

## CHAPTER V.

<sup>1</sup> PARTIES TO THE COMMISSION OF CRIMES — PRINCIPAL AND ACCESSORY.<sup>2</sup> ARTICLE 35.

## PRINCIPALS IN FIRST DEGREE.

<sup>3</sup> [WHOEVER actually commits, or takes part in the actual commission of, a crime is a principal in the first degree, whether he is on the spot when the crime is committed or not; and if a crime is committed partly in one place and partly in another, every one who commits any part of it at any place is a principal in the first degree.]

*Illustrations.*

(1.) <sup>4</sup> A lays poison for B, which B takes in A's absence. A is a principal in the first degree.

(2.) <sup>5</sup> A steals goods from a ship, and lays them in a place at some distance, whence B, by previous concert, carries them away for sale. A and B are both principals in the first degree.

<sup>6</sup> ARTICLE 36.

## INNOCENT AGENT.

Whoever commits a crime by an innocent agent is a principal in the first degree.

<sup>1</sup> [2 Hist. Cr. Law, ch. xxii, p. 221-241; Draft Code, ss. 71-74.]

<sup>2</sup> S. D., Art. 35.

<sup>3</sup> [Foster, 347-59, gives the history of the distinction between principals in the first and second degree. See also Hale, ch. xxii, 1 P. C. 233; ch. xxxiv, 1 P. C. 435, and ch. lv, 612.]

<sup>4</sup> Foster, 349, says simply that A is "a principal," without mentioning the degree, but as no one has "aided" or "abettod," it would seem that he must be a principal in the first degree.

<sup>5</sup> *H. v. Kelly*, 2 C. & K. 379.]

<sup>6</sup> S. D., Art. 36.

*Illustrations.*

- (1.) <sup>1</sup> A tells B, a child under seven, to bring him money belonging to C. B does so. A is a principal in the first degree.
- (2.) <sup>2</sup> A, knowing a note to be forged, asks B, who does not know it to be forged, to get it changed for him. B does so, and gives A the money. A is a principal in the first degree.
- (3.) <sup>3</sup> B, in the last illustration, knows that the note is forged. A is an accessory before the fact.

## \* ARTICLE 37.

## PRINCIPALS IN THE SECOND DEGREE.

<sup>5</sup> Whoever aids or abets the actual commission of a crime, either at the place where it is committed, or elsewhere, is a principal in the second degree in that crime.

<sup>6</sup> Mere presence on the occasion when a crime is committed does not make a person a principal in the second degree, even if he neither makes any effort to prevent the offence or to cause the offender to be apprehended, but such presence may be evidence for the consideration of the jury of an active participation in the offence.

When the existence of a particular intent forms part of the definition of an offence, a person charged with aiding or abetting the commission of the offence must be shewn to have known of the existence of the intent on the part of the person so aided.

*Illustrations.*

- (1.) <sup>7</sup> A, B, C, and D go out with a common design to rob. A commits the robbery; B stands by ready to help; C is stationed some way off to

<sup>1</sup> [*R. v. Mantley*, 1 Cox, C. C. 104.]

<sup>2</sup> *R. v. Palmer*, 1 Russ. Cr. 160.

<sup>3</sup> *R. v. Soares*, R. & R. 251

<sup>4</sup> S. D., Art. 37.

<sup>5</sup> [See cases in 1 Russ. Cr. 156-59. *R. v. Kelly*, R. & R. 421, perhaps marks the limit between a principal in the second degree and an accessory. In that case B stole horses and brought them to A, who was waiting half a mile off; A and B then rode away on them. It was held that A was an accessory before the fact. The distinction is now of no importance.

<sup>6</sup> *R. v. Coney and Others*, L. R. 8 Q. B. D. 534. See especially the judgment of Cave, J., 536-43.] *R. v. Curtley*, 27 U. C. Q. B. 613.

<sup>7</sup> [Foster, 350.]

[give the alarm if any one comes. A is a principal in the first degree, B, C, and D are principals in the second degree.

(2.)<sup>1</sup> B is indicted for inflicting on C an injury dangerous to life with intent to murder. A is indicted for aiding and abetting B. A must be shewn to have known that it was B's intent to murder C, and it is not enough to shew that A helped B in what he did.

## <sup>2</sup> ARTICLE 38.

### COMMON PURPOSE.

<sup>3</sup> When several persons take part in the execution of a common criminal purpose, each is a principal in the second degree, in respect of every crime committed by any one of them in the execution of that purpose.

If any of the offenders commits a crime foreign to the common criminal purpose, the others are neither principals in the second degree, nor accessories, unless they actually instigate or assist in its commission.

### *Illustrations.*

(1.)<sup>4</sup> A constable and his assistants go to arrest A at a house in which are many persons. B, C, D, and others come from the house, drive the constable and his assistants off, and one of the assistants is killed, either by B, C, D, or one of their party. Each of the party is equally responsible for the blow, whether he actually struck it or not.

(2.)<sup>5</sup> Three soldiers go to rob an orchard. Two get into a fruit tree. The third stands at the door with a drawn sword, and stabs the owner, who tries to arrest him. The men in the tree are neither principals nor accessories, unless all three came with a common resolution to overcome all opposition.

(3.)<sup>6</sup> Smugglers fight with revenue officers. In the fight a smuggler fires a gun which kills another smuggler. The gun was not fired at any of the revenue officers. The man who fired the gun is responsible for the act, but not his companions.

<sup>1</sup> [*R. v. Cruise*, 3 C. & P. 546.]

<sup>2</sup> S. D., Art. 38.

<sup>3</sup> [See cases referred to in the Illustrations. See also *Fost.* 350-2; 1 *Russ. Cr.* 159-163, 759-67.

<sup>4</sup> *Sivingshurst House Case*, 1st Resolution; 1 *Halo*, P. C. 462.

<sup>5</sup> *Plummer's Case*, *Foster*, 353. More fully reported in *Kelynge*, 155 (edition of 1873). Lord Holt in his judgment fully explains the whole law.

