust for which the common law provided no punishment. Bankers, merchants, brokers, solicitors, factors, and other agents might and did commit similar offences; and another great exception in the rule of the common law was made to include such cases. These enactments are elaborate and intricate, and present special difficulties of their own. The existing law will be found in 24 & 25 Vict. c. 96, ss. 75 and following. The first Act on the subject was passed in the reign of George III. The case of bailees singularly enough remained unprovided for after the rest, and a carrier stealing a parcel intrusted to him for carriage committed no crime till the fraudulent conversion of chattels, money, and valuable securities by bailees was made larceny by 20 & 21 Vict. c. 54. (See now 24 & 25 Vict. c. 96, s. 3.)

The common law rule, though thus nearly eaten up by exceptions, still survives as to all persons who come innocently into possession of the property of others, otherwise than as clerks, servants, bankers, merchants, brokers, solicitors, factors, and other agents or bailees. The case of the finder of goods already referred to furnishes an instance. This state of the law is obviously most objectionable, not only on account of its extreme intricacy and technicality, but also because the numerous exceptions made to the common law rule are inconsistent with the principle on which it depends. We have therefore defined theft in such a manner as to put wrongful taking and all other means of fraudulent misappropriation on the same footing.

The definition properly expounded and qualified will, we think, be found to embrace every act which in common language would be regarded as theft, and it will avoid all the technicalities referred to as arising out of the common law rules, as well as out of the intricate and somewhat arbitrary legislation, the course of which we have sketched above. The provisions of the Bill on this subject differed considerably in language from those of the Draft Code, but they were framed with the same objects, and would have effected them in another way. The Bill treated theft, criminal breach of trust, and obtaining property by false pretences as three ways of committing one offence—termed “fraudulent misappropriation.” These offences were so defined that they would have covered the same ground as theft, false pretences, and criminal breach of trust as defined by the Draft Code; but many things which according to the Draft Code are theft, would according to the Bill have been criminal breaches of trust. The Draft Code defines the offence of obtaining property by false pretences substantially in accordance with the present law, and “criminal breach of trust” is retained as a distinct offence. The other cases of “fraudulent misappropriation” are denominated “theft.”

The crimes of obtaining goods, money, or credit by false pretences, and of criminal breach of trust are in point of mischief and moral guilt much the same as theft, but from their nature they require separate clauses to define them.

The crime of embezzlement, wherever the subject matter of it is a chattel or other thing which is to be handed over in specie, will come within the definition of theft; but where the subject matter is not to be handed over in specie, but may be accounted for by handing over an equivalent, it requires separate provisions, which will be found in sections 249, 250, and 251.

It is essential to all of these offences that there should be the *animus furandi*,—that guilty intention which makes the difference between a trespass and a theft.

The only further observation we have to make on the general provisions as to theft relates to section 253. By the present law a husband or wife cannot steal from his wife or her husband, even if they are living apart, although by recent statutes the wife is capable of possessing separate property. So long as cohabitation continues, this seems reasonable; but when married persons are separated, and have separate property, it seems to us to follow that the wrongful taking of it should be theft. This section is also framed so as to put an end to an unmeaning distinction by which it is a criminal offence in an adulterer to receive from his paramour the goods of her husband, but no offence in anyone else to receive such goods from the wife.

We now pass to the law relating to the punishment of particular kinds of theft. At common law all larceny was either grand or petit. Grand larceny was the stealing of property worth one shilling or upwards: petit larceny was stealing property of less value. Grand larceny was a capital but clergyable felony down to the reign of George IV. The Bill was framed upon the principle of making the punishment of theft depend to a great extent upon the value of the stolen property. On the whole, however, it has been thought better that the legal limit of punishment ought not to depend on the mere value of the property stolen. The Draft Code accordingly reproduces in Part XXV the provisions of 24 & 25 Vict. c. 96 as

regards punishments for stealing particular things. In order, however, to meet some cases which are omitted, two provisions are added punishing specifically stealing from railways and stealing by means of picklocks, false keys, and other such instruments (sections 263, 264). These provisions are suggested partly by well-known cases which have occurred in this country and partly by similar provisions in the French and German Penal Codes. The state of the existing law as to stealing or maliciously injuring growing vegetable productions is very complicated; an attempt to preserve the effect of it and to adapt it to the enlarged definition of things capable of being stolen is made in sects. 244 and 267 of this Part, and sects. 404 and 405 in Part XXXIV.

By the existing law, if any one after stealing property in one county carries it into another, he is guilty of larceny in both, and may be tried in either. But if he steals it out of the United Kingdom and brings it into England or Ireland he commits no offence in either country. Sect. 269 is intended to remedy this, which seems a defect in the law. Sects. 278 and 279 are taken from the existing Game laws. They are added because they complete the subject, but no opinion is expressed as to them.

The provisions in Part XXVI as to fraud are principally re-enactments of existing statutes. In sect. 281 a few words are introduced in order to include the most common species of fraud.

Sect. 284 declares the common law as to a Conspiracy, but provides an increased punishment.

The provisions in Part XXVII as to Robbery and Extortion re-enact the existing law, with the exception of sect. 296, which is new. At present a policeman or game-keeper who levies blackmail under threats of accusing of larceny or poaching, if criminally responsible at all, is only punishable with imprisonment and fine.

Part XXVIII re-enacts with some variations the existing law as to burglary and housebreaking. The proposed enactments explain themselves.

The most important alteration in Part XXIX "Receiving" is that it extends the existing law as to receiving stolen property, so as to make it apply to property obtained by any indictable offence, and also to the receiving in England or Ireland of property so obtained out of the United Kingdom, an extension similar to that in sect. 269.

The crime of Forgery, which is dealt with in Part XXX, was an offence at common law, the punishment of which was only fine and imprisonment. It is not possible to say precisely what are the documents the false making of which is forgery at common law. But by a great many different enactments passed at different times a great many forgeries have been made felonies, and as such punishable with great severity. The statute law was for the most part consolidated by the 24 & 25 Vict. c. 98. Like the other Consolidation Acts, the Forgery Act assumes that the common law definition of forgery is known. This definition, however, is a somewhat intricate matter involving various questions as to the extent of falsification implied in forgery, the character of the intent to defraud essential to it, and the circumstances essential to the completion of the crime. These matters are dealt with in sections 313 to 317 both inclusive. They differ considerably in language, but not very materially in substance, from the corresponding provisions of the Bill. The part relating to Forgery contains an enumeration of the various classes of documents the forgery of which is punishable. They include all those which are mentioned in 24 & 25 Vict. c. 98, though not always in the same order or under the same names. They also include a considerable number of documents (contracts, for instance, documents intended to be produced in evidence, and false telegrams) which are not included in that Act. This Part makes provision for the forgery of some documents as to which it is doubtful whether to forge them is or is not a common law offence. Finally it contains a general clause (section 336) punishing the forgery of any document whatever with intent to defraud the public or any person, or to pervert the course of justice, or to injure any person, or to deprive any person of or prevent his obtaining any office, &c. We believe that few, if any, cases would be punishable under this section which would not be forgeries at common law. There is a considerable difference

between this Part and the corresponding chapter of the Bill. The general section (section 336) corresponds very nearly to a similar provision in the Bill, which proposed to subject offenders against its provisions to a maximum punishment of seven years penal servitude instead of two years imprisonment with hard labour. Such an enactment would have rendered unnecessary a considerable part of the enumeration of documents contained in the Draft Code. The provision was regarded as objectionable on the ground that it authorised a sentence of penal servitude for the forgery of various documents which were not defined, and the forgery of which could be at present punished by fine and imprisonment only. The difference in length between the Draft Code and the Bill is to a great extent due to the manner in which, perhaps *ex abundantia cautelâ*, the former deals with each particular forgery. In the result there will, we believe, be but little practical difference. The Draft Code adheres more closely than the Bill to the existing law, and is in these matters more explicit and detailed.

The provisions in Part XXXI as to Preparations for forgery are chiefly re-enactments of existing statutes. In sect. 356 we have re-enacted 25 & 26 Vict. c. 88 as to Trade Marks, omitting some clauses which seem not practical. Sect. 358 is new and is intended to render punishable a class of fraud which is believed to be not uncommon.

The provisions of Part XXXII as to Personation are also re-enactments of existing statutes.

The existing law as to offences against the Coin dealt with in Part XXXIII is contained in the 24 & 25 Vict. c. 99. We have slightly altered the definition of Counterfeit Coin so as to meet some difficulties which have arisen in practice. And we have in sects. 367 and 371 inserted provisions for punishing the making of fillets of metal prepared for the purpose of being coined elsewhere, which at present is actually done with impunity. The rest of this Part is substantially a re-enactment of the existing law.

Part XXXIV is founded on the provisions of 24 & 25 Vict. c. 97, in which the word "maliciously" very frequently occurs. Section 381 is meant to give what we believe to be the legal effect of that word. The first portion of the section is intended to meet such state of facts as that in the case of *Reg. v. Child* (1 C. C. R. 307), where a man, who out of malice to a fellow lodger made a bonfire of her furniture on the floor of her room, not meaning that his landlord's house should catch fire, escaped punishment. Under the proviso a tenant for years burning his landlord's house commits an offence, though in so doing he burns his own leasehold, and a freeholder burning his own house commits an offence if he does so with intent to defraud the insurers. The rest of this Part re-enacts 24 & 25 Vict. c. 97, with little substantial alteration.

Part XXXV re-enacts verbatim the English and Irish Fraudulent Debtors' Acts. The bankrupt laws in England and in Ireland are in some matters of detail not identical. It has been therefore thought better to reproduce the law as to each country separately.

Part XXXVI collects into one body all offences consisting not in the actual perpetration of crimes but in threats, agreements or conspiracies, and attempts to commit offences. The offence of being accessory after the fact is of the same nature. With regard to threats, this Part adopts the provisions of existing statutes, some of which are at present confined to Ireland, but seem fit to have a place in the general statute law of both countries. With regard to conspiracies and attempts, we proportion the punishment to the gravity of the offence which is the subject of the criminal agreement or attempt, and a similar course is taken with regard to accessories after the fact. All these offences (except those taken from statutes confined to Ireland) were made punishable by the Bill, though not in precisely the same manner. The arrangement, too, was somewhat different, the threats being placed in the chapters relating to offences against person and property, and the provisions as to attempts, conspiracies, and accessories after the fact at the beginning instead of the end of the part of the Bill which defined offences.

TITLE VII.—PROCEDURE.

Title VII and the corresponding part of the Bill relate to the Procedure in the prosecution of indictable offences, from the commencement to the conclusion of the

proceedings. The Title begins by disposing of some general matters affecting the whole course of the procedure. Section 428 gives to the judges a power to make rules for regulating the practice pleading and procedure under the Act which may be highly convenient in a variety of matters, and especially in the regulation of the practice upon trials in the Queen's Bench Division either at bar or at *Nisi Prius*.

Section 430 declares positively that the civil remedy for any wrongful act shall not be affected by the fact that the act is a crime. This seems to be the existing law, as laid down in *Wells v. Abraham*, L. R. 7 Q. B. 854, and *Osborne v. Gillett*, L. R., 8 Ex. 88.

Section 431 abolishes the distinction between felony and misdemeanour, and provides that all indictable offences shall be tried in the same manner, except so far as special provisions are made by the Draft Code with respect to treason. This section is qualified by several provisos. In the first place, a certain number of offences will still be designated felonies under the provisions of one or other of statutes remaining unrepealed. It provides that the existing law as to arrest for such felonies shall remain unaltered. Disqualifications now attaching to felony are for the future to attach to convictions for an offence involving dishonesty. The disqualifications referred to are such as these: Persons convicted of felony cannot serve on juries (33 & 34 Vict. c. 77, s. 10 [*Eng.*], 34 & 35 Vict. c. 65, s. 17 [*Ire.*]), nor retail wine (23 & 24 Vict. c. 27, s. 32) or spirits (33 & 34 Vict. c. 29, s. 14), nor keep a beerhouse (3 & 4 Vict. c. 61, s. 17), nor be brokers in London (33 & 34 Vict. c. 60, s. 6). It is further provided that upon a conviction under the Draft Code for any offence which is now a felony, the consequences which now attach to the same offence shall still attach though the offence is no longer called felony; and further that any Act unrepealed which refers to an offence as felony or misdemeanour shall be deemed to apply to the offences to which it would have applied if the Code had not been passed.

We have felt great difficulty with regard to these provisions. They are undoubtedly open to the grave objection that they retain, though only for a collateral purpose, the existing distinction between felony and misdemeanour, and will in certain cases necessitate a reference to the common law and to unrepealed statutes, in order to ascertain whether a crime falls within the one description or the other. The difficulty arises mainly upon the provisions remaining in the statute book which attach to felonies forfeiture and other consequences, in addition to the disqualifications hereinbefore mentioned. To avoid the difficulty would however involve a new classification of offences, which we regard as impracticable, or an alteration of the law as laid down in 33 & 34 Vict. c. 23, and the recasting of the provisions of several statutes which, for the reasons already given, we deem it expedient to leave untouched. (See Note C to the Report.)

Section 434 states the cases in which Courts of Quarter Sessions are to have jurisdiction, and supersedes 5 & 6 Vict. c. 38, from which it varies but little. It empowers the Courts of Quarter Sessions, however, to try burglaries and robberies of a class punishable with penal servitude for life and flogging; but this is coupled with a proviso that these courts are not to have power in any case to sentence an offender to be flogged, or to more than 14 years' penal servitude. This is adopted from the corresponding provision of the Bill as proposed to be amended by the Attorney General. Many cases of burglary and aggravated robbery are just as fit to be tried at the Quarter Sessions as cases of housebreaking or simple robbery, and the more serious cases would under other provisions of the Draft Code be sent from those courts to the assizes.

Before examining the provisions relating to procedure in their order, it may be well to notice an effect which some of them when put together will have of abolishing all local restrictions upon jurisdiction. At present the jurisdiction of the criminal courts is strictly local, though a great number of statutory exceptions enable particular offenders (*e.g.* persons who commit crimes at sea) to be tried wherever they may happen to be found. We propose to extend this principle to all offenders whatever.

If our suggestions are adopted, all courts otherwise competent will have jurisdiction to try all offenders brought before them, wherever the offences are committed. Any magistrate will have jurisdiction to compel the appearance before him of all persons who have committed indictable offences within his district, or who are within his district, having committed elsewhere any indictable offence triable in England or in Ireland, as the case may be. Having obtained the offender's appearance, the justice will be

able to send him for trial to a competent court, and the High Court will have power to vary by order the place of trial, if it thinks proper. In the Bill the provisions as to the local jurisdiction of the courts and justices were brought together in a chapter by themselves. In the Draft Code they are introduced in various places, according to a different method of arrangement, but the result is in each case the same.

A crime having been committed, there are at present four entirely different modes of proceeding against the accused person: He may be taken before a magistrate and committed for trial; he may, except in a few cases, be indicted by a grand jury without being so committed; he may in the case of homicide be committed and tried upon a coroner's inquisition; and in cases of misdemeanour he may be put upon his trial by a criminal information, filed either by the Attorney General *ex officio*, or, if the Queen's Bench Division so orders, by the Master of the Crown Office, at the instance of a private person injured.

According to the ancient theory of the law, from which it still derives its form, the course is this: The Queen from time to time sends commissioners through the country to hear and determine all accusations of crime, and to deliver the gaols. The grand juries of the different counties accuse by way of presentment certain persons as offenders, and the accusations are referred to a petty jury by whom they are disposed of. The common practice is different: Suspected persons are brought before a justice of the peace by the police or by private complainants. The magistrate takes the depositions of witnesses, and either discharges the prisoner or commits him for trial. The accusation is put in the form of an indictment and laid before the grand jury, who having heard the evidence, determine whether the accused is to be put on his trial or not. The grand jury are still however in theory, the sole accusers; but inasmuch as they have long ceased to report matters within their own knowledge and have come to act upon information supplied by others, any one can send up a bill before them, accusing any person of any offence whatever, with certain specified exceptions.

The proceeding upon coroner's inquisitions is a relic of times preceding the appointment of justices of the peace. The coroner and his jury at that time had a power of accusation concurrent with that of the grand jury, much as if a suspected person could in the present day be put on his trial upon the magistrate's committal without any bill being found by the grand jury.

As to criminal informations, they form a mode of proceeding adopted in peculiar cases, and call for no observation here.

In all common cases we think that of these modes of prosecution, that of initiating the charge before a magistrate is by far the fairest and most satisfactory in every way. It gives suspected persons full notice of the case against them, and it enables the judge and jury who finally dispose of the prosecution to discharge their duties with confidence that the whole matter has been properly prepared for their decision. It is moreover the mode in common use. All the others have become exceptional, and we think that, being the common course, it ought to be made imperative in all cases.

We doubt whether the existence of the power to send up a bill before a grand jury without a preliminary inquiry before a magistrate, the extent of this power, and the facilities which it gives for abuse, are generally known. It is not improbable that many lawyers, and most persons who are not lawyers, would be surprised to hear that theoretically there is nothing to prevent such a transaction as this:—Any person might go before a grand jury without giving any notice of his intention to do so. He might there produce witnesses, who would be examined in secret, and of whose evidence no record would be kept, to swear, without a particle of foundation for the charge, that some named person had committed any atrocious crime. If the evidence appeared to raise a *prima facie* case, the grand jury, who cannot adjourn their inquiries, who have not the accused person before them, who have no means of testing in any way the evidence produced, would probably find the bill. The prosecutor would be entitled to a certificate from the officer of the court that the indictment had been found. Upon this he would be entitled to get a warrant for the arrest of the person indicted, who, upon proof of his identity, must be committed to prison till the next assizes. The person so committed would not be entitled as of right to bail, if his alleged offence were felony. Even if he were bailed, he would have no means of discovering upon what evidence he was charged, and no other information as to his alleged offence than he could get from the warrant,

as he would not be entitled by law to see the indictment or even to hear it read till he was called upon to plead. He would have no legal means of obtaining the least information as to the nature of the evidence to be given, or (except in cases of treason) even as to the names of the witnesses to be called against him; and he might thus be tried for his life without having the smallest chance of preparing for his defence, or the least information as to the character of the charge.

Of course in practice the conviction of an innocent man under such circumstances would be practically impossible. The judge would postpone the trial, the jury would acquit the prisoner, the prosecutor would probably be subjected to exemplary damages in an action for malicious prosecution; but it still remains that such is the law, though it could not be put in force without shocking the feelings of the whole community. That such however is the law, subject only to certain exceptions herein-after mentioned, there can be no doubt.

Although the law is theoretically the same in Ireland, a salutary practice has prevailed there, whereby if the accused has not been committed for trial, a private prosecutor is not permitted to lay an indictment before the grand jury without the leave of the presiding judge obtained in open Court.

The exceptions we have referred to are constituted by the statutes which provide that it shall not be lawful to present an indictment against any person for perjury, subornation of perjury, conspiracy, obtaining property by false pretences, keeping a gambling house, keeping a disorderly house, or any indecent assault, or certain offences under the Debtors Act, 1869, unless the prosecutor has been bound over to prosecute or give evidence, or unless the accused person has been committed to or detained in custody, or is bound by recognizance to appear to answer to the indictment, or unless the indictment is preferred with leave of the Court or of a judge or the Attorney General, as in these statutes mentioned.

So far as it goes, this legislation appears to us wise and sound. On the one hand, it secures to the person accused the fullest possible notice of the nature of the charge against him and of the evidence on which it is to be supported; on the other, it does not invest the magistrate with an absolute veto on a prosecution. It enables the prosecutor, if he thinks proper, to take the opinion of a grand jury as to whether the accused person should or should not be put on his trial. It is, however, impossible to defend on any principle which occurs to us, the narrow range of the provisions. Why are indecent assaults included and other charges of indecency, most easily made, most hard to refute, and commonly employed as the engines of extortion, excluded? On what possible ground can it be right that a man should be at liberty to accuse another of murder, piracy, or arson without giving him notice of the nature of the charge against him, whilst he is obliged to give him notice if he charges him with perjury or conspiracy? It is obvious that this legislation was partial and tentative.

As to persons committed upon a coroner's inquisition, the common though not universal practice is to take a prisoner committed by the coroner before a magistrate. We do not undervalue the coroner's inquest, but we see no reason why in cases in which they result in a committal for murder or manslaughter, the suspected person should not have a right by law to be taken before a magistrate, and have the advantages which other accused persons possess; and upon the whole, we propose to extend the principle of the Vexatious Indictments Act to all offences whatever, except those which are tried on criminal informations. Section 505 accordingly provides that no one except the Attorney General may prefer any bill of indictment unless he is bound over to prosecute, or unless he has the written consent of a judge of the High Court or of the Attorney General, or of the Court before which the bill is to be preferred to do so; and section 506 enacts that henceforth no one shall be tried upon a coroner's inquisition, and that no grand jury shall present except upon a bill of indictment duly sent before them. The effect of this will be that as a rule no one will, if the Draft Code becomes law, be liable to be indicted without a preliminary inquiry being first held before a magistrate.

We may here refer with approval to the excellent practice so long prevailing in Ireland whereby, generally speaking, all prosecutions are conducted under the direction of the Attorney General as Public Prosecutor.

The provisions of the Bill upon this subject did not go so far as those of the Draft Code, though they were intended to effect the same object. They left coroners' inquests untouched, but they enacted that no one should indict another without going before a magistrate, except upon conditions as to notice to the accused of the charge and of the evidence against him of so stringent a kind that such a mode of prosecution

would never or hardly ever have been adopted. The provisions of the Draft Code seem simpler and more effectual.

Should these proposals be adopted the regular course of a prosecution would consist of the following steps:—

- (1) Procuring the appearance of the suspected person before a magistrate, either by summary arrest, summons, or warrant :
- (2) The preliminary hearing before the magistrate, resulting either in the discharge or committal of the prisoner, and in the case of his discharge being followed or not by the binding over of the prosecutor :
- (3) The preferring of the indictment before the grand jury :
- (4) The trial :
- (5) Proceedings by way of appeal subsequent to the trial.

Each of these matters is dealt with both in the Draft Code and the Bill. In the Draft Code they are arranged in the order just indicated. In the Bill the provisions relating to the indictment were placed at the end, as the subject was regarded as a special one depending on considerations peculiar to itself. In the Draft Code this matter is inserted between the proceedings before the magistrate and the trial, as this follows the order of time.

We proceed to comment upon the provisions of the Draft Code in the order in which they stand.

We propose in section 437 to empower magistrates, upon receiving information that a crime has been committed, to summon witnesses and take evidence before any person is charged. It appears highly desirable that this power should exist, as evidence may often be available whilst the whole matter is fresh, which is lost sight of during the interval which passes before any particular person is charged with the offence. People able to give material information, and prepared to do so if legally required, will often withhold it when they are questioned by persons who have no legal authority to require it. We also extend (section 438) to some degree the magistrate's power to grant search warrants.

Passing to the case in which a charge is made against a particular person; the first step is to secure his attendance before the magistrate. This may be procured either by summary arrest, by summons, or by warrant. The provisions of the Draft Code and those of the Bill as to summary arrest closely follow the existing law, with alterations rendered necessary by the abolition of the distinction between felony and misdemeanour.

With respect to arrest upon warrant we propose to make certain changes corresponding to the changes which have been made in the police organization of this country since the law upon the subject was last under the consideration of Parliament. As the law now stands, if a warrant is issued in one county for the arrest of a suspected person, it cannot (except in a very few cases) be executed in another county without being backed by a magistrate of that county, who before backing it must be satisfied upon oath of the genuineness of the signature of the justice whose name it bears. It has been represented to us that this formality is useless and often mischievous; useless, because it can be no protection against a forged warrant, as a person capable of forging a warrant would not hesitate to commit perjury by swearing to its signature; mischievous, because it often causes delay which enables criminals to escape. The practice originated in times when constables were parish officers unknown beyond their own immediate neighbourhood. Since the general introduction of county police it seems to have become useless. We propose accordingly that English warrants should run all over England, and Irish warrants all over Ireland. On the other hand, we propose that the execution of warrants everywhere should be confined to police constables. This practice already exists, with some modifications, in Ireland, where it is carried out by the Royal Irish Constabulary.

With regard to summonses we suggest no change, except that they should in all cases be served by police officers. We have provided in section 440, with respect to both warrants and summonses, that they should not be refused by a magistrate merely because the alleged offender may be arrested without warrant. This we believe to express the spirit, though it is not to be found in the letter, of the present law. We are, however, informed that some justices take a different view, and refuse in cases of felony to issue either a warrant or a summons, leaving the person applying for one to arrest the alleged offender on his own responsibility.

We now come to the preliminary hearing before the magistrate. The whole of th^s_i subject, including the way in which witnesses are to be summoned, the taking of thei^r

depositions, the committal or discharge of the accused, his bail, the binding over of the witnesses to attend at the trial, the transferring of documents to the proper officer of the courts of trial, are provided for in minute detail, for England by 11 & 12 Vict. c. 42, and for Ireland (except Dublin) by 14 & 15 Vict. c. 93, which latter Act provides also for proceedings in summary cases. We have re-enacted in Parts XXXVIII and XXXIX the provisions of these two statutes relating to indictable offences. In some cases where there is a difference in the practice of the two countries, we have thought the Irish practice preferable, and have accordingly adopted it. We have added provisions similar to, though not quite identical with, those of 30 & 31 Vict. c. 35, s. 6, for taking the depositions of witnesses who may be discovered after the committal of an accused person (see section 466). In this portion of the Draft Code a few modifications of the existing law are introduced, but they are of comparatively little importance, and are for the most part marginally noted. The offender having been committed for trial, the mode and place of trial have next to be considered. The abolition of the distinction between felony and misdemeanour makes it necessary to determine the cases in which the Attorney General may file a criminal information. We propose that he shall have power to do so in all cases not punishable by death or penal servitude.

With regard to the place of trial, the existing law is founded in the main on the theory of venue. The jury of the neighbourhood (*vicinia—visue—venue*) inform the court of the crimes committed in their own district, and are not supposed to know what happens elsewhere. It is, however, qualified by numerous exceptions both by statute and by common law. At common law, the Court of Queen's Bench in the case of an indictment originating in or removed into that Court possessed the power under certain circumstances to change the place of trial by a suggestion on the record. This power was extended by what is known as Palmer's Act, 19 & 20 Vict. c. 16, so as to enable the Court to direct a case to be tried at the Central Criminal Court. Provisions having the same effect are to be found in 25 & 26 Vict. c. 65, as to the trial for murder or manslaughter of soldiers subject to the Mutiny Act. We propose to extend the principle thus recognised to all cases, and to substitute for the present mode of procedure the simpler one of obtaining an order from the High Court for the change of the place of trial. The provisions on these subjects are contained in Part XL, which also contains provisions for trial by special jury.

The Draft Code next deals with the subject of indictments, the object being to reduce them to what is really necessary for the purposes of justice. The law as it at present stands is in the form of objectionable unwritten rules, qualified by several wide exceptions which modify some of their defects. These general rules require the greatest minuteness in many matters, which need not be referred to here. Two rules, however, may be specially mentioned: (1) Indictments must not be double and cannot be in the alternative; each count must charge one offence and no more: (2) All material averments must be proved as laid. Although these rules have been considerably relaxed in practice, the effect of them is that indictments run to a most inordinate length, and become at once so long and so intricate that it is hardly possible to understand them, and that practically no one reads them but the counsel who draw and the clerks who copy them.

The method employed is to take a section of an Act of Parliament and draw a series of counts, each charging one of the offences which the section creates; and as a single section often creates many offences hardly differing from each other except by very slight shades of meaning, counts are inordinately multiplied in this manner. For instance, in *R. v. Sillem* (2 H. and C. 431), an information (which might have been an indictment) charged certain persons in substance with having equipped for the Confederate States, then at war with the United States, a ship called the "Alexandra." The information was framed upon 59 Geo. 3. c. 69, and contained 95 counts. The first count charged an equipping with intent that the ship should be employed by certain foreign states, styling themselves the Confederate States, with intent to cruise against the Republic of the United States. The second count, instead of the Republic of the United States, mentioned the citizens of the Republic of the United States. The third count omitted all mention of the Confederate States, and called the United States the Republic of, &c. The fourth count was like the third, with the exception of returning to the expression "citizens," &c. After giving various names to the United States and Confederate States in the first eight counts, eight other counts were added substituting "furnish" for "equip." Eight more substituted "fit out" for "furnish." In short, the indictment contained a number of counts obtained by

combining every operative verb of the section on which it was founded with all the other operative words.

The excessive stringency of the rules on the subject of indictments has been greatly though somewhat capriciously relaxed by a variety of statutes, of which 14 & 15 Vict. c. 100 is perhaps the most extensive. By their provisions the necessity for excessive particularity is done away with in some cases, but is left untouched in others. Thus, for instance, it is sufficient in an indictment for murder to charge that A wilfully, feloniously, and of his malice aforethought did kill and murder B, instead of setting out, as was formerly necessary, the precise manner in which the murder was committed. If the charge is not murder but obtaining goods by false pretences, the particular false pretence used must be stated, and must be proved as laid, and a proper averment that it was false to the knowledge of the accused must be introduced. It is quite impossible to assign any reason whatever why indictments for murder should be drawn on one principle, and indictments for false pretences on another. The explanation is that the inconvenience of the principle which used to apply to both cases happened to attract notice in the one case, and to escape notice in the other. We propose to deal with this matter, not by making any further exceptions to the rules now in force as to indictments, but by altering the rule itself, and substituting for it the rule stated in section 482, the most important part of which is in these words: "Every count of an indictment shall contain and shall be sufficient if it contains in substance a statement that the accused has committed some offence therein specified. Such statement may be made in popular language without any technical averments or any allegation of matter not essential to be proved." We make in other sections a variety of provisions which we hope will render all future indictments perfectly simple, though sufficient to define the matter to be tried, and to form the basis of a record of the trial. In the matter of indictments the Bill went further than the Draft Code. It proposed substantially to abolish the thing, though the name was to be retained. The indictment was to consist of a form in two columns, the first column containing a reference to the enactment against which the offence was alleged to have been committed, and the second containing a short particular of the offence. The practical difference between the Bill and the Draft Code was inconsiderable, so far as the introduction of simplicity into indictments is concerned.

Part XLII, which relates to preferring indictments, contains the provisions already referred to, which are intended to do away with the law of venue. They also deal with another matter which must be shortly mentioned. If an indictment is found against a person who cannot be apprehended—if, for instance, he goes to a foreign country—the ultimate process against him is outlawry, which has all the effects of a conviction, including that of forfeiture abolished in all other cases. This process has become practically obsolete, and in these times in which extradition treaties have been very generally adopted, it is less likely to be of use than formerly. We accordingly propose to abolish it. The Bill made the same proposal, but added by way of substitute, provisions which would have enabled the Crown to make a man who absconded from justice a bankrupt, and to take possession of the surplus of his property after paying his debts. We do not think this will be needed, and we propose therefore to abolish outlawry simply.

Part XLIII deals with the Trial. It does not (as the Bill did) go in minute detail through every part of it, but notices those parts only on which the law appears to require statement or alteration. Several alterations made in the law are taken from recent legislation with regard to Ireland.

Sections 518, 519, and 520 state the law as to going through the panel, introducing into England some of the provisions of 39 & 40 Vict. c. 78 (as to Ireland), and providing that the number of jurors to be peremptorily challenged shall henceforth be thirty-five in cases of treason, twenty in cases where the accused might upon conviction be sentenced to penal servitude for life, and six in all other cases. Some alteration is made necessary by the abolition of the distinction between felony and misdemeanour; and what we suggest is something between the present English and the present Irish system. In England there are twenty peremptory challenges in all felonies, and none in any misdemeanour. In Ireland there are twenty in felony, and six in misdemeanour. Section 531 abolishes juries of matrons, where pregnancy is pleaded, and substitutes a medical examination; section 525 enables the court to adjourn or postpone the trial in order to obtain the attendance of any witness whose testimony appears material. This alteration is one of considerable importance.

Section 526 permits Admissions to be made in a criminal trial. At present if the accused is proved before his trial to have made an admission, it is evidence against him; but though he offers to make the same admission in court, it is thought that in cases of felony the judge is obliged to refuse to let him do so.

Section 532 gives the court a discretion as to allowing the jury to separate on an adjournment, except in capital cases. At present the practice is that they may separate in cases of misdemeanour, but not in cases of felony. Section 535 allows the court to direct that the jury should have a view, which is already permitted by statute in Ireland (39 & 40 Vict. c. 78, s. 111). Section 536 enables the court to take a verdict on Sunday. This provision was suggested by the case of *Winsor v. R.*, in which it was stated as one reason for discharging the jury late on a Saturday night that if they agreed to their verdict on Sunday, the verdict could not be taken till the Monday.

Section 537 preserves the power of staying proceedings always hitherto possessed, by the Attorney General, and at present exercised by entering a *nolle prosequi* on the record.

We have passed over section 523, which enables the accused to offer himself as a witness. The Bill contained a clause (section 368) enabling the accused to make an unsworn statement on his own behalf, and subjecting him to cross-examination of a restricted character. For this we have substituted section 523, which renders the accused and the husband or wife of the accused competent witnesses for the defence. As regards the policy of a change in the law so important, we are divided in opinion. The considerations in favour of and against the change have been frequently discussed and are well known. On the whole we are of opinion that, if the accused is to be admitted to give evidence on his own behalf, he should do so on the same conditions as other witnesses, subject to some special protection in regard to cross-examination.

Part XLIV deals with the subject of Appeal in criminal cases. There are several important alterations in the existing practice suggested by the provisions in this Part, which we have prepared for consideration, without expressing any opinion as to how far it may be judicious to adopt them. In order to explain their precise effect, it is necessary to make some introductory observations on the state of the law as it stands. The procedure under the existing law subsequent to a trial, and in the nature of an appeal, may be arranged under three separate heads. These are, first, proceedings in error; secondly, cases for the Court of Crown Cases Reserved; thirdly, motions for a new trial.

Proceedings in error are proceedings by which the Queen's Bench Division of the High Court is called upon to reverse a judgment on the ground that error appears on the record,—a writ of error being granted only on the Attorney General's fiat. An appeal lies ultimately to the House of Lords. The record, however, is so drawn up that many matters by which a prisoner might be prejudiced, indeed the matters by which he is most likely to be prejudiced, would not appear upon it; for instance, the improper reception or rejection of evidence, or a misdirection by the judge would not appear upon the record. This remedy therefore applies only to questions of law, and only to that very small number of legal questions which concern the regularity of the proceedings themselves, *e.g.*, an alleged irregularity in empanelling the jury (*Mansell v. R.*), or in discharging a jury (*Winsor v. R.*), or a defect appearing upon the face of the indictment (*Bradlaugh v. R.*). The result is that the remedy by writ of error is confined to a very small number of cases of rare occurrence. It must be added that the procedure in writs of error is extremely technical. It is necessary in such cases to draw up the record, and this is an extremely formal and prolix document, though the materials from which it is compiled are simply short notes in a rough minute book kept by the officer of the court. When the record is drawn up the Court of Appeal cannot look beyond it, but is tied down to the matters expressly entered in it. The proceedings on special verdicts and demurrers to evidence have practically fallen into disuse.

The second mode in which proceedings in the nature of an appeal may be taken is upon a case stated by the judge for the Court for Crown Cases Reserved. Up to the year 1848 it was the practice, if any question of law which would not appear on the record arose at a criminal trial at the assizes, for the judge who tried the case to state the point for the opinion of all the judges, by whom it was afterwards considered and determined, no reasons for the determination being given. If the judges thought that the conviction was wrong, the person convicted was pardoned. There was no mode of reserving cases which arose at the quarter sessions. By 11 & 12 Vict. c. 78, a Court for Crown Cases Reserved was instituted, composed of the judges of the three common law

courts or any five of them, a Chief Justice or the Lord Chief Baron being one. Upon the construction of the Act it has been considered that, if a difference of opinion occurs between the five judges, the minority are not bound by the majority, but the matter must be referred to the whole body,—a course which is on many obvious grounds inconvenient. The existing power of appeal on a point reserved is only on behalf of the accused. The consequence is that the judge cannot reserve a question, unless he rules it against the accused, notwithstanding his own opinion may be that, though the point is doubtful, it should be decided in favour of the accused; and if ultimately it is determined that there has been an improper ruling against the accused, on some point of perhaps very little importance, or that some evidence, perhaps of little weight, has been improperly received or rejected, the Court of Appeal must avoid the conviction, and has no power to grant a new trial. The procedure is, however, extremely simple and free from technicality. No record is drawn up, and the judge who reserves the point states a case in simple language.

The third proceeding in the nature of an appeal is a motion for a new trial. This is confined to cases which have either originated in or have been removed into the Queen's Bench Division, and as it seems (*R. v. Bertrand*, L. R. 1 P. C. 520, disapproving of *R. v. Scaife*, 2 Den., 281) to cases of misdemeanour. A defendant who has been convicted may move for a new trial in these cases as in a civil case, but the decision of the Queen's Bench Division is final.

It seems to us that in order to form a complete system these various forms of proceeding ought to be combined. For this purpose we propose, in the first place, to constitute a single court of Criminal Appeal closely resembling the Court for Crown Cases Reserved, but with two important differences. We propose that, as in other courts, the minority should be bound by the majority. A court composed of fifteen judges is inconveniently large. If on a point of importance a court of five should be divided, it might be desirable that a further appeal should be possible. We accordingly propose that the court should have power to permit an appeal to the House of Lords.

We do not interfere with the present practice as to trials in the Queen's Bench Division, and we propose that in the case of such trials the Queen's Bench Division should be the Court of Appeal, and that it should have power to give leave to appeal to the House of Lords.

As to the power to appeal and the cases in which an appeal should lie, the Draft Code proposes to make considerable changes in the existing law as regards both matter of law and matter of fact. With regard to matter of law, the judge has at present absolute discretion as to reserving or not reserving questions which arise at the trial and do not appear on the record. This we think ought to be modified. We propose accordingly that the judge shall be bound to take a note of such questions as he may be asked to reserve, unless he considers the application frivolous. If he refuses to grant a case for the Court of Appeal, the Attorney General may in his discretion grant leave to the person making the application to move the Court of Appeal for leave to appeal, and the Court may direct a case to be stated. The Court on hearing the case argued may either confirm the ruling appealed from, or grant a new trial, or direct the accused to be discharged; in a word, it may act in all respects as in a civil action when the question is one of law, and that on the application of either side. This in some ways is favourable, and in others unfavourable, to accused persons. By the existing law the prisoner's right to appeal on a point of law is, generally speaking, subject to the absolute discretion of the judge; but if he is permitted to appeal, and if the Court above decides in his favour, the conviction is quashed, although in a civil case he would gain nothing but a right to a new trial. Under section 542 the prisoner would be able to appeal, with the leave of the Attorney General, against the will of the judge, but if he succeeded he would in many cases only obtain a new trial. If the matter appealed upon was a mere irregularity, immaterial to the merits of the case, the Court of Appeal would have power to set it right. All this would diminish the value of the right of appeal to prisoners, though it would increase its extent. It must be observed, too, that the right of appeal on questions of law is given equally to both sides. The Commissioners as a body express no opinion on the expediency of this. If it is thought proper to confine the right to the accused, the alteration of a few words in the section would effect that object. In dealing with appeals upon matter of law little is wanted beyond an adaptation of the existing law.

It is more difficult to provide in a satisfactory way for an appeal upon matters of fact. It is obvious that the only practicable means of giving such an appeal is by permitting convicted persons to move under certain circumstances for a new trial, either on the ground that the verdict was against the evidence, or on the

ground that the verdict has been shown to be wrong by facts discovered subsequently to the trial. If the ground on which a new trial is sought for is that the verdict was against the evidence, the case is comparatively simple. In such cases the judge before whom the case was tried ought to have power to give leave to the convicted person to apply to the Court of Appeal for a new trial. If the convict had an absolute right to make such an application, it would be made whenever the convict could afford it. By making the leave of the judge who tried the case a condition for such an application, such motions would be practically confined to cases in which the judge thought the jury had been harsh towards the prisoner. However, when the application was made the Court of Appeal could deal with it as in civil cases.

A much more difficult question arises in relation to cases which occur from time to time, where circumstances throwing doubt on the propriety of a conviction are discovered after the conviction has taken place. In these cases it was provided by the Bill that the Secretary of State should have power to give leave to the person convicted to apply to the Court of Appeal for a new trial. Upon the fullest consideration of the subject we do not think that such an enactment would be satisfactory. In such a case the Court of Appeal must either hear the new evidence itself, or have it brought before it upon affidavit. In the former case the Court would substantially try the case upon a motion for a new trial, and this is opposed to the principle of trial by jury. In the latter case they would have no materials for a satisfactory decision. It is impossible to form an opinion on the value of evidence given on affidavit and *ex parte* until it has been checked and sifted by independent inquiry. Such duties could not be undertaken by a Court of Appeal. If the Secretary of State gave leave to a convict to move the Court of Appeal for a new trial on evidence brought before the Court by affidavit, the only well-ascertained fact before the Court would be that the Secretary of State considered that there were grounds for such an application. This would make it difficult to refuse the application. The Secretary of State would be responsible only for granting leave to move the Court for a new trial. The Court, in granting a new trial, would always in fact take into account the opinion indicated by the Secretary of State's conduct. It must also be remembered that a court of justice in deciding upon such applications would, in order to avoid great abuses, be obliged to bind itself by strict rules, similar to those which are enforced in applications for new trials in civil cases on the ground of newly-discovered evidence. Such applications cannot be made at all after the lapse of a very short interval of time, and are not granted if the applicant has been guilty of any negligence; and this stringency is essential to the due administration of justice and to the termination of controversies. It would be unsatisfactory to apply such rules to applications for new trials in criminal cases. No matter at what distance of time the innocence of a convicted person appeared probable,—no matter how grossly a man (suppose under sentence of death) had mismanaged his case, it would be impossible to refuse him a fresh investigation on the ground of such lapse of time or mismanagement. Cases in which, under some peculiar state of facts, a miscarriage of justice takes place, may sometimes though rarely occur; but when they occur it is under circumstances for which fixed rules of procedure cannot provide.

Experience has shown that the Secretary of State is a better judge of the existence of such circumstances than a court of justice can be. He has every facility for inquiring into the special circumstances; he can and does, if necessary, avail himself of the assistance of the judge who tried the case, and of the law officers. The position which he occupies is a guarantee of his own fitness to form an opinion. He is fettered by no rule, and his decision does not form a precedent for subsequent cases. We do not see how a better means could be provided for inquiry into the circumstances of the exceptional cases in question. The powers of the Secretary of State, however, as to disposing of the cases which come before him are not as satisfactory as his power of inquiring into their circumstances. He can advise Her Majesty to remit or commute a sentence; but, to say nothing of the inconsistency of pardoning a man for an offence on the ground that he did not commit it, such a course may be unsatisfactory. The result of the inquiries of the Secretary of State may be to show, not that the convict is clearly innocent, but that the propriety of the conviction is doubtful; that matters were left out of account which ought to have been considered; or that too little importance was attached to a view of the case the bearing of which was not sufficiently apprehended at the trial; in short, the inquiry may show that the case is one on which the opinion of a second jury ought to be taken. If this is the view of the Secretary of State, he ought, we think, to have the right of directing a new trial on his own undivided responsibility. Such a power we accordingly propose to give him by section 545.

With respect to the materials to be laid before the Court of Appeal we propose to

abolish the present record. It is extremely technical and gives little real information. Instead of it, we propose that a book to be called the Crown Book should be kept by the Officer, which should record in common language the proceedings of the Court. In practice the record is hardly ever made up, and if it is necessary to make it up, the officer's minute book affords the only materials for doing so. Our proposal is practically to substitute the original book for the record which is made up from it, and is merely a technical expansion of the original.

We also propose that the Court of Appeal should have power to call for the judge's notes, and to supply them if they are considered defective by any other evidence which may be available,—a shorthand writer's notes for instance. We consider the statutory recognition of the duty of the judge to take notes as a matter of some importance. Upon the subject of appeal there is not much difference between the Draft Code and the Bill. The provisions of the former are more simple.

Part XLV relates to costs, some provision as to which is rendered necessary by the abolition of the distinction between felony and misdemeanour. As the law now stands, costs may be allowed in all cases of felony, and in all misdemeanours indictable under any of the Consolidation Acts of 1861; also (by 7 Geo. 4. c. 64) for assaults with intent to commit felony, attempts to commit felony, riots, misdemeanours for receiving stolen property knowingly, assaults upon peace officers in the execution of their duty or upon persons acting in their aid, neglect and breach of duty as a peace officer, assaults committed in pursuance of any conspiracy to raise the rates of wages, indecent exposure, perjury and subornation of perjury; also (by 14 & 15 Vict. c. 55, s. 2.) in cases of abduction, conspiracy to accuse a person of felony and conspiring to commit a felony,—in short, in all the commoner misdemeanours. The law as to costs in Ireland is substantially the same, though it is in practice differently administered by reason of all prosecutions being conducted by the Crown Officers. We propose that costs should be allowed in all cases of prosecutions for offences included in the Draft Code, and that the accused shall be liable to be ordered to pay the costs in all cases if he is convicted. He is now subject to this liability upon a conviction for felony.

Finally, section 551 makes an alteration in principle on the existing law, to which we call attention. Where property has been stolen, no change in the property is produced by the theft, but a *bonâ fide* purchaser in market overt acquires under the common law a property superior to that of the true owner. By the general law merchant a *bonâ fide* purchaser of a negotiable instrument, though it may be from a thief, acquires a property superior to that of the true owner. By the common law, where property has been parted with under a contract obtained by fraud, the property passes, though it may be reclaimed and the contract rescinded; but the right of a *bonâ fide* purchaser for value before rescission is superior to that of the former owner. And by the Factors' Acts purchasers from agents entrusted with goods or the title to goods acquire a title superior to that of the true owner. The existing statute law, 24 & 25 Vict. c. 96, s. 100, however, rewards one who prosecutes with success by depriving the innocent purchaser in market overt, and the innocent purchaser of property obtained by a contract not yet rescinded, of the property which they have innocently acquired*; yet at the same time the enactment excepts the cases of negotiable instruments and property pledged or sold by agents within the Factors' Acts. If there is any ground for these exceptions other than the fact that the mercantile classes who would suffer without them are vigilant and powerful, we cannot perceive it. We think that it is just and politic to protect the interest acquired by *bonâ fide* purchasers in all cases, and that it is a vicious principle to reward a prosecution at the expense of a third person. But at all events the rule should be uniform; and we suggest, as will be seen by sect. 551, that the order of restitution should be effectual to put the person in possession who appears to the Court to be justly entitled to the property, but not to deprive the other claimant of his right to bring an action to recover it.

The only remaining observation we have to make is, that most of the forms appended to the Draft Code in the first Schedule are adapted from the Irish Act, 14 & 15 Vict. c. 93. They are considerably shorter and plainer than those which are appended to 11 & 12 Vict. c. 42.

The repealing Schedule repeals in whole or in part sixty-seven statutes of the Parliament of England and Great Britain, or the United Kingdom, and fifteen statutes of the Parliament of Ireland, the provisions of which the Code would supersede.

* In *Moyce v. Newington*, L. R., 4. Q. B. Div. 32, a construction is put on the section which, if sustained, would render the alteration proposed less necessary. It is, however, as it seems to us, better to put an end to all doubt.

It is not without much diffidence that we present to Your Majesty the result of our labours. It may be that some inaccuracies, omissions, and imperfections may be discovered, and we would be well content that our work could be subjected to a scrutiny as close, and a consideration as candid and painstaking as we have applied to the Bill submitted to us for our report. But we are at the same time convinced that however carefully a Code of Criminal Law may be framed, much risk of occasional miscarriage must at first be incurred. If codification is postponed until some proposed Code has been pronounced perfect, or until desultory and irresponsible criticism has been exhausted, the accomplishment of the work will be indefinitely deferred. In fact the merits or defects of a well-considered Code can only be ascertained after it has become law, and has been interpreted under the sanction of judicial responsibility.

All of which we humbly submit to Your Majesty.

(Signed) BLACKBURN.
CHARLES R. BARRY.
ROBERT LUSH.
JAMES FITZJAMES STEPHEN.

H. COWIE,
Secretary,
12th June 1878.

Note A to page 10.

There can be no doubt that a man is entitled to preserve his own life and limb; and on this ground, he may justify much which would otherwise be punishable. The case of a person setting up as a defence that he was compelled to commit a crime is one of every day occurrence. There is no doubt on the authorities that compulsion is a defence where the crime is not one of a heinous character. But killing an innocent person, according to Lord Hale, can never be justified. He lays down the stern rule: "If a man be desperately assaulted and in peril of death, and cannot otherwise escape, unless to satisfy his assailant's fury he will kill an innocent person then present, the fear and actual force will not acquit him of the crime and punishment of murder, if he commit the fact; for he *ought rather to die himself than kill an innocent.*"

On the trials for high treason in 1746, the defence of the prisoners was in many cases that they were compelled to serve in the rebel army. The law was laid down somewhat more favourably for the prisoners than it had been before, as the defence of compulsion was stated to apply not merely to furnishing provisions to the rebel army, but even to joining and serving in that army. It was laid down (see Foster 14) that "The only force that doth excuse is a force upon the person and present fear of death; and this force and fear of death must continue all the time the party remains with the rebels. It is incumbent on every man who makes force his defence, to show an actual force, and that he quitted the service as soon as he could." It is noticeable that though most of those who set up this defence must have fought in actual battle and must have killed, or at least have assisted in killing the loyalists, and so brought themselves within the stern rule laid down by Hale, it was never suggested that this made a difference. The Indian Commissioners proposed in the first draft of the Indian Code to make compulsion in no case a defence, but to have it merely a ground for appealing to the mercy of the Government. Their reasons are to be found in the note at pp. 134-5.* The Indian Code as published contains a section (clause 94) more lenient than that originally proposed, but more severe than that laid down in Foster. We have framed section 23 of the Draft Code to express what we think is the existing law, and what at all events we suggest ought to be the law.

But compulsion is only one instance of a justification on the ground that the act, otherwise criminal, was necessary to preserve life.

A case of frequent occurrence is where a thief says he was starving and could not save his life unless he stole. Lord Hale, after stating the rule laid down by some casuists that this was justifiable, says emphatically, "I do therefore take it that where persons live under the same civil government as here in England, that rule, at least by the laws of England, is false; and therefore if a person being under necessity for want of victuals or clothes shall upon that account clandestinely and *animo furandi* steal another man's goods, it is felony." And he gives an excellent reason: "Men's properties would be under a strange insecurity, being laid open to other men's necessities, whereof no man can possibly judge but the party himself."

But Lord Hale admits that this general principle is subject to some exceptions. He says, "Indeed this rule '*in casu extreme necessitatis omnia sunt communia*' does hold in some particular cases, where by the tacit consent of nations, or of some particular countries or societies it hath obtained. * * By the Rhodian Law and the common maritime custom, if the common provision for the ship's company fail, the master may under certain temperaments break open the private chests of the mariners or passengers and make a distribution of that particular and private provision for the preservation of the ship's company." †

Such cases have frequently happened, and the law has been settled as to them. But ingenious men may suggest cases which, though possible, have not come under

* Penal Code prepared by the Indian Law Commissioners, published by command of the Governor-General of India. Hertford, 1851.

† 1 Hale, 54, 55.

practical discussion in courts of justice. Casuists have for centuries amused themselves, and may amuse themselves for centuries to come, by speculating as to the moral duty of two persons in the water struggling for the possession of a plank capable of supporting only one. If ever such a case should come for decision before a court of justice (which is improbable), it may be found that the particular circumstances render it easy of solution. We are certainly not prepared to suggest that necessity should in every case be a justification. We are equally unprepared to suggest that necessity should in no case be a defence; we judge it better to leave such questions to be dealt with when, if ever, they arise in practice by applying the principles of law to the circumstances of the particular case.

Note B to page 11.

The proposition that the force used in defence of person, liberty, or property must be proportioned to the injury or mischief which it is intended to prevent, is in our opinion one of great importance, yet it seems not to have commended itself to the minds of highly respectable authorities. We think it right first to call attention to the mode in which the subject was dealt with in Lord St. Leonards' Bill. The first part of sect. 88 of that Bill was as follows: "Homicide shall be justifiable where one
" in lawful defence of his person repels force by force, and using no more violence
" than he has reasonable cause for believing to be necessary for the purpose of self
" defence, kills the assailant." Had this been passed unaltered into law, it would have justified every weak lad whose hair was about to be pulled by a stronger one, in shooting the bully if he could not otherwise prevent the assault.

Again, Sect. 90 says, "Homicide shall be justifiable" (not merely reduced from murder to manslaughter) "where one in defence of moveable property in his lawful possession repels force by force, and using no more force than he has reasonable cause for believing to be necessary for the defence of such property against wrong, kills the wrong-doer." If two roughs who each claimed a game-cock, and insisted on taking it home, quarrelled, and the weaker stabbed the stronger to the heart, this would, if made law, have justified the slayer, if he turned out to be the rightful owner of the bird, and could not otherwise have prevented its being taken away.

And Sect. 91 says, "Homicide shall be justifiable where one in defence of house or land in his lawful possession, resisting a person endeavouring by force to enter into or upon such house or land, repels force by force, and using no more force than he has reasonable cause for believing to be necessary for the defence of his possession, kills the wrong-doer."