<sup>6</sup> *Ibid.* 352.]

(4.)<sup>1</sup> Two parties of persons fight in the street about the removal of goods to avoid a distress. One of the persons engaged kills a looker-on, totally unconcerned in the affray. The other persons present are not responsible for his crime.

(5.)<sup>2</sup> Two persons go out to commit theft. One, unknown to the other, puts a pistol in his pocket, and shoots a man with it. The other person is not responsible for the shot.

(6.)<sup>3</sup> Three persons go out to practice with a rifle, and manage their practice so carelessly that a person is killed by a shot fired by one of them: all are guilty of manslaughter.

#### <sup>4</sup> ARTICLE 39.

##### ACCESSORIES BEFORE THE FACT.

<sup>5</sup> An accessory before the fact is one who <sup>6</sup> directly or indirectly counsels, procures, or commands any person to commit any felony or piracy <sup>7</sup> which is committed in consequence of such counselling, procuring, or commandment.

Every one who would have been an accessory before the fact if the crime committed, procured, or commanded had been a felony, is a principal if that crime is a misdemeanor.

Knowledge that a person intends to commit a crime, and conduct connected with and influenced by such knowledge, is not enough to make the person who possesses such knowledge, or so conducts himself, an accessory before the fact to any such crime, unless he does something to encourage its commission actively.

##### *Illustrations.*

(1.)<sup>8</sup> A supplies B with corrosive sublimate, knowing that B means to

<sup>1</sup> *R. v. Hodgson and Others*, 1 Leach, 6.

<sup>2</sup> Per Park, J., *Duffey's Case*, 1 Lew. 194.

<sup>3</sup> *R. v. Salmon*, L. R. 6 Q. B. D. 79.1

<sup>4</sup> S. D. Art. 39.

<sup>5</sup> [1 Hale, P. C. 615; 2 Hawk, P. C. 442; 1 Russ. Cr. 156-185. As to principals and accessories in forgery, see 2 Russ. Cr. 689. In the following Articles I use the word "instigate" as equivalent to "counsel, procure, or command." Draft Code, s. 71.

<sup>6</sup> *R. v. Cooper*, 5 C. & P. 535-7.

<sup>7</sup> 11 & 12 Will. 3, c. 7, s. 9.

<sup>8</sup> *R. v. Fretwell*, L. & C. 161. Contrast with this *R. v. Russell*, 1 Moody, 366.]

[use it to procure her own abortion, but being unwilling that she should take the poison, and giving it to her because she threatened to kill herself if he did not. B does so use it and dies. Even if B is guilty of murdering herself, A is not an accessory before the fact to such murder.

(2.) <sup>1</sup> B and C agree to fight a prize fight for a sum of money; A, knowing of their intention, acts as stakeholder. B and C fight, and C is killed. A is not present at the fight and has no concern with it except being stakeholder. Even if in such a case there can be an accessory before the fact, A is not accessory before the fact to the manslaughter of C.

#### <sup>2</sup> ARTICLE 40.

WHERE CRIME SUGGESTED IS COMMITTED IN A DIFFERENT WAY.

<sup>3</sup> When a person instigates another to commit a crime, and the person so instigated commits the crime which he was instigated to commit, but in a different way from that in which he was instigated to commit it, the instigator is an accessory before the fact to the crime.

##### *Illustration.*

A advises B to murder C by shooting, B murders C by stabbing. A is accessory before the fact to the murder of C.

#### <sup>4</sup> ARTICLE 41.

WHERE CRIME COMMITTED IS PROBABLE CONSEQUENCE OF CRIME SUGGESTED.

<sup>5</sup> If a person instigates another to commit a crime, and the person so instigated commits a crime different from the one which he was instigated to commit, but likely to be caused by such instigation, the instigator is an accessory before the fact.

##### *Illustrations.*

<sup>6</sup> (1.) A describes C to B, and instigates B to murder C. B murders D,

<sup>1</sup> [*R. v. Taylor*, L. R. 2 C. C. R. 147.]

<sup>2</sup> S. D. Art. 40.

<sup>3</sup> [Foster, 389-70; Draft Code, s. 72.]

<sup>4</sup> S. D., Art. 41.

<sup>6</sup> [Foster, 370.]

[whom he believes to be C, because D corresponds with A's description of C. A is accessory before the fact to the murder of D.

<sup>1</sup>(2.) A instigates B to rob C, B does so, C resists and B kills C. A is accessory before the fact to the murder of C.

<sup>2</sup>(3.) A advises B to murder C (B's wife) by poison. B gives C a poisoned apple, which C gives D (B's child). B permits D to eat the apple, which it does, and dies of it. A is not accessory to the murder of D.

### <sup>3</sup> ARTICLE 42.

#### WHERE INSTIGATION IS COUNTERMANDED.

<sup>4</sup>If an accessory before the fact countermands the execution of the crime before it is executed, he ceases to be an accessory before the fact, if the principal had notice of the countermand before the execution of the crime, but not otherwise.

#### *Illustration.*

<sup>5</sup>A advises B to murder C, and afterwards, by letter, withdraws his advice. B does murder C. A is not an accessory before the fact if his letter reaches B before he murders C; but he is if it arrives afterwards.

### <sup>6</sup> ARTICLE 43.

#### INSTIGATION TO COMMIT A CRIME DIFFERENT FROM THE ONE COMMITTED.

<sup>6</sup>When a person instigates another to commit a crime, and the person so instigated commits a different crime, the instigator is not accessory before the fact to the crime so committed.

<sup>1</sup>[Foster, 370.

<sup>2</sup>*Saunders' Case*, Plowd. 475; 1 Hale, P. C. 431. This decision is of higher authority than Foster's *dicta*, and marks the limit to which they extend, if it does not throw some doubt on them].

<sup>3</sup>S. D. Art. 42.

<sup>4</sup>[1 Hale, P. C. 618. In the case supposed, the instigator would probably have committed the offence of inciting to the commission of a crime (Art. 50), though he would not be an accessory before the fact. It may also be doubted whether this doctrine would extend to the case of a man who did his best to countermand his advice, but failed, as by an accident in the course of post, &c.]

<sup>5</sup>S. D. Art. 43.

<sup>6</sup>[Cf. Draft Code, s. 72.]

*Illustration.*

<sup>1</sup> [A instigates B to murder C, B murders D, A is not accessory before the fact to the murder of D.

<sup>2</sup> ARTICLE 44.

ACCESSORIES AND PRINCIPALS IN SECOND DEGREE TREATED  
AS PRINCIPALS IN FIRST DEGREE.

<sup>3</sup> Accessories before the fact, principals in the second degree, and principals in the first degree in any felony, are each considered as having committed that felony, and each may be indicted, tried, convicted and punished as if he alone and independently had committed the felony, although any other party to the crime may have been acquitted.

<sup>4</sup> ARTICLE 45.

## ACCESSORIES AFTER THE FACT.

<sup>5</sup> Every one is an accessory after the fact to felony who knowing a felony to have been committed by another, receives, comforts, or assists him, <sup>6</sup> in order to enable him to escape from punishment ;

or rescues him from an arrest for the felony ;

or having him in custody for the felony, intentionally and voluntarily suffers him to escape ;

or opposes his apprehension ;

Provided that a married woman who receives, comforts

<sup>1</sup> [Foster, 369, s. 1.]

<sup>2</sup> S. D. Art. 44.

<sup>3</sup> [24 & 25 Vict. c. 94, s. 2, as explained by *R. v. Hughes*, Bell, C. C. 242. The section referred to applies only to cases in which a felony has been committed, and does not affect the common law offence of inciting to commit a felony (Art. 50). *R. v. Gregory*, L. R. 1 C. C. R. 77.] See R. S. C. c. 145, ss. 1, 2, 3; 11 & 12 Vict. c. 12, s. 8; 24 & 25 Vict. c. 96, s. 98, c. 97, s. 56, c. 98, s. 49, c. 99, s. 35; c. 100, s. 67. See also *The Post Office Act* (R. S. C. c. 35) s. 110 (4) where it is provided that not only accessories before the fact but accessories after the fact to any felony defined in the Act may be tried as principals.

<sup>4</sup> S. D. Art. 45.

<sup>5</sup> [1 Russ. Cr. 171-4; 1 Hale, P. C. 618-20; 2 Hawk. P. C. Bk. IX, c. 29; Draft Code, s. 73.

<sup>6</sup> As to the addition of these words, see 2 Hawk. P. C. Bk. II. c. 29, ss. 28-9].

[or relieves her husband, knowing him to have committed a felony, does not thereby become an accessory after the fact].

<sup>1</sup> ARTICLE 46.

PUNISHMENT OF ACCESSORIES AFTER THE FACT.

<sup>2</sup> Every one who becomes an accessory after the fact to any felony, whether the same is a felony at common law or by virtue of any Act, may be indicted and convicted, either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been convicted, or is or is not amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

<sup>3</sup> Every accessory after the fact to any felony (except when it is otherwise specially enacted), whether the same is a felony at common law, or by virtue of any Act, shall be liable to imprisonment for any term less than two years.

ARTICLE 47.

WHERE PRINCIPAL FELON HAS BEEN CONVICTED BUT NOT  
ATTAINED.

<sup>4</sup> If any principal offender is, in any wise, convicted of any felony, any accessory, either before or after the fact, may be proceeded against in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon dies or is pardoned or otherwise delivered before such attainder; and every such accessory

<sup>1</sup> S. D. Art. 46.

<sup>2</sup> R. S. C. c. 145, s. 4; 24 & 25 Vict. c. 94, s. 3. *R. v. Fallon L. & C. 217.*

<sup>3</sup> R. S. C. c. 145, s. 5; 24 & 25 Vict. c. 94, s. 4.

<sup>4</sup> R. S. C. c. 145, s. 6; 24 & 25 Vict. c. 94, s. 5. See Art. 15 note (3.)



shall, upon conviction, suffer the same punishment as he would have suffered if the principal had been attainted.

## ARTICLE 48.

## MISDEMEANORS.

<sup>1</sup> Every one who aids, abets, counsels or procures the commission of any misdemeanor, whether the same is a misdemeanor at common law, or by virtue of any Act, is guilty of a misdemeanor and liable to be tried, indicted and punished as a principal offender.

## ARTICLE 49.

## OFFENCES PUNISHABLE ON SUMMARY CONVICTION.

<sup>2</sup> Every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction, be liable for every first, second or subsequent offence of aiding, abetting, counselling or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender, is liable.

<sup>1</sup> R. S. C. c. 145, s. 7; 24 & 25 Vict. c. 94, s. 8. *H. v. Esmond* 25 U. C. Q. B. 152. See also R. S. C. c. 35, s. 110 (4) as to misdemeanors under *The Post Office Act*.

<sup>2</sup> R. S. C. c. 145, s. 8; 11 & 12 Vict. c. 43, s. 5; 24 & 25 Vict. c. 96, s. 99, and c. 97, s. 63.

## CHAPTER VI.

<sup>1</sup> DEGREES IN THE COMMISSION OF CRIME—INCITEMENT—  
CONSPIRACY—ATTEMPTS.<sup>2</sup> ARTICLE 50.

## INCITEMENT TO COMMIT A CRIME.

<sup>3</sup> [EVERY one who incites any person to commit any crime commits a misdemeanor, whether the crime is or is not committed.

<sup>4</sup> ARTICLE 51.

## CONSPIRACY TO COMMIT A CRIME.

<sup>5</sup> When two or more persons agree to commit any crime, they are guilty of the misdemeanor called conspiracy, whether the crime is committed or not.

<sup>6</sup> ARTICLE 52.

## DEFINITION OF ATTEMPTS.

<sup>7</sup> An attempt to commit a crime is an act done with

<sup>1</sup> [3 Hist. Cr. Law, ch. xxii, pp. 221-241].

<sup>2</sup> S. D. Art. 47. See Appendix, Note II.