It is the more singular that this last clause should have been drawn as it is, because Lord Tenterden in a case which at the time attracted much attention laid down law directly opposed to it. It was the case of *R. v. Moir*, tried before Lord Tenterden at Chelmsford. A full report of the evidence, and an imperfect report of Lord Tenterden's summing up, are to be found in the Annual Register for 1830, vol. 72, p. 344. Mr. Moir having ordered some fishermen not to trespass on his land by taking a short cut, found the deceased and others persisting in going across. He rode up to them and ordered them back. They refused to go, and there was evidence of angry words, and some slight evidence that the deceased threatened to strike Mr. Moir with a pole. Mr. Moir shot him in the arm, and the wound ultimately proved fatal. Before the man died, or indeed was supposed to be in danger, Mr. Moir avowed and justified his act, and said that in similar circumstances he would do the same again. This land, he said, was his castle, and as he could not without the use of fire-arms prevent the fishermen from persisting in their trespass, he did use them, and would use them again. Lord Tenterden took a very different view of the law. He told the jury that the prevention of such a trespass could not justify such an act, and he seems to have left to them as the only justification which on these facts could arise, the question whether the prisoner was in reasonable apprehension of danger to his life from the threats of the deceased. Mr. Moir was found guilty of murder and executed.

It seems to us strange that these startling provisions passed without observation through the Select Committee, and were unnoticed by any of the judges except Mr.

Justice Coleridge, who, however, did not dwell on them, but merely made them the subject of a passing remark.

It would of course follow that if homicide was, under the circumstances mentioned in these three sections, justifiable, any less degree of violence, however great, would be justifiable also; and such appears to have been the view of the law taken by the Commissioners who framed the first draft of the Indian Code, and who in an eloquent passage directed to another purpose say, "That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing. But we cannot think that the law ought to punish such killing as murder." In this we agree; the provocation would be sufficient, generally, to reduce the crime to manslaughter. But they proceed, "For the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage,—to give the assailant a cut with a knife across the fingers, which may render his right hand useless to him for life, or to haul him down stairs with such force as to break his leg. And it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide, should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the code if he kills the same assailant,—that there should be only a single step between perfect impunity and liability to capital punishment seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death."

If we thought that the common law was such as is here supposed, we should without hesitation suggest that it should be altered. But we think that such is not and never was the law of England. The law discourages persons from taking the law into their own hands. Still the law does permit men to defend themselves. *Vim vi repellere licet modo fiat moderamine inculpate tutele, non ad summam vindictam, sed ad propulsandam injuriam.*—Co. Lit., 162 a. And when violence is used for the purpose of repelling a wrong, the degree of violence must not be disproportioned to the wrong to be prevented, or it is not justified.

There is no case that we are aware of in which it has been held that homicide to prevent mere trespass is justifiable. The question raised has always been, whether it was murder, or reduced by the provocation to manslaughter. And when death has not ensued, the forms of pleading, which had the advantage of bringing the principles of law to a precise issue, show what the principle was. In an appeal of Mayhem, the form of the plea of son assault demesne was that "the appellant made an assault upon the appellee and him then and there would have beaten wounded and maimed unless he had forthwith defended himself against the appellant, and so the ill which the appellant suffered was from his own proper assault and in defence of the appellee;"—Coke's Entries, 526. Less than this was not a defence,—see *Cook v. Beale*, 1 Ld. Ray, 176. In *Handcock v. Baker*, 2 Bos. & P. 260, a plea justifying the breaking of the plaintiff's dwelling-house, assaulting him therein, beating him, and imprisoning him on the ground that plaintiff was about to kill his wife, and that all that was done was for the purpose of and necessary to prevent his doing so, was held good after verdict. And we take it to be clear that even killing the intruding criminal, if necessary to prevent a crime of this magnitude, would be justifiable; but not if it were to prevent a common assault.

But the defence of possession either of goods or land against a mere trespass, not a crime, does not, strictly speaking, justify even a breach of the peace. The party in lawful possession may justify gently laying his hands on the trespasser and requesting him to depart. If the trespasser resists, and in so doing assaults the party in possession, that party may repel the assault and for that purpose may use any force which he would be justified in using in defence of his person. As is accurately said in 1 Rolle's Abt. Trespass G. 8, "a justification of a battery in defence of possession, though it arose in the defence of the possession, yet in the end it is the defence of the person."

Some misapprehension may have arisen from the numerous cases decided, on the 9 Geo. 4. c. 31, s. 11., in which persons indicted for wounding with intent to do grievous bodily harm were held entitled to an acquittal, on its coming out in evidence that there was an illegality or informality in an arrest, or some other provocation disproportioned to the degree of violence used. See *R. v. Hood*, 1 Moody, C.C. 281. And it may have been supposed that these are authorities that the violence was absolutely justified.

But this is from not observing that the effect of the enactment then in force, was that if wounding was inflicted under such circumstances that if death had ensued therefrom the offence would not have amounted to murder, the person indicted should be acquitted of felony. That provision was repealed in 1838, and since that time the course of practice has, we believe, been to leave it to the jury with proper explanations and directions, to say whether the wounding was disproportionate to the injury which it was intended to prevent. The cases in which this doctrine has been acted on [seem not to have been reported, with the exception of *R. v. Hewlett*, 1 F. & F. 91, in which the point only incidentally arose. We think that it is good sense, and that it is the law; and if it is not the law, we submit that it ought to be made so.

Note C to page 31.

Mr. Justice Barry and Mr. Justice Stephen object to section 431 on the ground that it keeps alive the distinction between felony and misdemeanour, mainly if not altogether for the sake of avoiding the necessity of dealing expressly with two matters which they think might be dealt with without difficulty, viz. :—the provisions of the Act abolishing forfeitures for felony, and the effect of the abolition of the distinction between felony and misdemeanour on the privileges of the peers.

By the Act which abolishes forfeiture for felony (33 & 34 Vict. c. 23, s. 7) a person convicted of felony and sentenced thereon to penal servitude is disabled from selling or alienating his property. The Crown may appoint an administrator of such property. The administrator is to make amends out of it to persons injured by the convict's offence; to support his family; and to preserve the property itself, and its surplus income, if any, for the convict or his representatives at his death. If a person should be sentenced to penal servitude for a misdemeanour (for instance, for obtaining goods by false pretences, misappropriation as an agent, fraud as a director, or false accounting), this consequence does not follow. Such a person whilst undergoing his sentence might sue and be sued and alienate his property at will. If the proposed proviso is adopted, the consequence will be that if a man with property is convicted of theft and sentenced to penal servitude under the provisions of the Draft Code, it will be necessary before the right of the Crown to appoint an administrator to the estate could be determined, to ascertain whether his offence would, before the Code became law, have been felony or a misdemeanour. This would be objectionable, not only because it perpetuates distinctions which it is desirable to abolish, but also because it would be practically impossible in many cases to say of what offence, according to the old law, the convict had been found guilty. Suppose for instance, the man were convicted of stealing money which he had picked up in the road; under the Draft Code, if there was a dishonest appropriation of the money, the offence of theft would be committed, although under the technical subtleties of the common law no felony might under the circumstances have been committed. A conviction under the Draft Code would not therefore decide whether the criminal was guilty of a felony at common law, and accordingly a further investigation would be required in order to determine whether the Crown could appoint an administrator or not.

As the sections relating to the appointment of administrators are not intended to inflict any punishment on the convict, but are rather meant for the protection of his property, it would seem simpler to enact that they should apply to all cases in which a sentence of penal servitude is passed for any offence. It seems very difficult to give any reason why a person convicted of bigamy should, and a person convicted of perjury should not, fall under these sections, and it is perhaps not easy to say what is the use of them under any circumstances.

A considerably greater difficulty arises with respect to one of the other provisions of the Act. A person sentenced for felony to imprisonment for 12 months or to imprisonment with hard labour, or to penal servitude thereupon loses every office, all ecclesiastical preferment, and every pension or superannuation allowance payable by the public or out of any public fund to which he may be entitled. Such consequences do not follow upon the infliction of similar punishments for misdemeanours. As

regards offices and ecclesiastical preferments this provision seems superfluous, and even to some degree objectionable, as it supersedes the authority of special professional tribunals. Her Majesty would of course dispense with the services of any person in military or civil employment who was convicted of any disgraceful offence, whether felony or misdemeanour. If a clergyman were so convicted, he might after the conviction be punished by the Ecclesiastical Courts. A barrister would be disbarred under similar circumstances, or a solicitor struck off the rolls. No special protection thus appears to be required for the protection of honourable professions against members who disgrace themselves. The provisions of the Act, on the other hand, might work cruel wrong to individuals, and might also produce inequality of punishment. Suppose that a military officer committed manslaughter. It is quite possible that a judge might under the circumstances consider it his duty to inflict a sentence of imprisonment with hard labour; but ought it to follow as a necessary consequence that such a man should lose his commission, and that such a loss should depend on the sentence passed by the judge? Would not the military authorities be better qualified on every ground to decide the question whether or not such a result should follow? Would it not be a disgrace to the law that, if another military officer committed deliberate perjury in order to ruin an innocent man, and was thereupon sentenced to penal servitude, the loss of his commission should be, not the legal consequence of his sentence, but the effect of the displeasure of the Sovereign?

Still greater irregularities are or might be involved in the provisions which deprive convicts of pensions and superannuation allowances. A pension (except in cases where it is a retaining fee for future services) is part of the consideration for which past services were rendered, and it is difficult to suggest any rational distinction between it and other property. If the principle of forfeiture is given up it seems inconsistent to retain forfeiture for one particular kind of property. If an Indian civilian retires upon a pension of 1,000*l.* a year and with 10,000*l.* saved from his pay, it seems difficult to justify a law which if he commits an offence forfeits his pension but leaves his savings untouched. But when this is connected with the distinction between felony and misdemeanour, the arbitrary character of the rule becomes still more apparent. Two public servants retire upon pensions; one becomes the secretary and the other a director of a joint stock bank; they conspire together to carry out a fraud, and its nature is such that in carrying it out, the secretary commits embezzlement as a servant, the director fraud as an agent; each is sentenced to 12 months imprisonment; the secretary will lose his pension, because his offence is felony; the director will retain his, because his offence is a misdemeanour. Surely this is a monstrous result; the two men commit the very same act and receive to all appearance the same punishment, yet because the one offence is (or rather used to be) called by a different name from the other, the one is to be fined thousands of pounds to his utter ruin, whilst the other at the end of his sentence retains his means of living.

It ought to be added that these forfeitures are the only remaining considerable exception to the rule which abolishes minimum punishments. If a man in possession of a pension is convicted of felony and sentenced to hard labour, the judge cannot help inflicting upon him, in addition, a heavy and it may be ruinous fine, depriving him of what may be his principal means of livelihood. This punishment is doubly invidious; it is inflicted or not according to an unintelligible and unmeaning distinction between the names of crimes, and it is inflicted upon those persons only who have earned a pension by long public service. A military officer and a rich civilian both commit an offence for which they are sentenced to penal servitude. The civilian's property is administered for him by a public officer, his family is supported out of it, the surplus is accumulated for his benefit, and he ends his term of punishment a richer man than when he began it. His fellow culprit is deprived of the whole of his income, and his family is reduced to absolute destitution. Mr. Justice Barry and Mr. Justice Stephen are of opinion that the second section of the Act for abolishing forfeitures for felony (33 & 34 Vict. c. 23) should be repealed, and that the latter part of the Act should either be repealed (which in their opinion would be the better course) or else be extended to all persons sentenced to penal servitude.

The effect of the abolition of the distinction between felony and misdemeanour on the privilege of the peerage, is certainly not likely to be of much practical importance. If a member of the House of Lords were ever to be accused of an offence against property, it might be matter of great difficulty to say whether the crime would have been felony or misdemeanour before the Code became law. To recur to the illustration given above. A peer is indicted for stealing property found by him. He says, "I

“ demand to be tried by my peers, because the offence with which I am charged
“ would have been felony at common law.” The answer would be, “It is impossible
“ to say, till the evidence is given, whether the offence with which you are charged
“ would have been felony at common law or not.”

Lord Blackburn and Mr. Justice Lush are, however, not prepared to express any opinion as to the propriety of continuing or repealing the provisions of the Act for the abolition of forfeitures hereinbefore mentioned. They think that any alteration of the provisions of an Act which has so recently found its place in the statute book, should form the subject of independent legislation.

APPENDIX
 TO THE
REPORT OF THE COMMISSIONERS
 CONTAINING
THE DRAFT CODE.

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SCHEDULE I. FORMS.

SCHEDULE II. ENACTMENTS REPEALED.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

TITLE I.

INTRODUCTORY PROVISIONS.

PART I.

PRELIMINARY.

SECTION 1.

SHORT TITLE.

This Act may be cited for all purposes as the Criminal Code (Indictable Offences), 1879.

SECTION 2.

COMMENCEMENT OF THE ACT.

This Act shall come into force on the day of Such of its provisions as relate to the definition and punishment of offences shall apply to all offences committed on or after that day, but shall not apply to any offence the commission of which was begun before that day, although such offence may have become complete on or after that day.

Such of its provisions as relate to procedure shall apply to all prosecutions commenced on or after the said day in relation to any indictable offence, whether indictable under this Act or otherwise, at whatever time such offence may have been committed.

The proceedings in respect of any prosecution commenced before the said day shall up to the time of committal for trial be continued as if this Act had not passed, and after committal for trial shall be subject to all the provisions of Title VII of this Act, so far as the same are applicable thereto.

SECTION 3.

APPLICATION OF THE ACT.

This Act shall apply to piracy by the law of nations wheresoever committed and to all offences committed by any person in England or Ireland, or on such part of the sea adjacent to the coast of any part of Her Majesty's dominions as is deemed by international law to be within the territorial sovereignty of Her Majesty, or as is within one marine league of the coast of any part of Her Majesty's dominions measured from low-water mark * or committed by any person on board any British ship, vessel, or boat which is in any place where the Admiralty of England or Ireland has jurisdiction; but this Act shall not (except where expressly provided) apply to offences committed elsewhere: † Provided that this Act shall apply to offences committed elsewhere than in England or Ireland only when they are tried in England or Ireland.

All offences to which this Act applies may be tried in England or Ireland: Provided that no proceedings for the trial or punishment of any person not a subject of Her Majesty who is charged with any offence committed on board a foreign ship on such part of the sea adjacent to the coast of any part of Her Majesty's dominions as is deemed by international law to be within the territorial sovereignty of Her Majesty, or as is within one marine league of the coast of any part of Her Majesty's dominions measured from low-water mark, shall be instituted in any court in England or Ireland except with the consent of one of Her Majesty's Principal Secretaries of State, and on his certificate that the institution of such proceedings is in his opinion expedient.

SECTION 4.

PLACE OF COMMISSION OF OFFENCES.

Every offence against this Act shall, for all the purpose of trial and punishment, be deemed to be committed at every place where any act is done or omitted the doing or omission of which forms a part of the offence, or where any event happens necessary to the completion of the offence, whether the person accused was at such place or not at the time of such act, omission, or event: ‡ Provided that no person not being a subject of Her Majesty shall be liable to be tried in England or Ireland for any offence under this Act except piracy by the law of nations, unless at the time when he became a party to the offence he was in some part of Her Majesty's dominions or on board some British ship in any place where the Admiralty of England or Ireland has jurisdiction or, though not on board a British ship was on such part of the sea adjacent to the coast of any part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty, or as is within one marine league of the coast of any part of Her Majesty's dominions, or unless after becoming a party to the offence and before or at the time of its completion he came for any purpose whatever into some part of Her Majesty's dominions, or on board some British ship in any place where the Admiralty of England or Ireland has jurisdiction.

SECTION 5.

OFFENDERS TO BE TRIED UNDER THIS ACT. §

Every one who after this Act comes into force is a party to any indictable offence shall be proceeded against under some provision of this Act, or under some provision of some statute not inconsistent therewith and not repealed, and shall not be proceeded against in England or Ireland at common law: Provided that when any offender is punishable both under this Act and under any other statute, every such offender may be tried and punished either under this Act or such other statute; and when any offender is punishable under two or more sections of this Act, he may be tried and punished under any of

* See 41 & 42 Vict. c. 73, (Territorial Waters Jurisdiction Act, 1878).

† When an offence is committed within the jurisdiction of the Admiralty, the offender may be tried in Scotland, or in many cases in India or the Colonies. It is proposed that in such cases the offence should be tried and punished as heretofore, until the Legislature for Scotland, India, or the Colony thinks fit to adopt the altered law as laid down in the Code.

‡ The general comity of nations does not allow the legislature of one country to make the subject of another punishable for an act, unless at the time when that foreign subject committed the act he was entitled to the protection of the laws of the legislating country, or as it is more technically said, owed temporary allegiance to that country. The proviso preserves to an alien what is in the nature of a plea to the jurisdiction of this country, unless he comes within this exception. It is thought that he does come within the exception if, whilst the crime is still incomplete, he comes into the dominions of Your Majesty or on board a ship belonging to this country. It is not thought that he comes within it merely by being on board a foreign ship within three miles of the coast of Your Majesty's dominions after becoming a party to the offence. The proviso is also framed with reference to the Territorial Waters Jurisdiction Act, 1878.

§ See the Report, pp. 9, 16.

such sections: Provided also that nothing in this Act shall extend to any proceeding by way of Parliamentary impeachment, or to affect the Court of the Queen in Parliament, or the Court of the Lord High Steward, or the right of any person entitled by the privilege of peerage to be tried therein or to affect the privilege of peerage in any way whatever.

SECTION 6.

INTERPRETATION OF TERMS.

In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context.

Every expression contained in this Act which refers to Her Majesty the Queen is intended to refer to Her Majesty, and Her heirs and successors.

“The Lord Lieutenant” means the Lord Lieutenant or the Chief Governor or Governors of Ireland for the time being.

The words “person,” “owner,” and other words and expressions of the same kind, include Her Majesty and all public bodies, bodies corporate, societies, companies, and inhabitants of counties, parishes or other districts, in relation to such acts and things as they are capable of doing and owning respectively.

“Oath,” and all expressions relating to the taking of oaths, include all such affirmations and declarations as may by law be substituted for an oath, and the making of such affirmations and declarations.

“Valuable security” includes every document forming the title or evidence of the title to any property of any kind whatever.

“Night” or “night time” means the interval between nine o’clock at night and six o’clock in the morning local mean time.

“Offence involving dishonesty” means any offence under the following portions of this Act, viz.: Parts XXV “Theft” and XXVI “Fraud,” (except Sections 276 (Killing deer), 277 (Killing hares), 278 (Killing hares), and 287 (Concealing deeds, &c.)) Parts XXVII “Robbery and Extortion,” XXVIII “Burglary and Housebreaking,” XXIX “Receiving,” XXX, and XXXI “Forgery” and “Preparation for Forgery, &c.” (except Section 356 (Forging trade marks), Section 357 (Imitating marks), Section 358 (Imitating marks),) Parts XXXII “Personation,” and XXXIII “Coin.”

“Conviction for an offence involving dishonesty” includes
 (a) A conviction upon indictment either before or after this Act comes into operation, either at common law or under a statute, for any “offence involving dishonesty” as hereinbefore defined, or for any act which would amount to such offence, however the offence may be or may have been defined either by common law or by any statute; or

(b) Two summary convictions under any statute for the time being in force for any offences which if committed after the commencement of this Act would amount to “offences involving dishonesty.”

* There still remain on the statute book, according to the Seventh Report of the Criminal Law Commissioners (dated 11th March 1843), p. 42, nine enactments under which the penalties of a præmunire may be incurred. No one of those statutes has been enforced within living memory, and most people have no conception what the penalties of a præmunire are, except that they are something terrible. There is no great harm in leaving this very vague threat hanging in terrorem over those who infringe these statutes so far as they are not repealed.

† Post, section 75.

PART II.

OF PUNISHMENTS.

SECTION 7.

ENUMERATION OF PUNISHMENTS.*

The following punishments may be inflicted under this Act: death, penal servitude, imprisonment, flogging, whipping, and fine.

SECTION 8.

PUNISHMENT OF DEATH.

The punishment of death shall in all cases be carried into effect in the manner prescribed by the Capital Punishment Amendment Act, 1868, subject to the provisions of this Act as to treason.†

SECTION 9.**IMPRISONMENT.***

Imprisonment shall be with or without hard labour. If it is to be with hard labour the sentence shall so direct.

No prisoner shall henceforth be sentenced to solitary confinement for any part of the term of his imprisonment.

* We leave the classification of prisoners to be dealt with under the Acts regulating prisons.

SECTION 10.**FLOGGING AND WHIPPING.**

Flogging shall consist of the infliction on a person whose age exceeds sixteen years of a number of strokes not exceeding at any one time fifty, with an instrument specified by the Court.

Whipping shall consist of the infliction on a person whose age does not exceed sixteen years of a number of strokes not exceeding at any one time twenty-five, with a birch rod.

In each case the court shall in its sentence specify the number of strokes to be inflicted.

No flogging or whipping shall take place after the expiration of six months from the passing of the sentence.

Every flogging or whipping inflicted on any person sentenced to penal servitude shall be inflicted before he is removed to a convict prison with a view to his undergoing his sentence of penal servitude.

After the commencement of this Act no person shall be sentenced, on a conviction upon any indictment, to be either flogged or whipped, except under the provisions of this Act.

No female shall be liable to be flogged or whipped.

SECTION 11.**FINE.**

Every one sentenced to pay a fine shall be liable, if the Court thinks fit, to be imprisoned till such fine is paid: Provided that the Court may in its discretion suspend such imprisonment on such terms as it thinks fit, or may limit the period of such imprisonment: Provided also, that no one shall be imprisoned for nonpayment of a fine for more than two years, exclusive of the period for which he may be imprisoned under any other part of his sentence.

SECTION 12.**DISCRETION OF COURT AS TO PUNISHMENT.**

Every one liable under this Act to be sentenced to penal servitude for life or for any term of years may be sentenced to any shorter term of penal servitude not less than five years, or instead thereof to any term of imprisonment not exceeding two years, with or without hard labour.

Every one liable under this Act to be sentenced to imprisonment for any term may be sentenced to imprisonment for any shorter term, and every one liable under this Act to be sentenced to imprisonment with hard labour for any term may be sentenced to imprisonment without hard labour for the same term, or to imprisonment either with or without hard labour for any shorter term.

Every one liable under this Act to be sentenced to penal servitude or to imprisonment with or without hard labour may be sentenced to pay a fine instead of any such sentence or in addition to any term of imprisonment.

SECTION 13.**DISCHARGE WITHOUT VERDICT.†**

In any case where the Court considers that the offence deserves no more than a nominal punishment, the Court may in its discretion direct the discharge of the accused person without taking any verdict, and such discharge shall have all the effects of an acquittal.

† New. See the Report, p. 16, and 24 & 25 Viet. c. 100. s. 44, and the Indian Penal Code, s. 95.

SECTION 14.

PUTTING UNDER RECOGNISANCES.*

* This clause does not authorise the requiring of sureties where the offender is sentenced to penal servitude. See

24 & 25 Vict. { c. 96, s. 117.
c. 97, s. 73.
c. 98, s. 51.
c. 99, s. 38.
c. 100, s. 71.

Every one who under any provision of this Act is convicted of any indictable offence for which he is liable to be sentenced to penal servitude or imprisonment with or without hard labour may, instead of any punishment hereby authorised, or in addition to any term of imprisonment or any fine, be required to enter into his own recognisances or to find sureties, or both, to such amount and for such time as the Court by which he is tried considers reasonable, that he shall keep the peace and be of good behaviour. Every one required to find sureties as aforesaid shall be liable, if the Court thinks fit, to be imprisoned till he finds such sureties: Provided that the Court may in its discretion suspend such last mentioned imprisonment on such terms as it thinks fit, or may limit the period of such imprisonment: Provided also, that no one shall be imprisoned for not finding sureties for more than one year, exclusive of any other period for which he may be imprisoned by the sentence of the Court.

SECTION 15.

PREVIOUS CONVICTIONS.

Every one who under the provisions hereinafter contained is liable to an increased punishment upon a conviction after a previous conviction shall, if sentenced to penal servitude, be sentenced to penal servitude for not less than seven years.†

† This is the existing law. See 27 & 28 Vict. c. 47. s. 2.; and the Report, p. 16.

SECTION 16.

‡ POLICE SUPERVISION.

When any one who has been convicted in England or Ireland of any offence involving dishonesty, or of any offence under Section 188, Section 189, Section 190, Section 191, Section 192, or Section 205 of this Act, or who has been convicted in Scotland of what if done in England or Ireland would be any such offence as aforesaid, is afterwards convicted of any offence involving dishonesty, or of any offence under Section 188, Section 189, Section 190, Section 191, Section 192, or Section 205 of this Act, and the fact of his having been so previously convicted is confessed by the offender in open court, or is proved in open court to the satisfaction of the Court, the Court may, whether such subsequent offence be charged in the indictment or not, in addition to any other punishment which it may award to him, direct that he shall be subject to the supervision of the police for any period not exceeding seven years, commencing immediately after the expiration of the sentence passed on him for the last of such offences.

SECTION 17.

SENTENCES MAY BE CUMULATIVE.§

§ This expresses the common law as to misdemeanours, and the statute law as to felonies. See 7 & 8 Geo. IV., c. 28, s. 10 (England), and 9 Geo. IV., c. 54 s. 20 (Ireland). See the Report, p. 17.

When an offender is convicted of more offences than one before the same Court at the same sitting, or when any offender undergoing punishment for one offence is convicted of any other offence, the Court may on the last conviction direct that the sentences passed upon him for his several offences shall take effect one after the other, or after the expiration of the punishment which he is undergoing at the time of his last conviction:

|| This proviso is new.

|| Provided that no cumulative sentence of imprisonment shall be passed on any offender so as to subject him to any continuous period of imprisonment exceeding two years; but if in the absence of this proviso the Court might sentence the offender to such cumulative sentence or sentences as would subject him to a continuous term of imprisonment exceeding two years, the court may in lieu thereof sentence him to penal servitude for a term not less than five nor exceeding seven years; and if in the absence of this proviso the Court might sentence the offender to such cumulative sentences as would subject him to a continuous term of imprisonment exceeding four years, the Court may in lieu thereof sentence him to penal servitude for any term not less than five nor exceeding fourteen years, such term of penal servitude being in each case in lieu of all imprisonment, and in the case of an offender

already undergoing sentence of imprisonment to date from the commencement of such last-mentioned sentence. If an offender undergoing a sentence of penal servitude is convicted of any offence, whether punishable by penal servitude or not, the Court may in its discretion sentence him to an additional term of penal servitude not exceeding the term of imprisonment or penal servitude to which it might have sentenced him on his last conviction, to commence from the expiration of the sentence which he is then undergoing, which additional term may be less than five years.

SECTION 18.

REFORMATORIES.

Nothing in this Act shall affect any Act relating to reformatory schools in England or Ireland or any power given thereby to send any offender to any such school.

PART III.

JUSTIFICATION AND EXCUSE FOR ACTS WHICH WOULD BE OTHERWISE OFFENCES.

SECTION 19.

COMMON LAW PRINCIPLES.*

All rules and principles of the common law which render any circumstances a justification or excuse for any act or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act, except in so far as they are thereby altered or are inconsistent therewith.

The matters hereby provided for in this Part are declared and enacted to be justifications and excuses for all charges to which they apply.

* See the Report, p. 10

SECTION 20.

CHILDREN UNDER SEVEN.

No one whose age does not exceed seven years shall be convicted of any offence.

SECTION 21.

CHILDREN BETWEEN SEVEN AND FOURTEEN.

No one whose age exceeds seven and does not exceed fourteen years shall be convicted of any offence unless it appear to the jury that at the time he committed the offence he had sufficient intelligence to know the nature and consequences of his conduct, and to appreciate that it was wrong.

SECTION 22.

INSANITY.†

If it be proved that a person who has committed an offence was at the time he committed the offence insane so as not to be responsible for that offence, he shall not therefore be simply acquitted, but shall be found not guilty on the ground of insanity.

To establish a defence on the ground of insanity, it must be proved that the offender was at the time when he committed the act labouring under natural imbecility or disease of or affecting the mind, to such an extent as to be incapable of appreciating the nature and quality of the act or that the act was wrong.

A person labouring under specific delusions but in other respects sane shall not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which if it existed would justify or excuse his act: Provided that insanity before or after the time when he committed the act, and insane delusions though only partial may be

† As to this very difficult subject, see the Report, p. 17.

evidence that the offender was at the time when he committed the act in such a condition of mind as to entitle him to be acquitted on the ground of insanity.

Every one committing an offence shall be presumed to be sane until the contrary is proved.

SECTION 23.

COMPULSION.*

Compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence shall be an excuse for the commission of any offence other than high treason as herein-after defined in section 75 sub-sections (a) (b) (c) (d) and (e), murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson: Provided that the person under compulsion believes that such threat will be executed: Provided also, that he was not a party to any association or conspiracy the being party to which rendered him subject to such compulsion.

No presumption shall henceforth be made that a married woman committing an offence in the presence of her husband does so under compulsion.

SECTION 24.

IGNORANCE OF LAW.

The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.

SECTION 25.

EXECUTION OF LAWFUL SENTENCE.†

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

SECTION 26.

EXECUTION OF LAWFUL PROCESS.

Every ministerial officer of any court duly authorised to execute any lawful process of such court, whether of a civil or a criminal nature, and every person lawfully assisting him, is justified in executing the same; and every gaoler who is required under such process to receive and detain any person is justified in receiving and detaining him.

SECTION 27.

EXECUTION OF LAWFUL WARRANTS.

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

SECTION 28.

EXECUTION OF ERRONEOUS SENTENCE OR PROCESS.‡

If a sentence is passed or process issued by a court having jurisdiction under any circumstances to pass such a sentence or issue such process, or if a warrant is issued by a court or person having jurisdiction under any circumstances to issue such a warrant, the sentence passed or process or warrant issued shall be sufficient to justify the officer or person authorised to execute such warrant, and every gaoler and person lawfully assisting in executing or carrying out such sentence process or warrant, although the court passing the sentence or issuing the process had not in the particular case authority to pass the sentence or to issue the process,§ or although the court justice or other person in the particular case had no jurisdiction to issue or exceeded its

* See the Report, p. 10, and Note A.

† As to this and the following sections to s. 66, see the Report, p. 18.

‡ The result of the authorities justifies us in saying that wherever a ministerial officer who is bound to obey the orders of a court or magistrate, (as for instance, in executing a sentence or effecting an arrest under warrant,) and is punishable by indictment for disobedience, merely obeys the order which he has received, he is justified, if that order was within the jurisdiction of the person giving it. And we think that the authorities show that a ministerial officer obeying an order of a court or the warrant of a magistrate, is justified if the order or warrant was one which the court or magistrate could under any circumstances lawfully issue, though the order or warrant was in fact obtained improperly, or though there was a defect of jurisdiction in the particular case which might make the magistrate issuing the warrant civilly responsible; on the plain principle that the ministerial officer is not bound to inquire what were the grounds on which the order or warrant was issued, and is not to blame for acting on the supposition that the court or magistrate had jurisdiction.

§ The latter part of this section perhaps extends the law.

or his jurisdiction in issuing the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district in or for which such court justice or person was entitled to act.

SECTION 29.

EFFECT OF SENTENCE OR PROCESS WITHOUT JURISDICTION.

Every officer gaoler or person executing any sentence process or warrant, and every person lawfully assisting such officer gaoler or person, shall be protected from criminal responsibility if he acts in good faith under the belief that the sentence or process was that of a court having jurisdiction, or that the warrant was that of a court justice of the peace or other person having authority to issue warrants, and if it be proved that the person passing the sentence or issuing the process acted as such a court,* under colour of having some appointment or commission lawfully authorising him to act as such a court, or that the person issuing the warrant acted as a justice of the peace or other person having such authority, although in fact such appointment or commission did not exist or had expired, or although in fact the court or the person passing the sentence or issuing the process was not the court or the person authorised by the commission to act, or the person issuing the warrant was not duly authorised so to act.

* Though cases of this sort have rarely arisen in practice, we think we are justified by the opinion of Lord Hale (1 Hale 498), in saying that the order of a court, having a colour of jurisdiction, though acting erroneously, is enough to justify the ministerial officer.

SECTION 30.

ARRESTING THE WRONG PERSON.

† Every one duly authorised to execute a warrant to arrest who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same conditions as if the person arrested had been the person named in the warrant.

Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person shall be protected to the same extent and subject to the same conditions as if the arrested person had been the person named in the warrant.

† This is new. As an officer arresting for felony without warrant is by the common law justified even if he by mistake arrests the wrong person, we think that the one who arrests any person with a warrant for any offence shall at least be protected from criminal responsibility. The right of action is not affected by it.

SECTION 31.

EFFECT OF AN IRREGULAR WARRANT.‡

Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form, apparent on the face of it, if he in good faith and without culpable ignorance or negligence believed that the warrant or process was good in law, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process was good in law, and ignorance of the law shall in this case be an excuse: Provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

‡ It is at least doubtful on the existing authorities whether a person honestly acting under a bad warrant, defective on the face of it, has any defence, though doing only what would have been his duty if the warrant was good. The section as framed protects him. The proviso is new, but seems to be reasonable; it does not touch the question of civil responsibility.

SECTION 32.

ARREST BY PEACE OFFICER IN CASE OF MAJOR OFFENCE.

Every peace officer who on reasonable and probable grounds believes that one of the offences § as to which it is provided in this Act that the offender may be arrested without warrant has been committed, whether it has been committed or not, and who on reasonable and probable grounds believes that any person has committed that offence, is justified in arresting such person without warrant, whether such person is guilty or not.

§ This description is substituted for felony in this and some other sections.

SECTION 33.

PERSONS ASSISTING PEACE OFFICER ARRESTING IN CASE OF MAJOR OFFENCE.

Every one called upon to assist a peace officer in the arrest of a person

suspected of having committed any such offence as last aforesaid is justified in assisting, if he knows that the person calling on him to assist him is a peace officer, and does not know that there is no reasonable ground for the suspicion.

SECTION 34.

ARREST OF PERSON FOUND COMMITTING MAJOR OFFENCE.

Every one is justified in arresting without warrant any person whom he finds committing any offence as to which it is provided by this Act that the offender may be arrested without warrant, or as to which it is specially provided by this Act that the offender may be arrested when found committing it.

SECTION 35.

ARREST AFTER COMMISSION OF MAJOR OFFENCE.

If any offence as to which it is provided in this Act that the offender may be arrested without warrant has been committed, any one who on reasonable and probable grounds believes that any person is guilty of that offence, is justified in arresting him without warrant, whether such person is guilty or not.

SECTION 36.

ARREST OF PERSONS BELIEVED TO BE COMMITTING MAJOR OFFENCE AT NIGHT.

* This leaves the question of civil liability untouched.

Every one is protected from criminal responsibility* for arresting without warrant any person whom he on reasonable and probable grounds believes he finds committing in the night time any offence as to which it is provided by this Act that offenders may be arrested without warrant.

SECTION 37.

ARREST BY PEACE OFFICER OF PERSON FOUND COMMITTING ANY OFFENCE.

Every peace officer is justified in arresting without warrant any person whom he finds committing any offence against this Act.

SECTION 38.

ARREST OF PERSON FOUND COMMITTING ANY OFFENCE AT NIGHT.

† 14 & 15 Vict. c. 19, s. 11.

† Every one is justified in arresting without warrant any person whom he finds in the night time committing any offence against this Act.

‡ See 24 & 25 Vict. c. 96, s. 104; c. 97, s. 57; and c. 100, s. 66.

‡ Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any highway yard or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant.

SECTION 39.

ARREST DURING FLIGHT.

§ This is believed to extend the common law, which applies only to the arrest of persons actually guilty. It does not affect the question of civil liability.

§ Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable grounds believes to have committed an offence against this Act and to be escaping from and to be freshly pursued by those whom he on reasonable and probable grounds believes to have lawful authority to arrest that person for such offence.

SECTION 40.

SAVING OF STATUTORY POWER OF ARREST.

Nothing herein contained shall take away or diminish any authority given by any act in force for the time being to arrest detain or put any restraint on any person.

SECTION 41.

WHAT FORCE MAY BE USED IN EXECUTING PROCESS OR IN ARREST.

Every one justified or protected from criminal responsibility in executing any sentence warrant or process or in making an arrest, and every one lawfully assisting him, is justified or protected from criminal responsibility as the case may be in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence process or warrant can be executed or the arrest effected by reasonable means in a less violent manner.

SECTION 42.

DUTY OF PERSONS ARRESTING.

It is the duty of every one executing any process or warrant to have it with him and to produce it if required.

It is the duty of every one arresting another, whether with or without warrant, to give notice where practicable of the process or warrant under which he acts, or of the cause of the arrest.

* A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant, or his assistants or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed or the arrest effected by reasonable means in a less violent manner.

* This is believed to alter the common law.

SECTION 43.

PEACE OFFICER PREVENTING ESCAPE FROM ARREST FOR MAJOR OFFENCE.

Every peace officer proceeding lawfully to arrest with or without warrant any person for any offence as to which it is provided in this Act that the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight; unless such escape can be prevented by reasonable means in a less violent manner.

SECTION 44.

PRIVATE PERSON PREVENTING ESCAPE FROM ARREST FOR MAJOR OFFENCE.

Every private person proceeding lawfully to arrest without warrant any person for any offence as to which it is provided in this Act that the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided that such force is neither intended † nor likely to cause death or grievous bodily harm.

† There is some obscurity as to the existing law on this point. See 2 Hale 82, 83, 84.

SECTION 45.

PREVENTING ESCAPE FROM ARREST IN OTHER CASES.

Every one proceeding lawfully to arrest any person for any cause other than such offence as in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided such force is neither intended nor likely to cause death or grievous bodily harm.

SECTION 46.

PREVENTING ESCAPE OR RESCUE AFTER ARREST FOR MAJOR OFFENCES.

† Every one who has lawfully arrested any person for any offence as to which it is provided in this Act that the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested as he believes on reasonable grounds to be necessary for that purpose.

† This seems to extend the law so far as regards private persons. 2 Hale 83.

SECTION 47.

PREVENTING ESCAPE OR RESCUE AFTER ARREST IN OTHER CASES.

Every one who has lawfully arrested any person for any cause other than one of the offences as to which it is provided in this Act that the offender may be arrested without warrant, is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes on reasonable grounds to be necessary for that purpose: Provided that such force is neither intended nor likely to cause death or grievous bodily harm.

SECTION 48.

SUPPRESSION OF BREACH OF THE PEACE.

Timothy v. Simpson, 1 C. M. and R. 762.

Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal of such breach of the peace, and may detain any person committing or about to join in or renew such breach of the peace in order to give him into the custody of a peace officer: Provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace.

Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he on reasonable and probable grounds believes to be about to join in or renew such breach of the peace.

Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace, by one who has or whom such peace officer upon reasonable and probable grounds believes to have witnessed such breach of the peace.

SECTION 49.

SUPPRESSION OF RIOT.

* This limitation is not expressed in the authorities, but appears to us to be implied from the nature of the law.

Every one is justified in using force necessary to suppress a riot, *provided the force used is not disproportioned to the danger to be apprehended from the continuance of the riot.

SECTION 50.

SUPPRESSION OF RIOT BY MAGISTRATES, ETC.

Every sheriff under-sheriff mayor bailiff or other head officer of any county city town or district, and every magistrate and justice of the peace is justified in using and ordering to be used, and every peace officer is justified in using, such force as he in good faith and on reasonable and probable grounds believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he on reasonable and probable grounds believes to be apprehended from the continuance of the riot.

SECTION 51.

SUPPRESSION OF RIOT BY PERSONS ACTING UNDER LAWFUL ORDERS.†

† The protection given by this and the following sections to persons obeying the orders of magistrates and military officers is perhaps carried to an extent not yet expressly decided; but see the language of Tindal, C. J., in *R. v. Pinney*, 5 C. & P., and Willes, J., in *Keighley v. Bell*, 4, F. & F., 763.

Every one, whether subject to military law or not, acting in good faith in obedience to orders given by any sheriff under-sheriff mayor bailiff or other head officer of any county city town or district or by any magistrate or justice of the peace for the suppression of a riot, is justified in obeying the orders so given, unless such orders are manifestly unlawful; and he is protected from criminal responsibility in using such force as he on reasonable and probable grounds believes to be necessary for carrying into effect such orders.

It shall be a question of law whether any particular order is manifestly unlawful or not.

SECTION 52.

SUPPRESSION OF RIOT BY PERSONS WITHOUT ORDERS.

Every one, whether subject to military law or not, who in good faith and on reasonable and probable grounds believes that serious mischief will arise

from a riot before there is time to procure the intervention of any of the authorities aforesaid, is justified in using such force as he in good faith and on reasonable and probable grounds believes to be necessary for the suppression of such riot, and as is not disproportioned to the danger which he on reasonable and probable grounds believes to be apprehended from the continuance of the riot.

SECTION 53.

PROTECTION OF PERSONS SUBJECT TO MILITARY LAW.

Every one who is bound by military law to obey the lawful command of his superior officer is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

It shall be a question of law whether any particular order is manifestly unlawful or not.

SECTION 54.

PREVENTION OF MAJOR OFFENCES.

Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of any offence for which if committed the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one ; or in order to prevent any act being done which he upon reasonable grounds believes would, if committed, amount to any of such offences.

SECTION 55.

SELF-DEFENCE AGAINST UNPROVOKED ASSAULT.

Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence ; and every one so assaulted is justified though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purpose and if he believes on reasonable grounds that he cannot otherwise preserve himself from death or grievous bodily harm.

SECTION 56.

SELF-DEFENCE AGAINST PROVOKED ASSAULT.

Every one who has without justification assaulted another, or has provoked an assault from that other, may nevertheless justify force subsequent to such assault, if he uses such force under reasonable apprehension of death or grievous bodily harm from the violence of the party first assaulted or provoked, and in the belief on reasonable grounds that it is necessary for his own preservation from death or grievous bodily harm : Provided that he did not commence the assault with intent to kill or do grievous bodily harm, and did not endeavour at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm : Provided also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable.

Provocation within the meaning of this and the last preceding section may be given by blows words or gestures.

SECTION 57.

PREVENTION OF INSULT.

* Every one is justified in using force in defence of his own person or that of any one under his protection from an assault accompanied with insult : Provided that he uses no more force than is necessary to prevent such assault,

* This perhaps extends the law, but it appears reasonable.

or the repetition of it: Provided also, that this section shall not justify the wilful infliction of any hurt or mischief disproportionate to the insult which it was intended to prevent.

SECTION 58.

DEFENCE OF MOVABLE PROPERTY AGAINST TRESPASSER.*

* This would put the possessor in the position of a person acting in self defence contemplated by section 55.

Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified in resisting the taking of such thing by any trespasser, or in retaking it from such trespasser, if in either case he does not strike or do bodily harm to such trespasser; and if, after any one having peaceable possession as aforesaid has laid hands upon any such thing, such trespasser persists in attempting to keep it or to take it from the possessor or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation.

SECTION 59.

DEFENCE OF MOVABLE PROPERTY BY ONE HAVING CLAIM OF RIGHT.

Every one who is in peaceable possession of any movable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the possession of such property or thing, if he does not strike or do bodily harm to such person; and if the person entitled by law to the possession thereupon attempts to take it from or otherwise assaults the possessor or any one acting under his authority, such assault shall be deemed to be without justification or provocation.

SECTION 60.

DEFENCE OF MOVABLE PROPERTY BY PERSON NOT HAVING CLAIM OF RIGHT.

Every one who is in peaceable possession of any movable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against a person entitled by law to the possession of such property or thing; and if the person so entitled attempts to retake any such thing, and the possessor resists, and the person entitled thereto thereupon assaults the possessor, such assault shall be deemed to have been provoked, although the possessor may not have assaulted the person entitled by law to the possession.

SECTION 61.

DEFENCE OF DWELLING-HOUSE.

Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house either by night or day by any person with the intent to commit any indictable offence therein.

SECTION 62.

DEFENCE OF DWELLING-HOUSE AT NIGHT.

Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house by night by any person, if he believes on reasonable and probable grounds that such breaking and entering is attempted with the intent to commit any indictable offence therein.

SECTION 63.

DEFENCE OF REAL PROPERTY.

Every one who is in peaceable possession of any house or land or other real property, and every one lawfully assisting him or acting by his authority,

is justified in using force to prevent any person from trespassing on such property or to remove him therefrom, if he does not strike or do bodily harm to such trespasser; and if such trespasser resists such attempt to prevent his entry or to remove him, such trespasser shall be deemed to commit an assault without justification or provocation.

SECTION 64.

ASSERTION OF RIGHT TO HOUSE OR LAND.

Every one is justified in peaceably entering in the daytime to take possession of any house or land to the possession of which he or some person under whose authority he acts is lawfully entitled.

If any person, not having or acting under the authority of one having peaceable possession of any such house or land with a claim of right, assaults any one peaceably entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

If any person having peaceable possession of such house or land with a claim of right, or any person acting by his authority, assaults any one entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering.

SECTION 65.

EXERCISE OF RIGHT OF WAY, ETC.

Every one lawfully entitled to enter upon any land for the exercise of any right of way or other easement or profit is justified in peaceably entering on such land for the purpose of exercising such right of way easement or profit: Provided that if any one so entering has notice that his right to use such way or easement or to take such profit is disputed by the person in possession of such land, an assault committed by such person or by any person acting under his authority, for the purpose of making the person entering desist from such entry, shall be deemed to be provoked by the person entering.

SECTION 66.

CORRECTION AND PRESERVATION OF DISCIPLINE.

It is lawful for every parent or person in the place of a parent, school-master or master to use force by way of correction towards any child pupil or apprentice under his care: Provided that such force is reasonable under the circumstances.

It is lawful for the master or officer in command of a ship on a voyage to use force for the purpose of maintaining good order and discipline on board of his ship: Provided that he believes on reasonable grounds that such force is necessary: Provided also that the force used is reasonable in degree.

SECTION 67.

SURGICAL OPERATIONS.

Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit: Provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

SECTION 68.

EXCESS.

Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

SECTION 69.

CONSENT TO DEATH.

No one has a right to consent to the infliction of death upon himself;

and if such consent is given, it shall have no effect upon the criminal responsibility of any person by whom such death may be caused.

SECTION 70.

OBEDIENCE TO DE FACTO LAW.

* See 11 Hen. 7, c. 1, Sir H. Vane's case, Kelynge, 15; and Foster's 4th Discourse, p. 402.

* Every one is protected from criminal responsibility for any act done in obedience to the laws for the time being made and enforced by those in possession de facto of the sovereign power in and over the place where the act is done.

PART IV.

OF PARTIES TO THE COMMISSION OF OFFENCES.

SECTION 71.

PARTIES TO OFFENCES.†

† This section is so framed as to put an end to the nice distinctions between accessories before the fact, and principals, in the second degree, already practically superseded by 24 & 25 Vict. c. 94.

Every one is a party to and guilty of an indictable offence who

- (a) Actually commits the offence or does or omits any act the doing or omission of which forms part of the offence; or
- (b) Aids or abets any person in the actual commission of the offence, or in any such act or omission as aforesaid; or
- (c) Directly or indirectly counsels or procures any person to commit the offence, or to do or omit any such act as aforesaid.

If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was or ought to have been known to be a probable consequence of the prosecution of such common purpose.

SECTION 72.

OFFENCE COMMITTED OTHER THAN THE OFFENCE INTENDED.†

† This is believed to express the existing law. See Foster, Chapter III.

Every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew or ought to have known to be likely to be committed in consequence of such counselling or procuring.

SECTION 73.

ACCESSORY AFTER THE FACT DEFINED.

An accessory after the fact to an indictable offence is one who receives comforts or assists any one who has been a party to such offence, in order to enable him to escape, knowing him to have been a party thereto:

Provided that no married woman whose husband has been a party to an indictable offence shall become an accessory after the fact thereto by receiving comforting or assisting her husband, or by receiving comforting or assisting in his presence and by his authority any other person who has been a party to such offence, in order to enable her husband or such other person to escape.

SECTION 74.

ATTEMPTS TO COMMIT OFFENCES.

An attempt to commit an offence is an act done or omitted with intent to commit that offence, forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted, either by the voluntary determination of the offender not to complete the offence or by some other cause.

* Every one who, believing that a certain state of facts exists, does or omits an act the doing or omitting of which would if that state of facts existed be an attempt to commit an offence, attempts to commit that offence, although its commission in the manner proposed was by reason of the non-existence of that state of facts at the time of the act or omission impossible.

The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

* This declares the law differently from *R. v. Collins, L. & C. 471*, where it was held that a person who put his hand into the pocket of another in order to steal, was not guilty of an *attempt* to steal, because it happened that the pocket was empty.

TITLE II.

OFFENCES AGAINST PUBLIC ORDER, INTERNAL AND EXTERNAL.

PART V.

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

SECTION 75.

HIGH TREASON DEFINED.

† High treason is

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

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

(c) The act of killing the eldest son and heir apparent of Her Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(d) The forming and manifesting by an overt act an intention to kill the eldest son and heir apparent of Her Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(e) Conspiring with any person to kill Her Majesty, or to do her any bodily harm tending to death or destruction maim or wounding, or conspiring with any person to imprison or restrain her; or

(f) Levying war against Her Majesty either

with intent to depose Her Majesty from the style, honour, and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of Her Majesty's dominions or countries; or

in order by force or constraint to compel Her Majesty to change her measures or counsels, or in order to intimidate or overawe both Houses or either House of Parliament; or

(g) Conspiring to levy war against Her Majesty with any such intent or for any such purpose as aforesaid; or

(h) Instigating any foreigner with force to invade this realm or any other of the dominions of Her Majesty; or

† 25 Edw. 3, st. 5, c. 2.
&c.

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

(j)* Violating, whether with her consent or not, a Queen consort, or the wife of the eldest son and heir apparent for the time being of the King or Queen regnant.

* The present law relates also to the King's eldest daughter, being unmarried; but this seems to be founded on feudal reasons now obsolete. Such an act could not affect the succession to the Crown.

† 54 Geo. 3, c. 146.

‡ 31 Vict. c. 24, s. 6.

§ 11 & 12 Vict. c. 42, 23.

Every one who commits high treason shall be guilty of an indictable offence, and shall upon conviction thereof suffer death as in other cases; provided that Her Majesty may, if she think fit, direct by warrant under her Sign Manual, countersigned by one of Her Majesty's Principal Secretaries of State, that the head of such person shall be severed from his body whilst alive. The head and body of every such offender shall be disposed of in the manner provided for by the †Capital Punishment Amendment Act, 1868.

§ Any one charged with this offence may be arrested without warrant, and shall not be bailed in England without an order from one of Her Majesty's Principal Secretaries of State, or in Ireland without an order from the Lord Lieutenant or his Chief Secretary; or from the Queen's Bench Division of the High Court or a judge of that division, or a judge of the High Court transacting the civil business of that division in chambers in England or Ireland as the case may be.

SECTION 76.

PROCEDURE IN HIGH TREASON.

¶ 7 & 8 W. 3, c. 3, ss. 2 and 4. 1 & 2 Geo. 4 c. 34, s. 1. (as to Ireland).

This section represents the existing law. See the Report, p.

¶ 39 & 40 Geo. 3, c. 93, 5 & 6 Vict. c. 51, s. 1.

¶ No one shall be convicted of high treason (unless he pleads guilty) except upon the evidence of two witnesses to one overt act of the kind of treason with which he is charged, or upon the evidence of one witness to one such act and one other witness to another such act.

No one shall be liable to be indicted or tried for high treason unless the indictment be found within three years next after the offence committed.

¶ Provided that nothing in this section shall apply to high treason by killing Her Majesty, or to cases where the overt act alleged is any attempt to injure her person in any manner whatever, but every such offence may be proved by the same evidence as any other offence.

SECTION 77.

CONSPIRACY.

** Mulcahy v. R., L. R. 3 H. L. 328.

** In every case in which it is high treason to conspire with any person for any purpose, the act of so conspiring, and every overt act of any such conspiracy, is an overt act of high treason.

SECTION 78.

ACCESSORIES AFTER THE FACT IN TREASON AND MISPRISION OF TREASON.

†† This is in substitution for misprision of treason, the punishment for which is imprisonment for life and forfeiture of goods and profits of land.

†† Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life, who

(a) Becomes an accessory after the fact to high treason; or

(b) Knowing that any person is about to commit high treason, does not with all reasonable despatch give information thereof to a justice of the peace, or use other reasonable endeavours to prevent the commission of the same.

SECTION 79.

†† TREASONABLE OFFENCES.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life, who forms any of the intentions hereinafter mentioned, and manifests any such intention §§ by conspiring with any person to carry it into effect or by any other overt act, or by publishing any printing or writing; that is to say,

(a) An intention to depose Her Majesty from the style honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland, or of any other of Her Majesty's dominions or countries:

†† 11 Vict. c. 12.

§§ See Mulcahy v. Reg., L. R. 3 H. L. 360.

(b) An intention to levy war against Her Majesty within any part of the said United Kingdom, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe, both Houses or either House of Parliament:

(c) An intention to move or stir any foreigner or stranger with force to invade the said United Kingdom or any other of Her Majesty's dominions or countries under the obeisance of Her Majesty.

No one charged with any offence punishable under this section shall be entitled to be acquitted on the ground that any act proved against him amounts to high treason; but no person acquitted or convicted for any such offence shall afterwards be prosecuted for high treason on the same facts.

Any one charged with any offence under this or the last preceding section may be arrested without warrant, and shall not be bailed in England without an order from one of Her Majesty's Principal Secretaries of State or in Ireland without an order from the Lord Lieutenant or his Chief Secretary, or from the Queen's Bench Division of the High Court in England or Ireland, or a judge of that division or a judge of the High Court transacting the civil business of that division in chambers in England or Ireland as the case may be.

SECTION 80.

* ASSAULTS ON THE QUEEN.