<sup>3</sup> [*R. v. Higgins*, 2 East, 5-22; *R. v. Schofield*, Cald. 397; *H. v. Gregory*, L. R. 1 C.C. 71. In *R. v. Leddington*, 9 C. & P. 79, a man was charged with inciting a man to commit suicide, and Alderson B., directed an acquittal, saying, "This is a case which by law we cannot try." The reasons for this direction are not given, and a note to the case does not make them clear. As to the case of *R. v. Welham*, see Appendix Note II]. Every one who incites any Indian to commit any indictable offence is guilty of felony and liable to five years' imprisonment. (R. S. C. c. 43, s. 112). Inciting a woman falsely to make an affidavit under C. S. U. C. c. 77, s. 6, that A is the father of her illegitimate child is a misdemeanor: *R. v. Clement*, 26 U. C. Q. B. 297.

<sup>4</sup> S. D. Art. 48.

<sup>5</sup> [*Mulcahy v. R.*, L. R. 3 H. L. 317; *H. v. Bunn*, 12 Cox, C. C. 316; and see cases collected in *Boscoe*, Cr. Ev. 423-41. *R. v. Fellows*, 19 U. C. Q. B. 48; *R. v. Roy*, 11 L. C. J. 89; *R. v. Downie*, 13 R. L. 429; *R. v. Bunting*, 7 O. R. 524.

<sup>6</sup> S. D. Art. 49.

<sup>7</sup> [See cases referred to in Illustrations, and Draft Code, s. 74]. *R. v. McCann*, 28 U. C. Q. B. 514. An assault with intent to commit a crime is an attempt to commit such crime; *Johs v. R.* 15 Can. S. C. 384.

[intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted.

The point at which such a series of acts begins cannot be defined but depends upon the circumstances of each particular case.

An act done with intent to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is not an attempt to commit that crime.

The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself.

*Illustrations.*

(1.) <sup>1</sup> A writes and sends to B a letter inciting B to commit a felony, B does not read the letter. A has attempted to incite B to commit a felony.

(2.) <sup>2</sup> A procures dies for the purpose of coining bad money. A has attempted to coin bad money.

(3.) <sup>3</sup> B is a contractor for the supply of meat to a regiment. A is B's servant, and his duty is to return the surplus meat to B, after weighing out a certain allowance to each mess. By using a short weight, A sets aside, as surplus, sixty pounds instead of fifteen pounds, intending to steal the forty-five pounds, and return the fifteen pounds to B. A's fraud is discovered before he carries the meat away. A attempts to steal the forty-five pounds as soon as he sets aside the sixty pounds.

(4.) <sup>4</sup> A, by false pretences as to the number of loaves he had delivered under a contract, obtains credit in account for the loaves, and would have been paid for them but for the discovery of the fraud. This is an attempt to obtain money by false pretences, as it was the last step depending on the defendant towards obtaining it.

(5.) <sup>5</sup> A procures indecent prints with intents to publish them. A has attempted to publish indecent prints. (*Simble.*)

(6.) <sup>6</sup> A goes to Birmingham to buy dies to make bad money. A has not attempted to make bad money.

<sup>1</sup> *H. v. Hanford*, 31 L. T. (N.S.) 488.

<sup>2</sup> *Roberts' Case*, Dearsley C. C. 539.

<sup>3</sup> *Cheeseman's Case*, L. & C. 140.

<sup>4</sup> *R. v. Eagleton*, Dear. C. C. 515.

<sup>5</sup> *Dugdale v. R.*, 1 E. & B. 435; *R. v. Dugdale*, Dearsley C. C. 64.

<sup>6</sup> Per Jarvis, C.J., in *Roberts' Case*, Dearsley C. C. 551.

[(7.) <sup>1</sup> A having in his possession indecent prints, forms an intent to publish them. A has not attempted to publish indecent prints.

(8.) <sup>2</sup> A mistaking a log of wood for B, and intending to murder B, strikes the log of wood with an axe. A has not attempted to murder B.

(9.) <sup>3</sup> A puts his hand into B's pocket with intent to steal whatever he finds there; the pocket is empty. A has not attempted to steal from B's person.

(10.) <sup>4</sup> A kneels down in front of a stack of corn, and lights a lucifer match, intending to set the stack on fire; but observing that he is watched blows it out. A has attempted to set fire to the stack.

#### ARTICLE 53.

##### ATTEMPT—MISDEMEANOR.

Every attempt to commit an offence, whether treason felony, or misdemeanor,<sup>5</sup> is a misdemeanor, unless it is otherwise specially provided for.]

<sup>1</sup> (Per Bramwell, B., in *R. v. McPherson*, D. & B. 201.

<sup>2</sup> *Collin's Case*, L. & C. 471. It is submitted, however, that he has committed an assault on B with intent to commit a felony, Article 314.

<sup>3</sup> *R. v. Taylor*, 1 F. & F. 511.] See also *R. v. Goodman*, 22 U. C. C. P. 338, Art. 565 note (2).

<sup>4</sup> S. D. Art. 59.

<sup>5</sup> [It is difficult to put a case of an attempt to commit treason, as an overt act done with intent to commit treason would generally be treason; see the next Chapter. In the case of treasons defined in Art. 62 there might be an attempt. See many cases collected in 1 Russ. Cr. 190, and 2 Hist. Cr. Law. 221-7.]

## PART II.

OFFENCES AGAINST PUBLIC ORDER—INTERNAL  
AND EXTERNAL.