* 5 & 6 Vict. c. 51, ss. 1, 2.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and (if he is sentenced to imprisonment instead of penal servitude) if a male to be flogged once twice or thrice, or if under sixteen years to be whipped once twice or thrice as the court directs, who

(a) Wilfully produces or has near the person of Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure the person of or to alarm Her Majesty; or

(b) Wilfully and with intent to alarm or to injure the person of Her Majesty, or to break the public peace or whereby the public peace may be endangered,

points, aims, or presents at or near her person any firearm, loaded or not, or any other kind of arm; or

discharges at or near her person any loaded arms; or

discharges or causes to be discharged any explosive material near her person; or

strikes, or strikes at, her person in any manner whatever; or

throws anything at or upon her person; or

(c) Attempts to do any of the things specified in sub-section (b) of this section.

No one charged with any offence punishable under this section shall be entitled to be acquitted on the ground that any act proved against him amounts to high treason.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

SECTION 81.

BURNING SHIPS OF WAR, ETC.

† Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to be sentenced to death, who unlawfully and wilfully sets on fire burns or otherwise destroys

† 12 G. 3. c. 24.

(a) Any of Her Majesty's ships or vessels of war, whether afloat or being built, or begun to be built, or under repair in any of Her Majesty's dockyards, or being built or repaired by contract in any private yard for the use of Her Majesty; or

(b) Any of Her Majesty's arsenals, magazines, dockyards ropeyards victualling offices or any of the buildings erected therein or belonging thereto; or

(c) Any timber or materials there placed for building repairing or fitting out ships or vessels; or

(d) Any of Her Majesty's military naval or victualling stores or other ammunition of war; or

(e) Any place where any such military naval or victualling stores, or other ammunition of war are kept or placed.

* 4 Geo. 4. c. 48, s. 1. We have preserved this provision wherever it is applicable, but we doubt whether it should be preserved. If it is done away with, the punishment should be changed to penal servitude for life, or it should be made compulsory to pronounce sentence of death.

† 37 Geo. 3. c. 70, s. 1, punishment; 7 W. 4. & 1 Vict. c. 91, ss. 1 and 2, 57 Geo. 3. c. 7. (Tr.)

* Upon a conviction for an offence under this section the court may abstain from passing sentence of death upon the offender, and instead of pronouncing such sentence may order judgment of death to be entered of record, and the proper officer shall thereupon enter the same of record accordingly.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 82.

† INCITING TO MUTINY.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who for any traitorous or mutinous purpose endeavours to seduce any person serving in Her Majesty's forces by sea or land from his duty and allegiance to Her Majesty, or to incite or stir up any such person to commit any act of mutiny or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatever.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

SECTION 83.

APPLICATION OF THIS PART OF THE ACT.

This Part of the Act shall apply to all acts done by any subject of Her Majesty in any part of the world.

PART VI.

UNLAWFUL ASSEMBLIES, RIOTS, BREACHES OF THE PEACE.

SECTION 84.

DEFINITION OF UNLAWFUL ASSEMBLY.

An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear on reasonable grounds that the persons so assembled will disturb the peace tumultuously,† or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

† See the Report, p. 20.

Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose.

§ See the Report, p. 20.

§ An assembly of three or more persons for the purpose of protecting the house of any one of their number against persons threatening to break and enter such house in order to commit any indictable offence therein is not unlawful.

SECTION 85.

DEFINITION OF RIOT.

A riot is an unlawful assembly which has begun to act in a tumultuous manner to the disturbance of the peace.

SECTION 86.

PUNISHMENT OF UNLAWFUL ASSEMBLY.‡

Every member of an unlawful assembly shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment.

‡ This lessens the present maximum punishment.

SECTION 87.

PUNISHMENT OF RIOT.

Every rioter shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour.

SECTION 88.

READING THE RIOT ACT.

* It is the duty of every sheriff under sheriff and justice of the peace of any county, and of every mayor bailiff or other head officer, sheriff under sheriff and justice of the peace of any city or town corporate, who has notice that there are within his jurisdiction persons to the number of twelve or more unlawfully riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the place where such unlawful riotous and tumultuous assembly is, and where the nature of the case requires it among the rioters or as near to them as he can safely come with a loud voice to command or cause to be commanded silence to be whilst the proclamation hereinafter mentioned is made, and after that openly and with loud voice to make or cause to be made a proclamation in these words, or to the like effect:

“ Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence, on conviction of which they may be sentenced to penal servitude for life.
GOD SAVE THE QUEEN.”

All persons shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life, who

(a) With force and arms wilfully and knowingly oppose obstruct hinder or hurt any person who begins or who is about to make the said proclamation, whereby such proclamation is not made; or

(b) Continue together to the number of twelve for and do not disperse themselves within one hour after such proclamation has been made, or if they know that its making was hindered as aforesaid, then within one hour after such hindrance:

Provided that no person shall be prosecuted for any offence under this section unless such prosecution be commenced within twelve months after the offence committed.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

* 1 Geo. 1, st. 2. c. 5, s. 2. 27 Geo. 3. c. 15. (Ir.) This and the following section abridge the language of the Riot Acts, but do not alter their provisions.

SECTION 89.

DUTY OF JUSTICE IF RIOTERS DO NOT DISPERSE.

If the persons so unlawfully riotously and tumultuously assembled together as aforesaid, or twelve or more of them continue together, and do not disperse themselves for the space of one hour after proclamation made, or after such hindrance as aforesaid, it is the duty of every such sheriff justice and other officer as aforesaid and of all persons required by them to assist to cause such persons to be apprehended and carried before a justice of the peace; and if any person so assembled is killed or hurt in the apprehension of such persons or in the endeavour to apprehend or disperse them by reason of their resistance every person ordering them to be apprehended or dispersed and every person executing such orders shall be indemnified against all proceedings of every kind in respect thereof: Provided that nothing herein contained shall in any way limit or affect any duties or powers imposed or given by Sections 49, 50, 51, 52, 53, 116, and 117 as to the suppression of riots before or after the making of the said proclamation.

SECTION 90.

RIOTOUS DESTRUCTION OF BUILDINGS.

All persons shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who, †being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully

† 24 & 25 Vict. c 97, s. 11.

and with force demolish or pull down or destroy or begin to demolish pull down or destroy any building whatever or any machinery whatever, whether fixed or movable, or any erection used in farming land or carrying on any trade or manufacture, or any erection or structure used in conducting the business of any mine, or any bridge waggon-way or trunk for conveying minerals from any mine.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 91.

* RIOTOUS DAMAGE OF HOUSES, ETC.

All persons shall be guilty of an indictable offence, and shall be liable on conviction thereof to seven years penal servitude, who being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force injure or damage any of the things mentioned in the last preceding section.

† It shall not be a defence to a charge of an offence against this or the last preceding section that the offender believed he had a right to act as he did, unless he actually had such a right.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

* 24 & 25 Vict. c. 97, s. 12.

† This removes what is at least a doubt. See R. v. Langford, Carr. and Marsh. 602; R. v. Casey, 8 Irish Rep. Com. Law, 408.

SECTION 92.

‡ UNLAWFUL DRILLING.

Whereas assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises movements or evolutions without lawful authority, are dangerous to the peace and security of Her Majesty's subjects and government,

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who without lawful authority

(a) Is present at or attends any such assembly for the purpose of training or drilling any other person to the use of arms or the practice of military exercise movements or evolutions; or

(b) At any such assembly trains or drills any other person to the use of arms or the practice of military exercise movements or evolutions.

‡ 60 G. 3. & 1 G. 4. c. 1. s. 1.

SECTION 93.

BEING UNLAWFULLY DRILLED.

§ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment, who without lawful authority attends or is present at any such assembly as in the last preceding section mentioned for the purpose of being, or who at any such assembly is, without lawful authority trained or drilled to the use of arms or the practice of military exercise movements or evolutions.

No one shall be prosecuted for any offence under this or the last preceding section unless such prosecution is commenced within twelve months after the offence is committed.

§ By s. 37 ante, a peace officer can arrest persons found committing this offence either by day or night. Sec. 38 enables any one to arrest persons found committing the offence at night. In other cases a warrant will be necessary.

SECTION 94.

|| THREE PERSONS ARMED IN PURSUIT OF GAME BY NIGHT.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who with two or more other persons together between the end of the first hour after sunset and the beginning of the last hour before sunrise, unlawfully enters or is on any land whether open or enclosed, for the purpose of taking or destroying hares pheasants partridges grouse heath or moor game black game bustards or rabbits, the offender or any of such persons to the knowledge of the offender being armed with any gun crossbow firearms bludgeon or other offensive weapon.

|| 9 G. 4. c. 69, s. 9. The gamekeepers power to arrest is preserved by s. 40.

No one shall be prosecuted for any offence under this section unless such prosecution is commenced within twelve months after the offence is committed.

SECTION 95.

FORCIBLE ENTRY AND DETAINER DEFINED.

A forcible entry is when a person whether legally entitled or not enters, in a manner likely to cause a breach of the peace or reasonable apprehension thereof, upon any lands or tenements being at the time of such entry in the actual and peaceable possession of some other person.

A forcible detainer is when a person in actual possession without colour of right of any lands or tenements detains in a manner likely to cause a breach of the peace or reasonable apprehension thereof such lands or tenements against a person entitled by law to the possession of them.

What amounts to actual possession or colour of right is a question of law.

Every one who forcibly enters or forcibly detains any lands or tenements shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment.

SECTION 96.

DEFINITION OF AFFRAY.

An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

*Every one who commits or takes part in an affray shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour.

* The addition of hard labour is new.

SECTION 97.

CHALLENGE TO FIGHT A DUEL.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who challenges or knowingly carries any challenge to or endeavours by any means to provoke any person to fight a duel, or endeavours to provoke any person to challenge any other person to fight a duel.

SECTION 98.

† PRIZE FIGHT.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who fights in a prize fight, or subscribes to or otherwise promotes a prize fight between any other persons.

† By the present law a prize fight is illegal, though it is difficult to say precisely what offence is committed. In *R. v. Bellingham and others*, 2 C. & P. 234, they were said (by Mr. Justice Burrough) to be unlawful assemblies. In *R. v. Perkins*, 4 C. & P. 537, Mr. Justice Patteson said all persons present were guilty of an assault. See too, *R. v. Hargrave*, 5 C. & P. 170. As there are difficulties in bringing prize fighting within the definition of either unlawful assembly or assault, it seems best to make special provision for their punishment. The punishment is that which may be inflicted on a conviction on an indictment for an assault under 24 & 25 Vict. c. 100. s. 47, and s. 206 *post*.

PART VII.

UNLAWFUL OATHS, SEDITIOUS WORDS CONSPIRACY AND LIBEL.

SECTION 99.

‡ UNLAWFUL OATHS. OATHS TO COMMIT OFFENCES.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life, who

(a) Administers or causes to be administered, or aids or assists or is present at and consenting to the administering or taking of any oath, or any obligation in the nature of an oath, or any engagement purporting or intending to bind the person taking the same to commit high treason or murder or any offence punishable with penal servitude; or

‡ 52 G. 3. c. 104. ss. 1, 6, 8. As to punishment, see 7 W. 4. & 1 Vict. c. 91.

Irish Acts, 27 G. 3. c. 15., 50 G. 3. c. 102, s. 1.

(b) Tenders or causes to be tendered any such oath obligation or engagement to any person, or attempts to compel or persuade any person to take any such oath obligation or engagement; or

(c) Takes any such oath or obligation in the nature of an oath or engagement.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

* 52 Geo. 3, c. 104, s. 8.

* No one who has been tried and acquitted or convicted of any offence under this section shall be liable to be indicted, prosecuted, or tried again for high treason or being accessory after the fact to any treason, in respect of the same offence or fact.

SECTION 100.

† OTHER UNLAWFUL OATHS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who

(a) Administers or causes to be administered or aids or assists or is present at and consenting to the administering or taking of any oath, or obligation in the nature of an oath, or engagement, purporting or intending to bind the person taking the same

to engage in any mutinous or seditious purpose; or

to disturb the public peace or commit any indictable offence; or

to be of any association society or confederacy formed for any such purpose as aforesaid; or

to obey (in order to carry out any such purpose as aforesaid) the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose; or

not to inform or give evidence against any associate confederate or other person; or

not to reveal or discover any unlawful combination or confederacy, or any illegal act done or to be done, or any illegal oath or obligation or engagement which may have been administered or tendered to or taken by any person, or the import of any such oath or obligation or engagement; or

(b) Tenders or causes to be tendered any such oath, obligation, or engagement to any person, or attempts to compel or persuade any person to take any such oath obligation or engagement; or

(c) Takes any such oath or obligation or engagement.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

This and the last preceding section shall extend to acts done by Her Majesty's subjects in any part of the world.

SECTION 101.

‡ EFFECT OF COMPELSION IN ADMINISTERING AND TAKING OATHS.

Provided that any one who, under such compulsion as would otherwise excuse him, commits any offence against either of the last two preceding sections shall not be excused thereby unless he within the period hereinafter mentioned declares the same, and what he knows touching the same, and the persons, by whom and in whose presence, and when and where, such oath or obligation or engagement was administered or taken, by information on oath before one of Her Majesty's justices of the peace, or one of Her Majesty's Principal Secretaries of State, or the Lord Lieutenant or his Chief Secretary or Her Majesty's Privy Council in England or Ireland, or if the oath is taken out of Her Majesty's dominions then before any British ambassador minister or consul,§ or if he is in actual service in Her Majesty's forces by sea or land, either by such information on oath as aforesaid, or by information to his commanding officer. Such declaration may be made by him within fourteen days after the taking of the oath, or if he is hindered from making it by actual force or sickness, then within four days of the cessation of such hindrance, or on his trial if it happens before the expiration of either of those periods.

† 37 G. 3, c. 123, ss. 1 & 5.; 27 Geo. 3, c. 15 (Ir.); 50 Geo. 3, c. 102.

‡ 52 G. 3, c. 104, s. 2; 37 G. 3, c. 123, s. 2.

§ This is new, but is wanted to complete the section.

SECTION 102.

SEDITIONOUS INTENTION, WORDS, LIBEL, AND CONSPIRACIES.

* A seditious intention is an intention

to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, or the Government and Constitution of the United Kingdom or of any part of it as by law established, or either House of Parliament, or the administration of justice; or

to excite Her Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of any matter in Church or State by law established; or

to raise discontent or disaffection amongst Her Majesty's subjects; or to promote feelings of ill-will and hostility between different classes of such subjects:

Provided that no one shall be deemed to have a seditious intention only because he intends in good faith

to show that Her Majesty has been misled or mistaken in her measures; or

to point out errors or defects in the Government or Constitution of the United Kingdom or of any part of it as by law established, or in the administration of justice, with a view to the reformation of such alleged errors or defects; or to excite Her Majesty's subjects to attempt to procure by lawful means the alteration of any matter in Church or State by law established; or

to point out in order to their removal matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of Her Majesty's subjects.

† Seditious words are words expressive of or intended to carry into execution or to excite others to carry into execution a seditious intention.

A seditious libel is a libel expressive of or intended to carry into execution or to excite others to carry into execution a seditious intention.

A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

* This is as accurate a statement of the existing law as we can make. See 60 Geo. 3 & 1 Geo. 4, c. 8. *O'Connell v. R.* 11 Cl. & F. 155, 234. *R. v. Lambert & Perry*, 2 Camp. 398. *R. v. Vincent*, 9 C. & P. 91. We are unable to assent to the proposition that 38 Geo. 3, c. 29 (Irish Act) is declaratory of the common law.

† *R. v. Frost*, 22 St. Tr. 471; *R. v. Winterbotham*, 1b. 823; *R. v. Binns*, 26 St. Tr. 595.

SECTION 103.

‡ PUNISHMENT OF SEDITIONOUS OFFENCES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment, who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy.

‡ See 40 & 41 Vict. c. 21, s. 40.

SECTION 104.

LIBELS ON FOREIGN SOVEREIGNS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment, who without lawful justification or excuse publishes any libel tending to degrade revile or expose to hatred and contempt in the estimation of the people of any foreign state any foreign prince or person exercising sovereign authority over any such foreign state.

PART VIII.**PIRACY.****SECTION 105.**

PIRACY BY THE LAW OF NATIONS. §

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who does any act which amounts to piracy by the law of nations.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

§ See Report, p. 20.

SECTION 106.

PIRACY BY THE LAW OF NATIONS WITH PERSONAL VIOLENCE.

* 7 W. 4 & 1 Vict. c. 88. * Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to suffer death, who does any act which amounts to piracy by the law of nations, and who with intent to do any such act or at the time of or immediately before or immediately after doing any such act murders or assaults with intent to murder any person, or stabs cuts or wounds any person, or unlawfully does any act by which the life of any person may be endangered.

† 4 Geo. 4, c. 48, s. 1.
See note to section 81,
ante.

† Upon a conviction for an offence under this section the court may abstain from pronouncing sentence of death on the offender, and may instead of pronouncing the same order judgment of death to be entered of record, and the proper officer shall thereupon enter the same of record accordingly.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

This and the last preceding section extend to all persons whatever, whether subjects of Her Majesty or not.

SECTION 107.

PERSONS DEEMED TO BE PIRATES.

Every one shall be deemed to be a pirate who does any of the following acts; that is to say, who

† 11 & 12 W. 3, c. 7,
s. 7, and Geo. 2, c. 30,
s. 1.

(a) † Being a subject of Her Majesty, commits any act of hostility or robbery against others Her Majesty's subjects on the sea, or in any place where the admiral has jurisdiction, under colour of any commission from any foreign prince or State, whether such prince or State is at war with Her Majesty or not, or under pretence of authority from any person whatever; or

§ 18 Geo. 2, c. 30, s. 1.

(b) § Being a subject of Her Majesty, during any war is in any way adherent to or gives aid or comfort to Her Majesty's enemies upon the sea, or in any place where the admiral has jurisdiction; or

|| 8 Geo. 1, c. 24, s. 1.

(c) || Belonging to any ship or vessel whatever (whether he is a subject of Her Majesty or not) upon meeting any British merchant ship or vessel on the sea, or in any place where the admiral has jurisdiction enters into such British ship or vessel, and though he does not seize or carry off such ship or vessel, throws overboard or destroys any part of the goods belonging to it; or

¶ 11 & 12 W. 3, c. 7,
s. 8.

(d) ¶ Being on board any British ship in any place where the admiral has jurisdiction,

turns pirate enemy or rebel, and piratically runs away with the ship, or any boat, ordnance ammunition or goods; or yields them up voluntarily to any pirate; or brings any seducing message from any pirate enemy or rebel; or counsels or procures any person to yield up or run away with any ship goods or merchandize, or to turn pirate or to go over to pirates; or lays violent hands on the commander of any such ship in order to prevent him from fighting in defence of his ship and goods; or confines the master or commander of any such ship; or makes or endeavours to make a revolt in the ship; or

** 8 Geo. 1, c. 24, s. 1.

(e) ** Being a subject of Her Majesty in any part of the world, or (whether a subject or not) being in any part of Her Majesty's dominions or on board a British ship, knowingly

furnishes any pirate with any ammunition or stores of any kind; or fits out any ship or vessel with a design to trade with or supply or correspond with any pirate; or conspires or corresponds with any pirate.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 108.

PUNISHMENT OF PERSONS DEEMED TO BE PIRATES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who does any act in respect of which he is to be deemed to be a pirate under the provisions herein-before contained.

SECTION 109.**PUNISHMENT OF PIRATES COMMITTING ACTS OF VIOLENCE.**

* Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to suffer death, who with intent to commit or at the time of or immediately before or immediately after committing any act in respect of which he is to be deemed to be a pirate under the provisions herein-before contained, assaults with intent to murder any person, or stabs cuts or wounds any person or unlawfully does any act whereby the life of any person may be endangered.

* 7 W. 4 & 1 Vict. c. 88. See note to s. 81, *ante*.

Upon a conviction for an offence under this section the court may abstain from pronouncing sentence of death on the offender, and instead of pronouncing the same may order judgment of death to be entered of record, and the proper officer shall thereupon enter the same of record accordingly.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 110.**NOT FIGHTING PIRATES.**

† Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to six months imprisonment, and shall forfeit to the owner of the ship all wages then due to such offender, who being a commander master or any officer or seaman or mariner of any merchant ship which carries guns and arms, does not, when attacked by any pirate or by any ship on which any pirate is on board, fight and endeavour to defend himself and his vessel from being taken by such pirate, or who utters any words to discourage the other mariners from defending the ship, if by reason thereof the ship falls into the hands of such pirate.

† 8 G. 1, c. 24, s. 6.

TITLE III.**OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE AND THE MAINTENANCE OF PUBLIC ORDER.****PART IX.****CORRUPTION AND DISOBEDIENCE TO LAWFUL ORDERS.****SECTION 111.****JUDICIAL CORRUPTION.†**

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who

(a) Holding any judicial office, corruptly accepts or obtains or agrees to accept or attempts to obtain for himself or any other person any money or valuable consideration office place or employment whatever, on account of anything already done or omitted, or to be afterwards done or omitted by him in his judicial capacity; or

(b) Corruptly gives or offers to any person holding any judicial office, or to any other person, any money or valuable consideration office place or employment whatever on account of any such act or omission as aforesaid.

No one holding any judicial office shall be prosecuted for any offence under this section without the leave of the Attorney General for England or Ireland, or if the office of Attorney General for England or Ireland be vacant, of the Solicitor General for England or Ireland as the case may be; and no judge who holds his office for life, subject only to a power of removal by Her Majesty, on an address presented by both Houses of Parliament, shall be prosecuted for any such offence except by the Attorney General for England or

† The punishment for an offence under ss. 111, 112, 113, is at present fine and imprisonment, as for a common law misdemeanour.

Ireland, or Solicitor General for England or Ireland as the case may be, in pursuance of a resolution of either House of Parliament.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 112.

CORRUPTION OF MINISTERIAL OFFICERS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who

(a) Being a justice of the peace, peace officer, or public officer employed in any capacity for the prosecution or detection or punishment of offenders, corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person any money or valuable consideration office place or employment whatever, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any indictable offence, or to protect from detection or punishment any person having committed or intending to commit any such offence; or

(b) Corruptly gives or offers to any such officer as aforesaid any such bribe advantage or consideration as aforesaid with any such intent as aforesaid.

Every one charged with any offence against this section shall be bailable at discretion.

SECTION 113.

OFFICIAL CORRUPTION.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years penal servitude, who

(a) Corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself or any other person any money or valuable consideration whatever on account of his having appointed to or having procured or attempted to procure for, or in consideration that he will appoint to or procure or attempt to procure for any person, any public office or employment; or

(b) Corruptly gives or offers to give to any person any money or valuable consideration whatever on any such account or consideration as aforesaid.

No one shall be prosecuted for this offence except by the leave of the Attorney General for England or Ireland for the time being, or if the office of Attorney General for England or Ireland is vacant, by the leave of the Solicitor General for England or Ireland as the case may be.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 114.

DISOBEDIENCE TO A STATUTE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment who without lawful excuse (the proof whereof shall lie on him*) disobeys any statute of the realm by wilfully doing any act which it forbids or omitting to do any act which it requires to be done, unless some penalty or other proceeding is expressly provided by law and is intended to be exclusive of all other punishment for such disobedience.

* These words are perhaps unnecessary, but they may prevent a question arising from the common law distinction between an exception and a proviso.

SECTION 115.

DISOBEDIENCE TO LAWFUL ORDERS OF COURT, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment who without lawful excuse disobeys any lawful order made by any court of justice, or by any person or body of persons authorised by any statute to make or give such order, unless some penalty or other mode of proceeding is expressly provided by law and is intended to be exclusive of all other punishment for such disobedience.

SECTION 116.

NEGLECT OF PEACE OFFICER TO SUPPRESS RIOT.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to imprisonment for two years, who being a sheriff under-

sheriff mayor bailiff or other head officer or justice of the peace or other magistrate or other peace officer of any county city town or district, having notice that there is a riot within his jurisdiction, without reasonable excuse omits to do all that may reasonably be expected of him to suppress such riot in the exercise of the powers which by law he possesses for the purpose of suppressing such riot.

SECTION 117.

NEGLECT TO AID PEACE OFFICER IN SUPPRESSING RIOT.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to one year's imprisonment, who, having reasonable notice that he is required to assist any sheriff under-sheriff mayor bailiff or other head officer justice of the peace magistrate or peace officer in suppressing any riot, omits without reasonable excuse so to do.

SECTION 118.

NEGLECT TO ASSIST PEACE OFFICER IN ARRESTING OFFENDERS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to six months' imprisonment, who having reasonable notice that he is required to assist any sheriff under-sheriff mayor bailiff or other head officer justice of the peace magistrate or peace officer in the execution of his duty in arresting any person, or in preserving the peace, omits without reasonable excuse so to do.

PART X.

MISLEADING JUSTICE.

SECTION 119.

DEFINITION OF PERJURY AND SUBORNATION.

Perjury is an assertion as to a matter of fact opinion belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court or by affidavit or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court jury or person holding the proceeding. Evidence in this section includes evidence given on the voir dire and evidence given before a grand jury.

Every person is a witness within the meaning of this section who actually gives his evidence upon oath or in any such form as aforesaid, whether he was competent to be a witness or not, and whether his evidence was admissible or not.

* Every proceeding is judicial within the meaning of this section which is held in or under the authority of any court of justice, or before either House of Parliament or any Committee of either House of Parliament empowered by law to administer an oath, or before any justice of the peace or any arbitrator or umpire, or any person or body of persons authorised by any statute in force for the time being to make an inquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice, or tribunal having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not so as to authorise the holding the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid.

Subornation of perjury is counselling or procuring any person to commit any perjury which is actually committed.

SECTION 120.

PERJURY WHEN PUNISHABLE WITH PENAL SERVITUDE FOR LIFE.*

* Seven years is the maximum punishment under the existing law. We think it is too small as a maximum. For such an offence as Macdaniel's (see Foster, p. 121) penal servitude for life is not too much.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who commits perjury or subornation of perjury in order to procure the conviction of any person for any offence punishable with death or penal servitude.

Every one charged with any offence against this section shall be bailable at discretion.

SECTION 121.

PERJURY IN OTHER CASES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who commits perjury or subornation of perjury for any other purpose than that in the last preceding section mentioned.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 122.

FALSE OATHS.

† This is at most a common law misdemeanour in cases not specially provided for by statute, of which there are a considerable number.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who being required or authorized by law to make any statement either on oath or in any form permitted to be substituted for an oath, thereupon makes a statement which would amount to perjury if made in a judicial proceeding.

Every one charged with any offence against this section shall be bailable at discretion.

SECTION 123.

FALSE STATEMENTS.‡

‡ It may be doubtful whether this is at present even a common law misdemeanour; but we feel no doubt that it ought to be made indictable.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who makes a statement as to any matter of fact opinion or belief which would amount to perjury if made on oath in a judicial proceeding, upon any occasion on which he is permitted by law to make any statement or declaration before any officer authorised by law to permit it to be made before him, or before any notary public to be certified by him as such notary.

SECTION 124.

RULE OF EVIDENCE.

No one shall be convicted of perjury, subornation of perjury, taking a false oath, or making a false declaration or statement, on the testimony of one witness only, contradicting the assertion declaration or statement alleged to be false: Provided that the testimony of one witness may be sufficient if material facts sufficient to corroborate that testimony are established independently of the evidence of that witness.

SECTION 125.

FABRICATING EVIDENCE.

§ This is new; see the Report, p. 21.

§ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years penal servitude, who with intent to mislead any court of justice or person holding any such judicial proceeding as aforesaid, fabricates or contrives evidence by any means other than perjury or subornation of perjury.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 126.

* CONSPIRACIES TO BRING FALSE ACCUSATIONS.

Every one shall be guilty of an indictable offence who conspires with any person to prosecute any other person for any alleged offence knowing such other person to be innocent thereof, and shall be liable upon conviction thereof to be punished according to the following provisions; that is to say,

(a) Every such offender as aforesaid shall be liable to penal servitude for life if the person prosecuted or intended to be prosecuted in pursuance of the conspiracy might, upon conviction for the alleged offence, be sentenced to death or penal servitude for life:

(b) Every such offender as aforesaid shall be liable to penal servitude for fourteen years if the person prosecuted or intended to be prosecuted in pursuance of the conspiracy might, upon conviction for the alleged offence, be sentenced to penal servitude for any term less than life:

(c) Every such offender as aforesaid shall be liable to penal servitude for seven years if the person prosecuted or intended to be prosecuted in pursuance of the conspiracy might, upon conviction for the alleged offence, either upon an indictment or upon a summary conviction, be sentenced to imprisonment, but not to penal servitude.

Every one charged with any offence under this section shall be bailable at discretion.

* This offence and that referred to in s. 127 are at present subject to no special punishment, except hard labour, in addition to imprisonment. (14 & 15 Vict. c. 100, s. 29.) The maximum punishment is here greatly increased.

SECTION 127.

CONSPIRING TO PERVERT OR DEFEAT JUSTICE.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to seven years' penal servitude, who conspires with any person to obstruct prevent pervert or defeat the course of justice.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 128.

ATTEMPTING TO PERVERT JUSTICE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who wilfully attempts in any way though not otherwise criminal to obstruct prevent pervert or defeat the course of justice or the administration of the law.

SECTION 129.

CORRUPTLY INFLUENCING JURIES AND WITNESSES.

† Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to two years' imprisonment with hard labour, who

(a) Dissuades or attempts to dissuade any person by threats bribes or other corrupt means from giving evidence in any cause or matter civil or criminal; or

(b) Influences or attempts to influence by threats or bribes or other corrupt means any jurymen in his conduct as such, whether such person has been sworn as a jurymen or not; or

(c) Accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a jurymen.

† This will meet some of the matters in the Whiteboy Acts. See the Report, p. 13.

PART XI.**ESCAPES AND RESCUES.****SECTION 130.**

‡ BEING AT LARGE WHILE UNDER SENTENCE OF TRANSPORTATION OR PENAL SERVITUDE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who having been sentenced or

‡ 5 Geo. 4, c. 84, s. 22. As to punishment, see 4 & 5 W. 4, c. 67. 9 Geo. 4, c. 54, s. 16.

ordered to be transported or kept in penal servitude, or having agreed to transport himself on certain conditions either for life or for any number of years, is afterwards at large within any part of Her Majesty's dominion, without some lawful cause (the proof whereof shall lie on him) before the expiration of the term for which he was ordered to be transported or kept in penal servitude, or for which he agreed to transport himself.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 131.

* 52 Geo. 3, c. 156.

* ASSISTING ESCAPE OF PRISONERS OF WAR.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who knowingly and wilfully

(a) Assists any alien enemy of Her Majesty, being a prisoner of war in Her Majesty's dominions, to escape from any prison or place of confinement in which he may be detained; or

(b) Assists any such prisoner as aforesaid, suffered to be at large on his parole in Her Majesty's dominions or in any part thereof, to escape from Her Majesty's dominions, or from that part of her dominions within which he is at large on his parole; or

(c) Owing allegiance to Her Majesty, after any such prisoner as aforesaid has quitted the coast of any part of Her Majesty's dominions in such his escape, knowingly and wilfully upon the high seas assists such prisoner in his escape towards any other dominions or place.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 132.

BREAKING PRISON.

† 17 & 18 Geo. 3, c. 36 (Irish Act), made perpetual by 40 Geo. 3, c. 96 (Irish Act). 1 & 2 W. 4, c. 44, s. 4.

† Every one shall be guilty of an indictable offence and shall be liable upon conviction thereof to penal servitude for life, who by force or violence breaks any prison, with intent to set at liberty himself or any other person confined therein on any criminal charge.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 133.

ESCAPE FROM PRISON WHEN CONFINED ON CRIMINAL CHARGE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who

(a) Having been convicted of any offence escapes from any lawful custody in which he may be under such conviction; or

(b) Whether convicted or not escapes from any prison in which he is lawfully confined on any criminal charge.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 134.

ESCAPE FROM OTHER LAWFUL CUSTODY ON CRIMINAL CHARGE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who being in lawful custody other than aforesaid on any criminal charge escapes from such custody.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 135.

‡ ASSISTING ESCAPE IN CERTAIN CASES.

‡ As to this and the following section see 16 G. 2, c. 31, and 1 & 2 W. 4, c. 44, s. 5.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who

(a) Rescues any person or assists any person in escaping or attempting to escape from lawful custody, whether in prison or not, under sentence of death or penal servitude for life, or after conviction of and before sentence for or whilst in such custody upon a charge of any offence punishable with death or penal servitude for life; or

(b) Being a peace officer and having any such person in his lawful custody, or being an officer of any prison in which any such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom, or aids him in escaping or attempting to escape.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 136.

ASSISTING ESCAPE IN OTHER CASES.

*Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who

* See 1 & 2 Geo. 4, c. 88.

(a) Rescues any person or assists any person in escaping or attempting to escape from lawful custody, whether in prison or not, under a sentence of penal servitude for any term less than life, or after conviction of and before sentence for or whilst in such custody upon a charge of any offence punishable with penal servitude for a term less than life; or

(b) Being a peace officer having any such person in his lawful custody, or being an officer of any prison in which such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom, or aids him in escaping or attempting to escape.

Every one charged with an offence under this section shall be bailable at discretion.

SECTION 137.

† AIDING ESCAPE FROM PRISON.

† 28 & 29 Vict. c. 126, s. 37.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who

(a) Rescues or aids any prisoner lawfully imprisoned in escaping or in attempting to escape from prison; or

(b) With intent to facilitate the escape of any prisoner lawfully imprisoned, conveys or causes to be conveyed anything whatever into any prison.

SECTION 138.

PEACE OFFICER, AND OFFICER OF PRISON AIDING ESCAPE.†

† The punishment we propose is more severe than at present in the case of a peace officer.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to five years' penal servitude, who

(a) Being a peace officer having any person in his lawful custody otherwise than upon a charge conviction or sentence of or for an offence punishable with death or penal servitude, voluntarily and intentionally permits such person to escape or aids him in escaping or attempting to escape from such custody; or

(b) Being an officer of a prison in which any person as aforesaid is lawfully confined for any cause civil or criminal otherwise than upon such charge as aforesaid, voluntarily and intentionally permits him to escape from such prison or aids him in escaping or in attempting to escape.

Every one charged with any offence under this section shall be bailable at discretion.

For the purposes of this and the five last preceding sections custody under an irregular warrant or other irregular process shall be deemed to be lawful.

SECTION 139.

§ RESCUING OR PERMITTING ESCAPE OF CRIMINAL LUNATICS.

§ 23 & 24 Vict. c. 75, s. 12.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who

(a) Rescues any person lawfully ordered to be conveyed to any asylum for

criminal lunatics, either during the time of his conveyance thereto or of his confinement therein; or

(b) Being an officer or servant in any asylum for criminal lunatics voluntarily and intentionally permits any such person to escape or aids him in escaping or attempting to escape from any such asylum.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 140.

PERMITTING ESCAPE THROUGH OMISSION OF DUTY.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment, who, by failing to perform any legal duty, permits a person in his lawful custody on a criminal charge to escape therefrom.

TITLE IV.

OFFENCES AGAINST RELIGION, MORALS, AND PUBLIC CONVENIENCE.

PART XII.

OFFENCES AGAINST RELIGION.

SECTION 141.

BLASPHEMOUS LIBELS.

* 9 & 10 W. 3, c. 35, and 53 G. 3, c. 100, somewhat altered in conformity with an opinion said to have been expressed by Coleridge, J., in *R. v. Pooley* (Bodmin Summer Assizes, 1857). See the Report, p. 21.

* Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment, who publishes any blasphemous libel.

It shall be a question of fact whether any particular published matter is or is not a blasphemous libel: Provided that no one shall be liable to be convicted upon any indictment for a blasphemous libel only for expressing in good faith and in decent language, or attempting to establish by arguments used in good faith and conveyed in decent language, any opinion whatever upon any religious subject.

SECTION 142.

ASSAULTING MINISTERS OF RELIGION.

† 24 & 25 Vict. c. 100, s. 36.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who

(a) By threats or force obstructs or prevents or endeavours to obstruct or prevent any clergyman or other minister in or from lawfully celebrating divine service or otherwise officiating in any church chapel meeting-house or other place of religious worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place; or

(b) Strikes or offers any violence to or arrests upon or under the pretence of executing any civil process, any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties mentioned in the last sub-section, or is going to perform the same or returning from the performance thereof.

SECTION 143.

‡ DISTURBING PUBLIC WORSHIP.

‡ 52 G. 3, c. 155, s. 12; 23 & 24 Vict. c. 32, s. 2. This is as far as we know the only indictable offence punishable with a fine only.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to be fined forty pounds, who wilfully and without lawful justification or excuse (the proof whereof shall lie on him) disquiets or disturbs any meeting assembly or congregation of persons lawfully assembled for religious worship, or in any way disturbs molests or misuses any preacher teacher or person lawfully officiating at such meeting, assembly or congregation, or any person or persons there assembled.

PART XIII.
OFFENCES AGAINST MORALITY.

SECTION 144.

* UNNATURAL OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who commits buggery either with a human being or with any other living creature.

This offence is complete upon penetration.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

* By 24 & 25 Vict. c. 100, s. 61, ten years penal servitude is the minimum punishment for this offence.

SECTION 145.

ATTEMPT TO COMMIT UNNATURAL OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to ten years' penal servitude, who attempts to commit buggery, or assaults any person with intent to commit buggery, or who being a male indecently assaults any other male.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 146.

INDECENT ACTS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who wilfully

(a) Does any indecent act in any place to which the public have or are permitted to have access; or

(b) † Does any indecent act in any place, intending thereby to insult or offend any person.

† This is new.

SECTION 147.

PUBLISHING AND EXHIBITING OBSCENE MATTER. ‡

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who knowingly and without lawful justification or excuse (the proof whereof shall lie on him)

(a) Publicly sells, or exposes for public sale or to public view any obscene book pamphlet newspaper or other printed or written matter, or any picture print engraving photograph model or other object tending to corrupt public morals; or

(b) Publicly exhibits any disgusting object or any indecent show; or

(c) § Publishes any obscene libel.

‡ 20 & 21 Vict. c. 83.

It shall be a question of law whether the occasion of the sale, publishing, or exhibition is such as might be for the public good, and whether there is evidence of excess beyond what the public good requires in the manner extent or circumstances in, to, or under which the sale publishing or exhibition is made, so as to afford a justification or excuse therefor; but it shall be a question of fact whether there is or is not such excess.

The motives of the seller publisher or exhibitor shall in all cases be irrelevant.

§ See Report, p. 22.

SECTION 148.

† PROCURING DEFILEMENT OF GIRLS UNDER AGE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who from motives of lucre by false pretences or false representations or other fraudulent means procures any female under the age of twenty-one years to have illicit carnal connexion with any man.

|| 24 & 25 Vict. c. 100, s. 49. See Report, p. 22.

SECTION 149.

CONSPIRACY TO DEFILE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour who conspires with any other person by false pretences or false representations or other fraudulent means to induce any female to commit adultery or fornication.

PART XIV.
NUISANCES.

SECTION 150.

COMMON NUISANCE DEFINED.

A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives safety health property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all Her Majesty's subjects.

SECTION 151.

WHAT COMMON NUISANCES ARE OFFENCES.*

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment, who commits any common nuisance which endangers the lives safety or health of the public, or which injures the person of any individual.

SECTION 152.

WHEN A COMMON NUISANCE IS NOT TO BE DEEMED CRIMINAL.†

Any one convicted upon any indictment or information for any common nuisance other than those mentioned in the preceding section shall not be deemed to have committed a criminal offence; but all such proceedings or judgments may be taken and had as heretofore to abate or remedy the mischief done by such nuisance to the public right.

SECTION 153.

EXPOSING FOR SALE THINGS UNFIT FOR FOOD.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to one year's imprisonment with hard labour,‡ who knowingly and wilfully exposes or causes to be exposed for sale or has in his possession with intent to sell for human food articles which he knows to be unfit for human food.

Every one who is convicted of this offence after a previous conviction for the same offence shall be liable to two years' imprisonment with hard labour.

SECTION 154.

§ DISORDERLY HOUSES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who keeps any disorderly house, that is to say, any common bawdy house common gaming house or common betting house as hereinafter defined.

|| Any one who appears acts or behaves as master or mistress or as the person having the care government or management of any disorderly house, shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof.

SECTION 155.

COMMON BAWDY HOUSES.

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

* See Report, p. 22.

† See 3 Inst. 237, and 40 & 41 Vict. c. 14.

‡ Punishment increased by addition of hard labour, but imprisonment limited to one year for the first offence.

§ As to hard labour, 3 G. 4, c. 114, s. 1. Imprisonment may be awarded at common law.

|| 25 G. 2, c. 36, s. 8. 21 G. 3, c. 49, s. 2.

SECTION 156.*** COMMON GAMING HOUSES.*** 8 & 9 Vict. c. 109,
s. 2. 33 H. 8, c. 9, s. 8.

A common gaming house is

- (a) A house room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance; or
- (b) A house room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which a bank is kept by one or more of the players, exclusively of the others; or
- in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake play or bet.

SECTION 157.**† COMMON BETTING HOUSES.**

† 16 & 17 Vict. c. 119.

A common betting house is a house office room or other place

- (a) Opened kept or used for the purpose of betting between persons resorting thereto and
- the owner, occupier, or keeper thereof, or
- any person using the same, or
- any person procured or employed by, or acting for or on behalf of, any such person, or
- any person having the care or management, or in any manner conducting the business thereof; or
- (b) Opened kept or used for the purpose of any money or valuable thing being received by or on behalf of any such person as aforesaid, as or for the consideration
- for any assurance undertaking promise or agreement express or implied to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race or other race, fight, game, sport, or exercise; or
- for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency.

SECTION 158.**OFFENCES CONNECTED WITH DEAD HUMAN BODIES.**

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to two years' imprisonment with hard labour, who

- (a) Neglects to perform any legal duty either imposed upon him by law or undertaken by him with reference to the burial‡ of any dead human body or human remains; or
- (b) Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not.

‡ We have not thought it expedient to make any reference here to any mode other than burial of disposing of dead bodies which may hereafter be sanctioned.

TITLE V.**OFFENCES AGAINST THE PERSON AND REPUTATION.****PART XV.****DUTIES TENDING TO THE PRESERVATION OF LIFE.****SECTION 159.****DUTY TO PROVIDE THE NECESSARIES OF LIFE.**

Every one who has charge of any other person unable, by reason either of detention age sickness insanity or any other cause to withdraw himself

from such charge, and unable to provide himself with the necessaries of life, is under a legal duty to supply that person with the necessaries of life, and* is criminally responsible for omitting without lawful excuse to perform it if death is caused thereby, or if the life of such person is endangered, or the health of such person is permanently injured, whether such charge is undertaken by him under any contract or is imposed upon him by law, or by reason of any unlawful act.

* See Part XXII, *post*.

SECTION 160.

DUTY OF HEAD OF FAMILY TO PROVIDE NECESSARIES.

Every one who as head of a family is under a legal duty to provide necessaries for any child under the age of sixteen years is criminally responsible for omitting without lawful excuse to do so whilst such child remains a member of his household, whether such child is helpless or not, if death is caused or the life of such child is endangered or his health permanently injured by such neglect.

SECTION 161.

DUTY OF MASTERS TO PROVIDE NECESSARIES.

Every one who as master or mistress has contracted to provide necessary food clothing or lodging for any servant or apprentice† under the age of sixteen years is under a legal duty to provide the same, and is criminally responsible for omitting without lawful excuse to discharge that duty, if death is caused or if the life of such person is endangered or the health of such person is permanently injured by such omission.

† 24 & 25 Vict. c. 100, s. 26. does not limit the age of the apprentice or servant. The 14 & 15 Vict. c. 11, s. 1. from which that enactment was taken, was passed under such circumstances as to show that it was meant to apply to servants of all ages; but that we do not think reasonable. See Report, p. 22.

SECTION 162.

DUTY OF PERSONS DOING DANGEROUS ACTS.

Every one who undertakes (except in case of necessity) to administer surgical or medical treatment, or to do any other lawful act the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge skill care and caution in doing any such act, and is criminally responsible for omitting to discharge that duty if death is caused thereby.

SECTION 163.

DUTY OF PERSONS IN CHARGE OF DANGEROUS THINGS.

Every one who has in his charge or under his control anything whatever whether animate or inanimate, or who erects makes or maintains anything whatever, which in the absence of precaution or care may endanger human life, is under a legal duty to take reasonable precautions against and use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting without lawful excuse to take such precautions or to use such care.

SECTION 164.

DUTY TO AVOID OMISSIONS DANGEROUS TO LIFE.

Every one who undertakes to do any act the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

PART XVI.

HOMICIDE.

SECTION 165.

HOMICIDE DEFINED.

Homicide is the killing of a human being by another directly or indirectly, by any means whatsoever.

SECTION 166.

WHEN A CHILD BECOMES A HUMAN BEING.

A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel string is severed or not; and the killing of such child is homicide when it dies after birth in consequence of injuries received before during or after birth.

SECTION 167.

CULPABLE HOMICIDE.

Homicide may be either culpable or not culpable. Homicide is culpable when it consists in the killing of any person either by an unlawful act or by a culpable omission to perform or observe any legal duty, or by both combined, or by causing a person by threats or fear of violence or by deception to do an act which causes that person's death, or by wilfully frightening a child or sick person.

Culpable homicide is either murder or manslaughter.
Homicide which is not culpable is not an offence.

SECTION 168.

PROCURING DEATH BY FALSE EVIDENCE.

Procuring by false evidence the conviction and death of any person by the sentence of the law shall not be deemed to be homicide.*

* But see section 120, ante, and Report, p. 21.

SECTION 169.

DEATH MUST BE WITHIN A YEAR AND A DAY.†

No one is criminally responsible for the killing of another unless the death take place within a year and a day of the cause of death. The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased. Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last.

† This is the existing law. See the Report, p. 23.

SECTION 170.

KILLING BY INFLUENCE ON THE MIND.

No one is criminally responsible for the killing of another by any influence on the mind alone, save by wilfully frightening† a child or sick person, nor for the killing of another by any disorder or disease arising from such influence, save as aforesaid.

† This obviates a possible doubt.

SECTION 171.

ACCELERATION OF DEATH.

Every one who by any act or omission causes the death of another shall be deemed to kill that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause.

SECTION 172.

CAUSING DEATH WHICH MIGHT HAVE BEEN PREVENTED.

Every one who by any act or omission causes the death of another shall be deemed to kill that person, although death from that cause might have been prevented by resorting to proper means.

SECTION 173.

CAUSING INJURY THE TREATMENT OF WHICH CAUSES DEATH.

Every one who causes a bodily injury to any person from which death results shall be deemed to kill that person, although the immediate cause of such death be treatment applied in good faith for the purpose of cure, even if such treatment was improper: Provided that if the injury was not in itself of a dangerous nature, and the improper treatment was the cause of the death, that shall be a defence to a charge of murder or manslaughter.

PART XVII.

MURDER, MANSLAUGHTER, ETC.

SECTION 174.

DEFINITION OF MURDER.*

Culpable homicide is murder in each of the following cases:

- (a) If the offender means to cause the death of the person killed;
- (b) If the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and if the offender, whether he does or does not mean to cause death, is reckless whether death ensues or not;
- (c) If the offender means to cause death or such bodily injury as aforesaid to one person so that if that person be killed the offender would be guilty of murder, and by accident or mistake the offender kills another person, though he does not mean to hurt the person killed;
- (d) If the offender for any unlawful object does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person; though he may have desired that his object should be effected without hurting anyone.

SECTION 175.

FURTHER DEFINITION OF MURDER.

Culpable homicide is also murder in each of the following cases, whether the offender means or not death to ensue, or knows or not that death is likely to ensue.

(a) If he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences hereinafter mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from his violence:

(b) If he administers any stupefying thing for either of the purposes aforesaid and death ensues from the effects thereof:

(c) If he by any means wilfully stops the breath of any person for either of the purposes aforesaid and death ensues from such stopping of the breath.

The following are the offences hereinbefore in this section referred to: Treason and the other offences mentioned in Part V of this Act; Piracy and offences deemed to be piracy; Escape or rescue from prison or lawful custody; Resisting lawful apprehension; † Murder; Rape; Forceful abduction; Robbery; Burglary; Arson.

† This offence is inserted here to cover the case when the grievous bodily harm is done to some person other than the person intended to be murdered, &c.

SECTION 176.

PROVOCATION.

Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

‡ See the Report, p. 24.

Any wrongful act or insult‡ of such a nature as to be sufficient to deprive an ordinary person of the power of self-control may be provocation, if the offender acts upon it on the sudden and before there has been time for his passion to cool.

Whether any particular wrongful act or insult, whatever may be its nature, amounts to provocation, and whether the person provoked was actually

deprived of the power of self-control by the provocation which he received, shall be questions of fact: Provided that no one shall be deemed to give provocation to another only by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person:

* Provided also, that an arrest shall not necessarily reduce the offence from murder to manslaughter because the arrest was illegal, but if the illegality was known to the offender it may be evidence of provocation.

* It is doubtful whether this does not alter the present law. *R. v. Hood*, 1 Moo. C. C. 281. If it does, it is the only case in which the Draft Code makes that murder which is not murder at present.

SECTION 177.

MANSLAUGHTER.

Culpable homicide not amounting to murder is manslaughter.

SECTION 178.

PUNISHMENT OF MURDER.

Every one who commits murder shall be guilty of an indictable offence, and shall upon conviction thereof be sentenced to death.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

This section shall apply to British subjects committing this offence in any part of the world.†

† British subjects committing murder *on land* out of the United Kingdom are within 24 & 25 Vict. c. 100, s. 9; and British subjects committing murder on board British ships are within 18 & 19 Vict. c. 91, s. 21 and 30 & 31 Vict. c. 124, s. 11. No enactment at present touches a British subject committing murder on the high seas when on board a foreign ship to which he belongs.

‡ 24 & 25 Vict. c. 100, ss. 11-15.

SECTION 179.

‡ ATTEMPTS TO COMMIT MURDER.

Every one who attempts to commit murder shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

SECTION 180.

CONSPIRACIES AND INCITEMENT TO COMMIT MURDER.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to § penal servitude for life, who

(a) Conspires or agrees with any person to murder or to cause or procure the murder of any other person, whether the person intended to be murdered is a subject of Her Majesty or not, or is within Her Majesty's dominions or not; or

(b) Counsels or attempts to procure any person to murder any other person, although such person is not murdered in consequence of such counselling or attempted procurement, whether the person whose murder is counselled or attempted to be procured is a subject of Her Majesty or not, or is within Her Majesty's dominions or not.

Every one charged with any offence under this section shall be bailable at discretion.

§ The punishment here is increased.

SECTION 181.

|| ACCESSORIES AFTER THE FACT TO MURDER.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who is an accessory after the fact to murder.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

|| See 24 & 25 Vict. c. 100, s. 67.

¶ SECTION 182.

PUNISHMENT OF MANSLAUGHTER.

Every one who commits manslaughter shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life.

¶ 24 & 25 Vict. c. 100, s. 5.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

This section shall apply to British subjects committing this offence in any part of the world.*

* See note to sec. 178, *ante*.

† See the Report, p. 25.

SECTION 183.†

AIDING AND ABETTING SUICIDE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who counsels or procures any person to commit suicide actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide.

Every one charged with this offence shall be bailable at discretion.

SECTION 184.

ATTEMPTING TO COMMIT SUICIDE.

Every one who attempts to commit suicide shall be guilty of an indictable offence,† and shall be liable upon conviction thereof to two years' imprisonment with hard labour.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

† This is the existing law. See *R. v. Burgess*, L. & C. 258. The punishment of hard labour is imposed by 3 Geo. 4, c. 114.

SECTION 185.

NEGLECTING TO OBTAIN ASSISTANCE IN CHILDBIRTH.

§ Every woman shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who being with child and being about to be delivered, with intent that the child shall not live neglects to provide reasonable assistance in her delivery, if the child dies either just before or during or shortly after birth, unless she proves that such death was not caused either by such neglect or by any wrongful act to which she was a party.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

§ This and the following section are new. See the Report, p. 25. Women found guilty of concealment of birth under the existing law (re-enacted in s. 187 *post*) have in most cases been really guilty of the acts made substantial offences by these sections. These sections would also often afford a means for punishing child murder, where there would be a practical difficulty in obtaining a conviction for that offence.

SECTION 186.

NEGLECTING TO OBTAIN ASSISTANCE IN CHILDBIRTH IN ORDER TO CONCEAL BIRTH.

Every woman shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who being with child and being about to be delivered thereof, with intent to conceal the fact of her having a child, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or if the child dies either just before or during or shortly after birth, unless she proves that such death was not caused either by such neglect or by any wrongful act to which she was a party.

No woman shall be entitled to be acquitted of any offence against this or the last preceding section because the facts proved amount to murder or manslaughter; but no woman who has been convicted or acquitted of an offence under this or the last preceding section shall be afterwards tried for the murder or manslaughter of such child, or for any other offence on the same facts.

Every woman charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 187.

|| CONCEALING DEAD BODY.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before during or after birth.

|| See 25 & 26 Vict. c. 100, s. 60.

PART XVIII.
BODILY INJURIES AND ACTS CAUSING DANGER TO THE
PERSON.

SECTION 188.

DISABLING IN ORDER TO COMMIT A CRIME.

* Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and according to his age to be flogged or whipped, once twice or thrice, who, with intent to commit or to facilitate the commission of any indictable offence,† or the flight of the offender upon the commission or attempted commission thereof,‡ attempts to choke suffocate or strangle any person, or† by any violent means whatever† renders or attempts to render any person incapable of resistance.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

* 24 & 25 Vict. c. 100,
ss. 21, 22.
See 26 & 27 Vict. c. 44,
s. 1.

† This is new.

‡ This is new.

SECTION 189.

ADMINISTERING CHLOROFORM, ETC. WITH INTENT TO COMMIT AN INDICTABLE OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who, with intent to commit or to facilitate the commission of any indictable offence,‡ or the flight of the offender upon the commission or attempted commission thereof, § causes or attempts to cause any person to be affected by chloroform, laudanum, or any other stupefying or overpowering thing.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

‡ This is new.

§ 24 & 25 Vict. c. 100,
s. 22.

SECTION 190.

WOUNDING WITH INTENT, ETC.

|| Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and ¶if a male under sixteen to be once whipped,¶ who, with intent to maim disfigure disable or do any grievous bodily harm to any one, or to resist or prevent the lawful apprehension or detainer of any one, unlawfully wounds or does actual bodily harm to any person.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

|| 24 & 25 Vict. c. 100,
s. 18.

¶ This is new.

SECTION 191.

SHOOTING OR ATTEMPTING TO SHOOT, WITH INTENT, ETC.

** Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen years to be once whipped, who, with intent to maim disfigure or do any grievous bodily harm to any one, or to resist or prevent the lawful apprehension or detainer of any one, unlawfully

(a) Discharges or attempts to discharge at any person any arms loaded with destructive materials, whether otherwise properly prepared for being discharged or not; or

(b) Causes any gunpowder or other explosive substance to explode, or sends or delivers to or causes to be taken or received by any person any explosive substance or any other dangerous or noxious thing; or

(c) Puts or lays at any place or casts or throws at or upon or otherwise applies to any person any corrosive fluid or any corrosive or destructive substance whatever.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

** 24 & 25 Vict. c. 100,
ss. 18, 29.

SECTION 192.

* 24 & 25 Vict. c. 100,
s. 30.

* ATTEMPTING TO INJURE BY EXPLOSIVE SUBSTANCES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen years to be once whipped, who, with intent to do any bodily harm to any person, unlawfully and intentionally puts any explosive substance whatever in any place whatever.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 193.

† 24 & 25 Vict. c. 100,
ss. 32 and 33. Whipping
is added by 34 & 35 Vict.
c. 78, s. 13.

† INTENTIONALLY ENDANGERING PERSONS ON RAILWAYS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen years to be once whipped, who, with intent to injure or endanger the safety of any person on any railway,

(a) Places anything upon or across any railway; or

(b) Does any act calculated to interfere with or directly or indirectly to cause injury to, or by any unlawful act endangers obstructs or causes to be obstructed, any engine tender carriage truck or vehicle on any railway; or

(c) Shoots or throws anything at into or upon, or causes anything to come into contact with any such engine tender carriage truck or vehicle, or any person; or

(d) Does or causes to be done anything whatever to any part of any railway, or to any points machinery or signal belonging to or near to such railway, or to any engine tender carriage truck or vehicle thereon; or

(e) Deals in any way with any signal or light on or near to any railway, or makes or shows any false signal or light or makes any sign whatever on or near to any railway; or

(f) † Wilfully omits to do any act which it is his duty to do.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

† This is new as applicable to this subject.

SECTION 194.

§ WANTONLY ENDANGERING PERSONS ON RAILWAYS.

§ 24 & 25 Vict. c. 100,
s. 34. expanded. Whipping
is new as applied to
these acts.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, and if a male under sixteen years to be once whipped, who unlawfully and wilfully, in a manner likely to injure or endanger the safety of any person on any railway,

(a) By any act omission or neglect endangers obstructs or causes to be obstructed any engine tender carriage truck or vehicle on any railway; or

(b) Does any act calculated to interfere with or directly or indirectly to cause injury to any engine tender carriage truck or vehicle on any railway; or

(c) Shoots or throws anything at into or upon or causes anything to come into contact with, any engine tender carriage truck or vehicle, or any person on any railway; or

(d) Does or causes to be done anything whatever to any part of any railway, or to any points machinery or signal belonging to or near to any railway, or to any engine tender carriage truck or vehicle thereon; or

(e) Deals in any way with any signal or light on or near to any railway, or makes or shows any false signal or light, or makes any sign whatever on or near to any railway; or

who by any culpable neglect of duty endangers the safety of any person conveyed or being upon any railway.

Every one charged with this offence may be arrested without warrant.

SECTION 195.*** PREVENTING ESCAPE FROM WRECK.**

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life, who intentionally and without lawful excuse (the proof whereof shall lie on him)

* 24 & 25 Vict. c. 100, s. 17.

(a) Prevents or impedes any person, on board of or having quitted any vessel in distress wrecked stranded or cast on shore, in his endeavour to save his life; or

(b) Prevents or impedes any person endeavouring to save the life of any person so situated as aforesaid.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 196.**† STRIKING PERSONS PROTECTING WRECK.**

† 24 & 25 Vict. c. 100, s. 27.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who strikes wounds or assaults any magistrate officer or other person lawfully authorised in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or goods or effects wrecked stranded or cast on shore or lying under water.

† In the section referred to it is "assaults and strikes or wounds."

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 197.**§ ADMINISTERING POISON SO AS TO ENDANGER LIFE.**

§ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who, knowingly and with intent to injure aggrieve or annoy any person, administers or causes to be administered to or taken by such person any poison or other noxious or destructive thing, whereby the life of any person is endangered or grievous bodily harm is caused to any person.

§ 24 & 25 Vict. c. 100, s. 23, modified. Maximum punishment increased from 10 to 14 years.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 198.**|| ADMINISTERING POISON WITH INTENT THOUGH NO INJURY CAUSED.**

|| 24 & 25 Vict. c. 100, s. 24.

Every one shall be guilty of an indictable offence and shall be liable upon conviction thereof to five years' penal servitude, who knowingly and with intent to injure aggrieve or annoy any person, administers to or causes to be administered to or to be taken by such person any poison or other destructive or noxious thing, although no injury may be caused thereby.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 199.**¶ CAUSING ACTUAL BODILY HARM.**

¶ 24 & 25 Vict. c. 100, ss. 20 and 47.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who assaults any person so to wound him or to cause him actual bodily harm.

SECTION 200.**** SETTING MAN-TRAPS AND SPRING-GUNS.**

** 24 & 25 Vict. c. 100,

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who

(a) Sets or places any spring-gun man-trap or other engine calculated to destroy human life or inflict grievous bodily harm, with intent that or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith; or

(b) When any of the engines before mentioned has been set or placed by any other person in any place then being in or afterwards coming into

the offender's possession or occupation, knowingly and wilfully permits it to continue so set or placed with such intent as aforesaid, or whereby it produces any such effect as aforesaid :

Provided that this enactment shall not extend to any gin or trap usually set with the intent of destroying vermin, or to any spring-gun, man-trap, or engine set from sunset to sunrise in a dwelling-house for the protection thereof.

SECTION 201.

* 24 & 25 Vict. c. 100,
ss. 34, 35, extended.

* NEGLIGENT ACTS PUNISHABLE WITH TWO YEARS IMPRISONMENT.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who causes actual bodily harm to any person under such circumstances that if death had been caused he would have been guilty of manslaughter: Provided that this section shall not apply to any of the cases provided for in Sections 223, 224, 225, and 226.

SECTION 202.

SENDING UNSEAWORTHY SHIPS TO SEA.

† 39 & 40 Vict. c. 80, s. 4.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment, who

(a) Sends or attempts to send, or is party to sending or attempting to send, a British ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, unless he proves that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable; or

(b) Being a master of a British ship knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable.

‡ As to this provision,
see s. 523 post.

‡ Every one accused of any of the offences aforesaid may, for the purpose of giving such proof, give evidence in the same manner as any other witness.

No prosecution under this section shall be instituted except by or with the consent of the Board of Trade.

PART XIX. ASSAULTS.

SECTION 203.

ASSAULT DEFINED.

An assault is the act of intentionally applying force to the person of another directly or indirectly, or attempting or threatening by any act or gesture to apply such force to the person of another, if the person making the attempt or threat has, or causes the other to believe upon reasonable grounds that he has, present ability to effect such purpose.

SECTION 204.

INDECENT ASSAULTS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who

§ 24 & 25 Vict. c. 100,
52.

(a) § Indecently assaults any female; or

(b) Does anything to any female by her consent which but for such consent would be an indecent assault, such consent being obtained by false and fraudulent representations as to the nature and quality of the act; or

|| 24 & 25 Vict. c. 100,
s. 52.

(c) || Attempts carnally to know any girl under the age of twelve years, whether he believes her to be of or above that age or not.

SECTION 205.

ASSAULTS ON PEACE OFFICERS AND TO RESIST APPREHENSION.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who

(a)* Assaults any person with intent to commit an indictable offence or to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, or to† rescue any person from lawful custody; or

(b)‡ Assaults resists or wilfully obstructs any peace officer in the execution of his duty, or any person acting in aid of such officer; or

(c) Assaults resists or wilfully obstructs any person in the lawful execution of any process against any lands or goods, or with intent to rescue any goods taken under such process, or taken under any lawful distress.

* 24 & 25 Vict. c. 100, s. 38. By 9 G. 4, c. 69, s. 2, a night poacher resisting with an offensive weapon a gamekeeper apprehending him may be sentenced to transportation for seven years.

† 1 & 2 Geo. 4, c. 88.

‡ 24 & 25 Vict. c. 100, s. 38.

SECTION 206.

PUNISHMENT OF COMMON ASSAULT.

§ Every person who commits an assault shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour.

§ 24 & 25 Vict. c. 100, s. 47.

PART XX.

RAPE, KNOWING CHILDREN, AND PROCURING ABORTION.

SECTION 207.

DEFINITION OF RAPE.

Rape is the act of a man having carnal knowledge without her consent of a female who is not his wife; provided that nothing shall be deemed to be consent which is either extorted by threats or fear of bodily harm, or obtained by personating her husband,|| or by falsely and fraudulently misrepresenting the nature and quality of the act.

This offence shall be complete upon penetration: Provided that a boy under fourteen years of age shall be conclusively presumed to be incapable of having carnal knowledge within the meaning of this section.

|| Reg. v. Flattery, L. R. 2 Q. B. D. 410; Hegerty v. Shine, Irish C. L. Rep.

SECTION 208.

PUNISHMENT OF RAPE.

¶ Every one who commits rape shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

¶ 24 & 25 Vict. c. 100, s. 48.

SECTION 209.

ATTEMPT TO COMMIT RAPE.

** Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who attempts to commit rape.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

** The present maximum punishment is two years imprisonment and hard labour.

SECTION 210.

CARNALLY KNOWING CHILDREN UNDER TWELVE.

†† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who carnally knows any girl under the age of twelve, whether he believes her to be of or above that age or not.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

†† 38 & 39 Vict. c. 94, s. 3, amending 24 & 25 Vict. c. 100, s. 50.

SECTION 211.

* 38 & 39 Vict. c. 94,
s. 4.

* CARNALLY KNOWING CHILDREN BETWEEN TWELVE AND THIRTEEN.

† It has been suggested that, as in the present state of the law a girl may be married at twelve, the insertion of this word is necessary in order to prevent the husband of a girl under thirteen being liable to punishment under this section.

‡ This is new.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who unlawfully † carnally knows any girl above the age of twelve and under the age of thirteen years, whether he believes her to be of or above thirteen years of age or not.

SECTION 212.

KILLING CHILD AT BIRTH.

‡ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who causes the death of any living child which has not proceeded in a living state from the body of its mother, in such a manner that he would have been guilty of murder if such child had been fully born:

Provided that no one shall be guilty of any offence under this or any other section of this Act who, by means employed in good faith for the preservation of the life of the mother of the child, causes the death of any such child before during or after its birth.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 213.

§ PROCURING MISCARRIAGE OF A WOMAN.

§ 24 & 25 Vict. c. 100,
s. 58.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who with intent to procure the miscarriage of any woman, whether she be or be not with child, unlawfully administers to or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent:

Provided that such woman herself shall not be indictable under this section.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 214.

WOMAN PROCURING HER OWN MISCARRIAGE.

|| 24 & 25 Vict. c. 100,
s. 58. Punishment reduced.

|| Every woman shall be guilty of an indictable offence, and shall be liable on conviction thereof to seven years' penal servitude, who, whether with child or not, unlawfully administers or permits to be administered to herself any poison or other noxious thing or unlawfully uses or permits to be used on herself any instrument or other means whatsoever with intent to procure her own miscarriage.

SECTION 215.

SUPPLYING INSTRUMENTS TO PROCURE ABORTION.

¶ 24 & 25 Vict. c. 100,
s. 59.

¶ Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for five years, ¶ who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child.

Every one who commits this offence after a previous conviction for a like offence shall be liable to penal servitude for life.

PART XXI.
CRIMES AFFECTING CONJUGAL AND PARENTAL RIGHTS—
BIGAMY — ABDUCTION.

SECTION 216.

* BIGAMY.

Bigamy is

(a) The act of any person who, whilst any valid marriage wherever contracted subsists between himself or herself and any person, goes through a form of marriage with any other person in any place in any part of the world; or

(b) The act of any person who, not being married, knowingly goes through a form of marriage in any place in any part of the world with any person whom he or she knows to be married.

The expression "form of marriage" means any form either recognized as a valid form of marriage by the law of the place where it is gone through, or, though not so recognized by the law of that place, such that a marriage celebrated there in that form is recognized as binding by the law of England or Ireland: Provided that every such form otherwise valid shall for the purposes of this section be deemed to be valid notwithstanding any act or default of the person charged with committing bigamy: Provided also, that the fact that the parties would if unmarried have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy:

Provided also, that no one shall be deemed to commit bigamy by going through such a form of marriage as aforesaid, if he or she has been continually absent from his or her wife or husband for seven years then last past, and is not proved to have known that his wife or her husband was alive at any time during those seven years; † but unless there be such absence as aforesaid, a belief on any grounds whatever that a wife or husband is dead shall be no defence to a charge of bigamy, if such wife or husband was in fact alive when the form of marriage was gone through:

Provided also, that no person not being a subject of Her Majesty shall be liable to be convicted of bigamy under this Act in respect of having gone through a form of marriage in any place not in England or Ireland.

* 24 & 25 Vict. c. 100, s. 57, and cases. See the Report, p. 25.

† This expresses the construction put upon the existing statute in *R. v. Gibbons*, 12 Cox, 237.

The opposite view was taken in *R. v. Moore*, 13 Cox, 544. See the Report, p. 25.

SECTION 217.

‡ PUNISHMENT OF BIGAMY.

Every one who commits bigamy shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years penal servitude.

Every one who commits this offence after a previous conviction for a like offence shall be liable to penal servitude for fourteen years.

Every one charged with an offence under this section shall be bailable at discretion.

‡ 24 & 25 Vict. c. 100, s. 57.

SECTION 218.

§ ABDUCTION OF A WOMAN AGAINST HER WILL.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who, with intent to marry or carnally know any female whether married or not, or with intent to cause any female to be married to or carnally known by any other person, takes away or detains such female against her own will.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

§ See as to this and the following sections 24 & 25 Vict. c. 100, ss. 53 and 54.

SECTION 219.

ABDUCTION OF HEIRESSSES UNDER TWENTY-ONE AGAINST PARENT'S WILL.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who, from motives of lucre takes away or detains any female under the age of twenty-one years,

having any such interest in property as is herein-after mentioned, against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or with intent to cause her to be married to or to be carnally known by any other person.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 220.

PROVISION AS TO PROPERTY OF SUCH WOMEN.

A female who has any interest legal or equitable present or future absolute conditional or contingent in any real or personal estate, or is a presumptive heiress or co-heiress or presumptive next of kin or one of the presumptive next of kin to anyone having such interest has such an interest in property as is referred to in Section 219 of this Act.

Every one convicted of any offence under Section 218 or Section 219 of this Act, in respect of any female having any such interest as aforesaid shall be incapable of taking any estate or interest legal or equitable in any real or personal property of such female, or in which she has any interest, or which comes to her as such heiress co-heiress or next of kin; and if any such marriage takes place, such property shall upon such conviction be settled in such manner as the High Court of Justice in England or Ireland may upon any information at the instance of the Attorney General for England or Ireland appoint. If such property is situated in any other part of Her Majesty's dominions, such settlement shall be made under the direction of such court, and upon the information of such officer, as may correspond to the said High Court and Attorney General respectively.

When any one is prosecuted for any offence under either of the sections aforesaid, a female who after having been taken away is married to the offender, shall notwithstanding that marriage be competent to be a witness against him.

SECTION 221.

* ABDUCTION OF GIRL UNDER SIXTEEN.

* 24 & 25 Vict. c. 100,
s. 55.

† This punishment has been increased from two years hard labour because the offence is confined to abduction with intent to carnally know.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable† to seven years' penal servitude, and if a male under sixteen years to be once whipped, who takes or causes to be taken an unmarried girl under the age of sixteen years who was and whom he had reason to believe to be under the lawful care or charge of her father or mother or any other person, without the consent of any such person, to any place where such person cannot exercise control over her, with intent to carnally know her or to cause her to be carnally known by any other person.

It is immaterial whether the girl is taken with her own consent or at her own suggestion or not.

† See *R. v. Prince*, L.R. C.C.R. 154.

‡ It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 222.

§ STEALING CHILDREN UNDER FOURTEEN.

§ 24 & 25 Vict. c. 100,
s. 56.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and if a male under sixteen years to be once whipped, who, with intent to deprive any parent or guardian or other person having the lawful care or charge of any child under the age of fourteen years of the possession of such child, unlawfully

(a) Leads or takes away or decoys or entices away or detains any such child; or

(b) Receives or harbours any such child, knowing it to have been dealt with as aforesaid:

Provided that nothing in this section shall extend to any one who gets or takes possession of any child, claiming in good faith a right to the possession of the child.

Every one charged with any offence under this section shall be bailable at discretion.

PART XXII.

OFFENCES BY PARENTS, GUARDIANS, AND MASTERS AGAINST
THOSE IN THEIR CHARGE.

SECTION 223.

NEGLECTING DUTY TO PROVIDE NECESSARIES.

*Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who without lawful excuse neglects the duty specified in section 159 of this Act, so that the life of the person under his charge is endangered, or his health is permanently injured thereby.

* This is new. At present the offender escapes unless death ensues.

SECTION 224.

NEGLECTING CHILDREN, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years imprisonment with hard labour, who without lawful excuse neglects the duty specified in section 160 of this Act, so that the life of any child is endangered, or his health is permanently injured thereby.

SECTION 225.

NEGLECT BY MASTERS.

†Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years imprisonment with hard labour, who without lawful excuse neglects the duty specified in section 161 of this Act, so that the life of any such servant or apprentice is endangered, or his health permanently injured thereby.

† The maximum punishment under 24 & 25 Vict. c. 100, s. 26 is here reduced.

SECTION 226.

‡ABANDONING CHILDREN UNDER TWO.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years penal servitude, who unlawfully abandons or exposes any child under the age of two years, or who being lawfully bound to take charge of any such child, knowingly and without lawful excuse leaves it abandoned or exposed whereby its life is endangered, or its health is permanently injured.

‡ 24 & 25 Vict. c. 100, s. 27.

PART XXIII.

DEFAMATORY LIBEL.

SECTION 227.

DEFAMATORY LIBEL DEFINED.

A defamatory libel is matter published without legal justification or excuse, designed to § insult the person to whom it is published, or calculated to injure the reputation of any person by exposing him to hatred contempt or ridicule.

Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony.

§ This is the existing law, the criminality of libel depending on its tendency to produce a breach of the peace.

SECTION 228.

PUBLISHING DEFINED.

For the purposes of this Act publishing a defamatory or other libel is exhibiting it in public, or causing it to be read or seen, or showing or delivering it or causing it to be shown or delivered with a view to its being read or seen by the person defamed, if any, or by any other person.

SECTION 229.

PUBLISHING UPON INVITATION OR CHALLENGE.*

* Sections 229 to 237 inclusive are believed to declare the existing common law as to what constitutes a privileged communication; but there has been some diversity of judicial opinion on this subject.

No one commits an indictable offence by publishing defamatory matter on the invitation or challenge of the person defamed thereby, nor if it is necessary to publish such defamatory matter in order to refute some other defamatory statement published by that person concerning the alleged offender: Provided that such defamatory matter is honestly believed to be true, and is relevant to the invitation challenge or the required refutation: Provided also, that the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

SECTION 230.

PUBLISHING IN COURTS OF JUSTICE.

No one commits an indictable offence by publishing, in any proceeding held before or under the authority of any Court of justice, or in any inquiry held under the authority of any statute or by order of Her Majesty, or of any of the Departments of State, or of the Lord Lieutenant, any defamatory matter.

SECTION 231.

PUBLISHING PARLIAMENTARY PAPERS.

No one commits an indictable offence by publishing to either House of Parliament defamatory matter contained in a petition to either House, or by publishing by order or under the authority of either House of Parliament any paper containing defamatory matter, or by publishing any extract from or abstract of any such paper: Provided such extract or abstract is published in good faith and without ill-will to the person defamed.

SECTION 232.

FAIR REPORTS OF PROCEEDINGS OF PARLIAMENT AND COURTS.

No one commits an indictable offence by publishing in good faith for the information of the public, a fair report of the proceedings of either House of Parliament, or of the public proceedings of any court of justice whether preliminary or final, nor by publishing in good faith any fair comment upon any such proceedings.

SECTION 233.

FAIR DISCUSSION.

No one commits an indictable offence by publishing any defamatory matter which he honestly and on reasonable grounds believes to be true, and which is relevant to any subject of public interest the public discussion of which is for the public benefit.

SECTION 234.

FAIR COMMENT.

No one commits an indictable offence by publishing fair comments upon any person who takes part in public affairs, provided such fair comments are confined to the public conduct of such person in such affairs.

No one commits an indictable offence by publishing fair comments on any published book or other literary production, or any composition or work of art or performance publicly exhibited, or any other communication made to the public on any subject, if such comments are confined to criticism on such book or literary production composition work of art performance or communication: Provided that nothing herein contained shall justify or excuse the publishing of defamatory matter on any person other than the author artist or publisher of such book or literary production or composition or work of art, or the performer manager or conductor of such performance, or the maker of such communication: Provided also that nothing herein contained shall excuse or justify the publishing of any defamatory matter on such author artist publisher performer manager conductor or maker, except so far as it fairly arises out of such criticism.

SECTION 235.

SEEKING REMEDY FOR GRIEVANCE.

No one commits an indictable offence by publishing defamatory matter for the purpose in good faith of seeking remedy or redress for any private or public wrong or grievance from a person who has or is reasonably believed by the person publishing to have the right to remedy or redress such wrong or grievance: Provided that such defamatory matter is honestly believed to be true, and is relevant to the remedy or redress sought: Provided also that such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

SECTION 236.

ANSWERS TO INQUIRIES.

No one commits an indictable offence by publishing in answer to inquiries made of him defamatory matter relating to some subject as to which the person by whom or on whose behalf the inquiry is made has or on reasonable grounds is believed by the person publishing to have an interest in knowing the truth: Provided that such matter is published for the purpose in good faith of giving information in respect of such matter to that person: Provided also that such defamatory matter is honestly believed to be true, and is relevant to the inquiries made: Provided also that such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

SECTION 237.

*GIVING INFORMATION.

No one commits an indictable offence by publishing to another person defamatory matter for the purpose of giving information to that person with respect to some subject as to which he has or is on reasonable grounds believed to have such an interest in knowing the truth as to make the conduct of the person giving the information reasonable under the circumstances: Provided that such defamatory matter is relevant to such subject, and that it is either true, or is made without ill-will to the person defamed and in the honest belief on reasonable grounds that it is true.

* See, as to privileged communications of this class, *Coxhead v. Richards* 2 C. B. 569.

SECTION 238.

PUBLISHING AND SELLING PERIODICAL CONTAINING DEFAMATORY MATTER.†

Every proprietor of any newspaper review magazine or other writing or print periodically published, (hereinafter called periodical), is *prima facie* criminally responsible for defamatory matter inserted and published therein: Provided that such *prima facie* liability may be rebutted by proof that the particular defamatory matter was inserted in such periodical without such proprietor's cognizance, and without negligence on his part.

General authority given to the person actually inserting such defamatory matter to manage or conduct as editor or otherwise such periodical, and to insert therein what he in his discretion thinks fit, shall not be negligence within the proviso lastly herein before contained, unless it be proved that the proprietor when originally giving such general authority meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such periodical.

No one shall be guilty of an indictable offence by selling any number or part of such periodical, unless he knew either that such number or part contained defamatory matter or that defamatory matter was habitually contained in such periodical.

Upon any trial for publishing a defamatory libel contained in a periodical, after evidence of the publishing of the number or part of the periodical containing the alleged defamatory matter is given, sufficient in the opinion of the court for such purpose, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published shall be admissible in evidence for the prosecution or the defence without further proof.

† Sects. 238 and 239 are a re-enactment, with some alterations, of the provisions in 6 & 7 Vict. c. 96.

There has been a difference of judicial opinion as to the construction of that statute,—see *Reg. v. Holbrook*, L.R. 4 Q.B.D. 42.

SECTION 239.

SELLING BOOKS, ETC. CONTAINING DEFAMATORY MATTER.

No one commits an indictable offence by selling any book pamphlet print or writing or other thing not forming part of any periodical, although the same contains defamatory matter, if at the time of such sale he did not know that such defamatory matter was contained in such book pamphlet print writing or other thing.

The sale by a servant of any book pamphlet print or writing or other thing, whether periodical or not, shall not make his master or employer criminally responsible in respect of defamatory matter contained therein, unless it be proved that such master or employer authorised such sale, knowing that such book pamphlet print writing or other thing contained defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical.

SECTION 240.

WHEN TRUTH IS A DEFENCE.

It shall be a defence to an indictment or information for a defamatory libel that the publishing of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published, and that the matter itself was true: Provided that such defence shall not be entertained unless it is pleaded in the manner hereinafter* provided for.

* *Post*, section 502.

SECTION 241.

PUNISHMENT OF DEFAMATORY LIBEL PUBLISHED OR THREATENED IN ORDER TO EXTORT, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to † five years' penal servitude, who publishes or threatens to publish or offers to abstain from publishing a defamatory libel with a view to extort any money, or to induce any person to confer upon or procure for any person any appointment or office of profit or trust, or in consequence of any person having been refused any such money appointment office or trust.

† The present punishment is three years imprisonment with hard labour. See 6 & 7 Vict. c. 96.

SECTION 242.

PUNISHMENT OF DEFAMATORY LIBEL KNOWN TO BE FALSE.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who publishes any defamatory libel, knowing the same to be false.

† Sec. 4 of 6 & 7 Vict. c. 96.

SECTION 243.

PUNISHMENT OF DEFAMATORY LIBEL.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment, who publishes any defamatory libel.

§ The existing law is shortly this: At common law nothing which grows out of or is fixed to the earth is the subject of larceny, but by 24 & 25 Vict. c. 96. s. 33 punishments are provided for stealing trees, saplings, and shrubs of the value of more than 1s.; by section 36 all plants whatever, growing in gardens, &c., are protected, and by section 37 all plants cultivated for any of the purposes specified in the text of the section, wherever they may grow, are protected. These provisions appear substantially to make all vegetable productions the subject of larceny, except things worth less than 1s., growing elsewhere than in gardens, and not cultivated for the purposes mentioned.

TITLE VI.**OFFENCES AGAINST RIGHTS OF PROPERTY OR RIGHTS ARISING OUT OF CONTRACTS.****PART XXIV.****THEFT AND SIMILAR OFFENCES.****SECTION 244.**

INANIMATE THINGS FIXED OR MOVABLE CAPABLE OF BEING STOLEN.

§ Every inanimate thing whatever which is the property of any person and which either is or may be made movable, shall henceforth be capable of being

stolen as soon as it becomes movable, although it is made movable in order to steal it: Provided that nothing growing out of the earth of a value not exceeding one shilling shall (except in the cases hereinafter* provided) be deemed capable of being stolen.

* *Post*, section 267.

Nothing herein contained shall affect the provisions of any statute in force at any time as to summary convictions for stealing things growing out of the earth.

SECTION 245.

ANIMALS CAPABLE OF BEING STOLEN.

All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen: Provided that tame pigeons shall be capable of being stolen so long as they are in a dovecote or on their owner's land, but not otherwise.

All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in England or Ireland, shall if kept in a state of confinement be capable of being stolen, not only whilst they are so confined, but after they have escaped from confinement.

All other living creatures wild by nature shall if kept in a state of confinement be capable of being stolen so long as they remain in confinement or are being actually pursued after escaping therefrom, but no longer.†

‡ A wild living creature shall be deemed to be in a state of confinement so long as it is in a den cage or small enclosure sty or tank, or is otherwise so situated that it cannot escape and that its owner can take possession of it at pleasure.

§ Oysters and oyster brood shall be capable of being stolen when in oyster beds, layings, and fisheries which are the property of any person, and sufficiently marked out or known as such property.

Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen when living, nor shall the taking of their dead bodies by or by the orders of the person who killed them before they are reduced into actual possession by the owner of the land on which they died, be deemed to be theft.

Every thing produced by or forming part of any living creature capable of being stolen, shall be capable of being stolen.

† This may not meet every conceivable case, but it will be sufficient for all practical purposes. See the Report, p. 26.

‡ This is intentionally worded so as not to include deer in a large park. See secs. 276, 277, *post*, and the Report, p. 27.

§ 24 & 25 Vict. c. 96, s. 26.

SECTION 246.

DEFINITION OF THEFT.

Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent to deprive the owner permanently thereof or to deprive any person having any special property or interest therein permanently of such property or interest.

Every one commits theft who fraudulently and without colour of right takes or converts anything capable of being stolen with intent

to pledge the same or deposit it as security, or to part with it under a condition as to its return which he may be unable to perform, or

to deal otherwise with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion; or

who being in lawful possession of any such thing fraudulently and without colour of right pledges deposits parts with or otherwise deals with it as aforesaid.

The taking or conversion may be deemed fraudulent although effected without secrecy or attempt at concealment.

|| Provided that no factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

|| This proviso is perhaps unnecessary; but it is found in the existing statute, and is therefore preserved.

It is immaterial in all cases whether the thing converted was taken by the thief for the purpose of the conversion, or whether it was at the time of the conversion in the lawful possession of the thief :

* 26 & 27 Vict. c. 103.

* Provided that if any servant contrary to the orders of his master takes from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not by reason thereof be deemed guilty of theft.

SECTION 247.

THEFT IS COMPLETE THOUGH THE TAKING OR CONVERSION MAY NOT BE COMPLETE.

Theft is committed when the offender moves the thing or causes it to move or to be moved with intent to steal it.

Theft is committed when the offender cuts, rips, or otherwise begins to cause to be movable anything forming part of or growing out of or attached to any real property, with intent to steal it.

SECTION 248.

THEFT OF ANIMALS.

† 24 & 25 Vict. c. 96,
s. 11.

† Every one commits theft who kills any living creature capable of being stolen, with intent to steal the carcase skin plumage or any part of such creature.

SECTION 249.

THEFT BY AGENT.†

† See as to this and the two following sections 24 & 25 Vict. c. 96, ss. 75-78. See the Report, p. 28.

Every one commits theft who, having received any money valuable security or other thing whatsoever on terms requiring him to account for or pay the same or the proceeds thereof or any part of such proceeds to any other person, though not requiring him to deliver over in specie the identical money valuable security or other thing received, fraudulently converts to his own use or fraudulently omits to account for the same or to account for or pay any part of the proceeds which he was required to account for or pay as aforesaid :

Provided that if it be part of the said terms that the money or other thing received or the proceeds thereof shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of any part of such proceeds in such account shall be deemed a sufficient accounting for the part of the proceeds so entered.

SECTION 250.

THEFT BY PERSON HOLDING A POWER OF ATTORNEY.

§ 24 & 25 Vict. c. 96,
s. 77.

§ Every one commits theft who, being entrusted either solely or jointly with any other person with any power of attorney for the sale mortgage pledge or other disposition of any property real or personal, whether capable of being stolen or not, fraudulently sells mortgages pledges or otherwise disposes of the same or any part thereof, or fraudulently converts the proceeds of any sale mortgage pledge or other disposition of such property or any part of such proceeds, to, some purpose other than that for which he was intrusted with such power of attorney.

|| 24 & 25 Vict. c. 96, s. 75. The proviso diminishes the number of cases in which the direction to dispose of the money, &c. must be in writing. See also Cooper's case, L. R. 2 C. C. R. 123; also R. v. Tatlock, L. R. 2 Q. B. D. 157.

SECTION 251.

THEFT BY MISAPPROPRIATING PROCEEDS HELD UNDER DIRECTION.

|| Every one commits theft who, having received either solely or jointly with any other person any money or valuable security or any power of attorney for the sale of any stock or shares whatever, with a direction that such money or any part thereof or the proceeds or any part of the proceeds of such security or such stock or shares shall be applied to any purpose or

paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person such proceeds or any part thereof :

Provided that where the person receiving such money security or power of attorney and the person from whom he receives it deal with each other on such terms that all money paid to the former would in the absence of any such direction be properly treated as an item in a debtor and creditor account between them, this section shall not apply unless such direction is in writing.

SECTION 252.

THEFT BY CO-OWNER.

* Theft may be committed by the owner of anything capable of being stolen against a person having a special property or interest therein, or by a person having a special property or interest therein against the owner thereof, or by a lessee against his reversioner, or by one of several joint owners tenants in common or partners of or in any such thing against the other persons interested therein, or by the directors public officers or members of a public company or body corporate against such public company or body corporate.

* 31 & 32 Vict. c. 116.
s. 1.

SECTION 253.

HUSBAND AND WIFE.†

No husband shall be convicted of stealing during cohabitation the property of his wife, and no wife shall be convicted of stealing during cohabitation the property of her husband; but whilst they are living (apart from each other, either shall be guilty of theft if he or she fraudulently takes or converts anything which is by law the property of the other in a manner which in any other person would amount to theft.

Every one commits theft who, whilst a husband and wife are living together, knowingly

(a) Assists either of them in dealing with any thing which is the property of the other in a manner which would amount to theft if they were not married; or

(b) Receives from either of them any thing the property of the other obtained from that other by such dealing as aforesaid.

† See the Report, p. 28.

PART XXV.

PUNISHMENT OF DIFFERENT KINDS OF THEFT.

SECTION 254.

STEALING WILLS. ‡

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who steals any testamentary instrument whatever, whether during the testator's life or after his death.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

‡ 24 & 25 Vict. c. 96,
s. 29.

SECTION 255.

§ STEALING POST LETTER BAGS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who steals a post letter bag from a post office, or from an officer of the Post Office, or from any conveyance in which post letters are carried by land or water, or from any person having charge of the same under the authority of the Post Office, or ||who being employed under the Post Office steals any post letter or postal packet, or anything from any such post letter or postal packet in the custody of the Post Office.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

§ 7 W. 4. & 1 Vict. c. 36, s. 28. (part). See section 290 *post*, as to Stopping the Mail.

|| 7 W. 4. & 1 Vict. c. 36, ss. 27, 29.

SECTION 256.

STEALING POST LETTERS.

* 7 W. 4. & 1 Vict. c. 36, ss. 27, 29. This reduces the punishment in the case of persons not in the employment of the Post Office from penal servitude for life to fourteen years.

* Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for fourteen years, who steals any post letter or any postal packet, or anything from any such post letter or postal packet in the custody of the Post Office.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 257.

STEALING BY SERVANTS OF THE BANK OF ENGLAND OR IRELAND.

† 24 & 25 Vict. c. 96, s. 73.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who, being an officer or servant in the employment of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland, steals any bond note bill dividend-warrant or warrant for the payment of any annuity or interest or money or any security money or other effects lodged or deposited with either of the said Governors and Companies, and intrusted to him as the officer or servant of either of them.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 258.

‡ STEALING BY SERVANTS, ETC.

‡ 24 & 25 Vict. c. 96, ss. 68, 69, 70.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who

(a) Being a clerk or servant, or being employed in the capacity or for the purpose of a clerk or servant, steals anything belonging to or in the possession of his master or employer; or

(b) Being employed in the public service of Her Majesty, or in the service of any department of State, or of any county city borough town board or any other public body, or being employed as a constable or police officer, steals anything in his possession by virtue of his employment; or

(c) § Steals anything by any act or omission amounting to theft under the provisions of section 249, section 250, or section 251 of this Act.

§ The punishment is here increased from seven years penal servitude to fourteen.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 259.

STEALING FROM THE PERSON OR IN DWELLING-HOUSE.

|| 24 & 25 Vict. c. 96, ss. 40, 60. By s. 60 this is restricted to stealing to the value of 5*l*.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who steals || anything from the person of another, or from any dwelling house.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 260.

STEALING CATTLE.

¶ Pigs and goats are not included in s. 10. of 24 & 25 Vict. c. 96.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for fourteen years, who steals any horse ass mule kine sheep pig ¶ or goat or the young thereof respectively, or who wilfully kills any such beast with intent to steal the carcase or any part thereof.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 261.

STEALING GOODS IN THE PROCESS OF MANUFACTURE.

** 24 & 25 Vict. c. 96, s. 62. is restricted to stealing to the value of ten shillings.

** Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who steals any woven

goods, or any materials out of which any woven goods are intended to be made, whilst exposed in any building field or other place during any process of manufacture.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 262.

* STEALING FROM SHIPS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who steals

(a) Any part of any vessel wrecked, stranded, or in distress, or any part of the cargo of or anything in or belonging to any such vessel; or

(b) Anything in any vessel barge or boat, in any port of entry or discharge, or in any harbour, or upon any navigable river or canal, or in any creek or basin communicating with or belonging to any such port harbour river or canal; or

(c) Anything in any dock, or on any wharf, or quay adjacent to any such port harbour river canal creek or basin as aforesaid.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

* 24 & 25 Vict. c. 96, s. 63.

SECTION 263.

† STEALING ON RAILWAYS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who steals anything in or from any railway station, or from any engine tender or vehicle of any kind on any railway.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

† This and the next section are new so far as they make these acts *special offences*. See the Report, p. 29.

SECTION 264.

STEALING BY PICKLOCKS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who by means of any picklock false key or other instrument steals anything from any receptacle for property locked or otherwise secured.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 265.

‡ DESTROYING, CANCELLING, ETC. DOCUMENTS.

Every one who destroys cancels conceals or obliterates any document for any fraudulent purpose shall be guilty of an indictable offence, and shall be liable to the same punishment as if he had stolen that document.

‡ Except as to wills and post letters, the punishment is the same for stealing documents as for stealing other things. 24 & 25 Vict. c. 96, ss. 27, 28, 29.

SECTION 266.

§ CONCEALING GOODS.

§ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who moves takes or conceals anything capable of being stolen with the fraudulent intention of thereby permanently depriving some person other than the owner of any pecuniary benefit arising from the possession thereof.

§ 24 & 25 Vict. c. 96, s. 39. *R. v. Webb*, 1 Moo. C.C. 431. The existing statute is confined to minerals, but the principle extends to many other cases.

SECTION 267.

|| STEALING SHRUBS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who steals or destroys or damages with intent to steal any ||plant root fruit or vegetable production, growing in any garden orchard or pleasure ground hothouse greenhouse or conservatory, although the value thereof does not exceed one shilling, the

|| 24 & 25 Vict. c. 96, s. 36.

offender having been previously convicted on an indictment or twice previously convicted summarily of stealing something growing out of the earth under any statute at any time in force.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 268.

STEALING THINGS NOT OTHERWISE PROVIDED FOR.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who steals anything for the stealing of which no punishment is herein-before provided.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 269.

BRINGING INTO ENGLAND AND IRELAND THINGS STOLEN ABROAD.*

* This is new as regards things stolen elsewhere than in the United Kingdom. See 24 & 25 Vict. c. 96, s. 114.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who having obtained, elsewhere than in England or Ireland, any property by any act which if done in England or Ireland would have amounted to theft, brings such property into or has the same in England or Ireland.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 270.

DEFINITION OF FALSE PRETENCE.

A false pretence is a representation either by words or otherwise of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

Exaggerated commendation or depreciation of the quality of any thing is not a false pretence unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

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

SECTION 271.

† OBTAINING BY FALSE PRETENCES.

† 24 & 25 Vict. c. 96, s. 88.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who by any false pretence obtains with intent to defraud, either directly or through the medium of any contract obtained by such false pretence, anything capable of being stolen.

Every one who by any false pretence causes or procures anything capable of being stolen to be delivered to any other person than himself with intent to defraud obtains that thing by a false pretence within the meaning of this section.

Every one charged with any offence under this section shall be bailable at discretion, and every one found committing or attempting to commit any offence under this section may be arrested without warrant.

SECTION 272.

‡ OBTAINING EXECUTION OF VALUABLE SECURITIES BY FALSE PRETENCES.

‡ 24 & 25 Vict. c. 96, s. 90, passed in reference to R. v. Danger, D. & B. 307.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who with intent to defraud or injure any person by any false pretence causes or induces any person to execute make accept endorse or destroy the whole or any part of any valuable security, or to write impress or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security.

Every one charged with any offence under this section shall be bailable at discretion, and every one found committing or attempting to commit any offence under this section may be arrested without warrant.

SECTION 273.

* OBTAINING CREDIT FRAUDULENTLY.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who, in incurring any debt or liability, obtains credit by means of any fraud though not amounting to a false pretence as hereinbefore defined.

* 32 & 33 Vict. c. 62,
s. 13. The Debtors' Act,
1869.

SECTION 274.

CRIMINAL BREACH OF TRUST.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who being a trustee, with intent to defraud and in violation of his trust converts anything of which he is trustee to any use not authorised by the trust.

† The following persons and no others are trustees within the meaning of this section; that is to say, trustees upon express trusts created by any deed will or instrument in writing, whether for any public or private or charitable object; every person upon whom the duty of any such trust devolves or comes; executors and administrators; official managers assignees liquidators trustees in bankruptcy or liquidation, and other like officers officiating under any Act in force at any time in England or Ireland relating to joint stock companies, bankruptcy, or insolvency.

† 24 & 25 Vict. c. 96,
s. 80.

No proceeding or prosecution for any offence against this section shall be commenced without the sanction of Her Majesty's Attorney General for England or Ireland, or if the office of Attorney General be vacant, of Her Majesty's Solicitor General for England or Ireland as the case may be.

Every one charged with an offence under this section shall be bailable at discretion.

SECTION 275.

PREVIOUS CONVICTIONS.

Every one who after a previous conviction for any offence involving dishonesty is convicted of any offence under Sections 265, 268, 271, 272, and 274, shall be liable to fourteen years' penal servitude.

SECTION 276.

‡ KILLING DEER IN INCLOSED LAND.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to two years' imprisonment with hard labour, and if a male under sixteen years to be once whipped, who unlawfully and wilfully courses hunts ensnares carries away kills wounds, or attempts to kill or wound any deer kept or being in any inclosed part of any forest chase or purlieu or in any inclosed land where deer are usually kept.

† See the Report, p. 27,
and 24 & 25 Vict. c. 96,
s. 13.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 277.

KILLING DEER IN UNINCLOSED GROUND AFTER PREVIOUS CONVICTION.

§ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, and if a male under sixteen years to be once whipped, who, having been previously summarily convicted of any offence relating to deer, unlawfully and wilfully courses hunts snares carries away kills or wounds any deer kept or being in the uninclosed part of any forest chase or purlieu.

§ 24 & 25 Vict. c. 96,
s. 12.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 278.

KILLING HARES IN A WARREN.

* 24 & 25 Vict. c. 96,
s. 17.

* Every one shall be guilty of an indictable offence, and shall on conviction thereof be liable to two years' imprisonment, who between the expiration of the first hour after sunset and the beginning of the last hour before sunrise unlawfully and wilfully takes or kills any hare or rabbit in any warren or ground lawfully used for breeding or keeping hares or rabbits whether inclosed or not.

SECTION 279.

NIGHT POACHING AFTER TWO PREVIOUS CONVICTIONS.

† 9 G. 4. c. 69, s. 1,
and 7 & 8 Vict. c. 29,
s. 1.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude who, between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, unlawfully takes or destroys any hare pheasant partridge grouse heath or moor game blackgame bustard or rabbit in any land whether open or inclosed, or on any public road highway or path or the sides thereof or at the openings outlets or gates from any such land into any such public road highway or path, or unlawfully enters or is in any land whether open or inclosed, with any gun net engine or other instrument for the purpose of taking or destroying any such bird or beast as aforesaid after having in either case been twice convicted in a summary way of a like offence.

No one shall be prosecuted for any offence under this section unless such prosecution is commenced within twelve months after the offence is committed.

PART XXVI.

FRAUD.

SECTION 280.

FRAUDULENT FALSE ACCOUNTING BY DIRECTORS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude who

‡ 24 & 25 Vict. c. 96,
s. 83.

‡ (a) Being a director manager public officer or member of any body corporate or public company, with intent to defraud

destroys alters mutilates or falsifies any book paper writing or valuable security belonging to the body corporate or public company; or

makes or concurs in making any false entry, or omits or concurs in omitting to enter any material particular in any book of account or other document; or

§ 24 & 25 Vict. c. 96,
s. 82.

(b) § Being a director public officer or manager of any body corporate or public company, as such receives or possesses himself of any of the property of such body corporate or public company, and with intent to defraud omits to make or to cause and direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company.

SECTION 281.

FALSE STATEMENTS BY DIRECTORS, ETC.

|| 24 & 25 Vict. c. 96,
s. 84.

|| Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who, being a promoter¶ director public officer or manager of any body corporate or public company¶ either existing or intended to be formed¶, makes circulates or publishes or concurs in making circulating or publishing any ¶ prospectus statement or account which he knows to be false in any material particular, with intent to induce persons (¶whether ascertained or not) to become shareholders or partners, or with intent to deceive or defraud the members shareholders or reditors or any of them (¶whether ascertained or not) of such body corporate

¶ These words are new.

or public company, or with intent to induce any person to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof.

SECTION 282.

FALSIFYING ACCOUNTS BY CLERKS AND SERVANTS.

*Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years penal servitude who being an officer clerk or servant or employed or acting in the capacity of an officer clerk or servant, wilfully and with intent to defraud

* 38 & 34 Vict. c. 24.

(a) Destroys alters mutilates or falsifies any book paper writing valuable security document or account which belongs to or is in the possession of his employer or has been received by him for or on behalf of his employer; or

(b) Makes or concurs in making any false entry in, or omits or alters or concurs in omitting or altering any material particular from or in any such book paper writing valuable security document or account as aforesaid.

SECTION 283.

PUBLIC OFFICERS MAKING FALSE STATEMENTS OR RETURNS.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who being an officer collector or receiver, entrusted with the receipt custody or management of any part of the public revenues, knowingly furnishes any false statement or return of any sum of money collected by him or entrusted to his care, or of any balance of money in his hands or under his control.

† 50 G. 3. c. 59, s.

SECTION 284.

CONSPIRACY TO DEFRAUD.

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

† This offence is now punishable as a common law misdemeanour by fine and imprisonment only.

Every one who after a previous conviction for any offence involving dishonesty commits an offence under this section shall be liable upon conviction thereof to fourteen years' penal servitude.

SECTION 285.

§ CHEATING AT PLAY.¹

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who wins or endeavours to win from any other person, to himself or any other, any money or valuable thing by any fraud or unlawful device or ill-practice in playing at or with cards dice tables or other games, or in bearing a part in the stakes wagers or adventures, or in betting on the sides or hands of the players, or in wagering on the event of any game sport pastime or exercise.

§ 8 & 9 Vict. c. 109, s. 17.

¶ This offence is complete, although the thing won has not been actually paid or delivered.

¶ See R. v. Moss, 11. and B. 104.

SECTION 286.

PRETENDING TO PRACTISE WITCHCRAFT.

¶ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who pretends to exercise or use any kind of witchcraft sorcery enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in

¶ 9 Geo. 2, c. 5, s. 4.

any occult or crafty science to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found.

SECTION 287.

* 22 & 23 Vict. c. 35,
s. 24. 23 & 24 Vict.
c. 38, s. 8.

* CONCEALING DEEDS AND INCUMBRANCES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who being a seller or mortgagor of land or of any chattels real or personal or chooses in action conveyed or assigned to a purchaser or mortgagee, or being the solicitor or agent of any such seller or mortgagor, in order to induce the purchaser or mortgagee to accept the title offered or produced to him and with intent to defraud, conceals from the purchaser or mortgagee any instrument material to the title or any incumbrance, or falsifies any pedigree on which the title does or may depend.

No prosecution for any offence against this section shall be commenced without the sanction of Her Majesty's Attorney General for England or Ireland, or if the office of Attorney General is vacant, of the Solicitor General for England or Ireland, as the case may be. Such previous notice as such Attorney or Solicitor General directs of the application for leave to prosecute must in every case be given to the person intended to be prosecuted.

PART XXVII.

ROBBERY AND EXTORTION.

SECTION 288.

DEFINITION OF ROBBERY.

Robbery is theft accompanied with actual violence, or threats of violence, to any person or any property, intentionally used to extort the property stolen or to prevent or overcome resistance to its being stolen.

SECTION 289.

† ROBBERY PUNISHABLE BY PENAL SERVITUDE FOR LIFE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male, according to his age to be flogged once twice or thrice, or whipped once twice or thrice, who

(a) Robs any person and at the time of or immediately before or immediately after such robbery wounds beats strikes or uses any other personal violence to any person; or

(b) Being together with any other person or persons robs or assaults with intent to rob any person; or

(c) Being armed with any offensive weapon or instrument, robs or assaults with intent to rob any person.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 290.

STOPPING OF MAIL.

† 7 W. 4. & 1 Vict. c. 36,
s. 28. (part), and s. 47
(part).

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who stops any conveyance by which post letters or postal packets are carried, either by land or on the water, or stops any person employed in conveying or delivering post letters or postal packets, with intent to rob or search such conveyance or person of any post letter or postal packet or to search for the same.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 291.*** COMPELLING EXECUTION OF DOCUMENTS BY FORCE.*** 24 & 25 Vict. c. 96,
s. 48.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who, with intent to defraud, by unlawful violence to or restraint of the person of another, or by the threat that either the offender or any other person will employ such violence or restraint, unlawfully compels any person to execute make accept endorse alter or destroy the whole or any part of any valuable security, or to write impress or affix any name or seal upon any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

SECTION 292.**† PUNISHMENT OF ROBBERY.**† 24 & 25 Vict. c. 96,
s. 40.

Every one who commits robbery shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

SECTION 293.**‡ PUNISHMENT OF ASSAULT WITH INTENT TO ROB.**‡ 24 & 25 Vict. c. 96,
s. 42.

Every one who assaults any person with intent to rob him shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, or if convicted after a previous conviction for any offence involving dishonesty to fourteen years' penal servitude.

Every one who commits this offence may be arrested without warrant, and shall be bailable at discretion.

SECTION 294.**§ DEMANDING WITH INTENT TO STEAL.**§ 24 & 25 Vict. c. 96,
s. 45.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who with menaces demands from any person, either for himself or for any other person, anything capable of being stolen, with intent to steal it.

Every one who commits this offence after a previous conviction for any offence involving dishonesty shall be liable upon conviction thereof to fourteen years' penal servitude.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 295.**EXTORTION BY THREATS OF ACCUSATION OF CERTAIN OFFENCES.**

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen years of age to be once whipped, who

(a) || With intent to extort or gain anything from any person, accuses or threatens to accuse either that person or any other person, whether the person accused or threatened with accusation is guilty or not, of

|| 24 & 25 Vict. c. 96
s. 47.

any offence punishable by law with death or penal servitude for seven years or upwards; or

any assault with intent to commit a rape, or any attempt or endeavour to commit a rape, or ¶ any indecent assault; or

¶ These words are new.

carnally knowing or attempting to know any child so as to be punishable under this Act; or

any infamous offence, that is to say, buggery, an attempt or assault with intent to commit buggery, or any unnatural practice; or

counselling or procuring any person to commit any such infamous offence; or

(b) With such intent as aforesaid threatens that any person shall be so accused by any other person; or

* 24 & 25 Vict. c. 96,
s. 46.

* (c) Without lawful excuse sends delivers utters or directly or indirectly causes to be received by any person, any document containing any such accusation or threat as aforesaid, knowing the contents of such document; or

† 24 & 25 Vict. c. 96,
s. 48.

† (d) By any of the means aforesaid compels or attempts to compel any person to execute make accept endorse alter or destroy the whole or any part of any valuable security, or to write impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 296.

EXTORTION BY THREATS OF ACCUSATION OF OTHER OFFENCES.

‡ This is new. See the
Report, p. 29.

‡ Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to penal servitude for seven years who

(a) With intent to extort or gain anything from any person, accuses or threatens to accuse either that person or any other person of any offence whether indictable or punishable on summary conviction other than the offences specified in the last section, whether the person accused or threatened with accusation is guilty or not of that offence; or

(b) With such intent as aforesaid threatens that any person shall be so accused by any other person; or

(c) Without lawful excuse sends delivers utters or directly or indirectly causes to be received by any person any document containing any such accusation or threat as last aforesaid, knowing the contents of such document; or

(d) By any of the means aforesaid, compels or attempts to compel any person to execute make accept endorse alter or destroy the whole or any part of any valuable security, or to write impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security.

PART XXVIII.

BURGLARY AND HOUSEBREAKING.

SECTION 297.

DEFINITION OF DWELLING-HOUSE, ETC.

In this part the following words are used in the following senses:

“Dwelling-house” means a permanent building the whole or any part of which is kept by the owner or occupier for the residence therein of himself his family or servants or any of them, although it may at intervals be unoccupied.

§ 24 & 25 Vict. c. 96,
s. 53.

§ A building occupied with and within the same curtilage with any dwelling-house shall be deemed to be part of the said dwelling-house if there is between such building and dwelling-house a communication, either immediate or by means of a covered and enclosed passage, leading from the one to the other, but not otherwise.

To “break” means

To break any part, internal or external of a building, or to open by any means whatever (including lifting, in the case of things kept in their places by their own weight) any door window shutter cellar flap or other thing intended to cover openings to the building, or to give passage from one part of it to another.

An entrance into a building is complete as soon as any part of the body of the person making the entrance or any part of any instrument used by him is within the building.