<p>CHAP. VII.—HIGH TREASON—TREASONABLE FELONIES—ASSAULTS ON THE QUEEN, AND OTHER OFFENCES AGAINST THE QUEEN'S AUTHORITY.</p> <p>CHAP. VIII.—CHALLENGES—PRIZE FIGHTING—AFFRAYS—UNLAWFUL ASSEMBLIES—ROUTS—RIOTS—UNLAWFUL DRILLING—FORCIBLE ENTRY AND DETAINER—UNLAWFUL USE AND POSSESSION OF EXPLOSIVE SUBSTANCES AND OFFENSIVE WEAPONS—PRESERVATION OF THE PEACE AT PUBLIC MEETINGS AND ELECTIONS AND</p>	<p>NEAR PUBLIC WORKS—UNLAWFUL SALE OF SPIRITUOUS LIQUORS.</p> <p>CHAP. IX.—OFFENCES AGAINST INTERNAL TRANQUILITY BY UNLAWFUL ENGAGEMENTS AND COMBINATIONS AND CONFEDERACIES.</p> <p>CHAP. X.—OFFENCES AGAINST EXTERNAL PUBLIC TRANQUILITY—OFFENCES AGAINST FOREIGN NATIONS.</p> <p>CHAP. XI.—OFFENCES AGAINST PERSONS ON THE HIGH SEAS—PIRACY—SLAVE-TRADING.</p>
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## \* CHAPTER VII.

*HIGH TREASON, TREASONABLE FELONIES, ASSAULTS ON THE  
QUEEN, AND OTHER OFFENCES AGAINST THE QUEEN'S  
AUTHORITY.*<sup>1</sup> ARTICLE 54.

## HIGH TREASON BY IMAGINING THE QUEEN'S DEATH.

<sup>2</sup> [EVERY one commits high treason who forms and displays by any overt act, or by publishing any printing or writing, an intention to kill or destroy the Queen, or do her any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint.

\* [See 2 Hist. Cr. Law, ch. xxiii. pp. 241-97, and Draft Code, Part V.]

<sup>1</sup> S. D. Art. 51.

<sup>2</sup> [25 Edw. 3, st. 5, c. 2; 36 Geo. 3, c. 7, ss. 1, 6; 57 Geo. 3, c. 6; 11 & 12 Vict. c. 12, s. 3; Draft Code, s. 75.] R. S. C. c. 146, ss. 1, 9.

<sup>1</sup> ARTICLE 55.

## WHAT AMOUNTS TO IMAGINING THE QUEEN'S DEATH.

<sup>2</sup> Every one is deemed to have formed an intention to put the Queen to death who forms and displays by any overt act an intention,

(a.) to depose the Queen from the exercise of her royal authority in any part of her dominions; or

(b.) to levy war against the Queen either in the first or in the second of the senses assigned to that expression in Article 56; or

(c.) to instigate any foreigner with force to invade this realm or any other of the Queen's dominions; or

(d.) who conspires to levy war against the Queen in the first or second, but not in the third, of the senses assigned to that expression in Article 56.

<sup>3</sup> ARTICLE 56.

## HIGH TREASON BY LEVYING WAR.

<sup>4</sup> Every one commits high treason who levies war against the Queen in any of her dominions.

<sup>1</sup> S. D. Art. 52.

<sup>2</sup> [Foster's Discourse of H. T. ch. i, ss. 1-5, pp. 198-7; ch. ii, ss. 3, 4, 6, pp. 211-13; Draft Code, s. 75.]

<sup>3</sup> S. D. Art. 53.

<sup>4</sup> [25 Edw. 3, st. 5, c. 2; Foster's Discourse on H. T. ch. ii, as to (a) see Foster, pp. 208 and 209; as to (b.) see s. 3; and see 36 Geo. 3, c. 7, s. 1, which, whilst in force, was a statutory recognition of Foster's doctrine: as to (c.) s. 4: as to the proviso, see 25 Edw. 3, st. 5, c. 2, and Foster, pp. 209-10; see also Note V., and Draft Code, s. 75. In *R. v. Gallagher and others*, 15 Cox, 231, it was held by Coleridge, C.J., Brett, M.R., and Grove, J., that war might be levied by a few persons using, for treasonable purposes, explosives calculated to do great damage. I held the same at Liverpool in the summer of 1883, in *R. v. Deasy*, 15 Cox, 334]. It has, however, been doubted whether it is treason to levy war against the Queen in one of her colonies or dependencies (1 Hale, c. xiv, 130-154; Finlason's *Martial Law* 2, note (b.) 190 note (b.); but see also pp. 12, 13.) The statute of Edward which was declaratory of the common law (Arch. P. & E. 20th Ed. 830) would, I think be held to be in force in Canada if the question were ever distinctly raised. See Art. 2 and R. S. C. c. 146, s. 9. It may, I think, be taken to be settled by the case of Louis Riel (L. R. 10 App. Cas. 675), who was tried, convicted and executed for levying war against the Queen at Duck Lake and other places in the North-West Territories of Canada and within

The expression "to levy war" means—

(a.) attacking in the manner usual in war the Queen herself or her military forces, acting as such by her orders, in the execution of their duty;

(b.) attempting by an insurrection of whatever nature by force or constraint to compel the Queen to change her measures or counsels, or to intimidate or overawe both Houses or either House of Parliament;

(c.) attempting by an insurrection of whatever kind to effect any general public object.

But the expression "to levy war against the Queen" does not include any insurrection against any private person for the purpose of inflicting upon him any private wrong, even if such insurrection is conducted in a warlike manner.]

#### ARTICLE 57.

#### LEVYING WAR BY SUBJECTS OF A STATE AT PEACE WITH HER MAJESTY—SUBJECTS ASSISTING.

<sup>1</sup> Every subject or citizen of any foreign state or country at peace with Her Majesty, who

*the realm*, that a person may, in Canada, be guilty of treason by levying war against the Queen. The words in italics were, no doubt, inserted in the information from abundant caution, and not because they were thought necessary to its validity. It is clear of course that Canada is not part of the realm (*Williams v. Nunn*, 1 Taunt. 270; 1 Hale. c. xiv, 155; Opinion of the Attorney and Solicitor General; Forsyth's Con. Law (1757) 2, 3); but it does not follow that no English statute that by its terms is limited to the realm will apply to a colony. That would obviously be the case with respect to statutes passed after England commenced to establish colonies or plantations, for the limitation would show the intention of Parliament that the statute should not apply to such colonies or plantations. But in respect of statutes passed before the era of colonies it is submitted that the true rule is that the statute applies if it is of a general character and applicable and necessary to the condition and circumstances of the people of the colony, although in the form in which it was enacted it was limited to the realm. Especially would this, I think, be the case, where the statute was, as was the statute of Edward, declaratory of the common law. (See *O'Brien v. R.* 3 Cox, 360.) Then, too, it is to be observed that the Parliament of Canada has, in legislating upon the subject of treason, dealt with this statute as if it were in force in Canada. (R. S. C. c. 146, s. 9).

<sup>1</sup> R. S. C. c. 146, ss. 6, 7, 8. The offender may be tried before a Superior Court of competent jurisdiction, or by a Militia General Court Martial. The latter court, but not the former, has a discretion as to the punishment to be awarded. An offender is within the

(a.) is or continues in arms against Her Majesty within Canada; or

(b.) commits any act of hostility therein; or

(c.) enters Canada with intent to levy war against Her Majesty, or to commit any felony therein for which any person would, in Canada, be liable to suffer death; and

Every subject of Her Majesty within Canada who

(a.) levies war against Her Majesty in company with any of the subjects or citizens of any foreign state or country at peace with Her Majesty; or

(b.) enters Canada in company with any such subjects or citizens with intent to levy war against Her Majesty or to commit any such felony therein; or

(c.) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against Her Majesty, or to commit any such felony therein,

Is guilty of felony and liable to suffer death.

#### <sup>1</sup> ARTICLE 58.

##### HIGH TREASON BY ADHERING TO THE QUEEN'S ENEMIES.

<sup>2</sup>[Every one commits high treason who, either in the realm or without it, actively assists a public enemy at war with the Queen. Rebels may be public enemies within the meaning of this Article.

statute if he is present and acting with those who are armed, even though he is not armed: *R. v. Slavin*, 17 U. C. C. P. 205. See also *R. v. McMahon*, 26 U. C. Q. B. 195; *R. v. Lanch*, 26 U. C. Q. B. 208; *R. v. School*, 26 U. C. Q. B. 212; *R. v. Magrath*, 26 U. C. Q. B. 385.

<sup>1</sup>S. D. Art. 54.

<sup>2</sup>[25 Edw. 3, st. 5, c. 2, as explained by Hale, 1 P. C. 159-70. An officer betraying his post is a traitor at common law, though such offences are usually dealt with under martial law; see 1 Hale, 168. I suppose a deserter in the field who joins the enemy commits high treason as well as a military offence. Draft Code, s. 75.] R. S. C. c. 146, s. 2; 2 & 3 Anne, c. 20, s. 34; 44 & 45 Vict. c. 55, s. 4 (3) (4).



<sup>1</sup> ARTICLE 59.

## ADHERENCE TO A DE FACTO KING NOT TREASON.

<sup>2</sup>[No person who attends upon the king and sovereign lord of this land for the time being, in his person, and does him true and faithful service of allegiance in the same, or is in other places by his commandment in his wars within this land or without, is for any such act guilty of treason (even if the king *de facto* should not be king *de jure*).

<sup>3</sup> ARTICLE 60.

## KILLING THE KING'S WIFE OR SON.

<sup>4</sup>Every one commits high treason who forms and displays by any overt act an intention,  
 (a.) to kill the wife of a king regnant; or,  
 (b.) to kill that son of a king or queen regnant who is for the time being heir-apparent to the king or queen.

<sup>5</sup> ARTICLE 61.

## WHEN WORDS ARE TREASON.

<sup>6</sup>The speaking of words expressive of the intentions above mentioned is not an overt act within the meaning of Articles 54, 55 and 60.

The writing of such words is such an overt act.

The speaking or writing of words accompanied by or explanatory of conduct connected with the execution of such intention is such an act.

The speaking of words of advice, consultation, or com-

<sup>1</sup>S. D. Art. 55.

<sup>2</sup>[11 Hen. 7, c. 1; and see 6th Rep. C. L. C. p. 23].

<sup>3</sup>S. D. Art. 56.

<sup>4</sup>[25 Edw. 3, st. 5, c. 2, as explained in 1 Hale, P. C. 124-129. Draft Code, s. 75].

<sup>5</sup>S. D. Art. 57.

<sup>6</sup>[Foster, 200-201.

[mand, or otherwise connected with the execution of such intention, is such an act.

<sup>1</sup> ARTICLE 62.

VIOLATING THE KING'S WIFE, ETC.

<sup>2</sup> Every one commits high treason who violates (whether by her own consent or not)

the wife of a king regnant ; or

that daughter of the king or queen regnant who at the time is his or her eldest daughter, if she never has been married, and (perhaps) if she is a widow, and (probably) if her father or mother is alive ; or

the wife of that son of a king or queen regnant who for the time being is the heir-apparent of such king or queen.

<sup>3</sup> ARTICLE 63.

PUNISHMENT FOR TREASON.

<sup>4</sup> Every one who is convicted of high treason must be sentenced to be hanged by the neck until he is dead.

<sup>1</sup> S. D. Art. 58.

<sup>2</sup> [25 Edw. 3, st. 5, c. 2; as explained by Hale, Draft Code, s. 75.] As a matter of historical interest only it may be observed that every one commits high treason who slays the Chancellor of England, or the treasurer, or the king's justices of the one bench or the other, justices in eyre or justice of assize being in their places doing their offices; and that by 13 Eliz. c. 2, and other statutes of the same and succeeding reigns a number of acts, such as putting in ure a Popish Bull, were made high treason. See 1 Hawk. c. 2, s. 95 *et seq.*; S. D. Art. 59 and note; 2 Hist. Cr. Law, 261 *et seq.*