Every one who obtains entrance into any building by any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, shall be deemed to have broken and entered that building.

*** SECTION 298.**

† BREAKING AND ENTERING PLACE OF WORSHIP AND COMMITTING OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years penal servitude, who breaks and enters any place of public worship and commits any indictable offence therein, or who having committed any indictable offence therein breaks out of such place.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

* This and the following sections represent 24 & 25 Vict. c. 96, ss. 55-57.

† The punishment by the present law is penal servitude for life.

SECTION 299.

BREAKING PLACE OF WORSHIP WITH INTENT TO COMMIT AN OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years penal servitude, who breaks and enters any place of public worship with intent to commit any indictable offence therein.

Every one charged with this offence may be arrested without warrant, and shall be bailable at discretion.

SECTION 300.

BURGLARY DEFINED.

Every one shall be guilty of the indictable offence called burglary, and shall be liable upon conviction thereof to penal servitude for life, who

(a) Breaks and enters a dwelling-house by night, with intent to commit any indictable offence therein; or

(b) Breaks out of any dwelling-house by night either after committing an indictable offence therein, or after having entered such dwelling-house either by day or by night with intent to commit an indictable offence therein.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 301.

HOUSEBREAKING AND COMMITTING AN OFFENCE.

Every one shall be guilty of the indictable offence called housebreaking, and shall be liable on conviction thereof to penal servitude for fourteen years, who

(a) Breaks and enters any dwelling-house by day and commits any indictable offence therein; or

(b) Breaks out of any dwelling-house by day after having committed any indictable offence therein.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 302.

HOUSEBREAKING WITH INTENT TO COMMIT AN OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude who by day breaks and enters any dwelling-house with intent to commit any indictable offence therein.

Every one charged with any offence against this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 303.

BREAKING SHOP, ETC. AND COMMITTING OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who either by day or

night breaks and enters and commits any indictable offence in any school-house shop warehouse or counting house or any building within the curtilage of a dwelling-house but not so connected therewith as to form part of it under the provisions hereinbefore contained.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 304.

BREAKING SHOP, ETC. WITH INTENT TO COMMIT OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who either by day or night breaks and enters any of the buildings mentioned in the last preceding section with intent to commit any indictable offence therein.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 305.

* BEING FOUND IN DWELLING-HOUSE BY NIGHT.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who enters or is found in any dwelling-house by night with intent to commit any indictable offence therein.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 306.

† BEING FOUND ARMED WITH INTENT TO BREAK A DWELLING-HOUSE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who is found

(a) Armed with any dangerous or offensive weapon or instrument whatever by day† with intent to break or enter into any dwelling-house, and to commit any indictable offence therein; or

(b) Armed as aforesaid by night, with intent to break into any building whatsoever, and to commit any indictable offence therein.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 307.

FOUND DISGUISED OR IN POSSESSION OF HOUSEBREAKING INSTRUMENTS.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to five years' penal servitude, who is found

(a) Having in his possession by night without lawful excuse (the proof of which excuse shall lie upon him) any key picklock crow jack bit or other instrument of housebreaking; or

(b) Having in his possession by day any such instrument with intent to commit any indictable offence; or

(c) § Having his face masked or blackened, or being otherwise disguised by night without lawful excuse (the proof whereof shall lie on him); or

(d) § Having his face masked or blackened, or being otherwise disguised by day with intent to commit any indictable offence.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 308.

OFFENCE AFTER PREVIOUS CONVICTION IN CERTAIN CASES.

Every one who after a previous conviction for any offence involving dishonesty is convicted of any offence against sections 299, 302, 304, 305, 306, or 307, shall be liable to fourteen years' penal servitude.

* 24 & 25 Vict. c. 96, s. 54, which fixes the maximum punishment at seven years.

† As to this and the following section see 24 & 25 Vict. c. 96, s. 58.

‡ This sub-section extends the law.

§ These are extensions of the existing law. It is thought that being disguised by night affords sufficient *prima facie* evidence of a criminal intent.

PART XXIX.
RECEIVING, &c.

SECTION 309.

* RECEIVING PROPERTY UNLAWFULLY OBTAINED—RULE OF EVIDENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who receives anything obtained by any offence punishable upon indictment under this or any other Act in force for the time being, knowing that thing to have been dishonestly obtained, for who receives in England anything obtained elsewhere than in England, or who receives in Ireland anything obtained elsewhere than in Ireland, by any act which if done in England or Ireland would have been an offence punishable upon indictment under this or any other statute in force for the time being, knowing such thing to have been dishonestly obtained.

‡ Whenever any person is being proceeded against for an offence under this section, the following matters may be given in evidence to prove guilty knowledge; that is to say,

(a) The fact that other property was at any time found in the defendant's possession, which property had been obtained by some such offence as aforesaid, or by any other offence of the same nature against the law in force at the time, within twelve months of the time when the alleged offender was first charged before a magistrate with the offence for which he is being tried. This fact may be proved at any stage of the proceedings at which evidence may be given for the prosecution.

(b) The fact that within five years of the time when the alleged offender was first charged before a magistrate with the offence for which he is being tried he was convicted of any offence of a fraudulent or dishonest nature. This fact may not be proved unless seven days' notice in writing has been given, either before or after the indictment is found, to the alleged offender that proof of such previous conviction is intended to be given; nor until evidence has been given that the property in respect of which the alleged offender is being tried was found in his possession.

Every one shall be liable upon conviction to penal servitude for life who commits any offence under this section after a previous conviction for of any offence involving dishonesty.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 310.

WHEN RECEIVING IS COMPLETE.

The act of receiving anything stolen or unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it.

SECTION 311.

RECEIVING AFTER RESTORATION TO OWNER.

When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence, although the receiver may know that the thing had previously been dishonestly obtained.

SECTION 312.

§ CORRUPTLY TAKING REWARD FOR RESTITUTION OF GOODS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who corruptly takes|| or bargains for any reward, directly or indirectly, in consideration that he will

* This section extends the existing law by putting the receiving of things obtained by any indictable offence on the same footing as receiving stolen property. It also makes the punishment uniform.

† 24 & 25 Vict. c. 96, s. 114. extended.

‡ 34 & 35 Vict. c. 112, s. 19.

§ 24 & 25 Vict. c. 96, s. 101.

|| These words are new.

help any person to recover anything obtained by any indictable offence under this or any other Act in force for the time being; unless he shall have used all due diligence to cause the offender to be brought to trial for the same.

PART XXX.

FORGERY.*

* See the Report, p. 29.

SECTION 313.

DEFINITION OF DOCUMENT.

A document means in this part any paper, parchment, or other material used for writing or printing, marked with matter capable of being read, but it does not include trade marks on articles of commerce, or inscriptions on stone or metal, or other things of the same kind.

SECTION 314.

“BANK NOTE” AND “EXCHEQUER BILL” DEFINED.

“Bank note” includes all negotiable instruments issued by or on behalf of any person or persons, body corporate, or company carrying on the business of banking in any part of the world, or issued by the authority of any foreign prince or state or government, or any governor or other authority lawfully authorised thereto in any of Her Majesty’s dominions beyond the seas, and intended to be used as equivalent to or as a substitute for money, either immediately upon their issue or at some time subsequent thereto, and all bank bills and bank post bills.

“Exchequer bill” includes Exchequer bonds and debentures and Treasury bills.

SECTION 315.

FALSE DOCUMENT DEFINED.

The expression “false document” means

(a) A document the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorise the making thereof, or which, though made by or by the authority of the person who purports to make it, is falsely dated as to time or place of making where either is material; or

(b) A document the whole or some material part of which purports to be made by or on behalf of some person who did not in fact exist; or

(c) A document which is made in the name of an existing person, either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person real or fictitious, other than the person who makes or authorises it.

It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence.

SECTION 316.

FORGERY DEFINED.

Forgery is the making of a false document knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine, whether within Her Majesty’s dominions or not, or that some person should be induced by the belief that it is genuine to do or refrain from doing anything whether within Her Majesty’s dominions or not.

Making a false document includes altering a genuine document in any material part, and making any material addition to it or adding to it any false date attestation seal or other thing which is material, or by making any material alteration in it either by erasure obliteration removal or otherwise.

SECTION 317.**FORGERY WHEN COMPLETE.**

Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced by the belief that it is genuine to do or refrain from doing anything.

Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine.

SECTION 318.*** COUNTERFEITING PUBLIC SEALS AND FORGERY OF DOCUMENTS OF STATE.**

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life, who unlawfully makes or counterfeits any public seal in use for the time being for the United Kingdom or any part thereof, or the public seal of any dominion, possession, or colony of Her Majesty, or the impression of any such seal or forges the Sign Manual of Her Majesty to any document, or forges any document under any such seal or under the Sign Manual.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

* For this and the following sections, see 24 & 25 Vict. c. 98.

SECTION 319.**† FORGERY OF JUDICIAL DOCUMENTS.**

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who forges

(a) Any record of any Court of justice, or any document whatever belonging to or issuing from any Court of justice, or being or forming part of any proceeding therein; or

(b) Any certificate office copy or certified copy or other document which by any statute in force for the time being is made admissible in evidence; or

(c) The signature of any officer of State or law officer of the Crown or any other person to any document which by the law or usage at the time in force, any Court of justice or any officer or any gaoler might act; or

(d) The signature or seal of any magistrate to any document which he is required or authorised by law to sign or seal, or any such document; or

(e) Any entry in any register or book kept under the provisions of any law in or under the authority of any Court of justice or magistrate acting as such.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

† 24 & 25 Vict. c. 98, s. 27, extended.

SECTION 320.**FORGERY IN REGISTRATION OF TITLE.**

‡ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges

(a) Any entry in any register or book or any memorial or other document kept or lodged under any Act in force for the time being for the registering of deeds or the recording or declaring of titles to land or declaring lands chargeable with debentures, as a record that any deed has been registered or any title recorded or declared, or that any lands are declared chargeable or are charged with any debenture; or

(b) Any document required for the purpose of procuring the registering of any deed or the recording or declaring of any such title, or the declaring that any lands are so chargeable or charged; or

(c) Any document which is made under any such Act evidence of the registering or recording or declaring of any such deed or title or chargeability or charge; or

(d) Any document which is made by any such Act evidence affecting the title to land.

‡ See 38 & 39 Vict. c. 87, and 28 & 29 Vict. c. 88 (Ireland). This section is drawn so as to apply to similar Acts which may be passed hereafter.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 321.

FORGERY OF ENTRIES IN REGISTERS OF BIRTHS, ETC.

* 24 & 25 Vict. c. 98, s. 36; 37 & 38 Vict. c. 88, s. 40. Some of the statutes in force do not extend to Ireland. The section is so drawn as to apply to Ireland if the Acts are extended.

* Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges

(a) Any register of births baptisms marriages deaths or burials authorised or required by the law in force for the time being to be kept; or

(b) Any copy of any such register required by the law in force for the time being to be transmitted by or to any registrar or other officer; or

(c) Any certified copy of any such last-mentioned register as aforesaid or any part thereof, or any entry in any such register or copy relating to any birth baptism marriage death or burial.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 322.

FORGERY OF CERTIFIED COPIES OF ENTRIES IN REGISTERS OF BIRTHS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who forges any certified copy of any entry in or extract from any such register as aforesaid.

Every one charged with any offence against this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 323.

† FORGERY OF MARRIAGE LICENSES.

† 24 & 25 Vict. c. 98, s. 35.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who forges

(a) Any certificate required by any Act in force for the time being for the celebration of marriage; or

(b) Any license for the celebration of marriage which may be given under any law in force for the time being.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 324.

FORGERY OF DOCUMENTS KEPT BY PUBLIC AUTHORITY.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction to two years' imprisonment with hard labour, who forges

(a) Any certificate or license which any person is authorised or required by any Act in force for the time being to give; or

(b) Any entry in any register or book which any person is authorised by any Act in force for the time being to keep.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 325.

‡ FORGERY OF TESTAMENTARY DOCUMENTS.‡

‡ 24 & 25 Vict. c. 98, s. 21.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges any will, codicil, or other testamentary document either of a dead or of living person, or any probate or letters of administration, whether with or without the will annexed.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 326.

§ FORGERY OF DOCUMENTS OF TITLE TO STOCK.

§ 24 & 25 Vict. c. 98, ss. 2 and 5, and 33 & 34 Vict. c. 58, s. 3.

§ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges

(a) Any transfer of any share or interest in any stock, annuity, or public fund of the United Kingdom or any part thereof, or of any dominion possession or colony of Her Majesty, or of any foreign state or country; or

(b) Any transfer of any share or interest in the debt of any public body company or society whatever, or of any share or interest in the capital stock of any company or society whatever; or

(c) Any power of attorney or other authority to transfer any such interest or share; or

(d) Any entry in any book or register, or any certificate coupon or share warrant or other document which by any law in force or any recognised practice existing at the time is evidence of the title of any person to any such stock, interest, or share, or to any dividend or interest payable in respect thereof; or

(e) Any Exchequer bill; or

(f) Any endorsement or assignment of any document hereinbefore mentioned; or

(g) Any receipt or certificate for interest accruing on any such document.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 327.

FORGERY OF DOCUMENTS OF TITLE TO LAND.*

* 24 & 25 Vict. c. 98,
ss. 20, 30.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges any document containing evidence of or forming the title or any part of the title of any person to any land or hereditament, or to any interest in or arising out of or to any charge upon any land or hereditament, or evidence of the creation, transfer, or extinction of any such interest or charge, or any court roll, or copy of court roll.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 328.

FORGERY OF BANK NOTES AND OTHER NEGOTIABLE INSTRUMENTS.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges any bank note or any bill of exchange, promissory note, or cheque, or any acceptance endorsement or assignment thereof. † 24 & 25 Vict. c. 98,
s. 12.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 329.

FORGERY OF BONDS, ETC. ‡

‡ 24 & 25 Vict. c. 98,
ss. 20, 23, 26 extended.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges

(a) Any document which is evidence of title to any portion of the debt of any dominion, colony, or possession of Her Majesty, or of any foreign state; or

(b) Any deed bond or writing obligatory, or any warrant order or other security for money or payment of money, whether negotiable or not; or

(c) Any accountable receipt or acknowledgment of the deposit, receipt, or delivery of money or goods; or

(d) Any endorsement or assignment of any of the documents aforesaid.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 330.

FORGERY OF MERCANTILE DOCUMENTS.

§ Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who forges § 24 & 25 Vict. c. 98,
s. 23. extended.

(a) Any bill of lading, charter-party, policy of insurance, or any shipping document accompanying a bill of lading; or

(b) Any India warrant, dock warrant, dock keeper's certificate, delivery order, or warrant for the delivery of goods or of any valuable thing; or

(c) Any other document used in the ordinary course of business as proof of the possession or control of goods, or as authorising, either by indorsement or delivery, the possessor of such document to transfer or receive any goods; or

(d) Any acceptance, endorsement, or assignment of any such document.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 331.

FORGERY OF CONTRACTS AND POWERS OF ATTORNEY.

* New. See the Report, p. 29.

* Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who forges

(a) Any document which, either by itself or with others, amounts to a contract, or is evidence of a contract; or

(b) Any power or letter of attorney, or mandate.

Every one charged with an offence under this section shall be bailable at discretion.

SECTION 332.

FORGERY OF ORDERS FOR GOODS AND RECEIPTS, ETC.

† 24 & 25 Vict. c. 98, s. 23. Maximum punishment reduced from penal servitude for life.

† Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who forges

(a) Any authority or request for the payment of money, or for the delivery of goods, or of any note, bill, or valuable security; or

(b) Any acquittance or discharge, or any voucher of having received any goods money note bill or valuable security, or any instrument which is evidence of any such receipt.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 333.

† FORGERY OF CERTIFICATES, TESTIMONIALS, ETC.

† It is doubtful whether the cases provided for in this section would all amount to forgery at common law. None would be punishable with hard labour.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who forges any document with intent to obtain for any person any employment situation credit or trust, or with intent to induce the public or any person to believe that any person belongs to any profession to which he does not belong, or holds any position which he does not hold.

SECTION 334.

§ New.

§ FORGERY OF DOCUMENTS OF EVIDENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who forges any document whatever with intent that such false document shall be given in evidence as genuine in any judicial proceeding.

SECTION 335

|| New.

|| SENDING FALSE TELEGRAM.

Every one shall be guilty of an indictable offence who knowingly and with intent to defraud causes or procures any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority, with intent that such telegram should be acted on as being sent by that person's authority, and shall be liable upon conviction thereof to the same punishment as if he had forged a document to the same effect as that of the telegram.

SECTION 336.*** GENERAL PROVISION.**

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who forges any document whatever, meaning thereby to defraud the public or any person, or to prevent the course of justice, or to injure any person or the character of any person, or to deprive any person of or prevent his obtaining any office employment situation trust legacy devise credit money or valuable thing.

* New.

It is doubtful whether all these cases would amount to forgery at common law. None of them would be punishable with hard labour.

SECTION 337.**† PROCURING EXECUTION OF DOCUMENT BY FALSE PRETENCE.**

Every one who procures the execution of any document by any person, by falsely and fraudulently pretending that the contents thereof are different from what they really are, shall be guilty of an indictable offence, and shall be liable upon conviction thereof to the same punishment as if he had forged that document.

Every one charged with an offence under this section shall be bailable at discretion.

† This seems not to be forgery by the present law. See *R. v. Collins*, 2 Mo. and Rob. 461.

SECTION 338.**USING FORGED DOCUMENTS.**

Every one shall be guilty of an indictable offence who, knowing a document to be forged, fraudulently uses or acts upon it, or attempts to use or act upon it, or causes or attempts to cause any person to use or act upon it as if it were genuine, and shall be liable upon conviction to the same punishment as if he had forged that document.

It is immaterial whether the document was forged in England or Ireland or elsewhere.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 339.**‡ PURCHASING OR POSSESSING FORGED BANK NOTES.**

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who without lawful authority or excuse (the proof whereof shall lie on him) purchases or receives from any person, or has in his custody or possession, any forged bank note whether complete or not, knowing it to be forged; and every such offender shall be liable upon conviction thereof to the same punishment as if he had forged the same.

Every one charged with any offence under this section may be arrested without warrant and shall be bailable at discretion.

‡ 24 & 25 Vict. c. 98, s. 13.

SECTION 340.**§ DRAWING BILLS ETC. WITHOUT AUTHORITY.**

Every one shall be guilty of an indictable offence who without colour of lawful authority makes or executes draws signs accepts or endorses in the name or on the account of another person by procuration or otherwise any document, or makes use of or utters any such document, knowing it to be so made executed signed accepted or endorsed, and shall upon conviction be liable to the same punishment as if he had forged such document.

Every one charged with an offence under this section shall be bailable at discretion.

§ 24 & 25 Vict. c. 98, s. 24.

SECTION 341.**|| USING PROBATE, ETC. OBTAINED BY FORGERY OR FALSE OATHS.**

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who

(a) Demands receives obtains or causes or procures to be delivered or paid to any person any thing whatever, under upon or by virtue of any probate

|| 24 & 25 Vict. c. 98, s. 38 (part).

or letters of administration, knowing the will, codicil, or testamentary writing on which such probate or letters of administration were obtained to be forged, or knowing the probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit; or

(b) Endeavours to do any such thing as aforesaid.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

PART XXXI.

PREPARATIONS FOR FORGERY AND OFFENCES RESEMBLING FORGERY.

* SECTION 342.

BANK PAPER, EXCHEQUER BILL PAPER, ETC. DEFINED.

In this part the following expressions are used in the following senses:

“Exchequer bill paper” means any paper provided by or under the directions of the Commissioners of Inland Revenue or of the Treasury for the purpose of being used as Exchequer bills.

“Rupee paper” means any paper provided by or under the directions of the Secretary of State for India for the purpose of being used for bills or notes expressed in rupees.

“Revenue paper” means any paper provided by or under the directions of any Department of the Government for the purpose of being used for stamps, licenses, or permits, or any purpose whatever connected with the public revenue,

“Bank of England paper” and “Bank of Ireland paper” mean

(a) Any paper having visible in the substance thereof the words “Bank of England,” or “Bank of Ireland,” or any part of such words, or anything intended to resemble or pass for the same:

(b) Any paper having visible in the substance thereof curved or waving bar lines, or laying wire lines in a waving or curved shape, so as to have the watermark of the paper used for the issue of bank notes by the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, or any number, sum, or amount expressed in a word or words, or any figure device ornament distinction or character peculiar to and appearing in the substance of the paper used by the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, for bank notes issued by either of such Banks, or so prepared as to resemble any such paper, whether such resemblance is produced in the manufacture thereof or by some subsequent and independent process.

SECTION 343.

† INSTRUMENTS FOR FORGING BANK PAPER, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who without lawful authority or excuse (the proof whereof shall lie on him)

(a) Makes, begins to make, uses, or knowingly has in his possession any machinery or instrument or material for making Exchequer bill paper, Rupee paper, Revenue paper, Bank of England paper, Bank of Ireland paper, or paper in the substance of which visibly appears in whole or in part the name or firm of any body corporate, company, or person carrying on the business of banking, or any word or name resembling or intended to resemble or pass for the same; or

(b) By any contrivance causes to appear visible in or on any paper any word, name, or device intended to resemble any distinguishing mark in the substance of Exchequer bill paper, Revenue paper, Bank of England paper, Bank of Ireland paper, or paper used by any such body corporate, company, or person as aforesaid for any bank note.

Every person charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

* As to sections 342-346, see 24 & 25 Vict. c. 98. ss. 9, 10, and 11, 14, 15, 16, 17, 18, 19, and 29 & 30 Vict. c. 25. ss. 15, 20, and 21.

† 24 & 25 Vict. c. 98. ss. 14, 18.

SECTION 344.***ENGRAVING PLATES FOR FORGED NOTES.*** 24 & 25 Vict. c. 98,
ss. 16, 17.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who without lawful authority or excuse (the proof whereof shall lie on him),

(a) Engraves or makes upon any plate or material whatever any Exchequer bill or bank note, or any part thereof respectively, or anything purporting to be or intended or apparently intended to resemble the whole or any part of any Exchequer bill or bank note, or any figure, device, or ornament thereon; or

(b) Uses any such plate or material, or any such instrument or contrivance for printing any part of any such Exchequer bill or bank note, or figure, device, or ornament thereon; or

(c) Knowingly has in his custody or possession any such plate or other instrument as aforesaid.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 345.**† POSSESSION, ETC. OF PAPER PREPARED FOR FORGED NOTES.**† 24 & 25 Vict. c. 98,
s. 6, 18.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to fourteen years' penal servitude, who without lawful authority or excuse (the proof whereof shall lie on him) makes, uses, sells, exposes to sale, utters, or disposes of, or puts off, or knowingly has in his possession

(a) Any Exchequer bill paper, Rupee paper, Revenue paper, Bank of England paper, or Bank of Ireland paper, or any paper intended to resemble either of them, or any paper whatsoever having visible in the substance thereof the name or firm, or any part of the name or firm of any body corporate, company, or person carrying on the business of banking, or anything of any kind intended to resemble or pass for any such name or firm; or

(b) Any paper upon which is written or printed the whole or any part of any Exchequer bill, or of any bank note, or any figure, device, or ornament on Exchequer bills or bank notes.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 346.**‡ ENGRAVING PLATES FOR FORGING FOREIGN BONDS, ETC.**‡ 24 & 25 Vict. c. 98,
s. 19.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to fourteen years' penal servitude, who without lawful authority or excuse (the proof whereof shall lie on him),

(a) Engraves or makes upon any plate or material whatsoever anything intended to resemble the whole or any distinguishing part of any bond or undertaking for the payment of money used by any dominion colony or possession of Her Majesty, or by any foreign prince or state, or by any body corporate, or other body of the like nature, whether within Her Majesty's dominions or without; or

(b) Uses any such plate or other material for printing the whole or any part of such bond or undertaking; or

(c) Knowingly offers utters disposes of or puts off or has in his custody or possession any paper upon which any part of any such bond or undertaking has been printed.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 347.**§ OFFENCES RELATING TO STAMPS.**§ 33 & 34 Vict. c. 98,
s. 18.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who

(a) Forges any stamp, whether impressed or adhesive, used for the purposes of revenue by the Government of the United Kingdom, or by the Government of any possession or colony of Her Majesty, or by any foreign prince or state; or

(b) Knowingly sells or exposes for sale or utters or uses any such forged stamp; or

(c) Without lawful excuse (the proof whereof shall lie on him) makes or has knowingly in his possession any die or instrument capable of making the impression of any such impressed stamp, or any such adhesive stamp as aforesaid; or

(d) Fraudulently cuts tears or in any way removes from any material any stamp used for purposes of revenue by the Government of the United Kingdom, with intent that any use should be made of such stamp or of any part thereof; or

(e) Fraudulently mutilates any such stamp as last aforesaid with intent that any use should be made of any part of such stamp; or

(f) Fraudulently fixes or places upon any material, or upon any such stamp as last aforesaid, any stamp or part of a stamp, which, whether fraudulently or not, has been cut, torn, or in any way removed from any other material or out of or from any other stamp; or

(g) Fraudulently erases or otherwise, either really or apparently, removes from any stamped material any name, sum, date, or other matter or thing whatsoever thereon written, with the intent that any use should be made of the stamp upon such material; or

(h) Knowingly and without lawful excuse (the proof whereof shall lie upon him) has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise, either really or apparently, removed.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 348.

* DEFACING REGISTERS OF BIRTHS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable, upon conviction thereof, to penal servitude for life, who

(a) Knowingly and unlawfully destroys defaces or injures, or permits to be destroyed defaced or injured, any register of births baptisms marriages deaths or burials now or hereafter required or authorised by law to be kept in England or Ireland, or any copy of such register, or any part thereof now or hereafter required by law to be transmitted to any registrar or other officer; or

(b) Unlawfully inserts or knowingly permits to be inserted in any such register, or any such copy thereof or any part thereof, any entry known by him to be false of any matter relating to any birth, baptism, marriage, death, or burial.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 349.

OTHER OFFENCES AS TO REGISTERS OF BIRTH, ETC.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to fourteen years' penal servitude, who

(a) Being a person authorised or required by law to give any certified copy of any entry in any such register as in the last preceding section mentioned, certifies any writing to be a true copy or extract knowing it to be false, or knowingly utters any such certificate; or

(b) Unlawfully and for any fraudulent purpose takes any such register or certified copy from its place of deposit, or conceals it; or

(c) Being a person having the custody of any such register or certified copy permits it to be so taken or concealed as aforesaid.

* As to this and the following sections, see 24 & 25 Vict. c. 98. ss. 36, 37. These sections include all offences relating to registers, separating forgery from defacing, &c.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 350.

UTTERING FALSE CERTIFICATES AS TO BIRTH, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who

(a) Being by law now or hereafter required to certify that any entry has been made in any such register as in the two last preceding sections mentioned, makes such certificate knowing that such entry has not been made; or

(b) Being by any law now or hereafter in force required to make a certificate or declaration concerning any particular required for the purpose of making entries in such register, knowingly makes such certificate or declaration containing a falsehood; or

(c) Forges or utters, knowing it to be forged, any such certificate or document.

Every one charged with an offence under this section shall be bailable at discretion.

SECTION 351.

* UTTERING FALSE CERTIFICATES OF RECORDS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who * 24 & 25 Vict. c. 98,
ss. 28, 29.

(a) Being the clerk of any court or other officer having custody of the records of any court, or being the deputy of any such officer, knowingly and wilfully utters a false copy or certificate of any record; or

(b) Not being such officer or deputy, fraudulently knowingly and wilfully signs or certifies any copy or certificate of any record, or any copy of any certificate as if he were such officer or deputy.

SECTION 352.

FORGING OTHER FALSE CERTIFICATES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who

(a) Being an officer required or authorised by law to make or issue any certified copy of any document or of any extract from any document, knowingly and wilfully certifies as a true copy of any document or of any extract from any such document any writing which he knows to be untrue in any material particular; or

(b) Not being such officer as aforesaid, fraudulently knowingly and wilfully signs or certifies any copy of any document or of any extract from any document as if he were such officer.

SECTION 353.

† MAKING FALSE ENTRIES IN BOOKS RELATING TO PUBLIC FUNDS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who with intent to defraud † 24 & 25 Vict. c. 98,
s. 5.

(a) Makes any untrue entry or any alteration in any book of account kept by the Governor and Company of the Bank of England or the Governor and Company of the Bank of Ireland in which books are kept the accounts of the owners of any stock annuity or other public fund transferable for the time being at either of the said banks, or who in any manner wilfully falsifies any of the accounts of any such owners in any of the said books; or

(b) Makes any transfer of any share or interest of or in any stock annuity or other public fund transferable for the time being at either of the said banks, in the name of any person other than the owner of such share or interest.

SECTION 354.

* CLERKS ISSUING FALSE DIVIDEND WARRANTS.

* 24 & 25 Vict. c. 98,
s. 6.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who, being in the employment of the Governor and Company of the Bank of England or the Governor and Company of the Bank of Ireland, knowingly and with intent to defraud, makes out or delivers any dividend warrant or any warrant for the payment of any annuity, interest, or money payable at either of the said banks for an amount greater or less than that to which the person on whose account such warrant is made out is entitled.

SECTION 355.

† TRADE MARKS DEFINED.

† 25 & 26 Vict. c. 88,
s. 1.

A trade mark is

(a) Any word or mark of any kind whatever lawfully used by any person to denote anything to be of the manufacture, production, workmanship, or merchandise of that person, or to be a thing of any particular description made or sold by that person; or

(b) Any word or mark of any kind whatever, which, in pursuance of any statute in force for the time being relating to registered designs, is to be put or placed upon or attached to anything during the existence of any copyright or other sole right acquired under the provisions of any statute.

SECTION 356.

‡ FORGING TRADE MARKS.

‡ 25 & 26 Vict. c. 88,
ss. 2, 3, 13. Sect. 2 contains a provision empowering the court to direct forfeited articles to be destroyed or otherwise dealt with. This could not in practice be acted upon by a court of criminal jurisdiction.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who with intent to defraud or to enable another to defraud,

(a) Forges any trade mark, or makes any imitation of any trade mark sufficiently resembling such trade mark to be calculated to deceive; or

(b) Knowingly uses a trade mark genuine or forged on any chattel or on any vessel case cover wrapper band reel ticket label, or other thing containing or connected with that chattel, so that the trade mark so used indicates that the chattel is such as is designated by such trade mark when it is not.

Every one who commits any offence against this section shall, in addition to the punishment hereinbefore mentioned, forfeit to Her Majesty everything in his possession or power to which any such trade mark or counterfeit trade mark is applied, and every instrument in his possession or power for applying any such trade mark or counterfeit trade mark.

SECTION 357.

§ IMITATING AUTHORISED MARKS.

§ *Ex.gr.* The Goldsmiths' hall-marks of gold and silver. 7 & 8 Vict. c. 22. s. 2, under which Act the maximum punishment is 14 years.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who fraudulently forges, or imitates in a manner calculated to deceive, any mark which under any statute or any other law in force for the time being is impressed upon or otherwise made upon or affixed to any chattel, or upon or to anything in which such chattel is contained for the purpose of denoting the quality of such chattel or the fact that it has been tested or examined and approved by or under the authority of any public body, or by any public officer.

SECTION 358.

|| IMITATING CUSTOMARY MARKS.

|| *New. e.g.* Cork butter is marked under the authority of a committee of merchants; their legal power to mark it is a matter of dispute, but there is no doubt that the mark is recognised and has a value in the market.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who fraudulently forges or imitates in a manner calculated to deceive any mark impressed or otherwise made upon or affixed to any chattel, or upon or to anything in which such chattel is contained, which mark is by recognised practice understood to denote that the thing marked has been examined and certified to be

of a particular quality by any particular officer or person, whether such officer or person be authorised by law or not so to certify.

PART XXXII.
PERSONATION.

SECTION 359.

* PERSONATION.

* 37 & 38 Vict. c. 36,

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life: who falsely and deceitfully personates any person, or the heir executor or administrator wife widow next of kin or relation of any person, with intent fraudulently to obtain any land estate chattel money valuable security or property.

s. 1.

SECTION 360.

PERSONATION OF CERTAIN PERSONS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, † who falsely and deceitfully personates

† 24 & 25 Vict. c. 98,
s. 3.

any owner of any share or interest of or in any stock, annuity, or other public fund transferable at the Bank of England or the Bank of Ireland; or

any owner of any share or interest of or in the debt of any public body or of or in the debt or capital stock of any body corporate, company, or society established by charter or by virtue of an Act of Parliament; or

any owner of any dividend, coupon, certificate, or money payable in respect of any such share or interest as aforesaid; or

any person duly authorised by any power of attorney to transfer any such share, or interest, or to receive any dividend, coupon, certificate or money, on behalf of the person entitled thereto;

and thereby transfers or endeavours to transfer any share or interest belonging to such owner, or thereby obtains or endeavours to obtain, as if he were the true and lawful owner or were the person so authorised by such power of attorney, any money due to any such owner or payable to the person so authorised, or any certificate, coupon, or share warrant, or other document, which by any law in force, or any usage existing at the time, is deliverable to the owner of any such stock or fund, or to the person authorised by any such power of attorney.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 361.

‡ ACKNOWLEDGING RECOGNIZANCE, ETC. IN FALSE NAME.

‡ 24 & 25 Vict. c. 98,
s. 34.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who without lawful authority or excuse (the proof of which shall lie on him) acknowledges in the name of any other person before any court judge or other person lawfully authorised in that behalf any recognizance or bail, or any cognovit actionem, or consent for judgment, or judgment, or any deed or other instrument.

PART XXXIII.
§ OFFENCES RELATING TO THE COIN.

§ See with regard to
this Part, 24 & 25 Vict.
c. 99.

SECTION 362.

INTERPRETATION OF TERMS.

In this chapter the following words and expressions are used in the following senses:—

“Current” applied to coin means coin coined in any of Her Majesty’s mints, or lawfully current by virtue of any proclamation or otherwise in any part of Her Majesty’s dominions, whether within the United Kingdom or without.

“Copper” applied to coin includes bronze or mixed metal and every other kind of coin inferior in value to silver.

“Counterfeit coin” means coin not genuine but resembling or apparently intended to resemble or pass for genuine coin, and includes genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination, and* genuine coin clipped filed or otherwise diminished in size or weight and altered or prepared so as to conceal such clipping filing or diminution,* and coin in part genuine and in part counterfeit, and counterfeit coin in an unfinished state.

* This is new, to meet the doubt raised in the recent case of *Reg. v. Hermann*.

“Gild” and “silver” as applied to coin include casing with gold or silver respectively, and washing or colouring by any means whatsoever with any wash or materials capable of producing the appearance of gold or silver respectively.

“Utter” includes “tender” and “put off.”

“Having in possession,” when used with reference to any person, includes not only having in his own personal possession, but also

- (a) Having in the actual possession or custody of any other person; and
- (b) Having in any place (whether occupied by himself or not) for the use or benefit of himself or of any other person.

SECTION 363.

† COINING.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who

- (a) Makes or begins to make any counterfeit gold or silver current coin; or
- (b) Gilds or silvers any counterfeit current coin; or
- (c) Gilds silvers files or alters any current silver or copper coin with intent to make it resemble or pass for current gold or silver coin respectively.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

† 24 & 25 Vict. c. 99, ss. 2, 3.

SECTION 364.

‡ DEALING IN AND IMPORTING COUNTERFEIT CURRENT COIN.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who, without lawful authority or excuse (the proof whereof shall lie on him),

- (a) Buys sells receives pays or puts off any counterfeit gold or silver current coin at a lower rate than it imports or was apparently intended to import, or offers to do any such thing; or
- (b) Imports or receives into the United Kingdom from beyond the seas any counterfeit current coin knowing it to be counterfeit.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

‡ 24 & 25 Vict. c. 99, ss. 6, 7.

SECTION 365.

§ MAKING INSTRUMENTS FOR COINING.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to penal servitude for life, who, without lawful authority or excuse (the proof of which shall lie upon him) makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his possession or custody

- (a) Any puncheon counter-puncheon matrix stamp die pattern or mould, in or upon which is made or impressed, or which will make or impress, or which is adapted and intended to make or impress the figure stamp or apparent resemblance of both or either of the sides of any current coin, or of any coin of any foreign prince state or country, or any part of either of such sides knowing the same to be such or to be so adapted and intended as aforesaid; or

§ As to this and the following section, see 24 & 25 Vict. c. 99, ss. 24 and 25.

(b) Any edger, edging or other tool, collar instrument or engine, adapted and intended for marking coin round the edges with letters, milling, grainings, or other marks or figures apparently resembling those on the edges of any such coin as aforesaid, knowing the same to be so adapted, and intended as aforesaid; or

(c) Any press for coinage, or any machine engine or tool for cutting round blanks out of gold silver or other metal, or mixture of metals, knowing such press machine or tool to have been used, or to be intended to be used for or in order to counterfeit any such coin as aforesaid.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 366.

TAKING INSTRUMENTS OR BULLION FROM THE MINT.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who, without lawful authority or excuse (the proof whereof shall lie on him), knowingly conveys out of any of Her Majesty's mints any such thing as is mentioned in the last preceding section, or any useful part thereof, or any coin bullion metal or mixture of metals.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 367.

PREPARING METAL FOR COINING.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who

(a) Gilds or silvers any piece of metal or mixture of metals whatever of a fit size or figure to be coined, with intent that it shall be coined into counterfeit current gold or silver coin; or

* (b) Makes any piece of metal or mixture of metals whatever into a fit size or figure to facilitate the coining therefrom of any counterfeit gold or silver current coin, with intent that thereby counterfeit gold or silver current coin should be made.

* New.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 368.

† CLIPPING CURRENT GOLD AND SILVER COIN.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, who impairs diminishes or lightens any current gold or silver coin, with intent that when so dealt with it may pass as current gold or silver coin.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

† 24 & 25 Vict. c. 99,
ss. 4 and 5.

SECTION 369.

POSSESSING CLIPPINGS, ETC. OF CURRENT COIN.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who unlawfully has in his custody or possession any filings or clippings, gold or silver bullion, or gold or silver in dust or solution, obtained by impairing current gold or silver coin, knowing it to have been so obtained.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 370.

‡ OFFENCES RELATING TO CURRENT COPPER COIN.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who

‡ 24 & 25 Vict. c. 99,
s. 14.

- (a) Makes or begins to make any counterfeit current copper coin; or
 (b) Without lawful authority or excuse (the proof whereof shall lie upon him) knowingly makes or mends, or begins or proceeds to make or mend, or buy or sell, or have in his custody or possession, any instrument, tool, or engine adapted and intended for counterfeiting any current copper coin; or buys, sells, receives, pays, or puts off any counterfeit copper coin at a lower rate or value than the same imports or was apparently intended to import.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 371.

* OFFENCES RELATING TO FOREIGN GOLD AND SILVER COIN.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, who

(a) Makes or begins to make counterfeit gold or silver coin of any foreign prince state or country; or

(b) Gilds or silvers any counterfeit coin of any foreign prince state or country; or

† New.

(c) † Makes any piece of metal or mixture of metals whatever into a fit size or figure to facilitate the coining therefrom of any such counterfeit gold or silver coin, with intent that thereby counterfeit gold or silver coin should be made; or

(d) Gilds or silvers any piece of metal or mixture of metals whatever of a fit size or figure to facilitate the coining therefrom of any such counterfeit gold or silver coin with intent that thereby counterfeit gold or silver coin should be made; or

(e) Brings or receives into the United Kingdom without lawful authority or excuse (the proof whereof shall lie on him), counterfeit gold or silver coin of any foreign prince state or country, knowing the same to be counterfeit.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 372.

‡ COINING FOREIGN COPPER COIN.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who makes any counterfeit copper coin of any foreign prince, state, or country.

SECTION 373.

POSSESSION OF ONE PIECE OF COUNTERFEIT CURRENT GOLD OR SILVER COIN.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to one year's imprisonment with hard labour, who has in his possession any counterfeit current gold or silver coin, knowing such coin to be counterfeit, and with intent to utter it.

SECTION 374.

§ POSSESSION OF THREE PIECES OF COUNTERFEIT CURRENT GOLD OR SILVER COIN.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to five years' penal servitude, who has in his possession three or more pieces of counterfeit current gold or silver coin, knowing such coin to be counterfeit, and with intent to utter it.

SECTION 375.

|| UTTERING COUNTERFEIT CURRENT GOLD OR SILVER COIN.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who utters any counterfeit current gold or silver coin knowing it to be counterfeit.

Every one charged with any offence under this section may be arrested without warrant.

* 24 & 25 Vict. c. 99.
ss. 18, 19.

† 24 & 25 Vict. c. 99,
s. 22.

§ 24 & 25 Vict. c. 99,
s. 11.

|| 24 & 25 Vict. c. 99,
s. 9.

SECTION 376.

* UTTERING AFTER PREVIOUS UTTERING.

* 24 & 25 Vict. c. 99,
s. 10.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to two years' imprisonment with hard labour, who

(a) Utters any counterfeit current gold or silver coin knowing it to be counterfeit, and having at the time of such uttering in his custody or possession any other piece of counterfeit gold or silver current coin; or

(b) On the day of such uttering as aforesaid, or within ten days afterwards exclusive of the day of uttering such coin, utters any other counterfeit gold or silver coin.

SECTION 377.

† EXPORTING COUNTERFEIT CURRENT COIN.

† 24 & 25 Vict. c. 99,
s. 8.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who without lawful authority or excuse (the proof whereof shall lie on him) exports or puts on board any vessel or boat for the purpose of being exported from the United Kingdom any counterfeit current coin whatever, knowing the same to be counterfeit; or

SECTION 378.

‡ OTHER OFFENCES RELATING TO COIN.

‡ 24 & 25 Vict. c. 99,
ss. 13, 15, 16, 20.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who

(a) Utters any counterfeit current copper coin, knowing it to be counterfeit; or

(b) Has in his possession three or more counterfeit current copper coins, knowing them to be counterfeit, and with intent to utter them; or

(c) With intent to defraud, utters as current gold or silver coin any coin which is not current coin; or

any medal or piece of metal or mixed metal being of less value than the current coin as and for which it is uttered; or

(d) Defaces any current coin whatever by stamping thereon any name or word, whether such coin is or is not thereby diminished or lightened; or

(e) Utters any counterfeit gold or silver coin of any foreign prince, state, or country, knowing it to be counterfeit.

SECTION 379.

ARREST OF PERSONS FOUND COMMITTING OFFENCES UNDER THIS PART.

Every one found committing any offence under this Part of this Act may be arrested without warrant.

SECTION 380.

OFFENCE AFTER PREVIOUS CONVICTIONS FOR OFFENCE RELATING TO COIN.

Every one who, after a previous conviction of any offence relating to the coin under this or any other Act, is convicted of any offence under any section in this Part of this Act, shall be liable to penal servitude for life if he would otherwise have been liable to fourteen years' penal servitude only; or to fourteen years' penal servitude if he would otherwise have been liable to penal servitude for less than fourteen years; or to five years' penal servitude if he would otherwise have been liable to imprisonment but not to penal servitude.

PART XXXIV.
MISCHIEF.

SECTION 381.

PRELIMINARY.

Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, shall be deemed to have caused it wilfully for the purposes of this part of this Act.

* This renders the word "unlawfully" superfluous in many sections of this Part.

* Nothing shall be an offence under any provision contained in this Part unless it is done without legal justification or excuse, and without colour of right: Provided that where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest if partial shall not prevent his act being an offence, and the fact that the thing injured belonged wholly to the offender shall not prevent his act being an offence if done with an intention to defraud.

SECTION 382.

† ARSON.

† 24 & 25 Vict. c. 97,
ss. 1—7, 17, 26.

Every one shall be guilty of the indictable offence called arson, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen years to be once whipped, who wilfully sets fire to any building whatever, or to any erection or structure whatever fixed to the soil, whether such building erection or structure is completed or not, or to any stack of vegetable produce, or of mineral or vegetable fuel, or to any mine, or to any ship or vessel whether completed or not.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 383.

‡ ATTEMPT TO SET FIRE TO BUILDINGS, ETC.

‡ 24 & 25 Vict. c. 97,
s. 27, amended.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceding section is likely to catch fire therefrom, but is reckless whether it catches fire or not.

Every one charged with any offence under this section may be arrested without warrant and shall be bailable at discretion.

SECTION 384.

§ SETTING FIRE TO CROPS.

§ 24 & 25 Vict. c. 97,
s. 16.

Every one shall be guilty of the indictable offence called arson, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully sets fire to any crop, whether standing or cut down, or to any wood coppice or plantation, or to any heath gorse furze or fern.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 385.

|| ATTEMPT TO SET FIRE TO CROPS, ETC.

|| 24 & 25 Vict. c. 97,
ss. 18, amended.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last

preceding section is likely to catch fire therefrom, but is reckless whether it catches fire or not.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 386.

* DAMAGE TO DWELLING-HOUSES AND SHIPS BY GUNPOWDER.

* 24 & 25 Vict. c. 97,
s. 9.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen years to be once whipped, who by the explosion of gunpowder or other explosive substance wilfully

(a) Throws down or damages the whole or any part of any dwelling-house, any person being therein; or

(b) Damages or destroys the whole or any part of any ship vessel or boat, any person being therein; or

(c) So as to endanger the life of any person, by any such means as aforesaid throws down or damages

the whole or any part of any building, or

the whole or any part of any ship vessel or boat.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 387.

† ATTEMPT TO DAMAGE BUILDING OR SHIP BY GUNPOWDER.

† 24 & 25 Vict. c. 97,
ss. 10 and 45.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully places or throws any gunpowder or other explosive substance in into upon under against or near any building ship or vessel with intent to destroy or damage any such building ship or vessel, or any engine machinery working-tools fixtures or chattels whatever whether or not any explosion takes place, and whether or not any damage is caused thereby.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 388.

‡ INTENTIONALLY ENDANGERING RAILWAY TRAINS.

‡ 24 & 25 Vict. c. 97,
s. 35. Whipping is added
by 34 & 35 Vict. c. 78
s. 13.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen years to be once whipped, who, with intent to obstruct endanger upset overthrow injure or destroy any engine tender carriage truck or vehicle on any railway,

(a) Places anything upon or across any railway, or

(b) Does any act calculated to interfere with or directly or indirectly to cause injury to, or by any unlawful act endangers obstructs or causes to be obstructed, any engine tender carriage truck or vehicle on any railway; or

(c) Shoots or throws anything at into or upon or causes anything to come in contact with any engine tender carriage truck or vehicle or any person; or

(d) Does or causes to be done anything whatever to any part of any railway, or to any points or machinery or signal belonging to or near to any railway or to any engine tender carriage truck or vehicle thereon; or

(e) Deals in any way with any signal or light on or to near any railway, or makes or shows any false signal or light, or makes any sign whatever on or near to any railway; or

(f) Wilfully omits to do any act which it is his duty to do.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 389.

§ WANTONLY ENDANGERING RAILWAY TRAINS.

§ 24 & 25 Vict. c. 97,
s. 36. expanded. Whipping
is new as applied to
these acts.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, and if a male

under sixteen years to be once whipped, who unlawfully wilfully in a manner likely to obstruct or endanger, upset or overthrow, injure or destroy any engine tender carriage truck or vehicle on any railway ;

(a) By any act omission or neglect endangers obstructs or causes to be obstructed any engine tender carriage truck or vehicle on any railway ; or

(b) Does any act calculated to interfere with or directly or indirectly to cause injury to any engine tender carriage truck or vehicle on any railway ; or

(c) Shoots or throws anything at into or upon or causes anything to come in contact with any engine tender carriage truck or vehicle or any person on any railway ; or

(d) Does or causes to be done anything whatever to any part of any railway or to any points machinery or signal belonging to or near to any railway or to any engine tender carriage truck or vehicle on any railway ; or

(e) Deals in any way with any signal or light on or near to any railway, or makes or shows any false signal or light, or makes any sign whatever on or near to any railway ; or

who by any culpable neglect of duty endangers the safety of any engine tender carriage truck or vehicle upon any railway.

Every one charged with any offence under this section may be arrested without warrant.

SECTION 390.

* DAMAGE TO SHIPS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen to be once whipped, who wilfully

(a) Casts away or in anywise destroys any ship or vessel whatever, whether in a completed or unfinished state ; or

(b) With intent to bring any ship vessel or boat into danger, masks, alters, or removes any light or signal, or exhibits any false light or signal ; or

(c) Does anything tending to the immediate loss or destruction of any ship or vessel in distress.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 391.

† DAMAGE TO WRECKS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen to be once whipped, who wilfully

(a) Destroys any part of any ship or vessel in distress, wrecked stranded or cast on shore, or any goods merchandise or articles of any kind belonging to such ship or vessel ; or

(b) Attempts to cast away or destroy any ship or vessel whatever, whether in a completed or unfinished state.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 392.

‡ INTERFERING WITH LIGHTSHIPS, BUOYS, ETC.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and if a male under sixteen to be once whipped, who

(a) With intent to destroy or render useless any ship or vessel, whether completed or not, damages it by any means whatever ; or

(b) Wilfully cuts away casts adrift removes alters defaces sinks or destroys any lightship boat buoy rope perch or mark used or intended for the guidance of seamen for the purposes of navigation ; or

(c) Does any act with intent to cut away cast adrift remove alter deface sink or destroy any such lightship boat buoy perch or mark as aforesaid ; or

(d) In any other manner wilfully injures or conceals any such lightship boat buoy perch or mark as aforesaid.

* 24 & 25 Vict. c. 97,
ss. 42, 43, 47.

† 24 & 25 Vict. c. 97,
s. 49.

‡ 24 & 25 Vict. c. 97,
ss. 46 and 48.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 393.

* DAMAGE ENDANGERING SEA-WALLS DAMS AND BRIDGES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, and if a male under sixteen to be once whipped, who wilfully

(a) Breaks down cuts down or otherwise damages or destroys any sea bank or sea wall, or the bank dam or wall of or belonging to any water, or † any work belonging to any port harbour dock or reservoir, or on or belonging to any navigable river or canal, so as to cause any land or building to be or to be in danger of being overflowed or damaged; or

(b) Pulls or throws down damages or destroys any bridge over which any highway passes, with intent and so as to render such highway dangerous or impassable; or

(c) Pulls up damages or destroys any part of any railway with intent to or so as to render such railway dangerous or impassable.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

* As to this and the following section, see 24 & 25 Vict. c. 97, ss. 30, 33.

† 24 & 25 Vict. c. 97, s. 30.

SECTION 394.

OTHER DAMAGE TO SEA WALLS DAMS AND BRIDGES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully breaks down cuts down or otherwise damages or destroys any sea bank or sea wall, or the bank dam or wall of or belonging to any water, or any work belonging to any port harbour dock or reservoir, or on or belonging to any navigable river or canal.

SECTION 395.

‡ DAMAGE TO PILES AND SLUICES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and if a male under sixteen years to be once whipped, who

(a) Wilfully cuts off, draws up, or removes any piles, chalk, or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank dam or wall of any other water; or

(b) With intent and so as thereby to obstruct or prevent the carrying on or completing or maintaining the navigation of any navigable river or canal opens draws up shuts or in any way interferes with any flood-gate or sluice, or does any injury or mischief to such river or canal.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

‡ 24 & 25 Vict. c. 97, s. 31.

SECTION 396.

DAMAGE TO FISH PONDS, FISHERIES, ETC.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to seven years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully

(a) § Cuts through breaks down or otherwise destroys the dam flood-gate or sluice of any fishpond, or of any water being private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish therein, or so as thereby to cause the loss or destruction of any of them; or

(b) Puts lime or any other noxious materials into any water, being private property, in which there is any private right of fishery, or in any salmon river, with intent to destroy any fish then being or afterwards to be put therein; or

(c) Cuts through breaks down or otherwise destroys the dam or flood-gate of any millpond reservoir or pool.

§ 24 & 25 Vict. c. 97, s. 32, and 36 & 37 Vict. c. 71.

SECTION 397.

* DAMAGE TO CATTLE.

* 24 & 25 Vict. c. 97, s. 40, where the only word used is "cattle." See s. 260, *ante*.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen years to be once whipped, who unlawfully and wilfully kills maims or wounds any horse ass mule kine sheep pig or goat or the young thereof respectively.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 398.

DAMAGE TO MACHINERY AND TO GOODS IN PROCESS OF MANUFACTURE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and if a male under sixteen years of age to be once whipped, who wilfully

† 24 & 25 Vict. c. 97, s. 14. Punishment reduced from penal servitude for life and provision generalised.

(a) † Cuts breaks destroys or damages with intent to destroy or render useless any goods or articles in any stage of manufacture, or who by force enters any house shop building or place with intent to commit any such offence; or

‡ 24 & 25 Vict. c. 97, s. 15.

(b) ‡ Cuts breaks destroys or damages with intent to destroy or render useless any machine or engine, whether fixed or movable, used or intended to be used for any agricultural operation, or prepared for or employed in any manufacture, or any tool or implement, whether fixed or movable, prepared for or employed in any manufacture; or

(c) By force enters any house shop building or place with intent to commit any such offence.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 399.

DAMAGE TO MINES AND MINING MACHINERY.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life and if a male under sixteen years to be once whipped, who, with intent to destroy or damage any mine, or to hinder obstruct or delay the working thereof, unlawfully and wilfully

§ 24 & 25 Vict. c. 97, s. 97.

(a) § Causes any water to be conveyed or run into the mine or into any subterranean passage communicating therewith, or damages any airway water-way drain pit level or shaft belonging thereto; or

|| 24 & 25 Vict. c. 97, s. 97.

(b) || Pulls down or destroys or damages, with intent to destroy or render useless, any engine for sinking draining ventilating or working any mine, or for assisting therein, or any appliance or apparatus in connexion therewith, or any staitth building or erection used in conducting the business of any mine, or any bridge waggon-way or trunk for conveying minerals from any mine, whether the thing damaged is complete or not; or

(c) Hinders the working of any such steam or other engine appliance or apparatus; or

(d) Wholly or partially cuts through severs breaks unfastens or damages, with intent to destroy or render useless, any rope chain or tackle of whatever material used in any mine, or upon any way or work belonging thereto or connected therewith, or employed in working it.

Every one charged with any offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 400.

DAMAGE TO HOPBINDS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to seven years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully ¶ cuts or otherwise destroys any hopbinds growing in any plantation of hops.

¶ 24 & 25 Vict. c. 97, s. 19.

Every one charged with an offence under this section may be arrested without warrant, and shall be bailable at discretion.

SECTION 401.

* DAMAGE TO TELEGRAPHS.

* 24 & 25 Vict. c. 97,
s. 37.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to seven years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully

(a) Injures or removes anything whatever forming part of or used in or about any electric or magnetic telegraph, or in the working thereof; or

(b) Prevents or obstructs in any manner whatever the sending conveyance or delivery by any such telegraph of any message or communication.

SECTION 402.

DAMAGE TO TOLL BARS.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment† with hard labour, and if a male under sixteen years to be once whipped, who unlawfully and wilfully throws down, levels, or otherwise destroys in whole or in part any turnpike gate or toll bar, or any wall chain rail post bar or other fence belonging to any turnpike gate or toll bar set up or erected to prevent passengers from passing by without paying any toll directed to be paid by any Act of Parliament relating thereto, or any house building or weighing engine erected for the better collection ascertainment or security of any such toll.

† 24 & 25 Vict. c. 97,
s. 34. By the present law the maximum punishment is six months hard labour and whipping for males under sixteen.

SECTION 403.

‡ DAMAGE TO WORKS OF ART.

‡ 24 & 25 Vict. c. 97,
s. 39.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, and if a male under sixteen years to be once whipped, who unlawfully and wilfully destroys or damages any book manuscript picture print statue bust vase or work of art, or article kept for the purposes of art science or literature, or any picture statue monument or other memorial of the dead, or any painted glass or other monument or work of art, wherever the same may be and whoever may be the owner of it, or any ornament railing or fence surrounding any such statue or monument.

SECTION 404.

DAMAGE TO TREES, ETC. IN CERTAIN CASES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, and if a male under sixteen years to be once whipped, who wilfully cuts breaks or otherwise destroys or damages

§ (a) The whole or any part of any tree sapling shrub or any underwood growing in any park pleasure ground garden orchard or avenue, or in any ground adjoining or belonging to any dwellinghouse, the amount of the injury done exceeding the sum of one pound; or

§ 24 25 Vict. c. 97,
s. 20.

|| (b) The whole or any part of any such thing as last aforesaid growing in any other place than last aforesaid, the amount of the injury done exceeding the sum of five pounds; or

|| 24 & 25 Vict. c. 97,
s. 21.

(c) Any plant root fruit or vegetable production growing in any garden orchard nursery ground hothouse greenhouse or conservatory, having been previously summarily convicted of any such offence.

SECTION 405.

DAMAGE TO TREES, ETC. IN OTHER CASES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, and if a male under sixteen years to be once whipped, who cuts breaks or otherwise destroys or damages the whole or any part of any tree sapling or shrub, or any

underwood wheresoever the same may be growing, the injury done being to the value of one shilling at least, and the offender having been twice summarily convicted of any such offence.

SECTION 406.

GENERAL PROVISION AS TO MISCHIEF.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, and if a male under sixteen years to be once whipped, who commits upon any real or personal property whatever, whether of a public or private nature, any wilful damage injury or spoil to the value of five pounds, which is not punishable either on indictment or on summary conviction by any Act in force at the time when such offence is committed;

Every such offender shall be liable to five years' penal servitude if the offence is committed at night.

SECTION 407.

* MAKING AND POSSESSING GUNPOWDER, ETC. FOR UNLAWFUL PURPOSES.

* 24 & 25 Vict. c. 97, s. 44; c. 100. s. 64.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who knowingly has in his possession, or makes or manufactures any gunpowder or any explosive substance, or other dangerous or noxious machine engine instrument or thing, with intent thereby or by means thereof to commit, or for the purpose of enabling any other person to commit, any indictable offence.

SECTION 408.

ARREST WITHOUT WARRANT.

Every one found committing any offence under this Part of this Act may be arrested without warrant.

PART XXXV.

FRAUDULENT DEBTORS.

SECTION 409.

† FRAUDULENT DEALINGS WITH PROPERTY.

† 32 & 33 Vict. c. 62, s. 13 (2) and (3).

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who, with intent to defraud his creditors or any of them,

(a) Makes or cause to be made any gift delivery or transfer of or any charge on his property; or

(b) Conceals or removes any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

SECTION 410.

‡ ABSCONDING FROM ENGLAND IN CONTEMPLATION OF BANKRUPTCY.

‡ 32 & 33 Vict. c. 62, s. 12.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who quits England and takes with him, or attempts or makes preparation for quitting England and for taking with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, after having been adjudged a bankrupt, or having had his affairs

liquidated by arrangement after the presentation of a bankruptcy petition against him, or the commencement of his liquidation, or within four months before such presentation or commencement, unless the jury is satisfied that he had no intent to defraud.

SECTION 411.

* ABSCONDING FROM IRELAND.

* 35 & 36 Vict. c. 57,

s. 12.

Every one shall be guilty of an indictable offence, and shall be liable on conviction thereof to two years' imprisonment with hard labour, who, having been adjudged a bankrupt or having presented a petition for arrangement in pursuance of the Irish Bankrupt and Insolvent Act, 1857, as amended by the Bankruptcy (Ireland) Amendment Act, 1872, after such adjudication or presentation respectively, or within four months before such adjudication or presentation respectively, quit Ireland and takes with him, or makes preparation for quitting Ireland and for taking with him, any part of his property to the amount of twenty pounds or upwards which ought by law to be divided amongst his creditors, unless the jury is satisfied that he had no intent to defraud.

SECTION 412.

† PUNISHMENT OF FRAUDULENT DEBTORS IN ENGLAND.

† 32 & 33 Vict. c. 62,

s. 11. See the Report,
p. 30.

Every person adjudged bankrupt, and every person whose affairs are liquidated by arrangement under the law relating to bankruptcy for the time being, shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour:

(a) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud;

(b) If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud;

(c) If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud;

(d) If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud;

(e) If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of ten pounds or upwards;

(f) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud;

(g) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fails for the period of a month to inform such trustee as aforesaid thereof;

(h) If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;

(i) If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or

is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intention to conceal the state of his affairs or to defeat the law ;

(j) If after the presentation of a bankruptcy petition against him or commencement of the liquidation, or within four months next before such presentation or commencement, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law ;

(k) If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission, in any document affecting or relating to his property or affairs ;

(l) If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses ;

(m) If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit, and has not paid for the same ;

(n) If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way in his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud

(o) If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud ;

(p) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs, or his bankruptcy or liquidation.

SECTION 413.

* PUNISHMENT OF FRAUDULENT DEBTORS IN IRELAND.

* 35 & 36 Vict. c. 57,
s. 11.

Every person adjudged bankrupt, and every person who shall have presented a petition for an arrangement with his creditors, in pursuance of "The Irish Bankrupt and Insolvent Act, 1857," as amended by the "Bankruptcy (Ireland) Amendment Act, 1872," shall in each of the cases following be guilty of an indictable offence, and shall be liable on conviction thereof to two years' imprisonment with hard labour :

(a) If he does not, to the best of his knowledge and belief, fully and truly discover to the Court of Bankruptcy in Ireland, or to the official or creditors' assignee or assignees of his estate and effects, or to such person or persons as the court shall from time to time direct, or to the trustees or trustee (if any) administering his estate for the benefit of his creditors, all his property, real and personal, and how and to whom and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud :

(b) If he does not deliver up to the said assignees or to the said trustees or trustee (if any), or as they or he or the court shall direct, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud :

(c) If he does not deliver up to the said assignees or to said trustees or trustee (if any), or as they or the court shall direct, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud :

(*d*) If after the presentation of a bankruptcy petition by or against him, or after the presentation of a petition for arrangement by him, or within four months next before such presentation respectively, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud :

(*e*) If after the presentation of a bankruptcy petition by or against him, or after the presentation of a petition for arrangement by him, or within four months next before such presentation respectively, he fraudulently removes any part of his property of the value of ten pounds or upwards :

(*f*) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud :

(*g*) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or arrangement, he fail for the period of a month to inform the said assignees or one of them, or such trustees or trustee (if any) thereof :

(*h*) If after the presentation of a bankruptcy petition by or against him, or after the presentation of a petition for arrangement by him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

(*i*) If after the presentation of a bankruptcy petition against or by him, or after the presentation of a petition for an arrangement by him, or within four months next before such presentation respectively, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

(*j*) If after the presentation of bankruptcy petition against or by him, or after the presentation of a petition for arrangement by him, or within four months next before such presentation respectively, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :

(*k*) If after the presentation of a bankruptcy petition against or by him, or after the presentation of a petition for arrangement by him, or within four months next before such presentation respectively, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission, in any document affecting or relating to his property or affairs :

(*l*) If after the presentation of a bankruptcy petition against or by him, or after the presentation of a petition for arrangement by him, or at any meeting of his creditors within four months next before such presentation respectively, he attempts to account for any part of his property by fictitious losses or expenses :

(*m*) If within four months next before the presentation of a bankruptcy petition against or by him, or next before the presentation of a petition for arrangement by him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same :

(*n*) If within four months next before the presentation of a bankruptcy petition against or by him, or next before the presentation of a petition for arrangement by him, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud :

(*o*) If within four months next before the presentation of a bankruptcy petition against or by him, or next before the presentation of a petition for arrangement by him, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the jury is satisfied that had no intent to defraud :

(*p*) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy or arrangement.

SECTION 414.*** FALSE CLAIM ON BANKRUPT'S ESTATE.**

* 32 & 33 Vict. c. 62,
s. 4.

† The words "being a creditor" occur in the Act, but they seem to be out of place. A false claim made by a person who is not a creditor is more fraudulent than an exaggerated claim by a creditor.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to one year's imprisonment with hard labour, who in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of the Bankruptcy Act, 1869, or "The Irish Bankrupt and Insolvent Act, 1857," as amended by "The Bankruptcy (Ireland) Amendment Act, 1872," wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular.

Every one convicted of any offence under this part of this Act, after having been previously convicted of the same or any other offence under this part of the Act, shall be liable on such subsequent conviction to five years' penal servitude.

PART XXXVI.**THREATS, CONSPIRACIES, ATTEMPTS, &c. TO COMMIT OFFENCES.****† SECTION 415.****THREATS TO MURDER OR DO GRIEVOUS BODILY HARM.**

† 24 & 25 Vict. c. 100,
s. 16. 1 & 2 W. 4. c. 44,
s. 3 (Ireland). See the
Report, p. 30.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen to be once whipped, who without lawful excuse (the proof whereof shall lie on him) sends, delivers, utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter, document, or writing containing threats to kill or murder or do grievous bodily harm to any person.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 416.**§ THREATS TO BURN, ETC.**

§ 24 & 25 Vict. c. 97,
s. 50. 1 & 2 W. 4. c. 44,
s. 3 (Ireland). See the
Report, p. 13.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to fourteen years' penal servitude, and if a male under sixteen years to be once whipped, who, without lawful excuse (the proof whereof shall lie upon him) knowing the contents thereof, sends delivers utters or directly or indirectly causes to be received any letter or writing threatening to burn or destroy any building, or any rick or stack, or standing crop of grain hay or straw or other vegetable produce, or any ship or vessel, or to kill maim or wound any cattle.

Every one charged with any offence under this section shall be bailable at discretion.

SECTION 417.**|| THREATENING ACTS BY NIGHT.**

|| See the Report, p. 13.

Every one shall be guilty of an indictable offence, and shall upon conviction thereof be liable to five years' penal servitude, and if a male under sixteen years to be once whipped, who with intent to intimidate or annoy any person by night breaks or injures or threatens to break or injure any dwelling-house, or by the discharge of firearms or otherwise alarms or attempts to alarm any person in any dwelling-house.

SECTION 418.**THREATENING ACTS.**

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who with

intent to intimidate or annoy any person breaks or injures or threatens to break or injure any dwelling-house, or by the discharge of firearms or otherwise alarms or attempts to alarm any person in any dwelling-house.

SECTION 419.

CONSPIRING TO COMMIT INDICTABLE OFFENCES PUNISHABLE WITH PENAL SERVITUDE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to five years' penal servitude, who in any case not hereinbefore provided for conspires with any person to commit any indictable offence punishable with penal servitude, or to do anything in any part of the world which if done in England or Ireland would be an offence punishable with penal servitude.

SECTION 420.

CONSPIRING TO COMMIT OTHER OFFENCE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who conspires with any person to commit any indictable offence not punishable with penal servitude, or to do anything in any part of the world which if done in England or Ireland would be an indictable offence not punishable with penal servitude.

SECTION 421.

* CONSPIRING TO PREVENT COLLECTION OF RATES OR TAXES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who conspires with any other person by force and intimidation to prevent the collection of any rates or taxes the levying and collection of which is authorised by law.

* 27 Geo. 3., c. 15,
(Irish Act).

Nothing in this Act contained shall prevent any person from being indicted and punished under the provisions of "The Conspiracy and Protection of Property Act, 1875," for any agreement or combination to do or procure to be done anything made punishable on summary conviction by that Act.

SECTION 422.

ATTEMPTING OR INCITING TO COMMIT AN OFFENCE PUNISHABLE WITH PENAL SERVITUDE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who attempts in any case not hereinbefore by this Act provided for to commit any indictable offence punishable with penal servitude, or who incites or attempts to incite any person to commit any such offence.

SECTION 423.

ATTEMPTING OR INCITING TO COMMIT OTHER OFFENCE.

Every one who attempts to commit or incites or attempts to incite any person to commit any offence under this Act, not punishable with penal servitude, in any case where no express provision is made by this Act for the punishment of such attempt, shall be guilty of an indictable offence, and shall be liable upon conviction thereof to imprisonment for a term equal to one half of the longest term to which a person committing the offence attempted to be committed may be sentenced under this Act (with or without hard labour as the case may be).

SECTION 424.

ATTEMPTING OR INCITING TO COMMIT OTHER STATUTORY OFFENCES.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment, who attempts to commit any indictable offence under any statute for the time being in force and not inconsistent herewith, or incites or attempts to incite any person to commit any such offence.

SECTION 425.

ACCESSORIES AFTER THE FACT TO OFFENCES PUNISHABLE WITH PENAL SERVITUDE.

Every one shall be guilty of an indictable offence, and shall be liable upon conviction thereof to two years' imprisonment with hard labour, who in any case where no express provision is made by this Act for the punishment of an accessory, is accessory after the fact to any offence under this Act punishable with penal servitude.

SECTION 426.

ACCESSORIES AFTER THE FACT TO OTHER OFFENCES.

Every one who is accessory after the fact to any offence under this Act not punishable with penal servitude, in any case where no express provision is made by this Act for the punishment of such accessory, shall be guilty of an indictable offence, and shall be liable upon conviction thereof to imprisonment for a term equal to one half of the longest term to which a person committing the offence to which he is accessory may be sentenced under this Act (with or without hard labour as the case may be).

TITLE VII.**PROCEDURE.***

* As to this Part generally, see the Report, pp. 31 et seqq.

PART XXXVII.**GENERAL PROVISIONS.****SECTION 427.**

INTERPRETATION OF TERMS.

The following words and expressions are used in the senses hereinafter declared unless a different intention appears from the context:

“The Lord Chancellor” means, as regards all matters relating to England, the Lord Chancellor of England, and, as regards all matters relating to Ireland, the Lord Chancellor of Ireland.

“The Court of Appeal” means the Court of Appeal in Criminal Cases, constituted as hereinafter mentioned for England or Ireland as the case may be.

“The High Court” means, as regards all matters relating to England, the High Court of Justice in England, and, as regards all matters relating to Ireland, the High Court of Justice in Ireland; and in like manner the names and titles of all Courts Divisions of Courts Judges and officers shall mean, as regards matters relating to England, the Courts Division Judges and officers in England designated by such names and titles, and, as regards matters relating to Ireland, the Courts Divisions Judges and officers in Ireland designated by such names and titles.

“Justice” includes all justices of the peace.

“The Attorney General” means the Attorney General for England or Ireland, as the case may be. All the powers given to and to be exercised by the Attorney General under this Act may, when the office of Attorney General is vacant, be exercised by the Solicitor General for England or Ireland as the case may be.

“Crown solicitor” includes any solicitor or other person for the time being appointed or authorised to prosecute, or who prosecutes for indictable offences for or on behalf of the Attorney General of Ireland in Courts of Oyer and Terminer or Gaol Delivery in or for any county riding county of a city county of a town or place in Ireland, and in cases of prosecutions in the

Queen's Bench Division of the High Court in Ireland, the Crown and Treasury Solicitor of Ireland.

"Sessional Crown solicitor" includes any solicitor or person for the time being appointed or authorised to prosecute indictable offences for or on behalf of the Attorney General of Ireland at quarter sessions in or for any county riding county of a city county of a town or place in Ireland.

"Prosecutor" includes, in reference to Ireland, the Crown Solicitor and the Sessional Crown solicitor.

"Next sittings" means in relation to any Court of Oyer and Terminer and Gaol Delivery the next Court of the same character held in and for the same county division or riding.

The "police constables" mentioned and referred to in this Title of this Act are and shall be deemed to be, in England all commissioners assistant commissioners superintendents inspectors sergeants officers chief constables and constables of any Police force appointed under any Act for the time being in force; and in Ireland, the Inspector General Deputy Inspector General Assistant Inspector General county inspectors sub-inspectors head constables constables acting constables and sub-constables of the Royal Irish Constabulary Force,* and the Chief Commissioner Assistant Commissioner chief superintendents superintendents inspectors acting inspectors sergeants acting sergeants and constables of the Police force of the District of Dublin metropolis.

* 29 & 30 Vict. c. 103.

SECTION 428.

† POWER TO MAKE RULES.

The Lord Chancellor, the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other judges each being a judge of the Queen's Bench Common Pleas or Exchequer Division of the High Court chosen at the commencement of each year by all the judges of the Queen's Bench Common Pleas and Exchequer Divisions, may at any time and from time to time make such rules for regulating practice pleading and procedure under this Act in England or Ireland as the case may be, as may be found necessary, and may from time to time alter or annul any rules so made.

† See 38 & 39 Vict. c. 77, s. 25, and the Report, p. 31.

The judges so chosen shall continue to exercise their powers till their successors are appointed.

Such rules shall come into force upon their publication in the London or Dublin Gazette as the case may be, or on such day subsequent to such publication as by the said rules may be appointed in that behalf, and shall be laid before Parliament‡ within forty days of such publication if Parliament is then sitting, and if not, within forty days after the commencement of the then next ensuing session. If an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House has sat, praying that any rule so made may be annulled, Her Majesty or the Lord Lieutenant, as the case may be, may thereupon by Order in Council annul the same.

‡ 38 & 39 Vict. c. 77, s. 25.

Until such rules are made and so far as they do not extend, the existing practice pleading and procedure in England and Ireland respectively shall remain and be in force so far as they are not altered by or inconsistent with the provisions of this Act.

SECTION 429.

MATTERS EXCEPTED FROM THIS TITLE.

Nothing herein contained relating to pleading or procedure shall apply to or affect any information or indictment for anything declared by Section 152 of this Act not to be a criminal offence, but all such indictments or informations may be preferred or filed as if this Act had not been passed.

SECTION 430.

CIVIL REMEDY NOT SUSPENDED THOUGH ACT IS A CRIMINAL OFFENCE.

§ After the commencement of this Act no civil remedy for any act or omission shall be suspended by reason that such act or omission amounts to a criminal offence.

§ See *Wells v. Abraham*, L.R. 7. Q.B. 854.; *Osborne v. Gillett*, L.R. 8. Ex. 88.

SECTION 431.

ABOLITION OF DISTINCTION BETWEEN FELONY AND MISDEMEANOUR.

After the commencement of this Act the distinction between felony and misdemeanour shall be abolished, and proceedings in respect of all indictable offences (except so far as they are herein varied in respect of treason) shall be conducted in the same manner: Provided that every disqualification which now attaches to a conviction for felony shall attach after the commencement of this Act to a conviction for any offence involving dishonesty: Provided also, that everyone committing after the commencement of this Act any offence which by any statute remaining for the time being in force is made felony shall be liable to be arrested in the same manner as if this Act had not been passed: and every person lawfully making any such arrest without warrant shall be within all the provisions of this Act relating to persons lawfully making arrests without warrant.

Provided also, that when any sentence is passed on a conviction for an offence committed after this Act comes into operation, which offence if committed before the Act came into operation would have been a felony, all the consequences other than such disqualification as aforesaid which by any statute still remaining unrepealed are attached to a sentence passed upon a conviction for felony shall attach to such sentence as if such offence was still a felony.

Provided also, that any enactment not hereby repealed which has reference to offences designated as felonies or misdemeanours shall be deemed to apply to the same offences as they would have applied to if this Act had not passed.

SECTION 432.

* PROVISION AS TO HABEAS CORPUS ACTS.

* 31 Car. 2. c. 2. and 21 & 22 G. 3. c. 11. (Irish).

If any one is committed for any indictable offence plainly and specially expressed in the warrant of commitment to be one which under this Act is bailable at discretion, such person shall for all the purposes of the Acts made and passed in the thirty-first year of the reign of His late Majesty King Charles the Second, chapter two, and of the Act made and passed in the session of the Parliament of Ireland holden in the twenty-first and twenty-second year of His late Majesty King George the Third, chapter eleven, respectively, be treated as a person who stands committed for felony plainly and specially expressed in the warrant of commitment.

SECTION 433.

ARREST WITHOUT WARRANT.

No one shall be liable to be arrested without warrant for any offence under this Act except in the cases in this Act expressly provided for.

SECTION 434.

† JURISDICTION OF THE COURTS OF QUARTER SESSIONS.

† This is a substitute for 5 & 6 Vict. c. 38, in England, and modifies to some extent the law in force in Ireland. See the Report, p. 31.

Courts of Quarter Sessions shall have jurisdiction to try the following offences under this Act; that is to say,

Any offence under the following sections of Part IV "Unlawful assemblies," viz., Section 86 (Unlawful assembly), Section 87 (Riot), Section 91 (Riotous damage), Section 96 (Affray), Section 97 (Challenge to fight duel), and Section 98 (Prize fight);

Any offence under Section 118 (Duty to assist peace officer) or under Section 143 (Disturbing public worship);

Any offence under Part XIII "Offences against morality," except offences under Section 144 (Unnatural offences) and Section 147 (Publishing and exhibiting obscene matter);

Any offence under Part XIV "Nuisances";

Any offence under Part XVIII "Bodily injury and acts causing danger to the person," not punishable by penal servitude for life;

Any offence under Part XIX "Assaults";

Any offence under Section 222 (Stealing children under fourteen);

Any offence under Part XXII "Offences by parents guardians and masters against those in their charge";

Any offence under Part XXV "Theft, &c." not punishable with penal servitude for life, except offences under Section 274 (Criminal breach of trust) and Section 279 (Night poaching);

Any offence under the following sections of Part XXVI "Fraud," viz., Section 282 (Falsifying accounts), Section 284 (Conspiring to defraud) Section 285 (Cheating at play), and Section 286 (Pretending to practise witchcraft);

Any offence under the following sections of Part XXVII "Robbery and extortion," viz., Section 289 (Robbery punishable with penal servitude for life), provided that no court of quarter sessions shall sentence any offender thereunder to be flogged or to more than fourteen years' penal servitude; Section 292 (Robbery), Section 293 (Assault with intent to rob);

Any offence under Part XXVIII "Burglary and housebreaking," provided that no such Court shall sentence any person to more than fourteen years' penal servitude for burglary;

Any offence under Part XXIX "Receiving";

Any offence under Part XXXIII "Offences relating to the coin," except offences punishable with penal servitude for life;

Any offence under Part XXXIV "Mischief," except offences under Section 382 (Arson), Section 383 (Attempting to set fire to buildings), Section 384 (Setting fire to crops), Section 385 (Attempting to set fire to crops), or Section 387 (Attempting to damage buildings or ships by gunpowder), and except offences punishable with penal servitude for life;

Any offence under Part XXXV "Fraudulent debtors";

Any offence under Part XXXVI "Threats, conspiracies, attempts, &c."

except any conspiracy other than a conspiracy to commit an indictable offence, and except any conspiracy to commit any offence which offence such court would not have had jurisdiction to try if it had been actually committed; and

except the offence of being accessory after the fact to any offence which such court has not jurisdiction to try; and

except any attempt to commit any offence under Part VII "Unlawful oaths, &c.," or

Part VIII "Piracy," or under Section 111 (Judicial corruption), Section 112 (Ministerial corruption), or Section 113 (Official corruption), or under Part X "Misleading justice," or under Section 141 (Blasphemous libel), or Section 142 (Assaulting minister of religion), or under Section 217 (Bigamy), Section 218 (Abduction), Section 219 (Abduction), or Section 221 (Abduction of girl under sixteen).

Save as aforesaid a Court of Quarter Sessions shall not have jurisdiction to try any offences under this Act: Provided that nothing herein contained shall take away the jurisdiction of any Court of Quarter Sessions in England or Ireland to try any offence which the said courts have jurisdiction to try under any other statute for the time being in force.

PART XXXVIII.

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICE.

SECTION 435.

WHEN JUSTICE MAY COMPEL APPEARANCE.

* Every justice may issue a warrant or summons as hereinafter mentioned to compel the attendance of an accused person before him, for the purpose of preliminary inquiry in any of the following cases; that is to say,

(a) If such person is accused of having committed in any place whatever an indictable offence triable in England or Ireland, and is or is suspected to be within the limits over which such justice has jurisdiction, or resides or is suspected to reside within such limits:

(b) † If such person, wherever he may be, is accused of having committed

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* 11 & 12 Vict. c. 42, s. 1; 14 & 15 Vict. c. 93, (Ireland) and 12 & 13 Vict. c. 69, s. 1 (Dublin).

† 7 G. 4, c. 64, s. 13. 9 G. 4, c. 34: (Ireland.) These Acts are at present limited to counties.

an indictable offence within such limits, or on or within five hundred yards of the boundary thereof, or upon any journey during any part of which he has passed through such limits :

* 24 & 25 Vict. c. 96,
s. 96.

(c) * If such person is alleged to have anywhere unlawfully received property which was unlawfully obtained within such limits.

SECTION 436.

WHERE JUSTICE MAY ACT.

† 14 & 15 Vict. c. 93,
s. 7. compare 11 & 12
Vict. c. 42. ss. 5, 6; 12
& 13 Vict. c. 69. ss. 5
and 6 (Ireland, Dublin
District).

† A justice may act as such in any matter cognizable by him under this Act, although he may at the time be out of the limits of the jurisdiction within which such matter arose, and in an adjoining place: Provided he is also a justice for such adjoining place.

A justice for any county, riding, or division may in like manner act as such in any matter cognizable by him under this Act, although he may at the time be in any city town or place being a county of itself situated within or adjoining to such county riding or division, whether he is a justice of such county of a city town or place, or not; but nothing herein contained shall extend to empower any justice for any county, riding, or division, not being also a justice for any such county of a city town or place, or any person acting under him, to act or intermeddle in any matter arising within such county of a city town or place.

In Ireland the Inspector General or the Deputy Inspector General or any Assistant Inspector General of the Royal Irish Constabulary Force, being a justice for any county in Ireland, may act as such wherever in Ireland he may happen to be at the time.

Whenever any townland in Ireland belonging to one county is included in any Petty Sessions District of an adjoining county, any justice having jurisdiction in such Petty Sessions District shall have the like jurisdiction in such townland, although he may not be a justice of the county to which such townland belongs.

Any committal to any prison of such last-mentioned county or any other magisterial act done by any such justice in any case in which the offence is committed in such townland shall have the like force and effect as if such justice was also a justice of such last-mentioned county.

And all police constables apprehending any person whom they lawfully may and ought to apprehend by virtue of their office or otherwise in any county or place may lawfully convoy such person before any justice for such county or place whilst such justice is in such adjoining county or such county of a city, town or place as aforesaid; and such constables are hereby authorised and required in all cases to act in all things as if such justice were within the county or place for which he so acts.

SECTION 437.

POWER OF JUSTICE TO INQUIRE INTO SUSPECTED OFFENCE.

† Adapted from 33
Vict. c. 9, s. 13.

† Every justice who has reason to believe that any indictable offence has been committed within the limits of his jurisdiction for which under this Act the offender might be arrested without warrant, or that there is reasonable ground for inquiring whether such an indictable offence has been committed within those limits, or in either case that there is reasonable ground for inquiring by whom such suspected offence has been committed, may (whether any particular person is charged or not) summon to the police court or office, or to the place where the Petty Sessions for the district in which such offence is suspected to have been committed are usually held, any person within his jurisdiction whom he has reason to believe to be capable of giving material evidence concerning such offence, and may examine such person on oath concerning such offence, and if he sees cause, bind such person by recognizance to appear and give evidence if called upon by any justice of the peace or Court of Oyer and Terminer or Quarter Sessions at any time within the three months then next ensuing, unless such person can show some reasonable excuse to the contrary.

In case any person so summoned neglects to appear, or refuses without lawful excuse to take such oath, or, having taken such oath, to answer

such questions concerning the said offence as may then be put to him, or to enter into such recognizance as aforesaid, he may be dealt with in the same manner as a witness may be dealt with under this Act who neglects or refuses to attend or give evidence, or to be bound by recognizance so to do after being served with a summons for that purpose.

Every such summons under this section may be in the form B (1) in the first schedule hereto, or to the like effect.

Every such recognizance may be in the form C (3) in the first schedule hereto, or to the like effect.

SECTION 438.

* SEARCH WARRANT.

Any justice who is satisfied upon oath that there is reasonable ground for believing that there is in any building ship carriage box receptacle or place anything upon or in respect of which any indictable offence has been or is suspected to have been committed for which under this Act the offender may be arrested without warrant; or

anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or

anything which there is reasonable ground to believe is intended to be used for the purpose of committing any indictable offence against the person for which under this Act the offender may be arrested without warrant: may at any time issue a warrant under his hand authorising some police constable named therein to search such building ship carriage box receptacle or place for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice, to be by him dealt with according to law.

† Every search warrant shall be executed between the hours of six in the morning and nine at night, provided that the justice in his discretion may by the warrant authorise the police constable to execute it at any hour.

Every search warrant may be in the form D (4) in the first schedule hereto, or to the like effect.

When any such thing is seized and brought before such justice, he may detain it, taking reasonable care to preserve it till the conclusion of the investigation; and, if any one is committed for trial, he may order it further to be detained for the purpose of evidence on the trial. If no one is committed, the justice shall direct such thing to be restored to the person from whom it was taken, except in the cases next hereinafter mentioned, unless he is authorised or required by law to dispose of it otherwise.

‡ If under any such warrant there is brought before any justice any forged bank note, bank note-paper, instrument or other thing, the possession whereof in the absence of lawful excuse is an indictable offence under any provision of this Act, the court to which any such person is committed for trial, or if there is no commitment for trial, such justice, may cause such thing to be defaced or destroyed.

§ If under any such warrant there is brought before any justice any counterfeit coin or other thing the possession of which with knowledge of its nature and without lawful excuse is an indictable offence under any provision of Part XXXIII of this Act, every such thing shall be delivered up to the officers of Her Majesty's Mint or to the solicitor of Her Majesty's Treasury, or to any person authorised by them respectively to receive the same, as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be so produced.

|| If the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the same powers and protections as are given by any Act of Parliament in force for the time being to any person lawfully authorised to search for any such thing, and the things themselves shall be disposed of in the same manner as directed by any such Act.

SECTION 439.

CORONER'S INQUISITION.

Every coroner before whom an inquisition of murder or manslaughter is found, whether charging any person or not, shall as soon as conveniently

* Adapted from 24 & 25 Vict. c. 96, s. 103, c. 94, s. 46; c. 99, s. 27; c. 100, s. 65.

† 24 & 25 Vict. c. 100 s. 65, is confined to the daytime; c. 99, s. 27, extends expressly to day and night. The other sections are general.

‡ 24 & 25 Vict. c. 96, s. 46.

§ 24 & 25 Vict. c. 99, s. 27.

|| 24 & 25 Vict. c. 100, s. 65.

may be send such inquisition, together with all depositions taken before him, to the clerk of the justices for the Petty Sessional Division or the clerk of the Petty Sessions District in which such inquest is held; and such clerk shall lay such inquisition and all such depositions before some justice or justices having jurisdiction in the matter, and such justice or justices may then proceed to an inquiry. If the coroner issues a warrant for the apprehension of the person against whom the inquisition is found, it shall be a warrant to take such person before some such justice.

SECTION 440.

INFORMATION.

* 11 & 12 Vict. c. 42, s. 1; 14 & 15 Vict. c. 93, s. 10. An objectionable practice has hitherto existed of refusing a summons because the applicant might arrest on his own responsibility.

* Upon any complaint or information given to a justice that an indictable offence has been committed by any person whose attendance he has power to compel, such justice shall hear and consider the allegations of the complainant, and if such justice is of opinion that a case for so doing is made out, he shall issue a summons or warrant as the case may be in the manner hereinafter mentioned; and such justice shall not refuse to issue such summons or warrant only because the alleged offence is one for which an offender may be arrested without warrant.

SECTION 441.

CONTENTS OF SUMMONS. SERVICE OF SUMMONS.

† 11 & 12 Vict. c. 42, s. 1 and 9; 14 & 15 Vict. c. 93, s. 11.

† The justice may issue a summons although there is not any information in writing or upon oath.

The summons shall be directed to the accused, and shall require him to appear at a time and place to be therein mentioned. Such summons may be in the form B (2) given in the first schedule hereto, or to the like effect. No summons shall be signed in blank.

‡ See 14 & 15 Vict. c. 93, s. 12 (2).

‡ Every such summons shall be served by a police constable upon the person to whom it is directed, either by delivering it to him personally, or if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age.

Such summons if issued in England may be served anywhere in England, and if issued in Ireland may be served anywhere in Ireland.

The person by whom the summons is served as aforesaid shall under ordinary circumstances attend at the time and place specified therein for the appearance of the accused, in order if necessary to prove the service: Provided that any justice before whom the accused person ought to appear may in his discretion receive proof of such service by affidavit, which affidavit may be made before any justice. Every justice is hereby authorised to take such affidavit.

SECTION 442.

WARRANT FOR APPREHENSION IN FIRST INSTANCE.

§ 11 & 12 Vict. c. 42, s. 10; 14 & 15 Vict. c. 93, s. 11 (1).

§ If there is a complaint or information in writing and on oath, the justice may issue a warrant for the apprehension of the accused person.

Every complaint or information may be in the form A (1) in the first schedule hereto, or to the like effect.

The warrant may be in the form B (3) given in the first schedule hereto, or to the like effect. No such warrant shall be signed in blank.

Every such warrant shall be under the hand of the justice issuing the same, and may be directed, in England or Ireland as the case may be, either to any police constable by name, or to such police constable and all other police constables in England or Ireland, as the case may be, or generally to all police constables in England or Ireland as the case may be.

Every such warrant may be executed by any police constable named therein, or by any one of the police constables to whom it is directed.

The warrant shall state shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the police constable or police constables to whom it is directed to apprehend the

offender, and bring him before the justice or justices issuing the warrant, or before some other justice or justices to answer to the charge contained in the said information, and to be further dealt with according to law. It shall not be necessary to make such warrant returnable at any particular time, but the same shall remain in force until it is executed.

The fact that a summons has been issued shall not prevent any justice from issuing such warrant at any time before or after the time mentioned in the summons for the appearance of the accused; and where the service of the summons has been proved and the accused does not appear, or when it appears that the summons cannot be served, the warrant may issue.

The justice who would have heard the charge if the person summoned had appeared, may issue the warrant either upon information in writing and on oath taken before himself or upon information in writing and on oath taken before another justice either before or after the summons was issued.

No such warrant shall issue without an information in writing and on oath.

SECTION 443.

WHERE WARRANT MAY BE EXECUTED.

* Every warrant issued in England may be executed by arresting the accused wherever he is found in England, and every warrant issued in Ireland may be executed by arresting the accused wherever he is found in Ireland, and no indorsement or backing of any such warrant shall be necessary.

* 11 & 12 Vict. c. 42, s. 10; 14 & 15 Vict. c. 93, s. 11.

† Warrants issued in England when the accused is found in Ireland, and warrants issued in Ireland when the accused is found in England, and warrants issued in England or Ireland when the accused is found in Scotland or in the Isle of Man or in the Channel Islands, and warrants issued in Scotland or the Isle of Man or the Channel Islands when the accused is found in England or Ireland, shall be backed executed and dealt with as heretofore.

† 11 & 12 Vict. c. 42, ss. 12-14; 14 & 15 Vict. c. 93, ss. 27-29.

‡ Every such warrant may be issued and executed on a Sunday.

The provisions of this and the last preceding section shall apply to every warrant and to the apprehension of every person whether accused or not under any warrant the issuing of which is authorised by any provision of this Act.

‡ 11 & 12 Vict. c. 42, s. 4.

SECTION 444.

DISPOSAL OF PERSON APPREHENDED ON WARRANT.

When any person is arrested upon a warrant he shall be brought as soon as is practicable before some justice, and such justice shall either proceed with the preliminary inquiry or postpone such inquiry to a future time, in which latter case he shall either commit the accused person to prison or admit him to bail or permit him to be at large on his own recognizance according to the provisions hereinafter contained.

PART XXXIX.

PROCEDURE ON APPEARANCE OF ACCUSED.

SECTION 445.

IRREGULARITY IN SUMMONS WARRANT SERVICE OR ARREST.

§ No irregularity or defect in the substance or form of the warrant, and no variance between the charge contained in the warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the preliminary inquiry shall affect the validity of any proceeding at or subsequent to the hearing.

§ 11 & 12 Vict. c. 42, s. 10.

When any person accused of any indictable offence is before a justice, whether voluntarily or upon summons, or after being apprehended with or

without warrant, or while in custody for the same or any other offence, the preliminary inquiry may be held notwithstanding any irregularity illegality defect or error in the summons or warrant, or the issuing service or execution of the same, and notwithstanding the want of any information on oath, and notwithstanding any defect in the information, or any irregularity or illegality in the arrest or custody of the accused person: Provided that it shall be lawful for such justice, if he thinks that the ends of justice require it, to adjourn the hearing of the case at the request of the accused to some future day, and in the meantime to remand the accused or admit him to bail: Provided also that upon such adjournment the accused person shall not be committed to prison unless before his committal an information in writing and upon oath has been taken.

SECTION 446.

OFFENCE COMMITTED OUT OF JURISDICTION.

* 11 & 12 Vict. c. 42,
s. 22; 14 & 15 Vict. c. 93,
s. 15 (2).

* The preliminary inquiry may be held either by one justice or by more justices than one: Provided that if the accused person is brought before any justice charged with an offence committed out of the limits of the jurisdiction of such justice, such justice may, after hearing both sides, order the accused at any stage of the inquiry to be taken by a police constable before some justice having jurisdiction in the place where the offence was committed. The justice so ordering shall give a warrant for that purpose to a police constable, which may be in the form D (2) in the first schedule hereto, or to the like effect, and shall deliver to such police constable the information, depositions, and recognizances if any taken under the provisions of this Act, to be delivered to the justice before whom the accused person is to be taken, and such depositions and recognizances shall be treated to all intents as if they had been taken by the last-mentioned justice.

SECTION 447.

PROCURING ATTENDANCE OF WITNESSES.

† 11 & 12 Vict. c. 42,
s. 16; 14 & 15 Vict. c. 93,
s. 13.

† If it appears to any justice by whom a preliminary inquiry is held or to be held that any person being or residing within his jurisdiction is likely to give material evidence either for the prosecution or for the accused, the justice may issue a summons under his hand to such person, requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge, and to bring with him any documents which may be in his power or control.

Such summons may be in the form B (2) in the first schedule hereto, or to the like effect.

SECTION 448.

SERVICE OF SUMMONS FOR WITNESS.

‡ 11 & 12 Vict. c. 42,
s. 16; 30 & 31 Vict. c. 35,
s. 3. 14 & 15 Vict. c. 93,
s. 11, provides for the
service of summonses in
some cases in the adjoining
county.

‡ Every such summons shall be served by a police constable upon the person to whom it is directed either personally or, if such person cannot conveniently be met with and if he resides within the jurisdiction of the justice issuing the summons, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age.

If the person arrested resides in the jurisdiction of the justice issuing the summons, but is out of that jurisdiction, the summons, if issued in England, may be served upon him personally anywhere in England, or if issued in Ireland may be served upon him personally anywhere in Ireland. If the person summoned resides out of the jurisdiction of the justice issuing the summons the summons must be served on him personally within the jurisdiction of the justice issuing it.

SECTION 449.

WARRANT FOR WITNESS AFTER SUMMONS.

§ 11 & 12 Vict. c. 42,
s. 16; 14 & 15 Vict. c. 93,
s. 13. There is no pro-

§ If any one to whom such last-mentioned summons is directed does not appear at the time and place appointed thereby, and no just excuse is offered for such nonappearance, then (after proof upon oath that such summons has

been personally served as aforesaid, or that the person to whom the summons is directed is keeping out of the way to avoid service) the justice before whom such person ought to have appeared, being satisfied by proof on oath that he is likely to give material evidence, may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other justice in order to testify as aforesaid.

vision in the existing law for tendering a witness his expenses.

The warrant may be in the form B (3) in the first schedule hereto, or to the like effect. Such warrant if issued in England may be executed in any part of England, and if issued in Ireland may be executed in any part of Ireland.

SECTION 450.

WARRANT FOR WITNESS IN FIRST INSTANCE.

If the justice is satisfied by evidence upon oath that any person within his jurisdiction likely to give material evidence either for the prosecution or for the accused will not attend to give evidence without being compelled so to do, then instead of issuing a summons he may issue a warrant in the first instance. Such warrant may be in the form B (3) in the first schedule hereto, or to the like effect. Such warrant if issued in England may be executed anywhere in England, and if issued in Ireland may be executed anywhere in Ireland.

No warrant for the apprehension of any witness, either after summons or in the first instance, shall be issued until there is an information in writing and on oath.

SECTION 451.

CROWN OFFICE SUBPŒNA.

If any person not resident within the jurisdiction is likely to give material evidence either for the prosecution or for the accused, and will not voluntarily appear for the purpose of being examined, a subpœna may be issued from the Crown Office of the Queen's Bench Division of the High Court to compel the appearance of such witness.

SECTION 452.

WITNESS REFUSING TO BE EXAMINED.

* Whenever any person appearing either in obedience to a summons or subpœna, or by virtue of a warrant, or being present and being verbally required by the justice to give evidence, refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or neglects to produce any documents which he is required to produce, or refuses to sign his depositions without in any such case offering any just excuse for such refusal, such justice may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant in form D (1) in the first schedule hereto, or to the like effect, commit the person so refusing to gaol, unless he sooner consents to do what is required of him. If such person upon being brought up upon such adjourned hearing, again refuses to do what is so required of him, such justice, if he sees fit, may again adjourn the proceedings, and commit him for the like period, and so again from time to time until such person consents to do what is required of him.

* 13 & 14 Vict. c. 93, s. 13. s. 5 & 6, substituted for 11 & 12 Vict. c. 42, s. 16.

Nothing herein contained shall prevent such justice from sending any such case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence taken by him.

SECTION 453.

DISCRETIONARY POWERS OF THE JUSTICE.

A justice holding the preliminary inquiry may in his discretion

(a) Permit or refuse permission to the prosecutor his counsel or solicitor to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused;

(b) Receive further evidence on the part of the prosecutor, after hearing any evidence given on behalf of the accused;

* 11 & 12 Vict. c. 42,
s. 21; 14 & 15 Vict. c. 93,
s. 14.

(c) * Adjourn the hearing of the matter from time to time and change the place of hearing, if from the absence of witnesses, the inability of a witness who is ill to attend at the place where the justice usually sits, or from any other reasonable cause, it appears desirable to do so, and may remand the accused if required; Provided that no such remand shall be for more than eight clear days, the day following that on which the remand is made being counted as the first day;

† 11 & 12 Vict. c. 42,
s. 19.

(d) † Order that no person other than the accused his counsel and solicitor shall have access to or remain in the room or building in which the inquiry is held (which shall not be deemed an open court), if it appears to him that the ends of justice will be best answered by so doing;

(e) Regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of this Act.

SECTION 454.

‡ EVIDENCE ON PRELIMINARY INQUIRY.

‡ 11 & 12 Vict. c. 42,
s. 21.

When the accused is before a justice holding a preliminary inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution.

The evidence of the said witnesses shall be given upon oath and in the presence of the accused; and the accused his counsel or solicitor shall be entitled to cross-examine them.

The evidence of every such witness shall be taken down in writing in the form of a deposition, which may be in the form A (2) in the schedule hereto, or to the like effect.

§ This is not required by the existing statutes; and it is believed not to be the practice. There seems to be some diversity of opinion as to whether it is expedient to make the alteration.

Such deposition shall, at some time before the accused is called on for his defence, be read over to and signed by the witness and the justice, the § accused the witness and the justice being all present together at the time of such reading and signing.

The signature of the justice may either be at the end of the deposition of each witness, or at the end of several or of all the depositions in such a form as to show that the signature is meant to authenticate each separate deposition.

Every justice holding a preliminary inquiry is hereby required to cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written.

SECTION 455.

|| EVIDENCE TO BE READ TO THE ACCUSED.

|| 11 & 12 Vict. c. 42,
s. 18; 14 & 15 Vict. c. 93,
s. 14 (2).

After the examination of the witnesses produced on the part of the prosecutor has been completed, and after the depositions have been signed as aforesaid, the justice, unless he discharges the accused person, shall ask him whether he wishes the depositions to be read again, and unless the accused dispenses therewith, shall read or cause them to be read again. When the depositions have been again read or the reading dispensed with, the accused shall be addressed by the justice in these words, or to the like effect:

“Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial.”¶

¶ This is all the caution used in Ireland, and is all that we think necessary.

Whatever the accused then says in answer thereto shall be taken down in writing in the form A (3) in the first schedule hereto, or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter mentioned.

SECTION 456.

EVIDENCE FOR THE DEFENCE.

After the proceedings required by the last section are completed, the accused shall be asked if he wishes to call any witnesses. Every witness called

by the accused who testifies to any fact relevant to the case shall be heard, and his deposition shall be taken and signed in the same manner as the depositions of the witnesses for the prosecution.

SECTION 457.

* DISCHARGE OF ACCUSED.

When all the witnesses on the part of the prosecution and the accused have been heard, the justice shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him; and in such case any recognizances taken in respect of the charge shall become void, unless some person is bound over to prosecute under the provisions next hereinafter contained.

* 11 & 12 Vict. c. 62, s. 22 (proviso); 14 & 15 Vict. c. 93, s. 15 (1).

SECTION 458.

PERSON PREFERRING CHARGE MAY HAVE HIMSELF BOUND OVER TO PROSECUTE.

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

Such recognizance may be in the form C (2) in the first schedule hereto, or to the like effect.

If the prosecutor so bound over at his own request does not prefer and prosecute such an indictment, or if the grand jury do not find a true bill, or if the accused is not convicted upon the indictment so preferred, the prosecutor shall, if the Court before which the indictment was to be preferred or tried so direct, pay to the accused person his costs, including the costs of his appearance on the preliminary inquiry.

The Court before which the indictment is to be preferred or tried or a judge of the High Court may in its or his discretion order that the prosecutor shall not be permitted to prefer any such indictment until he has given security for such costs to the satisfaction of the Court before which the indictment is to be tried or of a judge of the High Court.

The prosecutor shall not, by reason of his being so bound over as aforesaid, be allowed to prefer such bill of indictment at any other Court or sitting than that at which he is so bound over to prefer it.

SECTION 459.

COMMITTAL OF ACCUSED FOR TRIAL.

If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall commit him for trial to the next practicable sittings of some Court to be named in the warrant of commitment, which may be in the form E in the first schedule hereto, or to the like effect.

Such Court must be either a Court of Oyer and Terminer or Gaol Delivery, or a Court of Quarter Sessions.

SECTION 460.

COMMITTALS TO BE TO COURT FOR DISTRICT WHERE OFFENCE COMMITTED.

A justice committing for trial shall send any person accused of having committed an offence in one or more districts for trial before a Court of Oyer and Terminer or Gaol Delivery, or a Court of Quarter Sessions for the district or one of the districts within which such offence was committed, and may commit any person accused of having committed an offence on the high seas or abroad for trial to a Court for any district: Provided that such justice may for the convenience of witnesses or other special reasons to be stated in the warrant of commitment, commit any accused person for trial to any Court

he thinks fit, subject to the power of removal herein-after given: Provided also that no justice in England shall commit any accused person for trial to any Court out of England, nor shall any justice in Ireland commit any accused person for trial to any Court out of Ireland.

No one shall be committed for trial to a Court of Oyer and Terminer or Gaol Delivery for any county of a city or town corporate within which Her Majesty has not been pleased to direct a commission of Oyer and Terminer or Gaol Delivery to be executed within one year then last past, but every person who would otherwise be committed thereto shall be committed for trial to the next Court of Oyer and Terminer or Gaol Delivery for the next adjoining county, unless he is committed to some other Court under the provisions herein contained.

SECTION 461.

DISCRETION OF COMMITTING JUSTICE AS TO CASES TRIABLE AT QUARTER SESSIONS.

A justice may commit to a Court of Oyer and Terminer or Gaol Delivery any accused person whom he would otherwise commit to a Court of Quarter Sessions, if he thinks it proper to do so having reference to the evidence and the magnitude or peculiar character of the case or the local excitement connected with it, or the difficulty of investigating it or of obtaining an impartial trial at such Sessions.

The Court of Quarter Sessions to which any accused person is committed for trial shall have power at any time before trial to transfer him for trial to the next Court of Oyer and Terminer or Gaol Delivery, if for any such reason as aforesaid the case appears proper to be so transferred.

When such power is exercised, all persons who are under recognizance to appear for any purpose connected with such case before the Court of Quarter Sessions shall if necessary be again bound over to appear for the same purpose before the Court in which the trial is to be had; and the recognizances depositions and other documents, including the indictment if found, shall be transmitted to the officer of the Court before which the trial is to take place.

SECTION 462.

* COPY OF DEPOSITIONS.

Every one who has been committed for trial, whether he is bailed or not, shall be entitled at any time before the trial to have copies of the depositions and of his own statement if any from the officer who has custody thereof, on payment of a reasonable sum not exceeding three halfpence for each folio of ninety words.

SECTION 463.

BINDING OVER TO PROSECUTE AND GIVE EVIDENCE.

† When any one is committed for trial, the justice holding the preliminary inquiry shall bind over to prosecute some person willing to be so bound, and bind over every witness for the prosecution whose deposition has been taken, and every witness for the defence, whose evidence in his opinion is material, to give evidence at the court before which the accused is to be indicted.

Every recognizance so entered into shall specify the name and surname of the person entering into it, his occupation or profession if any, the place of his residence, and the name and number if any of any street in which it may be, and whether he is owner or tenant thereof or a lodger therein.

Such recognizance may be either at the foot of the deposition or separate therefrom, and may be in the form C (1) or in the form C (2) in the first schedule hereto as the case may be, or to the like effect, and shall be acknowledged by the person entering into the same, and be subscribed by the justice or one of the justices before whom it is acknowledged.‡

Every such recognizance shall bind the person entering into it to prosecute or give evidence (both or either as the case may be), not only before the Court to which the accused is committed by the justice, but before any Court before which the trial may by competent authority be directed to be had.

* 11 & 12 Vict. c. 42, s. 27.; 14 & 15 Vict. c. 93, s. 14.

† 11 & 12 Vict. c. 42, s. 20; and 14 & 15 Vict. c. 93, s. 10 provides for binding over a complainant before he accused is committed.

‡ Notice required in 11 & 12 Vict. c. 42, s. 20 omitted because not in use in Ireland.

All such recognizances and all other recognizances taken under this Act shall be liable to be estreated in the same manner as any forfeited recognizance to appear is now by law liable to be estreated by the Court before which the principal party thereto was bound to appear.

SECTION 464.

WITNESS REFUSING TO BE BOUND OVER.

* Any witness who refuses to enter into or acknowledge any such recognizance as aforesaid may be committed by the justice holding the inquiry by a warrant in the form E (2) in the first schedule hereto, or to the like effect, to the prison for the place where the trial is to be had, there to be kept until after the trial, or until the witness enters into such a recognizance as aforesaid before a justice of the peace having jurisdiction in the place where the prison is situated: Provided that if the accused is afterwards discharged, any justice having such jurisdiction may order any such witness to be discharged by an order which may be in the form D (3) in the said schedule, or to the like effect.

* 11 & 12 Vict. c. 42, s. 20.; 14 & 15 Vict. c. 98, s. 13 (6).

SECTION 465.

† TRANSMISSION OF DOCUMENTS.

The following documents shall as soon as may be after the committal of the accused be transmitted to the officer of the Court to which the accused is committed for trial, that is to say, the information if any, the depositions of the witnesses, the exhibits thereto, the statement of the accused, and all recognizances entered into, and also any depositions taken before a coroner, if any such have been sent to the justice.

† 11 & 12 Vict. c. 42, s. 20.; 21 & 22 Vict. c. 100, s. 8 (3).

When any order changing the place of trial is made, the person obtaining it shall serve it, or an office copy of it, upon the person then in possession of the said documents, who shall thereupon transmit them and the indictment, if found, to the officer of the court before which the trial is to take place.