<sup>3</sup> S. D. Art. 60, which has the following exception and note:—[But Her Majesty may (if the offender is a man) direct by a warrant signed by one of her principal Secretaries of State, that instead thereof such offender's head shall be covered from his body whilst alive. For common law judgment see Chitty, Crim. Law, 365-6. It was modified by 30 Geo. 3, c. 48, as to women (who before that Act were liable to be burnt alive for treason) as to men by 54 Geo. 3, c. 146, and 33 & 34 Vict. c. 23, s. 31. The odd exception made in the parenthesis arises thus: the Act 30 Geo. 3, c. 48, applies only to women, and the 54 Geo. 3, c. 146, only to men. The proviso as to beheading occurs in the second only. The Act of 1870 repeals parts of the Acts of 1790 and 1814. It would seem, however, that the power exists at common law. See Foster 269-70 The Act (31 & 32 Vict. c. 24) for executing sentence of death within gaols does not apply to cases of treason. Indeed ss. 2 and 16 together appear to exclude its operation in such cases. An execution for treason would, therefore, it would seem, have to be public. Sir E. Coke's Scriptural reasons for the punishment of treason may be seen in 3 Inst. 211. Cf. Draft Code, s. 75]. See R. S. C. c. 181, s. 10 which is general and not limited to cases of murder.

<sup>4</sup> R. S. C. c. 181, s. 5.

<sup>1</sup> ARTICLE 64.

## ALL PRINCIPALS IN TREASON.

<sup>2</sup> [Every person who in the case of felony would be an accessory before or after the fact is in the case of high treason a principal traitor, <sup>3</sup> but a person who knowingly comforts or receives a traitor so far partakes of the nature of an accessory that he cannot be tried till the principal is convicted.]

<sup>4</sup> ARTICLE 65.

## TREASONABLE FELONIES.

<sup>5</sup> Every one is guilty of felony, and liable to imprisonment for life [who <sup>6</sup> forms any of the intentions hereinafter mentioned, and expresses such intention either by any overt act or by publishing any printing or writing.] or by open and advised speaking, [that is to say,

(a.) an intention to depose the Queen, her heirs or successors, from the style, honour, and royal name of the Imperial Crown of the United Kingdom or of any other of Her Majesty's dominions or countries; or

(b.) an intention to levy war against Her Majesty, Her heirs or successors, within any part of the United Kingdom] or of Canada, [in order by force or constraint to compel her] or them [to change her] or their [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] of the United Kingdom or of Canada, [or

(c.) an intention to move or stir any foreigner with force to invade the United Kingdom] or Canada, [or any

<sup>1</sup> S. D. Art. 61.

<sup>2</sup> [Foster, 343, and see 341-6.

<sup>3</sup> 1 Hale, P. C. 238; Foster, 345-6; and see 2 Hist. Cr. Law].

<sup>4</sup> S. D. Art. 62.

<sup>5</sup> R. S. C. c. 146, s. 3; 11 & 12 Viet. c. 12, s. 3. *R. v. Stovin*, 17 U. C. C. P. 205.

<sup>6</sup> Every one who compasses, imagines, invents, devises or intends, &c.

[other of Her Majesty's dominions or countries under the obeisance of Her Majesty, her heirs and successors.

<sup>1</sup> A conspiracy to effect any of the said intentions is an overt act within the meaning of this Article.]

<sup>2</sup> No one shall be convicted of any felony mentioned in this article if such intention is expressed by open and advised speaking only, unless

(a.) information of such intention and of the words by which the same is expressed is given upon oath to a justice of the peace within six days after such words are spoken; and

(b.) a warrant for the apprehension of the offender is issued within ten days next after such information is given; and

(c.) the offender confesses in open court or the words so spoken are proved by two credible witnesses.

## ARTICLE 66.

## CONSPIRACY TO INTIMIDATE A PROVINCIAL LEGISLATURE.

<sup>3</sup> Every one is guilty of felony and liable to fourteen years' imprisonment who confederates, combines or conspires with any person to do any act of violence, in order to intimidate, or to put any force or constraint upon any Legislative Council, Legislative Assembly or House of Assembly in any Province of Canada.

<sup>4</sup> ARTICLE 67.

## ASSAULTS ON THE QUEEN.

<sup>5</sup> [Every one who], in British Columbia, Manitoba or the

<sup>1</sup> [Mulcahy v. R. L. R. 3 H. L. 306.]

<sup>2</sup> R. S. C. c. 146, s. 5; 11 & 12 Vict. c. 12, s. 4. The latter statute also contained a provision that no prosecution could be sustained for an intention so expressed unless the warrant were issued within two years from the passing of the statute, as to which see S. D. Art. 62, note (2).

<sup>3</sup> R. S. C. c. 146, s. 4.

<sup>4</sup> S. D. Art. 64.

<sup>5</sup> [5 & 6 Vict. c. 51, ss. 1, 2 (redrawn). I have omitted a few manifestly superfluous words. Draft Code, s. 80.]

North-West Territories, [does any of the acts hereinafter specified is guilty of a high misdemeanor, that is to say;—

(a.) Whoever wilfully and with intent to injure the person of the Queen or to alarm Her Majesty, or to break the public peace, or so as to endanger the public peace,

(i.) points, aims, or presents at or near the person of the Queen any <sup>1</sup> firearm, loaded or not, or any other kind of arm ; or

(ii.) discharges at or near the person of the Queen any loaded arms ; or

(iii.) discharges or causes to be discharged any explosive material near the person of the Queen ; or

(iv.) strikes, or strikes at, the person of the Queen in <sup>2</sup> any manner whatever ; or

(v.) throws anything at or upon the person of the Queen ; or

(vi.) attempts to do any of the things specified in (ii.) (iii.), (iv.), or (v.) ;—

(b.) Whoever produces or has near the person of the Queen any <sup>1</sup> arm or destructive or dangerous thing with intent to use the same to injure the person of the Queen or to alarm Her Majesty.

### <sup>3</sup> ARTICLE 68.

#### CONTEMPTS AGAINST THE QUEEN.

<sup>4</sup> Every one commits a misdemeanor who is guilty of any contempt against the person of Her Majesty, or her royal dignity, by means of any contumelious, insulting, or disparaging words, acts or gestures.

<sup>1</sup>[" Any gun, pistol, or any other description of firearms, or of other arms whatsoever."]