The provisions of the † Petty Sessions (Ireland) Act, 1851, section 19, and the § Petty Sessions Clerk (Ireland) Act, 1858, section 8, sub-section 3, shall apply to the transmission and disposal in Ireland of such documents as aforesaid.

† 14 & 15 Vict. c. 93. § 21 & 22 Vict. c. 100.

SECTION 466.

TAKING DEPOSITION OF WITNESS AFTER COMMITTAL. ||

After any one has been committed for trial for any indictable offence, proof upon oath may be given either by the prosecutor or the accused, that any person who has not been examined as a witness is able to give evidence tending to prove either the guilt or the innocence of the accused.

|| See 30 & 31 Vict. c. 35, s. 6.

Such proof shall be given before the justice by whom the accused was committed or some other justice acting within the same limits: Provided that if the person intended to be examined is prevented by illness or any other such cause from appearing, such proof may be given before a justice for the place in which the person intended to be examined then is.

In any case the justice before whom such proof is given shall take it in the form of a deposition as hereinbefore provided. The justice, if satisfied by the proof that it is for the interests of justice that the examination should take place shall appoint a time and place for the examination of the person intended to be examined, and if such person is able to attend, the justice shall have the same powers for compelling his attendance as are herein provided for compelling the attendance of witnesses at the preliminary inquiry.

The person making the application shall give notice to the accused, or the prosecutor, as the case may be, and in Ireland to the Crown Solicitor or sessional Crown solicitor, of the time and place at which the examination is to take place. The notice shall be in writing and may be in the form E in the first schedule hereto, or to the like effect.

The person giving the notice must, if required, tender to the person to whom it is given reasonable travelling expenses to the place where the evidence is to be taken: Provided that if the application is made by the

prosecutor and if the accused is in prison, the justice by whom the prisoner was committed or any justice attending at the prison in which he is confined may, by an order in writing under his hand, direct the governor of the prison having the custody of the accused person to convey him or cause him to be conveyed to the place where the examination is to be taken for the purpose of being present when it is taken and to take him back to prison afterwards. The expenses of such conveyance shall be paid out of the funds applicable to the expenses of the conveyance of any prisoner taken from that prison before a justice for examination.

At the time and place appointed, the justice shall take the deposition of the person to be examined in the same way in which other depositions are taken, and all the provisions herein contained relating to the signing and reading over of depositions and to their admissibility in evidence shall apply to every such deposition: Provided that if the party against whom such deposition is to be read neglects to attend at the time when it is taken after receiving due notice thereof, such deposition shall be admissible in evidence against him, although it was taken and signed in his absence: Provided also, that if the prosecutor or the accused person does not himself attend at the taking of the deposition, but causes his counsel or solicitor to attend, such counsel or solicitor shall be entitled to cross-examine the witness.

Depositions taken under this section may be in the form A (2) in the first schedule hereto or to the like effect, and every such deposition shall be transmitted to the proper officer of the Court before which the accused is to be tried, and shall be treated in all respects in the same way as and shall be considered as being for all purposes a deposition taken upon the preliminary inquiry.

SECTION 467.

* BAIL.

* 11 & 12 Vict. c. 42, ss. 21 and 23; and 14 & 15 Vict. c. 93, s. 16.

Every one charged with or committed for trial for any offence under this Act as to which no provision as to bail is made in this Act shall be bailable as of right at any stage of the proceedings, whether he has been committed to prison or not, upon providing sureties sufficient in the opinion of the justice to secure his appearance, or upon his own recognizance if the justice thinks fit. In case which are by this Act bailable at discretion, bail shall at any stage of the proceedings be allowed or refused at the discretion of the justice.

Whenever the preliminary inquiry is for any reason adjourned or interrupted, the justice holding it instead of remanding the accused to prison, shall or may as the case may be, admit him to bail on condition of his appearing at the time to which the inquiry is adjourned or at an earlier day if so required.

The recognizances to be taken when an accused person is bailed or allowed to be at large on his own recognizance may be in the forms C (1) in the schedule hereto, or to the like effect.

If an accused person who has appeared and has been admitted to bail (either on the recognizance of sureties or on his own recognizance) to appear at any adjournment fails to appear according to the condition of such recognizance, the justice before whom he ought to have appeared may issue a warrant for his apprehension, whether there has been any information in writing and on oath or not.

Every such warrant may be in the form B (4) in the first schedule hereto, or to the like effect.

SECTION 468.

POWER OF HIGH COURT TO BAIL.

The Queen's Bench Division of the High Court or any judge thereof, or any judge of the High Court transacting civil business in Chambers for that division, may order any person to be admitted to bail, and such bail may, if the order so directs, be taken before a justice.

SECTION 469.

† WHERE ACCUSED AFTER BEING BAILED IS ABOUT TO ABSCOND.

Whenever any person charged with any indictable offence has been bailed in manner aforesaid, it shall be lawful for the justice by whom he has been

† 14 & 15 Vict. c. 93, s. 17.

bailed, or for any other justice, if he sees fit, upon the application of the surety or of either of the sureties of such person, and upon information being made in writing and on oath by such surety, or by some person on his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, to issue his warrant for the arrest of the person so bailed, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, to commit such person, when so arrested, to gaol, until his trial, or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

SECTION 470.

COMMITTING ACCUSED TO PRISON FOR SAFE CUSTODY PENDING INQUIRY.

Any accused person who is not admitted to bail shall be committed for safe custody to prison or as the case may require.

If the justice postpones the preliminary inquiry and remands the accused for more than three days, such remand shall be by warrant which may be in the form D (1) in the first schedule hereto, or to the like effect. If such remand is for a period not exceeding three clear days, the justice may, if he thinks fit, give a verbal order* to the police constable who has the accused in custody, or to any other police constable, to continue to keep the accused in his custody, and bring him before the justice at the time appointed for continuing the inquiry.

* 11 & 12 Vict. c. 21,
s. 42.

The justice may, whilst the accused is under remand and before the expiration of the period for which he has been remanded, order the accused to be brought before him, and the gaoler or officer in whose custody he then is shall obey the order, or if the accused is on bail the justice may summon him to appear at an earlier day than that to which he was remanded. If such summons is not obeyed a warrant may be issued to enforce attendance, which may be in the form B (3) in the schedule, and may be executed like any other warrant.

SECTION 471.

CONVEYING ACCUSED TO PRISON AFTER COMMITTAL FOR TRIAL.

If the accused is committed for trial, the police constable to whom the warrant of commitment is directed shall convey him to the prison mentioned in such warrant, and shall there deliver him together with such warrant to the governor of such prison, who shall thereupon give such police constable a receipt for the accused, which may be in the form F in the first schedule hereto, or to the like effect, and which † shall set forth the condition in which such accused person was when he was delivered into the custody of such governor.

† 11 & 12 Vict. c. 42.

It shall not be necessary to address any warrant of committal under this or any other section of this Act to the governor of the prison, but upon delivery of any such warrant to such governor by the person charged with the execution thereof, such governor shall receive and detain the person named therein (or detain him if already in his custody) for such period and for such purpose as the warrant directs. In cases of adjournments or remands the governor shall bring the said person at the time and place fixed by the warrant for that purpose before such justices as are there.

The provisions of this section shall apply to every person who is committed to prison under any provision of this Act.

SECTION 472.

‡ BAIL OF ACCUSED AFTER COMMITTAL.

If any accused person entitled to be admitted to bail, or if any accused person whom the justice has power to bail, and who in his opinion ought to be bailed, is committed to prison only because he does not at the time of his committal for trial procure sufficient sureties for appearing to take his trial, the justice shall write on the back of the warrant of commitment a cer-

‡ 11 & 12 Vict. c. 42,
ss. 23 and 24.; 14 & 15
Vict. c. 93, s. 16.

tificate in the form H (1) or H (2) in the first schedule hereto, or to the like effect, of his consent to the accused being bailed, and shall state the amount of bail which ought to be required. Any justice of the peace attending or being at the prison in which such accused person is confined shall, upon the production of such certificate, admit him to bail accordingly, and shall order him to be discharged by a warrant of deliverance, which may be in the form D (3) in the first schedule hereto, or to the like effect.

The justice holding the preliminary inquiry shall, if required, make and sign one or more duplicate copies of the certificate hereinbefore mentioned; and upon the production of any such duplicate to any justice, such justice may within his jurisdiction take the recognizance of one or more sureties in conformity therewith, and shall thereupon transmit the recognizance to the clerk of the justices of the petty sessional division or petty sessions clerk of the district in which the accused person was committed. When the recognizances of all the sureties required have been received, the committing justice or some other justice for the same place, petty sessional division, or petty sessions district, shall issue his warrant of deliverance to the governor of the prison, which may be in the form D (3) in the first schedule hereto, requiring him to take the recognizance of the accused person and to discharge him, and such governor is hereby authorised to take such recognizance and he shall forthwith do so and shall discharge the accused, unless he is detained for some other cause.

SECTION 473.

* WHEN DEPOSITIONS MAY BE GIVEN IN EVIDENCE.

* 11 & 12 Vict. c. 42,
s. 26.; 14 & 15 Vict. c. 93,
s. 14 (1).

If a witness who gave evidence before the justice is at the time when his evidence is required dead or in such a state of health as not to be able to appear in court, or in such a state of mind as not to be able to testify (although in either of the last two cases there may be a prospect of his recovery), or if being a witness for the prosecution he is kept out of the way by the accused, or if being a witness for the accused he is kept out of the way by the prosecution, his deposition may be given in evidence either before the grand jury or at the trial, if the cause of his non-appearance is proved upon oath before the Court, and if the deposition was taken read and signed by the witness and justice as hereinbefore provided.

If the deposition purports to have been taken and signed as aforesaid, it shall be presumed to have been duly taken read and signed, but in all cases when the deposition is taken before committal it must be proved that the deposition was taken in the presence of the accused, and that he, his counsel, or solicitor had a full opportunity of cross-examining the witness; or in cases where the deposition was taken after committal that notice of the examination was given as hereinbefore provided to the party against whom the deposition is proposed to be read.

Evidence may be given of the service of such notice without the production of the original:

Provided that if it is made to appear to the Court that it is probable that the witness may within a reasonable time be capable of attending to give evidence, and that the ends of justice require that the witness should be examined personally before the jury, the Court may postpone the trial on such terms as to bail or otherwise as may seem proper, and if it is first made to appear as aforesaid after the accused is given in charge to the jury, the Court may discharge the jury.

The provisions of Part XXXVIII and Part XXXIX shall supersede all provisions contained in the Indictable Offences Act, 1848,† and the Petty Sessions Ireland Act, 1851, and in all other Acts not hereby repealed which are repugnant to this Act; but all other provisions contained in any of such Acts shall remain in force, anything in this Act notwithstanding.

† 11 & 12 Vict. c. 42.
(This title is given to
Jervis's Act by 31 & 32
Vict. c. 107, s. 1.)

PART XL.
PLACE AND MODE OF TRIAL.

SECTION 474.

INFORMATION AND INDICTMENT IN QUEEN'S BENCH.

After the commencement of this Act an information may be filed by the Attorney General or by the Master of the Crown Office for any offence not punishable by death or penal servitude, in like manner as may now be done for misdemeanours. The existing practice as to the time and mode of pleading upon informations shall, till altered by rules to be made under this Act, apply to informations under this Act.

An information filed or indictment found or ordered to be tried before the Queen's Bench Division of the High Court shall (if no special order of that division is given) be tried as civil cases of that division are now tried. Such information or indictment may be tried at bar before the Queen's Bench Division if so ordered. The Attorney General may obtain an order for that purpose as of right.

Upon a trial at bar the jury shall in England be taken from the county of Middlesex, and in Ireland from the county of Dublin or the county of the city of Dublin, as the order of the Queen's Bench Division may direct.

SECTION 475.

ORDER AS TO PLACE AND MODE OF TRIAL.

The Queen's Bench Division of the High Court may in any case after hearing the parties make an order, on the application either of the prosecutor or of the accused, that the trial shall be had before such Queen's Bench Division either at bar or as civil causes are tried, or before any competent Court specified in such order, other than that to which the accused has been committed for trial, in which case the trial shall be by a jury of the Court specified in the order.

If the indictment has not been found when the order is made, the indictment may, as the order directs, be found either by the grand jury of the Court in which the accused is ordered to be tried, or by the grand jury of the Court to which he has been committed for trial.

The party at whose instance any such order is made shall forthwith give notice thereof to every one who has been bound over to give evidence, and to every one who has given bail for the appearance of the accused, and to the person who at the time when the order is made is in possession of the depositions and other documents hereinbefore mentioned relating to the case. Such notice may be given by serving an office copy of the order on the person to whom it is to be given.

Whenever any order is made under this section, the Court may give such direction as to postponing the trial and as to bail and may impose on the person at whose instance the application is made such terms as to the payment of costs as it thinks reasonable.

Any application under this section shall be made upon notice of motion, and the decision of the Queen's Bench Division thereon shall be final.

When the Queen's Bench Division is not sitting, any judge thereof or any judge of the High Court transacting the civil business of that Division at Chambers may, if he thinks fit, on hearing the parties, postpone the trial of any case so as to enable either party to make an application under this section.

The Attorney General may as of right obtain an order ex parte for the trial of any case before the Queen's Bench Division.

Nothing herein contained shall enable any order to be made for the trial in Ireland of any person committed for trial in England or for the trial in England of any person committed for trial in Ireland.

SECTION 476.

CHANGING PLACE OF TRIAL FROM COUNTY OF A CITY OR TOWN CORPORATE.

Any Court of Oyer and Terminer or Gaol Delivery sitting in and for any county of a city or town, except London, Westminster, and the borough of Southwark, may direct any indictment found by the grand jury of such county to be tried before the Court of Oyer and Terminer or Gaol Delivery in and for the next adjoining county.

Every one bound over to prosecute before a Court of Oyer and Terminer or Gaol Delivery for a county of a city or a county of a town, may by leave of that Court prefer the bill of indictment before the Court of Oyer and Terminer or Gaol Delivery for the next adjoining county, on entering into a recognizance of forty pounds conditioned to pay the extra costs attending the prosecution of such offence in such adjoining county, if the Court before which the trial is heard is of opinion that he ought to pay the same. The provisions now in force contained in the Acts passed in the thirty-eighth year of the reign of his late Majesty King George the Third, chapter fifty-two, and in the fifty-first year of the same reign, chapter one hundred, as to England, and of an Act passed in the sixth year of the reign of his late Majesty King George the Fourth, chapter fifty-one, as to Ireland, relating to indictments the trial of which is removed from such counties of cities and counties of towns under those Acts shall so far as applicable be applied to indictments the trials of which are removed under this section.

* 5 & 6 W. 4. c. 76,
s. 24.

* York shall be considered to be the next adjoining county to Kingston-upon-Hull, and Northumberland the next adjoining county to Newcastle-upon-Tyne and to Berwick-upon-Tweed for the purposes of this section.

SECTION 477.

SPECIAL JURIES.

The Queen's Bench Division of the High Court, or when that Division is not sitting, any judge thereof or any judge of the High Court transacting the civil business of that division in chambers, may, on the application of either the prosecutor or the accused, on notice of motion or summons to the other side, make an order that any case which is to be tried in a Court of Oyer and Terminer and Gaol Delivery for any county, or in the Central Criminal Court, be tried by a special jury.

No such order shall be made unless the Court or judge is satisfied that the application for it is not made vexatiously or for delay, and that it is expedient for the ends of justice that the trial should take place before a special jury. The Court or judge may by such order, if it be deemed necessary, postpone the trial on such terms as seem just.

Such order may be either for a special jury to be struck in the manner hereinafter provided, or for a jury to be taken from the special jury panel.

SECTION 478.

STRIKING SPECIAL JURY.

When the order is made for striking a special jury at the instance of the prosecutor, one of the terms of the order shall be that the prosecutor shall pay the reasonable costs and expenses (to be taxed by the proper officer) of the solicitor employed by the accused to attend for the purpose of striking the special jury.

A copy of such order when made shall be served on the sheriff of the county in which such trial is to take place, or his agent; or, in the case of the Central Criminal Court, on the Sheriff of Middlesex and the Secondary of London or their agents, and on the Clerk of the Central Criminal Court; and in both cases on the Master of the Crown Office; and also, where such order is obtained at the instance of the prosecutor, on the accused, and where it is obtained at the instance of the accused, on the prosecutor or his solicitor.

The Master of the Crown Office shall appoint a time and place for the nomination of the special jury, which appointment shall be served by the party obtaining it on all the other parties.

If the trial is to take place in a Court of Oyer and Terminer and Gaol Delivery for a county, the sheriff of the county in which the trial is to take place or his agent shall attend before the Master of the Crown Office in London or Dublin, as the case may be; and all proceedings shall be taken in England as prescribed in the County Juries Act, 1825, s. 32, and in Ireland as prescribed in the Juries Act (Ireland), 1871, s. 39, respectively, for striking reducing and returning such jury.

If the trial is to take place in the Central Criminal Court, the Sheriff of Middlesex and the Secondary of London, or their agents, shall attend before the Master of the Crown Office with the special jury lists of Middlesex and London, and the Clerk of the Central Criminal Court, or his agent, shall also attend with the lists of the special jurors for the counties or parts of counties for the time being within the jurisdiction of the Central Criminal Court. Such lists shall be made out and transmitted as hereinafter directed.

The numbers of all the special jurors in the lists aforesaid shall be written on separate pieces of parchment, and all proceedings shall be taken with those numbers for the purpose of striking a special jury for the trial at the Central Criminal Court, as hereinbefore directed as to striking a special jury for the trial at the Court of Oyer and Terminer and Gaol Delivery for a county.

SECTION 479.

SPECIAL JURY TAKEN FROM SPECIAL JURY PANEL.

Where the order is that the case be tried by a jury to be taken from the special jury panel, and the trial is to take place at a time and place where a special jury panel is returned for the trial of civil causes, the jury for the trial of the case shall be taken from the jurors whose names are on the special jury panel returned for the trial of such civil causes.

When any such order has been made, notice thereof shall be given to the judge or judges under whose precept such jury panel has been or is to be issued and to the clerk of assize; and such judge or judges may issue the precept for returning as many jurors on the panel as they may deem necessary, or if the precept is already issued, may make an order on the sheriff to summon such additional number as such judge or judges may think fit; and the jurors returned under such order shall be added to the special jury panel.

If the trial is to take place at a time and place where no panel of special jurors is returned for the trial of civil causes, a precept shall be issued by the Master of the Crown Office to the sheriff of the county in which the case is to be tried to return such number of special jurors as the Master of the Crown Office deems sufficient to be the panel for the trial of special jury cases at such Court, in like manner as is done for the trial of civil causes under the precept of the judge or judges, and the sheriff shall obey such precept and the persons so summoned shall attend as required.

If the case is to be tried at the Central Criminal Court, the Clerk of the Central Criminal Court shall take by ballot indiscriminately from the lists of special jurors for Middlesex and London and from the lists of special jurors within the counties and parts of counties for the time being within the jurisdiction of the Central Criminal Court the names of such number of persons as the Master of the Crown Office deems sufficient to be the panel for the trial of special jury cases at such sessions, and shall return their names to the Central Criminal Court, and thereupon such precepts as are usual for the summoning of other jurors in that court shall issue for the purpose of summoning such persons.

SECTION 480.

SPECIAL JURY LISTS FOR CENTRAL CRIMINAL COURT.

The sheriff of every county (other than Middlesex and the City of London) part of which is within the jurisdiction of the Central Criminal Court shall, at the time when the jurors' book for that year is made out, make a list of the special jurors within such part of such county, and transmit it to the Clerk of the Central Criminal Court.

Whenever under any authority given by any statute in force for the time being any county or part of a county is after the making of the annual jury book included within the jurisdiction of the Central Criminal Court, the sheriff of such county shall as soon as may be make out a list of the special jurors within such county or part of a county as the case may be, and transmit it to the Clerk of the Central Criminal Court.

PART XLI.
INDICTMENTS.

SECTION 481.

HEADING OF INDICTMENT.

It shall not be necessary to state in any indictment that the jurors present upon oath or affirmation.

It shall be sufficient if an indictment begins in the form I (1) given in the first schedule hereto, or to the like effect.

Any mistake in the heading shall upon being discovered be forthwith amended, and whether amended or not shall be immaterial.

SECTION 482.

FORM AND CONTENTS OF COUNTS.

Every count of an indictment shall contain and shall be sufficient if it contains in substance a statement that the accused has committed some offence therein specified. Such statement may be made in popular language without any technical averments or any allegations of matter not essential to be proved, and may be in the form I (2) in the first schedule hereto or to the like effect.

Such statement may be in the words of the enactment describing the offence or declaring the matter charged to be an indictable offence, or in any words sufficient to give the accused notice of the offence with which he is charged.

Every count shall contain so much detail of the circumstances of the alleged offence as is sufficient to give the accused reasonable information as to the act or omission to be proved against him, and to identify the transaction referred to: Provided that the absence or insufficiency of such details shall not vitiate the count, but the Court may order an amendment or further particulars, as herein-after mentioned.

A count may refer to any section or sub-section of any statute creating the offence charged therein, and in estimating the sufficiency of such count the Court may have regard to such reference.

Every count shall in general apply only to a single transaction.

SECTION 483.

OFFENCES MAY BE CHARGED IN THE ALTERNATIVE.

A count shall not be deemed objectionable on the ground that it charges in the alternative several different matters acts or omissions which are stated in the alternative in the enactment describing any offence or declaring the matters acts or omissions charged to be an indictable offence, or on the ground that it is double or multifarious: Provided that the accused may at any stage of the trial apply to the Court to amend or divide any such count on the ground that it is so framed as to embarrass him in his defence.

The Court, if satisfied that the ends of justice require it, may order any count to be amended or divided into two or more counts, and on such order being made, such count shall be so divided or amended, and thereupon a formal commencement may be inserted before each of the counts into which it is divided.

SECTION 484.

CERTAIN OBJECTIONS NOT TO VITIATE COUNTS.

No count shall be deemed objectionable or insufficient on any of the following grounds; that is to say,

that it does not contain the name of the person injured; or

that it does not state who is the owner of any property therein mentioned;

or

that it charges an intent to defraud without naming or describing the person whom it was intended to defraud; or

that it does not set out any document which may be the subject of the charge; or

that it does not set out the words used where words used are the subject of the charge; or

that it does not specify the means by which the offence was committed;

or

that it does not name or describe with precision any person or thing:

Provided that the Court may, if satisfied that it is necessary for a fair trial, order that a particular further describing such document words means person or thing be furnished by the prosecutor.

SECTION 485.

INDICTMENTS FOR LIBEL.

No count for publishing a blasphemous, seditious, obscene, or defamatory libel, or for selling or exhibiting an obscene book pamphlet newspaper or other printed or written matter shall be deemed insufficient on the ground that it does not set out the words thereof: Provided that the Court may order that a particular shall be furnished by the prosecutor stating what passages in such book pamphlet newspaper printing or writing are relied on in support of the charge.

A count for libel may charge that the matter published was written in a sense which would make the publishing criminal, specifying that sense without any prefatory averment showing how that matter was written in that sense. And on the trial it shall be sufficient to prove that the matter published was criminal either with or without such innuendo.

SECTION 486.

INDICTMENTS FOR PERJURY AND CERTAIN OTHER OFFENCES.

No count charging perjury, the making of a false oath or of a false statement, or fabricating evidence, or subornation or procuring the commission of any of these offences, shall be deemed insufficient on the ground that it does not state the nature of the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used or the evidence fabricated, or on the ground that it does not expressly negative the truth of the words used: Provided that the Court may if satisfied that it is necessary for a fair trial order that the prosecutor shall furnish a particular of what is relied on in support of the charge.

No count which charges any false pretence, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretences or the fraud or fraudulent means consisted: Provided that the Court may if satisfied as aforesaid order that the prosecutor shall furnish a particular of the above matters or any of them.

No provision hereinbefore contained in this Part as to matters which are not to render any count objectionable or insufficient shall be construed as restricting or limiting in any way the general provisions of Section 482.

SECTION 487.

PARTICULARS.

When any such particular as aforesaid is delivered, a copy shall be given without charge to the accused or his solicitor. And it shall be entered in the

Crown Book; and the trial shall proceed in all respects as if the indictment had been amended in conformity with such particular.

In determining whether a particular is required or not and whether a defect in the indictment is material to the substantial justice of the case or not, the Court may have regard to the depositions.

SECTION 488.

VARIANCES AND AMENDMENTS.

If on the trial of any indictment there appears to be a variance between the proof and the charge in any count in the indictment, either as found or as amended or as it would have been if amended in conformity with any such particular, the Court before which the case is tried, or the Court of Appeal, may amend the indictment or any count in it or any particular so as to make it conformable with the proof. If the Court is of opinion that the accused has not been misled or prejudiced in his defence by such variance, it shall make such amendment.

If it appears that there is in the indictment, or in any count in it, an omission to state or a defective statement of anything requisite to constitute the offence, or an omission to negative any exception which ought to have been negatived, but that the matter omitted is proved by the evidence, the Court before which the trial takes place, or the Court of Appeal, if of opinion that the accused has not been misled or prejudiced in his defence by such omission, shall amend the count by inserting in it the matter omitted.

The trial in either of these cases or the appeal may then proceed in all respects as if the indictment or count had been originally framed as amended: Provided that if the Court is of opinion that the accused has been misled or prejudiced in his defence by any such variance or omission or defective statement as aforesaid, but that the effect of such misleading or prejudice might be removed by adjourning or postponing the trial, the Court may in its discretion make the amendment and adjourn the trial to a future day in the same sittings, or discharge the jury and postpone the trial to the next sittings of the Court on such terms as it thinks just: Provided also that the Court of Appeal may, in making such amendment in its discretion, either affirm the sentence or direct a new trial.

In determining whether the accused has been misled or prejudiced in his defence, the Court which has to determine the question shall consider the contents of the depositions, as well as the other circumstances of the case.

Provided that the propriety of making or refusing to make any such amendment shall be deemed a question of law, and that the decision of the Court upon it may be reserved for the Court of Appeal, or may be brought before the Court of Appeal like any other decision on a point of law.

SECTION 489.

INDICTMENT FOR HIGH TREASON.

Every indictment for high treason or for any offence against Section 79 of this Act must state overt acts, and no evidence shall be admitted of any overt act not stated unless it is otherwise relevant as tending to prove some overt act stated.

The power of amending indictments herein contained shall not extend to authorise the Court to add to the overt acts stated in the indictment.

SECTION 490.

FULL OFFENCE CHARGED—ATTEMPT PROVED.

When the complete commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the accused may be convicted of such attempt and punished accordingly.

SECTION 491.

ATTEMPT CHARGED—FULL OFFENCE PROVED.

When an attempt to commit an offence is charged, but the evidence establishes the commission of the full offence, the accused shall not be

entitled to be acquitted, but the jury may convict him of the attempt: Provided that after a conviction for such attempt the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit.

SECTION 492.

FULL OFFENCE CHARGED—PART ONLY PROVED.

Every count shall be deemed divisible; and if the commission of the offence charged, as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence, the person accused may be convicted of any offence so included which is proved, although the whole offence charged is not proved; or he may be convicted of an attempt to commit any offence so included:

Provided that on a count charging murder, if the evidence proves manslaughter but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter, but shall not on that count find the accused guilty of any other offence: Provided also, that upon a count charging rape, the accused shall not be found guilty of any charge other than rape or an attempt to commit rape.

SECTION 493.

JOINDER OF COUNTS AND PROCEEDINGS THEREON.

Any number of counts for any offences whatever may be joined in the same indictment, and shall be distinguished in the manner shown in the form I (1) in the first schedule hereto, or to the like effect: Provided that to a count charging murder no count charging any offence other than murder shall be joined.

When there are more counts than one in an indictment, each count may be treated as a separate indictment.

If the Court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately. Such order may be made either before or in the course of the trial, and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed. The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been found in a separate indictment:

Provided that, unless there be special reasons, no order shall be made preventing the trial at the same time of any number of offences involving dishonesty not exceeding five, alleged to have been committed within six months from the first to the last of such offences, whether against the same person or not.

If one sentence is passed upon any verdict of guilty on more counts than one, the sentence shall be good if any of such counts would have justified the sentence.

SECTION 494.

CHARGE OF PREVIOUS CONVICTION.

* When an indictment contains a count charging the accused with having been previously convicted, he shall not at the time of his arraignment be required to plead to it unless he pleads guilty to the rest of the indictment, nor shall such count be mentioned to the jury when the accused is given in charge to them, nor shall he be tried upon it if he is acquitted on the other counts; but if he is convicted on any other part of the indictment, he shall be asked whether he has been previously convicted as alleged or not, and if he says that he has not, or does not say that he has been so convicted, the jury shall be charged to inquire into the matter as in other cases:

* 6 & 7 W. 4, c. 111; 24 & 25 Vict. c. 96, s. 116; c. 99, s. 37; 34 & 35 Vict. c. 112, s. 9. As to proof of previous convictions, see 14 & 15 Vict. c. 99, s. 3.

† Provided that, if upon the trial of any person for any such subsequent offence as aforesaid evidence is given on the part of the accused of his good character, the prosecutor may in answer thereto prove such previous conviction, and the jury shall be charged to inquire thereof together with the other offence to be tried.

† 6 & 7 W. 4, c. 111, s. 8. (proviso).

SECTION 495.

WHAT OBJECTIONS MAY BE TAKEN TO AN INDICTMENT, AND WHEN.

After the commencement of this Act no objection to an indictment shall be taken by way of demurrer, but if an indictment does not state in substance an indictable offence, or states an offence not triable by the Court before which the accused is arraigned, the accused may move the Court to quash it, or in arrest of judgment, as herein provided.

If such motion is made before the accused pleads, the Court shall either quash the indictment or amend it, if it thinks that it ought to be amended. If the defect in the indictment appears to the Court during the trial, and the Court does not think fit to amend it, it may in its discretion quash the indictment, or leave the objection to be taken in arrest of judgment.

SECTION 496.

HOW PARTIES TO OFFENCES MAY BE INDICTED.

Every one who is a party to any offence within the meaning of Section 71 of this Act may be convicted either upon a count charging him with having committed that offence or upon a count showing how he became a party to it within the meaning of that section.

SECTION 497.

ACCESSORIES AFTER THE FACT, AND RECEIVERS.

Every one charged with being an accessory after the fact to any offence, or with receiving any property knowing it to have been dishonestly obtained, may be indicted, whether the principal offender or other party to the offence or person by whom such property was so obtained has or has not been indicted or convicted, or is or is not amenable to justice, and may be indicted and tried either alone as for a substantive offence or jointly with such principal or other offender or person by whom such property was dishonestly obtained.

When any property has been dishonestly obtained, any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive offences under Section 309 of this Act, and may be tried together, whether the person by whom the property was so obtained is or is not indicted with them, or is or is not in custody or amenable to justice.

SECTION 498.

SPECIAL PLEAS.

The following special pleas and no others may be pleaded according to the provisions hereinafter contained; that is to say, a plea of autrefois acquit, a plea of autrefois convict, a plea of pardon, and such plea in cases of defamatory libel as is herein-after mentioned.

All others grounds of defence may be relied on under the plea of Not guilty.

The pleas of autrefois acquit, autrefois convict, and pardon may be pleaded together, and if pleaded, shall be disposed of before the accused is called on to plead further; and if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

In any plea of autrefois acquit or autrefois convict it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted as the case may be of the offence charged in the count or counts to which such plea is pleaded.

SECTION 499.

EFFECT OF PLEAS OF AUTREFOIS ACQUIT AND CONVICT.

On the trial of an issue on a plea of autrefois acquit or autrefois convict to any count or counts, if it appear that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made which might then have

been made, have been convicted of all the offences of which he may be convicted on the count or counts to which such plea is pleaded, the Court shall give judgment that he be discharged from such count or counts.

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

SECTION 500.

PREVIOUS OFFENCE CHARGED WITH AGGRAVATION.

When an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in charge on a former trial, but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction shall be a bar to such subsequent indictment.

A previous conviction or acquittal on an indictment for murder shall be a bar to a second indictment for the same homicide charging it as manslaughter; and a previous conviction or acquittal on an indictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder.

If it appears on the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* to an indictment for murder or manslaughter that the former trial was for an offence against the person now alleged to have been killed, and the death of such person is now alleged to have been caused by the offence previously charged, but that the death happened after the trial on which the accused was acquitted or convicted as the case may be, then if it appear that on the first trial the accused might if convicted have been sentenced to penal servitude, the Court shall direct that the accused be discharged from the indictment before it. If it does not so appear, the Court shall direct that he plead over.

SECTION 501.

DEPOSITIONS AND JUDGE'S NOTES ON FORMER TRIAL.

On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, the depositions transmitted to the Court on the former trial, together with the judge's notes if available, and the depositions transmitted to the Court on the subsequent charge, shall be admissible in evidence to prove or disprove the identity of the charges.

SECTION 502.

* PLEA OF JUSTIFICATION IN CASES OF LIBEL.

Every one accused of publishing a defamatory libel may plead that the defamatory matter published by him was true, and that it was for the public benefit that the matters charged should be published in the manner and at the time when they were published. Such plea may justify the defamatory matter in the sense specified (if any) in the count, or in the sense which the defamatory matter bears without any such specification; or separate pleas justifying the defamatory matter in each sense may be pleaded separately to each as if two libels had been charged in separate counts. Every such plea must be in writing, and must set forth the particular fact or facts by reason of which it was for the public good that such matters should be so published. The prosecutor may reply generally denying the truth thereof.

The truth of the matters charged in an alleged libel shall in no case be inquired into without such plea of justification, unless the accused is put upon his trial upon any indictment or information charging him with publishing the libel knowing the same to be false, in which case evidence of the truth may be given in order to negative the allegation that the accused knew the libel to be false.

* 6 & 7 Vict. c. 96.

The accused may, in addition to such plea, plead not guilty, and such pleas shall be inquired of together. No such plea of justification as is herein provided for shall be pleaded to any indictment or count so far as it charges a libel to be a seditious or blasphemous or obscene libel.

If, when such plea of justification is pleaded, the accused is convicted, the Court may, in pronouncing sentence, consider whether his guilt is aggravated or mitigated by the plea.

If, when such plea of justification is pleaded, the issue thereon is found against the accused, the prosecutor shall be entitled to recover from the accused person the costs sustained by the prosecutor by reason of such plea.

If the accused is acquitted either upon an indictment preferred or information filed by a private prosecutor for a defamatory libel, the accused shall be entitled to recover from such prosecutor the costs sustained by him by reason of such prosecution* inclusive of the costs if any incurred in the Court which granted the information. The costs so to be recovered by the accused or prosecutor respectively shall be taxed by the proper officer of the Court before which the indictment or information is tried.

* See *R. v. Hargreaves*,
L.R. 1 Q.B.D. 48A.

SECTION 503.

APPLICATION OF THIS PART TO CRIMINAL INFORMATIONS.

The provisions of this Part relating to indictments shall so far as they are applicable thereto apply to criminal informations.

PART XLII.

PREFERRING INDICTMENT.

SECTION 504.

JURISDICTION OF COURTS.

Every Court competent to try offences triable in England or Ireland, as the case may be, shall be competent to try all such offences wherever committed, if the accused is found or apprehended or is in custody within the jurisdiction of such Court, or if he has been committed for trial to such Court or ordered to be tried before such Court, or before any other Court the jurisdiction of which has by lawful authority been transferred to such first-mentioned Court under any Act for the time being in force: Provided that nothing in this Act shall authorise any Court in England to try any person for any offence committed entirely in Ireland, or any Court in Ireland to try any person for any offence committed entirely in England, or any Court either in England or Ireland to try any person for any offence committed entirely in Scotland.

No proceeding before any Court shall be held invalid only because it took place in any other district than the one in which the Court ought to have sat, unless it is made to appear affirmatively that the accused was actually prejudiced thereby.

SECTION 505.

SENDING BILL BEFORE GRAND JURY.

† See 30 & 31 Vict.
c. 35.

† Any one who is bound over to prosecute any person, whether committed for trial or not, may prefer a bill of indictment for the charge on which the accused has been committed, or in respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice: Provided that the accused may at any time before he is given in charge to the jury apply to the Court to quash any count in the indictment, on the ground that it is not founded on such facts or evidence, and the Court shall quash such count if satisfied that it is not so founded: Provided also, that if at any time during the trial it appears to the Court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of such count remaining in the indictment, the Court may then quash such count and discharge the jury from finding any verdict upon it, but the Court shall not do so unless satisfied that justice requires it.

The Attorney General, or any one with the written consent of a judge of the High Court or of the Attorney General, may prefer a bill of indictment for any offence before the grand jury of any Court specified in such consent; and any person may prefer any bill of indictment before any Court with the consent of that Court.

It shall not be necessary to state such consent in the indictment. An objection to an indictment for want of such consent must be taken by motion to quash the indictment before the accused person is given in charge.

Save as aforesaid no bill of indictment shall after the commencement of this Act be preferred in England or Ireland: Provided that nothing herein contained shall prohibit or affect the practice existing in Ireland whereby the Crown Solicitor at any Court of Oyer and Terminer or Gaol Delivery, or the sessional Crown solicitor at Quarter Sessions, or the Crown counsel at any court, may prefer any bill of indictment in any case.

SECTION 506.

PRESENTMENT TO BE UPON INDICTMENT, AND NO TRIAL ON CORONER'S INQUISITION.

After the commencement of this Act no grand jury shall present that any one has committed an indictable offence except upon a bill of indictment duly sent before them.

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

SECTION 507.

COPIES OF INDICTMENT.

After the indictment is found every one charged therein shall be entitled to have a copy thereof from the officer of the Court, reasonable notice being given to the officer that such copy will be required, on paying for it a reasonable sum not exceeding three halfpence for each folio of ninety words.

SECTION 508.

SPECIAL PROVISIONS IN THE CASE OF TREASON.

*When any one is indicted for high treason, or for being accessory after the fact to high treason, the following documents shall be delivered to him after the indictment has been found, and at least ten days before his arraignment; that is to say,

a copy of the indictment;

a list of the witnesses to be produced on the trial to prove the indictment;

and

a copy of the panel of the jurors who are to try him returned by the sheriff.

The lists of the witnesses and the copy of the panel of the jurors must mention the names occupations and places of abode of the said witnesses and jurors.

The documents aforesaid must all be given to the accused at the same time and in the presence of two witnesses:

Provided that if the trial is to be heard in the Queen's Bench Division of the High Court, the list of jurors aforesaid may be given to the accused after his arraignment, if it is given ten days before the trial:

† Provided also, that this section shall not apply to cases of high treason or by killing Her Majesty, or to cases where the overt act alleged is any attempt to injure her person in any manner whatever, or to the offence of being accessory after the fact to any such treason.

* 7 & 8 W. 3, c. 3, s. 7;
7 Anne, c. 21, s. 14;
6 Geo. 4, c. 50, ss. 21 and
62. 17 & 18 Vict. c. 20
extends the statute of
Anne to Ireland without
noticing the alterations
made in it by the statute
of Geo. 4.

† 39 & 40 Geo. 3, c. 96;
5 & 6 Vict. c. 11.

SECTION 509.

BENCH WARRANT AND CERTIFICATE.

When any one against whom an indictment has been duly preferred and has been found, and who is then at large, does not appear to plead to such indictment, whether he is under recognizances to appear or not, the following consequences shall follow; that is to say,

(a) The Court before which the accused ought to have been tried, or, if it is a Court of Quarter Sessions for a county, any two justices forming part thereof, may issue a warrant for his apprehension, which may be executed in any part of England or Ireland as the case may be.

(b) The officer of the Court at which the said indictment is found or (if the place of trial has been changed) the officer of the Court before which the trial is to take place, shall at any time after the end of the sessions at which the accused ought to have appeared and pleaded, grant to the prosecutor, upon application made on his behalf and upon payment of one shilling, a certificate of such indictment having been found. The certificate may be in the form G in the first schedule hereto, or to the like effect.

(c) Upon production of such certificate to any justice for the county or place in which the indictment was found, or in which the accused is or resides or is suspected to be or reside, such justice shall issue his warrant to apprehend him, and to cause him to be brought before such justice, or before any other justice for the same county or place, to be dealt with according to law. The warrant may be in the form B (3) in the first schedule hereto, or to the like effect.

(d) If it is proved upon oath before such justice that any one apprehended and brought before him on such warrant is the person charged and named in such indictment, such justice shall, without further inquiry or examination, either commit him to prison by a warrant which may be in the form D (1) in the first schedule hereto, or to the like effect, or admit him to bail as in other cases provided; but if it appears that the accused has without reasonable excuse broken his recognizance to appear, he shall not in any case be bailable as of right.

(e) If it is proved before the justice upon oath that any such accused person is at the time of such application and production of the said certificate as aforesaid confined in any prison for any other offence than that charged in the said indictment, such justice shall issue his warrant directed to the governor of the prison in which such person is then confined as aforesaid, commanding him to detain him in his custody until by lawful authority he is removed therefrom. Such warrant may be in the form D (1) in the first schedule hereto, or to the like effect.

SECTION 510.

OUTLAWRY ABOLISHED.

After the commencement of this Act outlawry in criminal cases shall be abolished.

PART XLIII. TRIAL.

SECTION 511.

MINUTE OF PROCEEDINGS.

It shall not in any case be necessary to draw up any formal record of the proceedings on a trial for a criminal offence, but the proper officer of the Court before which the trial takes place shall cause to be preserved all indictments and all depositions transmitted to him, and he shall keep a book to be called the Crown Book, which book shall be the property of the Court, and shall be deemed a record thereof, and the contents thereof proveable by a certified copy or extract without production of the original.

In the Crown Book shall be entered the names of the judge recorder justices or other members of the Court and of the grand jurors, and a memorandum of the substance of all proceedings at every trial and of the result of every trial; and such entries, or a certified copy thereof, or of so much thereof as may be material, may be referred to on any proceeding by way of appeal as herein provided; and any certificate of any indictment trial conviction or acquittal, or of the substance thereof, shall be made up from the

memorandum in such book, and shall be receivable in evidence for the same purpose and to the same extent as certificates of records or the substantial parts thereof are now receivable. Any erroneous or defective entry in the Crown Book may at any time be amended in accordance with the fact by the judge or justice who presided at the trial:

Provided always, that nothing herein contained shall dispense with the taking of notes by the judge or justice presiding at the trial.

If the trial takes place before a different Court from that to which the accused was committed for trial, or at a different Court from that before which the indictment was found, a statement shall be made in the Crown Book of the order under which the trial is so held, and by whom and where it was made.

The officer of the Court shall cause to be entered in the Crown Book a statement of the following particulars:

(a) The name of the committing justice and the charge on which the accused was committed; or,

(b) If the accused was not committed and the prosecutor was bound over to prosecute under the provisions of section 458 of this Act, the name of such prosecutor, and by whom he was bound over; or,

(c) If the indictment is preferred by consent, then the name of the Court or person giving such consent;

(d) The names of all the witnesses whose depositions have been transmitted to the officer of the Court, and of the justices before whom and of the places where their depositions were taken:

Provided that the absence of such a statement or any mistake in it shall not be an objection to the proceedings; but the court to which the Crown Book belongs may and shall, on the application of either the prosecutor or accused at any time, order a statement of these particulars to be entered or amend the statement where erroneous or defective.

SECTION 512.

*DEFENCE BY COUNSEL OR SOLICITOR.

* 6 & 7 W. 4, c. 114.

Every person accused of any offence whatever may make his full defence thereto by counsel, or by solicitor in Courts where solicitors practise as advocates.

SECTION 513.

BRINGING PRISONER UP FOR ARRAIGNMENT.

†If any person against whom any indictment is found is at the time confined for some other cause in the prison belonging to the jurisdiction of the Court by which he is to be tried, the Court may by order in writing, without writ of habeas corpus, direct the governor of the prison to bring up the body of such person as often as may be required, for the purposes of the trial, and such governor shall obey such order.

† 30 & 31 Vict. c. 35.

SECTION 514.

ARRAIGNMENT.

Every accused person shall upon being called upon to plead be entitled to have the indictment on which he is to be tried read over to him, if he so requires.

SECTION 515.

PLEAS IN ABATEMENT ABOLISHED.

No plea in abatement shall be allowed after the commencement of this Act. Any objection to the constitution of the grand jury may be taken by motion to the Court, and the indictment shall be quashed, if the Court is of opinion both that such objection is well-founded and that the accused has suffered or will suffer prejudice thereby, but not otherwise.

SECTION 516.

PLEAS.—REFUSAL TO PLEAD.

When the accused is called upon to plead, he may plead either guilty or not guilty, or such special pleas as hereinbefore provided for.

If the accused wilfully refuses to plead or will not answer directly, the court may if it thinks fit order the proper officer to enter a plea of not guilty.

SECTION 517.

INSANITY OF ACCUSED ON ARRAIGNMENT OR TRIAL.

If at any time after the indictment is found, and before the verdict is given, it appears to the Court that there is sufficient reason to doubt whether the accused is then capable or on account of insanity incapable of conducting his defence, the Court may direct that an issue shall be tried whether the accused is or is not then on account of insanity unfit to take his trial.

If such issue is directed before the accused is given in charge to a jury for trial on the indictment, such issue shall be tried by any twelve jurors. If such issue is directed after the accused has been given in charge to a jury for trial on the indictment, such jury shall be sworn to try this issue in addition to that on which they are already sworn.

If the verdict on this issue is that the accused is not then unfit to take his trial, the arraignment or the trial shall proceed as if no such issue had been directed. If the verdict is that he is unfit on account of insanity the court shall order the accused to be kept in custody in England till Her Majesty's pleasure, or in Ireland till the pleasure of the Lord Lieutenant shall be known, and any plea pleaded shall be set aside and the jury shall be discharged.

No such proceeding shall prevent the accused being afterwards tried on such indictment.

SECTION 518.

CHALLENGES TO THE ARRAY.

* 39 & 40 Vict. c. 78,
s. 17.

Either the accused or the prosecutor may challenge the array *on the ground of partiality, fraud, or wilful misconduct on the part of the sheriff or his deputies by whom the panel was returned, but on no other ground. The objection shall be made in writing, and shall state that the person returning the panel was partial or was fraudulent or wilfully misconducted himself, as the case may be. Such objection may be in the form J (1) in the first schedule hereto, or to the like effect.

If partiality fraud or wilful misconduct, as the case may be, is denied, the Court shall appoint any two indifferent persons to try whether the alleged ground of challenge is true or not. If the triers find that the alleged ground of challenge is true in fact, or if the party who has not challenged the array admits that the ground of challenge is true in fact, the Court shall direct a new panel to be returned.

SECTION 519.

CALLING THE PANEL.

† 39 & 40 Vict. c. 78,
s. 19.

† If the array is not challenged, or if the triers find against the challenge, the officer of the Court shall proceed to call the names of the jurors in the following manner: The name of each juror on the panel returned with his number on the panel and place of his abode, shall be written on a distinct piece of card, such cards being all as nearly as may be of an equal size. The cards shall be delivered to the officer of the Court by the sheriff or other officer returning the panel, and shall, under the direction and care of the officer of the Court, be put together in a box to be provided for that purpose, and shall be shaken together.

The officer of the Court shall in open court draw out the said cards, one after another, and shall call out the name and number upon each such card as it is drawn, until such a number of persons have answered to their names as in the opinion of the Court will probably be sufficient to provide a full jury after allowing for challenges of jurors and directions to stand by.

The officer of the Court shall then proceed to swear the jury, each juror being called to swear in the order in which his name is so drawn, until after subtracting all challenges allowed, and jurors directed to stand by, twelve jurors are sworn. If the number so answering is insufficient to provide a full jury, such officer shall proceed to draw further names from the box, and call the same in manner aforesaid, until, after challenges allowed and directions to stand by, twelve jurors are sworn.

If by challenges and directions to stand by the panel is exhausted without leaving a sufficient number to form a jury, those who have been directed to stand by shall be again called in the order in which they were drawn, and shall be sworn, unless challenged by the accused or unless the prosecutor challenges them and shows cause why they should not be sworn: Provided that if before any such juror is sworn other jurymen in the panel become available, the prosecutor may require the names of such jurymen to be put into and drawn from the box in the manner hereinbefore prescribed, and such jurors shall be sworn, challenged, or ordered to stand by, as the case may be, before the jurors originally ordered to stand by are again called.

The twelve men who in manner aforesaid are ultimately sworn shall be the jury to try the issues on the indictment, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury give in their verdict or until they are discharged; and then the names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so toties quoties as long as any issue remains to be tried:

Provided that when the prosecutor and accused do not object thereto, the Court may try any issue with the same jury that has previously tried or been drawn to try any other issue, without their names being returned to the box and redrawn, or if the parties or either of them object to some one or more of the jurors forming such jury, or the Court excuses any one or more of them, then the Court may order such persons to withdraw, and may direct the requisite number of names to make up a complete jury to be drawn, and the persons whose names are so drawn shall be sworn:

Provided also, that an omission to follow the directions in this section shall not affect the validity of the proceedings.

SECTION 520.

CHALLENGES AND DIRECTIONS TO STAND BY IN PARTICULAR CASES.

Every one indicted for high treason shall be entitled to challenge thirty-five jurors peremptorily.

Every one indicted for any offence other than high treason for which he may be sentenced to death or penal servitude for life shall be entitled to challenge twenty jurors peremptorily.

Every one indicted for any other indictable offence shall be entitled to challenge six jurors peremptorily:

Provided that no peremptory challenges shall be allowed in any case in which a special jury has been struck in the manner hereinbefore provided for.

Every prosecutor and every accused person shall be entitled to any number of challenges on any of the following grounds; that is to say,

that any juror's name does not appear in the jurors' book: Provided that no misnomer or misdescription in the jurors' book shall be a ground of challenge if it appears to the Court that the description given in the jurors' book sufficiently designates the person referred to; or

that any juror is not indifferent between the Queen and the accused; or that any juror has been convicted of any offence for which he was sentenced to death or penal servitude or to any term of imprisonment with hard labour or exceeding twelve months; or

* that any juror is disqualified as an alien under the law in force for the time being in England or Ireland; or

in Ireland on the ground that any juror was returned to serve as a jurymen contrary to the provisions for the time being in force for the returning of jurors in rotation.

No other ground of challenge than those above-mentioned shall be allowed.

* As to England 33 & 34 Vict. c. 77, s. 8; as to Ireland, 34 & 35 Vict. c. 67, s. 7.

If any such challenge is made, the Court may in its discretion require any party challenging to put his challenge in writing. The challenge may be in the form J (2) in the first schedule hereto, or to the like effect. The other party may deny that the ground of challenge is true. If the ground of challenge is that the juror's name does not appear in the jurors' book, or was not taken in proper rotation, the issue shall be tried by the court on the voir dire by the inspection of the jurors' book, and such other evidence as the court thinks fit to receive.

If the ground of challenge be any other than as aforesaid the two jurors last sworn, or if no jurors have then been sworn then two persons present whom the Court may appoint for that purpose shall be sworn to try whether the juror objected to stands indifferent between the Queen and the accused, or has been convicted as aforesaid, or is disqualified as an alien, as the case may be. If the Court or the triers find against the challenge the juror shall be sworn. If they find for the challenge he shall not be sworn. If after what the Court considers a reasonable time the triers are unable to agree, the Court may discharge them from giving a verdict, and may direct other persons to be sworn in their place.

The prosecutor shall have no power to challenge any juror peremptorily, but he may (except in the case of a special jury struck in the manner hereinbefore provided for) direct any number of jurors not peremptorily challenged by the accused to stand by until all the jurors have been called who are available for the purpose of trying that indictment: Provided that in Ireland* a private prosecutor shall not have power to require the Court to order any juror to stand by, but in lieu thereof he may challenge six jurors peremptorily.

The accused may be called upon to declare whether he challenges any juror peremptorily or otherwise, before the prosecutor is called upon to declare whether he requires such juror to stand by, or challenges him either for cause or peremptorily.

SECTION 521.

ACCUSED PERSONS JOINING AND SEVERING IN THEIR CHALLENGES.

If several accused persons are jointly indicted and it is proposed to try them together, they or any of them may either join in their challenges, in which case the persons who so join shall have only as many challenges as a single person would be entitled to, or each may make his challenges in the same manner as if he were intended to be tried alone.

SECTION 522.

POWER TO ORDER A TALES.

If after the proceedings hereinbefore provided for a full jury cannot be obtained, the Court may upon the application of the prosecutor require the sheriff or other officer by whom the panel is returned to name and appoint, as often as may be necessary, twelve other persons on the jurors' book to serve as jurymen, and the sheriff or officer shall thereupon return twelve such men and add their names to the former panel. The names of the persons so returned shall be written upon separate cards, which shall be delivered to the officer of the Court, and shall by him be dealt with in all respects in the same manner as the cards on which the names of the persons contained in the original panel were dealt with, and the same proceedings shall be taken as to calling and challenging such persons and as to directing them to stand by as are hereinbefore provided for with respect to the persons named in the original panel.

SECTION 523.

† EVIDENCE OF THE ACCUSED.

Every one accused of any indictable offence shall be a competent witness for himself or herself upon his or her trial for such offence, and the wife or husband as the case may be of every such accused person shall be a competent witness for him or her upon such trial: Provided that no such person shall

* 39 & 40 Vict. c. 78,
s. 16.

† See the Report, p. 37.

be liable to be called as a witness by the prosecutor, but every such witness called and giving evidence on behalf of the accused shall be liable to be cross-examined like any other witness on any matter though not arising out of his examination-in-chief: Provided that so far as the cross-examination relates to the credit of the accused, the court may limit such cross-examination to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness.

SECTION 524.

PROSECUTOR'S RIGHT TO SUM UP.

* If an accused person or any one of several accused persons being tried together is defended by counsel, such counsel shall at the end of the case for the prosecution, declare whether he intends to adduce evidence or not on behalf of the accused person for whom he appears, and if no counsel any such accused person thereupon announces his intention to adduce evidence the counsel for the prosecution may address the jury by way of summing up.

* 28 Vict. c. 18, s. 2.

Upon every trial for any indictable offence, whether the accused person is defended by counsel or not, he shall be allowed, if he thinks fit, to open his case, and after the conclusion of such opening the accused person or his counsel shall be entitled to examine such witnesses as he thinks fit, and when all the evidence is concluded, to sum up the evidence. The right of reply shall remain as at present.

SECTION 525.

ADJOURNING AND POSTPONING TRIAL FOR THE ATTENDANCE OF WITNESSES.

If the Court is of opinion that the accused is taken by surprise in a manner likely to be prejudicial to his defence by the production on behalf of the prosecutor of a witness who has not made any deposition, and of the intention to produce whom the accused has not had sufficient notice, the Court may, on the application of the accused, adjourn the further hearing of the case, or discharge the jury from giving a verdict, and postpone the trial.

If the Court is of opinion that any witness who is not called for the prosecution ought to be so called, it may require the prosecutor to call him, and if the witness is not in attendance, make an order that his attendance shall be procured, and the Court may if it thinks proper, adjourn the further hearing of the case to some other time during the sittings until such witness attends.

If in such a case the Court is of opinion that it would be conducive to the ends of justice to do so, it may upon the application of the accused discharge the jury and postpone the trial.

SECTION 526.

ADMISSIONS MAY BE TAKEN ON TRIAL.†

Any accused person on his trial for any indictable offence, or his counsel or solicitor, may admit any fact alleged against the accused so as to dispense with proof thereof.

† New.

SECTION 527.

JURY RETIRING TO CONSIDER VERDICT.

If the jury retire to consider their verdict, they shall be kept under the charge of an officer of the Court in some private place, where they shall be allowed to have the use of fire and lights, and with the consent of the Court to have reasonable refreshment at their own expense. No person other than the officer of the Court who has charge of them shall be permitted to speak or to communicate in any way with any of the jury without the leave of the Court.

Disobedience to the directions of this section shall not affect the validity of the proceedings: Provided that if such disobedience is discovered before the verdict of the jury is returned, the Court, if it is of opinion that such disobedience has produced substantial mischief, may discharge the jury and direct a new jury to be sworn or empanelled during the sitting of the Court, or postpone the trial on such terms as justice may require.

SECTION 528.

JURY UNABLE TO AGREE.

If the Court is satisfied that the jury are unable to agree upon their verdict, and that further detention would be useless, it may in its discretion discharge them and direct a new jury to be empanelled during the sittings of the Court, or may postpone the trial on such terms as justice may require.

It shall not be lawful for any other court to review the exercise of this discretion.

SECTION 529.

MOTION IN ARREST OF JUDGMENT, AND SENTENCE.

If the jury find the accused guilty, or if the accused pleads guilty, it shall be the duty of the officer of the Court to ask him whether he has anything to say why sentence should not be passed upon him according to law: but the omission so to ask shall have no effect on the validity of the proceedings.

The accused may at any time before sentence move in arrest of judgment on the ground that the indictment does not (after any amendment which the Court is willing to and has power to make) state any indictable offence.

The Court may in its discretion either hear and determine the matter during the same sittings or reserve the matter for the Court of Criminal Appeal as herein provided. If the Court decides in favour of the accused, he shall be discharged from that indictment. If no such motion is made, or if the Court decides against the accused upon such motion, the Court may sentence the accused during the sittings of the Court, or the Court may in its discretion discharge him on his own recognizance, or on that of such sureties as the Court thinks fit, or both, to appear and receive judgment at some future Court or when called upon. If sentence is not passed during the sitting, any Court of Oyer and Terminer or Gaol Delivery before which the person so convicted afterwards appears or is brought, or if he was convicted before a Court of Quarter Sessions the Court of Quarter Sessions at a subsequent sitting, may pass sentence upon him or direct him to be discharged.

When any sentence is passed upon any person after a trial had under an order for changing the place of trial, the Court may in its discretion either direct the sentence to be carried out at the place where the trial was had, or order the person sentenced to be removed to the place where his trial would have been had but for such order, so that the sentence may be there carried out.

SECTION 530.

ACQUITTAL ON GROUND OF INSANITY.

If any accused person is acquitted on the ground of insanity, the Court shall, in England, direct him to be detained during Her Majesty's pleasure, or in Ireland during the pleasure of the Lord Lieutenant.

SECTION 531.

PREGNANCY OF WOMAN SENTENCED TO DEATH.

If sentence of death is passed upon any woman, she may move in arrest of execution on the ground that she is pregnant. If such a motion is made the Court shall direct one or more registered medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not. If upon the report of any of them it appears to the Court that she is so with child, execution shall be arrested till she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered.

After the commencement of this Act no jury de ventre inspiciendo shall be empanelled or sworn.

SECTION 532.

ADJOURNMENT.

From the time when the accused is given in charge to the jury the trial shall proceed continuously, subject to the power of the Court to adjourn it. Upon every such adjournment the Court may in all cases if it thinks fit direct that during the adjournment the jury shall be kept together, and proper provision made for preventing the jury from holding communication with any one on the subject of the trial. Such direction shall be given in all cases in which the accused might upon conviction be sentenced to death. In other cases, if no such direction is given, the jury shall be permitted to separate.

No formal adjournment of the Court shall hereafter be required, and no entry thereof in the Crown Book shall be necessary.

SECTION 533.

DISCHARGE OF JURY.

The Court may in case of any emergency or casualty rendering it in its opinion highly expedient for the ends of justice so to do, in its discretion discharge the jury without giving a verdict and direct a new jury to be empanelled during the sittings of the Court, or postpone the trial on such terms as justice may require. It shall not be lawful for any other court to review the exercise of this discretion.

If the presiding judge becomes incapable of trying the case or directing the jury to be discharged, the officer of the Court shall discharge the jury.

If one or more of the jurors before they retire to consider their verdict become in the opinion of the Court incapable of continuing to perform his or their duty, the Court may either discharge the jury and direct a new jury to be empanelled during the sittings of the Court or postpone the trial, or in its discretion and with the consent of the prosecutor and the accused, proceed with the remaining jurors and take their verdict, which shall have the same effect as the verdict of the whole number.

SECTION 534.

PRESENCE OF THE ACCUSED AT THE TRIAL.

Every accused person shall be entitled to be present in court during the whole of his trial, unless he misconducts himself by so interrupting the proceedings as to render their continuance in his presence impracticable.

The Court may, if it thinks proper, permit the accused to be out of court during the whole or any part of any trial on such terms as it thinks proper.

SECTION 535.

*VIEW.

The Court may if it appears expedient for the ends of justice, at any time after the jurors have been sworn to try the case and before they give their verdict, direct that the jury shall have a view of any place thing or person, and shall give directions as to the manner in which and the persons by whom the place thing or person, shall be shown to such jurors, and may for that purpose adjourn the trial and order the costs occasioned thereby to be part of the costs of the prosecution.

The Court shall give such directions as seem requisite for the purpose of preventing undue communication with such jurors: Provided that no breach of any such directions shall affect the validity of the proceedings.

* 39 & 40 Vict. c. 78,
s. 11 (Ireland).

SECTION 536.

PROCEEDINGS ON SUNDAY.

The taking of the verdict of the jury or other proceeding of the Court shall not be invalid by reason of its happening on Sunday.

SECTION 537.

STAY OF PROCEEDINGS.

* This power exists at present; its execution is simplified by this section.

* The Attorney General may at any time after an indictment has been found against any person for any indictable offence, and before judgment is given thereon, direct the officer of the Court to make in the Crown Book an entry that the proceedings are stayed by his direction, and on such entry being made all such proceedings shall be stayed accordingly.

† This is new in England. It has been found useful in practice in Ireland.

The Attorney General may delegate† such power in any particular Court to any counsel nominated by him.

In Ireland the Crown counsel nominated for the time being by the Attorney General to prosecute in any court or county, the Crown Solicitor, and at the quarter sessions the sessional Crown solicitor shall have this power.

PART XLIV.**APPEAL.****SECTION 538.**

COURT OF APPEAL IN CRIMINAL CASES.

Any five judges of the High Court, of whom the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron of the Exchequer shall be one, shall be a Court of Appeal in Criminal Cases for England or Ireland as the case may be (in this Act called the Court of Appeal), and their decision or the decision of the majority of them upon all such cases shall be final, unless the majority of them see fit to allow an appeal from their decision to the House of Lords, in which case an appeal shall lie to that House, and such House may make all such orders as the Court of Appeal ought to have made. Appeals shall lie to the said Court in the cases hereinafter provided for, and no others.

SECTION 539.

RESERVING QUESTIONS OF LAW.

No proceeding in error shall be taken upon any trial under the provisions of this Act.

The Court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the judge, for the opinion of the Court of Appeal in manner hereinafter provided.

If the decision of the question may in the opinion of the Court depend on any question of fact or facts, the Court may in its discretion ask the jury questions as to such facts separately, and the Court shall make a note of such questions and the findings thereon.

Either the prosecutor or the accused may during the trial apply to the Court to reserve any such question as aforesaid, and the Court, if it refuses so to reserve it, shall nevertheless take a note of such objection, unless it considers the application frivolous.

After a question is reserved, the trial shall proceed as in other cases.

† See the Report, pp. 38, 39.

‡ If the result is acquittal, the accused shall be discharged subject to being arrested again if the Court of Appeal orders a new trial. If the result is a conviction, the Court may in its discretion respite the execution of the sentence or postpone sentence till the question reserved has been decided, and in either case shall in its discretion commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the Court thinks fit, to surrender at such time as the Court directs.

If a question is reserved, a case shall be stated for the opinion of the Court of Appeal.

SECTION 540.

APPEAL WHEN NO QUESTION RESERVED.

If the Court refuses to reserve the question, the party applying may, with the leave in writing of the Attorney General, move the Court of Appeal as hereinafter provided. The Attorney General may in his discretion give or refuse such leave.

The Attorney General, or any person to whom such leave as aforesaid is given, may on notice of motion to be given to the accused or prosecutor, as the case may be, move the Court of Appeal for leave to appeal. The Court of Appeal may upon the motion and upon considering such evidence (if any) as they think fit to require, grant or refuse such leave.

If leave to appeal is granted, a case shall be stated for the opinion of the Court of Appeal as if the question had been reserved.

If the sentence is alleged to be one which could not by law be passed, either party may without leave, upon giving notice of motion to the other side, move the Court of Appeal to pass a proper sentence.

If the Court has arrested judgment, and refused to pass any sentence, the prosecutor may without leave make such a motion.

SECTION 541.

EVIDENCE FOR COURT OF APPEAL.

On any appeal or application for a new trial, the Court before which the trial was had shall, if it thinks necessary or if the Court of Appeal so desires, send to the Court of Appeal a copy of the whole or of such part as may be material of the notes taken by the judge or presiding justice at the trial. The Court of Appeal may, if it considers such notes defective, refer to such other evidence of what took place at the trial as it may think fit. The Court of Appeal may in its discretion send back any case to the Court by which it was stated to be amended or re-stated.

SECTION 542.

POWERS OF COURT OF APPEAL DEALING WITH QUESTIONS OF LAW.

Upon the hearing of any appeal under the powers hereinbefore contained the Court of Appeal may

- (a) Confirm the ruling appealed from; or
- (b) If of opinion that the ruling was erroneous, and that there has been a mistrial in consequence, direct a new trial; or
- (c) If it considers the sentence erroneous or the arrest of judgment erroneous, pass such a sentence as ought to have been passed or set aside any sentence passed by the Court below, and remit the case to the Court below with a direction to pass the proper sentence; or
- (d) If of opinion in a case in which the accused has been convicted that the ruling was erroneous, and that the accused ought to have been acquitted, direct that the accused shall be discharged, which order shall have all the effects of an acquittal; or
- (e) In any case, whether the appeal is on behalf of the prosecutor * or of the accused, direct a new trial; or

(f) Make such other order as justice requires: Provided that no conviction or acquittal shall be set aside nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial or some misdirection given, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage was thereby occasioned on the trial: Provided that if the Court of Appeal is of opinion that any challenge was improperly disallowed a new trial shall be granted.

If it appears to the Court of Appeal that such wrong or miscarriage affected some count only of the indictment the Court may give separate directions as to each count and may pass sentence on any valid count unaffected by such wrong or miscarriage, or may remit the case to the Court below with directions to pass such sentence as justice may require.

* The Commissioners point out that as framed this section gives an equal appeal on points of law to the Crown and to the accused. The Commissioners as a body express no opinion whether this should be done, but if it is to be done this seems to be the best mode of doing it. See the Report.

The order or direction of the Court of Appeal shall be certified under the hand of the presiding Chief Justice or Chief Baron to the proper officer of the Court before which the case was tried, and such order or direction shall be carried into effect.

SECTION 543.

QUESTIONS RESERVED AND APPEALS ON TRIALS BEFORE QUEEN'S BENCH DIVISION.

When any information or indictment is tried before the Queen's Bench Division, either at bar or at Nisi Prius, questions of law shall be reserved for the Queen's Bench Division only, which division shall with respect to any such trial, whether any question is reserved or not, have all such powers as are hereby given to the Court of Appeal in other cases, including the power of granting a new trial.

The Queen's Bench Division may give leave to appeal to the House of Lords on any question of law arising before it, whether the trial was at bar or at Nisi Prius, and upon any such appeal the House of Lords shall have power to make all such orders as the Queen's Bench Division might have made.

SECTION 544.

APPLICATION FOR A NEW TRIAL.

* It will be observed that here the power of applying for a new trial is limited to the accused.

* After the conviction of any person for any indictable offence the Court or judge before whom the trial takes place may either during the sittings or afterwards give leave to the person convicted to apply to the Court of Appeal for a new trial on the ground that the verdict was against the weight of evidence. The Court of Appeal may, upon hearing such motion direct a new trial if it thinks fit.

In the case of a trial before a Court of Quarter Sessions for any county riding division or part, such leave may be given, during or at the end of the session, by the justice who presided at the trial and one other justice present at the trial.

SECTION 545.

NEW TRIAL BY ORDER OF SECRETARY OF STATE.

† See the Report, p. 39.

† If upon any application for the mercy of the Crown on behalf of any person convicted of an indictable offence, one of Her Majesty's Principal Secretaries of State in England, or in Ireland the Lord Lieutenant, entertains a doubt whether such person ought to have been convicted, the Secretary of State instead of advising Her Majesty to remit or commute the sentence, and the Lord Lieutenant instead of remitting or commuting it, may after such inquiry as he thinks proper by an order in writing direct a new trial at such time and before such Court as he may think proper.

SECTION 546.

INTERMEDIATE EFFECTS OF APPEAL.

The sentence of a Court shall not be suspended by reason of any appeal, unless the Court expressly so directs, except where the sentence is that the accused suffer death, flogging, or whipping. The production of a certificate from the officer of the Court that a question has been reserved or that leave has been given to apply for a new trial, or of a certificate from the Attorney General that he has given leave to move the Court of Appeal, or of a certificate from the Secretary of State that he has directed a new trial, shall be a sufficient warrant to suspend the execution of any sentence of death, flogging, or whipping.

In all cases it shall be in the discretion of the Court of Appeal or the Secretary of State in directing a new trial to order the accused to be admitted to bail or kept in custody as it or he may think fit.

PART XLV.
COSTS: RESTITUTION, ETC.

SECTION 547.

COSTS OF PROSECUTIONS UNDER THIS ACT TO BE PAID AS HERETOFORE IN CASES OF FELONY.

In all prosecutions of offences under this Act, the costs and expenses of the prosecution and the expenses of witnesses attending under subpoena or on recognizance on behalf of the prosecution, and the allowances to any prosecutor or witness for trouble and loss of time may be ordered allowed paid and repaid by the same persons out of the same funds on the same terms and in the same manner as hitherto in cases of felony, and the expenses of and allowances to the witnesses or any of them bound over to appear on behalf of the accused may be ordered allowed paid and repaid in the same manner as the expenses and allowances of the witnesses on behalf of the prosecution attending under recognizance or subpoena.

The costs and expenses of the prosecution and allowances to the prosecutor may be ordered allowed paid and repaid, although no bill of indictment may be found, and the expenses and allowances of all such witnesses may be ordered allowed paid and repaid, although no bill of indictment is preferred or found, or although the trial is postponed.

The Court in its discretion may disallow the whole or any part of such costs expenses and allowances.

SECTION 548.

SECRETARY OF STATE MAY MAKE REGULATIONS AS TO AMOUNT OF COSTS.

In England one of Her Majesty's Principal Secretaries of State may from time to time revoke any regulations made under any Act for the purposes mentioned in the fifth section of the Act passed in the session of Parliament holden in the fourteenth and fifteenth years of Her present Majesty, chapter fifty-five, and make regulations in lieu thereof for all the purposes therein mentioned, and also for all similar purposes under the provisions of this Act.

SECTION 549.

ACCUSED MAY BE ORDERED TO PAY COSTS.

Whenever any accused person is convicted of any indictable offence, the Court may order him to pay the costs of the prosecution, in addition to any sentence which may be passed upon him.

Such order upon being filed in any division of the High Court of Justice as the case may be shall have the effect of a judgment.

If upon the apprehension of any such person any money was taken from him, the Court may in its discretion order the whole or any part thereof to be applied to any such payment.

No such order as aforesaid shall affect the claim of the prosecutor and the witnesses or either of them to be paid their costs allowances or expenses under Section 547 of this Act.

SECTION 550.

COSTS OF CONVEYING PERSONS TO AND FROM PRISON.

All provisions of any Act in force for the time being relating to the payment of the expenses of conveying any person to or from prison under the provisions of any such Act, shall apply to the payment of the expense of conveying any person to or from prison under the provisions of this Act.

SECTION 551.**RESTITUTION OF PROPERTY.**

When any one is convicted of any indictable offence, any property found in his possession or in the possession of any other person for him, may be ordered by the Court to be delivered to the person who appears to the Court to be entitled thereto.

When any one is convicted of having stolen or dishonestly obtained any property, and it appears to the Court that the same has been pawned to a pawnbroker, the Court may order the delivery thereof to the person appearing to the Court to be the owner, either on payment or without payment to the pawnbroker of the amount of the loan or any part thereof, as to the Court under all the circumstances of the case may seem just. If the person in whose favour any such order is made pays the money to the pawnbroker under such order and obtains the property, he shall not afterwards question the validity of the pawn, but save to that extent no order made under this Section shall have any further effect than to change the possession, and no such order shall prejudice any right of property or right of action in respect to property existing or acquired in the goods either before or after the offence was committed.

TITLE VIII.**REPEAL.****SECTION 552.****REPEAL OF ENACTMENTS.**

The Acts referred to in the first column of the second schedule hereto shall be repealed as to England and Ireland respectively (but not as to Scotland), to the extent stated in the second column of the said schedule: Provided that every offence committed before the commencement of this Act shall be determined and punished, and (subject to the provisions of Section 2 of this Act) shall be inquired into and tried, as if the said Acts had not been repealed, and that such repeal shall not affect the validity or consequences of any act done or of any warrant or instrument made or granted before the commencement of this Act, or any right or title liability privilege or protection acquired or existing in respect of any matter or thing committed or done before the commencement of this Act, or any remedy action prosecution or other proceeding commenced before the commencement of this Act, or thereafter commenced in respect of any such matter or thing:

Provided that where an enactment has altered or abolished any rule of the common law as to procedure or otherwise, the repeal of such enactment by this Act shall not be deemed to restore such rule of the common law:

Provided also that where in any enactment not hereby repealed any larceny or stealing or any attempt to commit larceny or attempt to steal is made punishable on summary conviction, such enactment shall be held to apply to theft or stealing or an attempt to commit theft or stealing as defined by this Act.

* * The words in the margin in *italics*, or words to the like effect, are to be used according to the circumstances of each case.

SCHEDULES.

FIRST SCHEDULE.

FORMS (A)—PROOFS.

A (1) *Information.*

(1) *Oath or Affirmation.*
 (2) State the CHARGE as made.
 (3) Add for the arrest of a witness—
And he further saith that X.Y. can give material evidence, but is not likely to attend voluntarily; or, (and is keeping out of the way of personal service of summons); or, for sureties for the peace, And he makes this information for the safety of his person and property, and not from malice or revenge against the said C.D.

County of _____
 The information of A.B. of M.N. who saith on his (1) that (2) (3)
 Taken before me, this _____ day of _____ in the
 year eighteen hundred and _____ at _____ in
 the said county.
 Signed _____ Justice of said county.
 *

A (2) *Deposition of a Witness.*

(1) CHARGE, with time and place.
 (2) *Oath or Affirmation.*
 (3) DEPOSITION as nearly as possible in the words of the witness, to be signed by him, and by the justice.

County of _____
 The deposition of X.Y. of M.N., taken [or after notice to C.D. who stands committed for _____] in the presence and hearing of C.D. who stands charged that (1)
 The said deponent saith on his (2) as follows: (3)

[If depositions of several witnesses are taken at the same time, they may be taken and signed as follows:]
 The depositions of X. of M., Y. of N., Z. of O., &c., taken in the presence and hearing of C.D., who stands charged that
 The deponent X. (on his oath or affirmation) says as follows:
 The deponent Y. (on his oath or affirmation) says as follows: &c.
 The deponent Z. (on his oath), &c., &c.
 [The signature of the justice may be appended as follows:]
 The depositions of X., Y., Z., &c., written on the several sheets of paper, to the last of which my signature is annexed, were taken before me in the presence and hearing of C.D. and signed by the said X., Y., Z., respectively in his presence. In witness whereof I have in the presence of the said C.D. signed my name.

* Justice of the county of _____

A (3) *Statement of the Accused.*

(1) CHARGE, with time and place.

County of _____
 A charge having been made against C.D. before the undersigned Justice that (1)
 and the said charge having been read to the said C.D., and the Witnesses for the prosecution having been severally examined in his presence, and the depositions having been again read over [or the said C.D. having dispensed with the reading of the Depositions] the said C.D. is addressed by me as follows:

“Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in

* The informant or witness may be bound to prosecute or give evidence by the following form of recognizance at foot of his information or deposition:

And the said deponent binds himself to attend at _____ on the _____ [or any court before which of competent authority the trial may be directed to be had] to give evidence for or against the said C.D. for the said offence, or otherwise to forfeit to the crown the sum of _____

Taken before me this _____ day of _____ in the year eighteen hundred and _____ at _____
 in the said county.
 Signed _____ deponent.
 Signed _____ Justice of said county.

evidence against you upon your trial notwithstanding such promise or threat."

Saith as follows: ⁽²⁾

Taken before me this _____ day of _____ in the _____ year eighteen hundred and _____ at _____ in said county.
Signed _____ Justice of said county.

⁽³⁾ STATEMENT of prisoner in his very words, or as nearly so as possible, and to be signed by him, if he will.

FORMS (B)—PROCESS TO ENFORCE APPEARANCE.

B (1) *Summons to Witness.*

County of _____
Whereas there is reason to believe that ⁽¹⁾ _____ and you are capable of giving material evidence concerning the same.

⁽¹⁾ State the CHARGE.

This is to command you to appear at _____ on _____ before such justice as shall be there to be examined then on oath concerning such offence.

Signed _____ Justice of the said _____
The _____ day of _____
To _____ of _____

B (2) *Summons.*

County of _____ Petty Sessions District of _____
Whereas information has been made to me that ⁽¹⁾ _____ This is to command you to appear as a ⁽²⁾ _____ on the hearing of said complaint at _____ on the _____ day of _____ at _____ o'clock, before such justices as shall be there.

⁽¹⁾ NATURE of CHARGE, with time and place.

⁽²⁾ Insert: *Party charged or Witness.*

Signed _____ Justice of said county,
This _____ day of _____ 18 _____

B (3) *Warrant to arrest.*

County of _____
Whereas an information has been made on oath and in writing that ⁽¹⁾ _____ and ⁽²⁾ _____

⁽¹⁾ CHARGE as in information.

⁽²⁾ If the Case be so, add—
For accused—

Whereas a summons has been issued to C.D. [the accused] or X.Y. [a witness] and C.D. [or X.Y.] has neglected to appear in obedience to the summons, and oath has been made of the service of the summons.

For Witness—

Whereas oath has been made that X.Y. can give material evidence, but will not attend voluntarily; or, whereas oath has been made that X.Y. is keeping out of the way of personal service of a summons.

If after Indictment—
It has been certified to me that [state as in certificate of clerk of Crown or peace].

This is to command you to whom this warrant is addressed to arrest the said ⁽³⁾ _____ of _____

⁽³⁾ PERSON against whom warrant is issued.

and to bring him before me or some other justice of the county to answer to the said complaint.

Signed _____ justice of said county
This _____ day of _____ 18 _____
To ⁽⁴⁾ _____ of _____

⁽⁴⁾ ADDRESS.

To A.B., police constable, or, To A.B. and all other police constables in England (or Ireland), or, to all police constables in England (or Ireland).

B (4) *Warrant for Arrest where an accused Person on Bail has absconded.*

County of _____
Whereas C.D., who stands charged before me at _____ was admitted to bail to appear at _____ on _____ and has made default therein. This is to command you, &c. (as in last Form B (3)).

FORMS (C)—RECOGNIZANCES.

(1) State the CHARGE.

OR
If an accused person is remanded
recite—

“Whereas C.D. stands charged
before me that () and the
hearing of the said charge has
been [adjourned or interrupted].

(2) OBLIGATION.
To attend at on the
day of at o'clock;

or
To attend at (any Court be-
fore which the trial may by
competent authority be directed
to be had) and there:—To pre-
fer (or prosecute, or give evidence
upon) a bill of indictment
against the said C.D. for the
said offence;

or
To surrender himself to the
keeper of the gaol at F., and
plead to any indictment found
against him for said offence, and
take his trial for the same;

or
To keep the peace (and be of
good behaviour) towards all Her
Majesty's subjects, and parti-
cularly towards A.B. for the
space of
or (in the case of a remand or
adjournment)

To appear at the time to which
the hearing is adjourned, or at
an earlier day if so required.

C (1) Recognizance to appear, &c.

County of _____

Whereas (1)
The undersigned M.N. binds himself to perform the following
obligation, viz., to (2)

or otherwise to forfeit to the Crown the sum of

or [if bound over with sureties]

The undersigned M.N., the principal party to this recognizance
hereby binds himself to perform the following obligation, viz.,
to (2)

And the said principal party, together with the undersigned
sureties hereby severally acknowledge themselves bound to
forfeit to the Crown the sums following, viz.:—The said prin-
cipal party the sum of _____ and the said
sureties the sum of _____ each, in case the
said principal party fails to perform the above obligation.

Signed { M.N. _____ Principal Party.
O.P. _____ } Sureties.
Q.R. _____ }

Taken before me this _____ day of _____ at _____
Signed _____ Justice of said county.

C (2) Form of Recognizance where the Prosecutor requires the Justice to bind him over to
prosecute after the Charge is dismissed.

County of _____

Whereas C.D. was charged before me upon the information of E.F. that C.D. [state
the charge], and upon the hearing of the said charge I discharged the said C.D., and the
said E.F. desires to prefer an indictment against the said C.D. respecting the said charge,
and has required me to bind him over to prefer such an indictment at [here describe the
next practicable sitting of the Court to which the person discharged would have been
committed].

The undersigned E.F. hereby binds himself to perform the following obligation, that is to
say, that he will prefer and prosecute an indictment respecting the said charge against the
said C.D. at [as above]. And the said C.D. acknowledges himself bound to forfeit to the
Crown the sum of £ _____ in case he fails to perform the said obligation.

C.D.

Taken before me,

A.B.,
Justice of the county of _____

C (3) Form of Recognizance for Witness examined under Section 437.

County of _____

Whereas A.B. was examined before me as a witness under the Criminal Code (Indic-
table Offences), s. 437. The undersigned A.B. hereby binds himself to perform the fol-
lowing obligation, that is to say, that he will appear and give evidence before any justice
of the peace, Court of Oyer and Terminer, or Quarter Sessions, if called upon for that
purpose, at any time within three months next ensuing. And the said A.B. acknowledges
himself bound to forfeit to the Crown the sum of £ _____ in case he fails to perform
the above obligation.

A.B.

Taken before me,

Justice of the county of _____

Certificate of Forfeiture.

I certify that the said M.N., (E.F. or A.B.) has not performed the above obligation.

Signed _____ Justice (or Clerk of Peace, &c.)

This _____ day of _____ 18 _____

Estreat.

I order that the sum of _____ be levied off the goods of the said *M.N.*, and the sum of _____ off the goods of each of the said sureties *O.P.* and *Q.R.*

Signed _____ Justice of said county.
This _____ day of _____ 18 _____

NOTE.—In all the recognizances there must be given the name and surname of the person bound, his occupation or profession if any, the place of his residence, the name and number if any of the street, and whether he is owner, tenant, or lodger.

FORMS (D)—WARRANTS.

D (1) *Warrant to commit (or detain) for Trial, &c.*

County of _____

Whereas a charge was made on the _____ day of _____ on the oath of *X.Y.* [or *X.Y.* and others, as the case may be], that ⁽¹⁾ _____ and ⁽²⁾ _____

This is to command you to whom this warrant is addressed to lodge the said ⁽³⁾ _____ of _____ in the gaol at *F.*, there to be imprisoned by the governor of said gaol, as follows :—⁽⁴⁾

And for this the present warrant shall be a sufficient authority to all whom it may concern.

Signed _____ Justice of said county.
This _____ day of _____

To ⁽⁵⁾ _____ of _____D (2) *Warrant to convey before a Justice of another County.*

County of _____

Whereas information upon oath was made that ⁽¹⁾ _____ And whereas I have taken the deposition of *X.Y.* as to the said offence.

And whereas the charge is of an offence committed in the county of _____

This is to command you to convey the said ⁽²⁾ _____ of _____

before some justice of the last-mentioned county, near the above place, and to deliver to him this warrant and the said deposition.

Signed _____ Justice of the first-mentioned county.
This _____ day of _____ 18 _____

To _____ of _____

⁽¹⁾ CHARGE, with time and place.

⁽²⁾ RECITALS.

If Indictment found

Whereas a bill of indictment has been found against the said C.D. for the said offence.

Adjournments—

Whereas the hearing of the said complaint has been adjourned to the _____ day of _____ at _____

or

Whereas the hearing of the said charge was adjourned, &c., and the said C.D. was admitted to appear on bail that day or such earlier day as should be required, and whereas he was summoned to attend on the day of _____ but did not appear according to his recognizance.

Remands on arrest—

Whereas the said C.D. has been brought before me under a warrant of arrest, and the said charge is to be heard on the day of _____ at _____

Refractory witness—

Whereas *X.Y.*, a material witness, has, without just excuse, refused to make oath as a witness (or to answer certain questions) (or to enter into recognizance to give evidence on the trial of the said C.D.) in that behalf.

⁽³⁾ NAME of Person to be committed.

⁽⁴⁾ PERIOD of Imprisonment.

For trial—

Until his trial for said offence or till he shall be discharged by due course of law.

For witness—

Until the trial of the said C.D. unless he shall in the meantime enter into such recognizance as required (or until the day of _____ unless he shall in the meantime consent to answer as required).

For adjournments—

Until the above time of adjournment (or hearing), or such earlier day as he may be required upon, when he shall have him at the above place.

⁽⁵⁾ ADDRESS—

To *A.B.* police constable (by his proper title), and all other police constables in England (or Ireland).

⁽¹⁾ STATE CHARGE, with time and place.

⁽²⁾ NAME of accused person.

⁽³⁾ ADDRESS—

To *A.B.* police constable (by his proper title), and all other police constables in England (or Ireland).

(1) CHARGE, with time and place.

D (3) *Warrant to discharge from Gaol.*

County of _____
Whereas a charge was made that (1)

(2) NAME of Prisoner.

(3) RECITALS— and whereas the said

For Accused—

Was committed to take his trial (2)
for said offence, but has now of _____
duly entered into recognizance (3)
to appear for that purpose.

For Witness—

Was committed for refusing to
enter into recognizance to give
evidence on the trial of C.D.
for said offence, but has now
done so (or and the said C.D. for
want of evidence has not been
bailed or committed) or two
sureties have duly entered into
recognizances for his appearance
for that purpose.

This is to command you to take recognizance of the said
in the sum of £ _____ to appear for that purpose and then
to discharge the said _____ unless he shall be in your custody for
some other cause.

Signed _____ Justice of said county.

This _____ day of _____ 18 _____

(4) ADDRESS

(4) To the governor of the gaol at _____

(1) Insert description of the
things to be searched for, and
of the offence in respect of
which the search is made.

D (4) *Warrant to search.*

Whereas it appears on the Oath of A.B. of M.N. that there
is reason to suspect that (1)

are concealed in _____ at _____

(2) The warrant may be exe-
cuted between 6 a.m. and 9 p.m.
unless the justice otherwise
directs.

This is, therefore, to authorise and require you to enter between
the hours of _____ (2) into the said premises, and
to search for the said things, and to bring the same before me or
some other justice.

(3) ADDRESS—

To the police constable who is
to execute the warrant by his
proper title.

Signed _____ Justice of said county.

This _____ day of _____ 18 _____

(3) To _____ of _____

FORM E—NOTICE OF INTENTION TO TAKE DEPOSITION OF A WITNESS.

To A.B. of _____

Take notice, that whereas it has been proved upon the oath of _____ before
[name and residence of justice], that [name and full description of witness]
is able to give evidence tending to prove [the guilt or innocence of the accused] the exami-
nation of the said _____ will be taken at _____ on _____ at o'clock,
on which occasion, if you think proper, you your counsel or solicitor may attend and
cross-examine the said _____; and take notice that, whether you attend or not, the
deposition then taken of the said _____ may be given in evidence at the trial, not-
withstanding your absence from such examination.

(Signed) C.D.

FORM (F)—RECEIPT FOR PRISONER.

County of _____

(1) NAME, Rank, &c.

I hereby certify that I have received from A.B. (1) of
the body of C.D., together with a warrant under the hand of
J.S., Esq, justice for the county of _____, and
that the said Prisoner was (2) _____ at the time he
was so delivered into my custody.

(2) "sober," or as the case may
be.

Signed _____

This _____ Governor of the gaol at
day of _____ 18 _____

FORM (G)—CERTIFICATE OF INDICTMENT BEING FOUND.

County of _____
 I hereby certify that the ⁽¹⁾
 held at _____ day of _____ in the said county on the ⁽¹⁾ "Court of Oyer and Terminer,
 was found by the grand jury against C.D., therein described a bill of indictment and General Gaol Delivery," or
 as C.D. of N., for that on the _____ day of _____ Court of Quarter Sessions.
 and that the said C.D. has not appeared or pleaded to said ⁽²⁾ OFFENCE as in indictment.
 Dated this _____ day of _____
 Signed, _____
 Clerk of Crown [or Peace].
 This _____ day of _____ 18__

FORMS (H)—BAIL.

H (1) *Certificate of Consent to Bail by the committing Justice indorsed on the Commitment.*

I hereby certify, that I consent to the within-named A.B. being bailed by recognizance,
 himself in _____ and [two] sureties in _____ each. J.S.

H (2) *The like, on a separate Paper.*

Whereas A.B. was on the _____ committed by me to the [Prison] at
 charged with [*&c.*, naming the offence shortly]:
 I hereby certify, that I consent to the said A.B. being bailed by recognizance, himself
 in _____ and [two] sureties in _____ each.
 Dated the _____ day of _____ 18__ J.S.

FORMS (I)—INDICTMENT.

I (1) *Heading.*

In the (name of the Court in which the indictment is found).
 The jurors for Our Lady the Queen present that
 [Where there are more counts than one add at the beginning of each count]:
 "The said jurors further present that

I (2) *Charge.*

Examples of the manner of stating Offences.

- (a) A. murdered B. at _____ on _____ at _____
 (b) A. stole a sack of flour from a ship called the _____ at _____
 on _____
 (c) A. obtained by false pretences from B. a horse a cart and the harness of a horse
 at _____ on _____
 (d) A. committed perjury with intent to procure the conviction of B. for an offence
 punishable with penal servitude, namely robbery, by swearing on the trial of B. for the
 robbery of C. at the Court of Quarter Sessions for the West Riding of the county of
 York, held at Leeds on the _____ day of _____ 1879; first, that he A.
 saw B. at Leeds on the _____ day of _____; secondly, that B. asked A. to
 lend B. money on a watch belonging to C.; thirdly, &c.
 or
 (e) The said A. committed perjury on the trial of B. at a Court of Quarter Sessions
 held at Kilkenny on _____ for an assault alleged to have been committed by the
 said B. on C. at Kilkenny on the _____ day of _____, by swearing to the effect that
 the said B. could not have been at Kilkenny at the time of the alleged assault, inasmuch
 as the said A. had seen him at that time in Waterford.
 (f) A., with intent to maim disfigure disable or do grievous bodily harm to B., or with
 intent to resist the lawful apprehension or detainer of A. [or C.], did actual bodily harm to
 B. [or D.].
 (g) A., with intent to injure or endanger the safety of persons on the North-Western
 Railway did an act calculated to interfere with an engine a tender and certain carriages on
 the said railway on _____ at _____ by [describe with so much detail as is sufficient

to give the accused reasonable information as to the acts or omissions relied on against him, and to identify the transaction.]*

(g) A. published a defamatory libel on B. in a certain newspaper, called the _____, on the _____ day of _____ A.D. _____, which libel was contained in an article headed or commencing [describe with so much detail as is sufficient to give the accused reasonable information as to the part of the publication to be relied on against him], and which libel was written in the sense of imputing that the said B. was [as the case may be].

(h) That A. without leave of Her Majesty did at [Birkenhead] equip, furnish, fit out, or arm, or attempt, or endeavour to equip, furnish, fit out, or arm [this is rendered sufficient by Section 483 of the Code; Section 71 renders it unnecessary to proceed to state that they "procured, aided, or assisted" in the equipment] a ship called the "Alexandra," in order that it might be employed in the service of a certain foreign power called the Confederate States [see Section 484 of the Code] against a foreign power called the United States, with which Her Majesty was not then at war.†

FORMS (J).—CHALLENGES.

J (1). Challenge to Array.

The Queen } The said A.B., who prosecutes for Our Lady the Queen [or the said
v. } C.D., as the case may be] challenges the array of the panel on the ground
C.D. } that it was returned by X.Y., sheriff of the county of _____ [or
E.F., deputy of X.Y. sheriff of the county of _____, as the case may be], and that
the said X.Y. [or E.F., as the case may be] was guilty of partiality [or fraud, or wilful
misconduct] on returning said panel.

J (2). Challenge to Poll.

The Queen } The said A.B., who prosecutes, &c. [or the said C.D., as the case may
v. } be] challenges G.H., on the ground that his name does not appear in the
C.D. } Jurors' Book, [or "that he is not indifferent between the Queen and
the said C.D.," or "that he was convicted and sentenced to ('death' or 'penal servitude,'
or 'imprisonment with hard labour,' or 'exceeding twelve months,' or "that he is dis-
qualified as an alien;" or in Ireland, that he is returned to serve as a juryman contrary
to the provisions in force for the returning of jurors in rotation].

SECOND SCHEDULE.

ENACTMENTS REPEALED.

PART I.

Acts of the Parliaments of England, Great Britain, and the United Kingdom.

23 Edw. I. -	-	The Statute of breaking prisons. The whole Act.
5 & 6 Edw. 6. c. 11.	-	An Act for the punishment of divers treasons. The whole Act.
5 Eliz. ch. 9. -	-	An Act for the punishment of such persons as shall procure or commit any wilful perjury. The whole Act, except section six.
8 Eliz. c. 2. -	-	An Act whereby the defendant may recover his costs being wrongfully sued. In part, that is to say, section three.
7 & 8 Will. 3. c. 3.	-	An Act for regulating of trials in cases of treason and misprision of treason. The whole Act, except sections ten and eleven.
9 Will. 3. c. 35.	-	An Act for the more effectual suppressing of blasphemy and profaneness. The whole Act.
11 Will. 3. c. 7. -	-	An Act for the more effectual suppression of piracy. The whole Act, except sections eleven, twelve, and seventeen.
1 Geo. 1. st. 2. c. 5.	-	An Act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters. The whole Act, except sections six, nine, and ten.

* A failure to state the circumstances with sufficient detail will give ground for an application for particulars and to postpone the trial, but will not vitiate the count.

† In the Attorney General v. Sillem, founded on the seventh section of 59 Geo. 3. c. 69, it was deemed advisable to frame 98 counts. See an abstract of the indictment in 33 L. J. Exch. 92. That Act has since been repealed; but to show the degree to which the clauses referred to would render such prolixity without excuse, a form of count has been drawn which would be sufficient under the Code if the 59 Geo. 3. c. 69. was still in force.

4 Geo. 1. c. 11.	-	An Act of which the title begins with the words "An Act for the better preventing," and ends with the words "relating to pirates." The whole Act.
8 Geo. 1. c. 24. -	-	An Act for the more effectual suppressing of piracy. In part, that is to say, sections one, three, six.
12 Geo. 1. c. 29.	-	An Act to prevent frivolous and vexatious arrests. The whole Act.
2 Geo. 2. c. 25. -	-	An Act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other securities for payment of money. The whole Act.
25 Geo. 2. c. 37.	-	An Act for better preventing the horrid crime of murder. The whole Act.
12 Geo. 3. c. 24. -	-	An Act for the better securing and preserving His Majesty's dockyards, magazines, ships, ammunition, and stores. The whole Act.
33 Geo. 3. c. 67. -	-	An Act for better preventing offences in obstructing, destroying, or damaging ships or other vessels, and in obstructing seamen, keelmen, casters, and ship carpenters from pursuing their lawful avocations. The whole Act.
36 Geo. 3. c. 7. -	-	An Act for the safety and preservation of His Majesty's person and Government against treasonable and seditious practices and attempts. The whole Act.
37 Geo. 3. c. 70.	-	An Act for the better prevention and punishment of attempts to seduce persons serving in His Majesty's forces by sea or land from their duty and allegiance to His Majesty, and to incite them to mutiny or disobedience. The whole Act.
37 Geo. 3. c. 123.	-	An Act for more effectually preventing the administering or taking of unlawful oaths. The whole Act.
39 & 40 Geo. 3. c. 93.	-	An Act for regulating trials for high treason and misprison of treason. The whole Act.
50 Geo. 3. c. 102.	-	An Act for the more effectually preventing the administering and taking of unlawful oaths in Ireland, and for the protection of magistrates and witnesses in criminal cases. In part, that is to say, sections one to four inclusive.
52 Geo. 3. c. 104.	-	An Act to render more effectual an Act passed in the thirty-seventh year of his present Majesty, for preventing the administering or taking of unlawful oaths. The whole Act.
54 Geo. 3. c. 146.	-	An Act to alter the punishment in certain cases of high treason. The whole Act.
57 Geo. 3. c. 6. -	-	An Act of which the title begins with the words "An Act to make perpetual," and ends with the words "treasonable practices and attempts." The whole Act.
1 & 2 Geo. 4. c. 24.	-	An Act to extend certain provisions of an Act of King William the Third, intituled "An Act for regulating of trials in cases of treason and misprison of treason," to that part of the United Kingdom called Ireland. The whole Act.
1 & 2 Geo. 4. c. 88.	-	An Act for the amendment of the law of rescue. The whole Act.
5 Geo. 4. c. 84. -	-	An Act for the transportation of offenders from Great Britain. In part, viz., section twenty-two.
7 Geo. 4. c. 64. -	-	An Act for improving the administration of criminal justice in England. In part, that is to say, sections one, two, three, five (so far as it relates to justices), twelve to twenty-one, both inclusive.
7 & 8 Geo. 4. c. 28.	-	An Act for further improving the administration of justice in criminal cases in England. In part, that is to say, sections nine, ten, eleven, twelve.
9 Geo. 4. c. 54. -	-	An Act for improving the administration of criminal justice in Ireland. In part, that is to say, sections one to three inclusive, section five (so far as it relates to justices), sections nine, sixteen, nineteen, twenty to twenty-two inclusive, twenty-six to thirty inclusive, section thirty-two.
9 Geo. 4. c. 69. -	-	An Act for the more effectual prevention of persons going armed by night for the destruction of game. In part, that is to say, so much of section one as relates to prosecution by indictment and section nine.
1 & 2 Will. 4. c. 44.	-	An Act, the title of which begins with "An Act to amend an Act," and ends with the words "purposes therein mentioned." In part, that is to say, sections four and five.

- 4 & 5 Will. 4. c. 67. - An Act for abolishing capital punishment in case of returning from transportation. The whole Act.
- 7 Will. 4. & 1 Vict. c. 36. An Act of which the title begins with the words "An Act for consolidating the laws relative to offences against the Post Office," and ends with the words "in those laws." In part, that is to say, sections twenty-six (except so much as relates to destroying a post letter), section twenty-seven, section twenty-eight (except so much as relates to stopping mail), and section twenty-nine (except so much as relates to unlawfully taking away a post letter-bag sent by a post office packet, or unlawfully taking a letter out of such bag, or unlawfully opening any such bag).
- 7 Will. 4. & 1 Vict. c. 88. An Act to amend certain Acts relating to the crime of piracy. The whole Act.
- 7 Will. 4. & 1 Vict. c. 90. An Act to amend the laws relative to offences punishable by transportation for life. The whole Act.
- 5 & 6 Vict. c. 28. - An Act, the title of which begins with the words "An Act to assimilate," and ends with the words "in lieu thereof." In part, that is to say, sections twelve and sixteen.
- 5 & 6 Vict. c. 51. - An Act for providing for the further security and protection of Her Majesty's person. The whole Act.
- 6 & 7 Vict. c. 96. - An Act to amend the law respecting defamatory words and libel. In part, that is to say, sections three, four, five, six, seven, eight.
- 7 & 8 Vict. c. 2. - An Act for the more speedy trial of offences committed on the high seas. The whole Act.
- 7 & 8 Vict. c. 29. - An Act to extend an Act of the ninth year of King George the Fourth for the more effectual prevention of persons going armed by night for the destruction of game. In part, that is to say, so much as relates to prosecution by indictment.
- 8 & 9 Vict. c. 68. - An Act to stay execution of judgment for misdemeanours upon giving bail in error. The whole Act.
- 9 & 10 Vict. c. 24. - An Act for removing some defects in the administration of criminal justice. The whole Act.
- 11 & 12 Vict. c. 12. - An Act for the better security of the Crown and government of the United Kingdom. The whole Act.
- 11 & 12 Vict. c. 46. - An Act for the removal of defects in the administration of criminal justice. The whole Act.
- 11 & 12 Vict. c. 78. - An Act for the further amendment of the administration of the criminal law. The whole Act.
- 12 & 13 Vict. c. 45. - An Act to amend the procedure in courts of general and quarter sessions of the peace in England and Wales, and for the better advancement of justice in cases within the jurisdiction of those courts. In part, that is to say, section ten.
- 14 & 15 Vict. c. 19. - An Act for the better prevention of offences. The whole Act.
- 14 & 15 Vict. c. 100. - An Act for further improving the administration of criminal justice. All that is unrepealed, except sections twenty-two, twenty-seven, twenty-eight, thirty, and thirty-two.
- 16 & 17 Vict. c. 32. - An Act to make further provision for staying execution of judgment for misdemeanours upon giving bail in error. The whole Act, except section eight.
- 17 & 18 Vict. c. 26. - An Act to assimilate the law and practice existing in cases of high treason in Ireland to the law and practice existing in cases of high treason in England. The whole Act.
- 19 & 20 Vict. c. 102. - An Act to further amend the procedure in, and to enlarge the jurisdiction of the Superior Courts of Common Law in Ireland. In part, that is to say, sections twenty-four and ninety-two.
- 22 & 23 Vict. c. 17. - An Act to prevent vexatious indictments for certain misdemeanours. The whole Act.
- 22 & 23 Vict. c. 35. - An Act to further amend the law of property, and to relieve trustees. In part, that is to say, section twenty-four, so far as it creates a misdemeanour.
- 24 & 25 Vict. c. 94. - An Act to consolidate and amend the statute law of England and Ireland relating to accessories to and abettors of indictable offences. The whole Act.
- 24 & 25 Vict. c. 96. - An Act to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences. The whole Act, except the following sections: one, twelve

	(so far as it makes any offence punishable on summary conviction), fourteen, fifteen, sixteen, seventeen (so far as it makes any offence punishable on summary conviction), eighteen, nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, thirty-three (so far as it makes any offence punishable on summary conviction), thirty-four, thirty-five, thirty-six (so far as it makes any offence punishable on summary conviction), sixty-five, sixty-six, eighty-five, ninety-seven, ninety-nine, one hundred and two, one hundred and three, one hundred and five to one hundred and thirteen, both inclusive, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-three.
24 & 25 Vict. c. 97.	- An Act to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property. The whole Act, except the following sections: twenty-two (so far as it makes any offence punishable on summary conviction), twenty-three (so far as it makes any offence punishable on summary conviction), twenty-four, twenty-five, thirty-eight, forty-one, fifty-two, fifty-three, fifty-eight, fifty-nine, sixty-one, sixty-two to seventy, both inclusive, seventy-six, seventy-eight, seventy-nine.
24 & 25 Vict. c. 98.	- An Act to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery. The whole Act.
24 & 25 Vict. c. 100.	- An Act to consolidate and amend the statute law of England and Ireland relating to offences against the person. The whole Act, except sections thirty-nine, forty, forty-two, forty-three, forty-four, forty-five, forty-six, seventy-two, seventy-six, seventy-eight, seventy-nine.
28 Vict. c. 18.	- An Act for amending the law of evidence and practice on criminal trials. In part, that is to say, section two.
30 & 31 Vict. c. 35.	- An Act to remove some defects in the administration of the criminal law. The whole Act, except section eight.
31 & 32 Vict. c. 116.	- An Act to amend the law relating to larceny and embezzlement. In part, that is to say, section one.
32 & 33 Vict. c. 62.	- An Act for the abolition of imprisonment for debt, for the punishment of fraudulent debtors, and for other purposes. In part, that is to say, sections eleven, twelve, thirteen, fourteen, seventeen, eighteen, nineteen.
33 & 34 Vict. c. 23.	- An Act to abolish forfeitures for treason and felony, and to otherwise amend the law relating thereto. In part, that is to say, sections three and four.
34 & 35 Vict. c. 112.	- An Act for the more effectual prevention of crime. In part, that is to say, section nineteen.
35 & 36 Vict. c. 57.	- An Act for the abolition of imprisonment for debt in Ireland, and for the punishment of fraudulent debtors, and for other purposes relating thereto. In part, that is to say, sections eleven to fourteen inclusive, and sections seventeen to nineteen inclusive.
36 & 37 Vict. c. 71.	- The Salmon Fishery Act, 1873. In part, that is to say, section thirteen.
37 & 38 Vict. c. 36.	- The False Personation Act, 1874. The whole Act.
38 & 39 Vict. c. 24.	- The Falsification of Accounts Act, 1875. The whole Act.
38 & 39 Vict. c. 94.	- An Act to amend the law relating to offences against the person. The whole Act.

PART II.

Acts of the Parliament of Ireland.

28 Hen. 8. c. 7.	- An Act of slander. The whole Act.
33 Hen. 8. c. 1.	- An Act that the King of England, his heirs and successors, be Kings of Ireland. In part, that is to say, section two.
28 Eliz. c. 1.	- An Act concerning wilful perjury. The whole Act.
3 Geo. 2. c. 4.	- An Act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes or other securities for payment of money, and for the more effectual transporting felons, vagabonds, and others. The whole Act.

5 Geo. 3. c. 21. -	-	An Act for the better regulating of trials in cases of high treason under the statute of the twenty-fifth of Edward the Third. The whole Act.
17 & 18 Geo. 3. c. 36. -	-	An Act for reviving and continuing several temporary statutes. In part, that is to say, sections two and seven.
23 & 24 Geo. 3. c. 20. -	-	An Act for the more effectual punishing such persons as shall by violence obstruct the freedom of corn markets and the corn traders, or who shall be guilty of other offences therein mentioned, and for making satisfaction to the parties injured. In part, that is to say, sections seven, eight, twelve and thirteen.
26 Geo. 3. c. 24.	-	An Act, the title of which begins with "An Act for the better execution of the law within the city of Dublin," and ends with "city of Dublin." In part, that is to say, sections sixty-four and sixty-five.
27 Geo. 3. c. 15.	-	An Act to prevent tumultuous risings and assemblies, and for the more effectual punishment of persons guilty of outrage, riot, and illegal combination, and of administering and taking unlawful oaths. In part, that is to say, sections one, two, three, four, five, six, and seven.
31 Geo. 3. c. 17.	-	An Act, the title of which begins with the words "An Act to prevent," and ends with the words "high treason." The whole Act.
31 Geo. 3. c. 18.	-	An Act to render prosecutions for perjury, and subornation of perjury, more easy and effectual, and for affirming the jurisdiction of the quarter sessions in cases of perjury. The whole Act.
33 Geo. 3. c. 45.	-	An Act for the trial of treason committed out of the King's dominions. The whole Act.
36 Geo. 3. c. 31.	-	An Act for discontinuing the judgment which has been required by law to be given against women convicted of certain crimes, and substituting another judgment in lieu thereof. The whole Act.
37 Geo. 3. c. 40.	-	An Act for the better prevention and punishment of attempts to seduce persons serving in His Majesty's forces by sea or land from their duty and allegiance to His Majesty or to incite them to mutiny or disobedience. The whole Act.
40 Geo. 3. c. 96.	-	An Act to revive, amend, continue, and make perpetual certain temporary statutes. In part, that is to say, section nine.

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