<sup>2</sup>["With any offensive weapon or in any other."]

<sup>3</sup>S. D. Art. 65.

<sup>4</sup> [I have taken the words of the 7th Rep. C. C. L. art. 2, c. ii, s. 2, founded on Hawkins, P. C. bk. i. ch. vi., which contains much obsolete and even more indefinite and undefinable matter. See, too, 6th Rep. C. C. art. 44, and note. Hawkins treats contempts against the judges of the King's Courts under this head. Contempt of court seems to me hardly to be a branch of the criminal law.]

<sup>1</sup> ARTICLE 69.SOLEMNISING OR ASSISTING AT MARRIAGE OF A MEMBER  
OF THE ROYAL FAMILY.

<sup>2</sup> [Every person commits a misdemeanor who knowingly or wilfully presumes to solemnize, or to assist, or to be present at the celebration of any marriage of any descendant of the body of King George the Second, male or female (other than the issue of princesses married into foreign families), or at his or her making any matrimonial contract without the consent specified in 12 Geo. 3, c. 11.

<sup>3</sup> Every person committing such a misdemeanor is put out of the Queen's protection. His lands, tenements, goods, and chattels are forfeited to the Queen, and he is to be imprisoned for life (perhaps, at the Queen's pleasure).

<sup>4</sup> ARTICLE 70.

## INCITING TO MUTINY.

<sup>5</sup> Every one commits felony who maliciously and advisedly endeavours,

(a.) to seduce any person serving in Her Majesty's forces by sea or land from his duty and allegiance to Her Majesty; or

(b.) 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.]

<sup>1</sup> S. D. Art. 66.

<sup>2</sup> [12 Geo. 3, c. 11, s. 3. The punishment is præmunire, as explained by Coke, 1 Inst. 130 a; see 7th Rep. C. C. L. p. 37.]

<sup>3</sup> The Act 12 Geo. 3, c. 11, was held to avoid a marriage contracted out of England contrary thereto, but how far the 3rd section would apply to an offence against the same committed in Canada is not, I think, clear. *The Sussex Peerage Case*, 11 C. & F. 85, 148.

<sup>4</sup> S. D. Art. 63.

<sup>5</sup> 37 Geo. 3, c. 70, s. 1, Draft Code, s. 82. *R. v. Sherman*, 17 U. C. C. P. 166.

## ARTICLE 71.

## ENTICING SOLDIERS OR SAILORS TO DESERT.

<sup>1</sup> Every one is guilty of a misdemeanor who, not being an enlisted soldier in Her Majesty's service, or a seaman in Her Majesty's naval service,

(a.) by words or with money or by any other means whatsoever, directly or indirectly persuades or procures, or goes about or endeavours to persuade, prevail on or procure, any such soldier or seaman to desert from or leave Her Majesty's military or naval service; or

(b.) conceals, receives or assists any deserter from Her Majesty's military or naval service, knowing him to be such deserter.

The offender may be prosecuted by indictment or summarily before two justices of the peace. In the former case he is liable to fine and imprisonment<sup>2</sup> in the discretion of the court, and in the latter to a penalty not exceeding two hundred dollars, and not less than eighty dollars and costs, and in default of payment, to imprisonment for any term not exceeding six months.

## ARTICLE 72.

RESISTING EXECUTION OF WARRANT FOR ARREST OF  
DESERTERS.

<sup>3</sup> Every one who resists the execution of any warrant authorizing the breaking open of any building to search for any deserter from Her Majesty's military or naval service is liable on summary conviction before two justices of the peace to a penalty of eighty dollars.

<sup>1</sup> R. S. C. c. 169, ss. 1, 4; *R. v. Sherman*, 17 U. C. C. P. 166; *R. v. Patterson*, 27 U. C. Q. B. 142. See 29 & 30 Vict. c. 109, ss. 25, 26; 44 & 45 Vict. c. 58, s. 153.

<sup>2</sup> Not however to exceed five years; Art. 17.

<sup>3</sup> R. S. C. c. 169, s. 7.

ARTICLE 73.

ENTICING MILITIAMEN OR MEMBERS OF THE NORTH-WEST  
MOUNTED POLICE FORCE TO DESERT.

<sup>1</sup> Every one is guilty of a misdemeanor and liable on summary conviction to six months' imprisonment with or without hard labor who,

(a.) persuades any man who has been enlisted to serve in any corps of Militia, or who is a member of or has engaged to serve in the North-West Mounted Police Force, to desert, or attempts to procure or persuade any such man to desert; or

(b.) knowing that any such man is about to desert, aids or assists him in deserting; or

(c.) knowing any such man is a deserter, conceals such man or aids or assists him in concealing himself, or aids or assists in his rescue.

<sup>1</sup> R. S. C. c. 41, s. 109; 52 Vict. (D.) c. 25, s. 4. As to the punishment of deserters from the North-West Mounted Police Force see R. S. C. c. 45, s. 24, as amended by 52 Vict. (D.) c. 25, s. 3. The active Militia are subject to the Queen's Regulations and Orders for the Army; R. S. C. c. 41, s. 82.



## CHAPTER VIII.

CHALLENGES, PRIZE FIGHTING, AFFRAYS, UNLAWFUL ASSEMBLIES, ROUTS, RIOTS, UNLAWFUL DRILLING, FORCIBLE ENTRY AND DETAINER, UNLAWFUL POSSESSION AND USE OF EXPLOSIVE SUBSTANCES AND OFFENSIVE WEAPONS, PRESERVATION OF THE PEACE AT PUBLIC MEETINGS AND ELECTIONS AND NEAR PUBLIC WORKS, UNLAWFUL SALE OF SPIRITUOUS LIQUORS.

<sup>1</sup> ARTICLE 74.

SENDING CHALLENGES AND PROVOKING TO FIGHT.

[EVERY one commits a misdemeanor who  
 (a.)<sup>2</sup> challenges any other person to fight a duel; or,  
 (b.)<sup>3</sup> endeavors by words, or by writings, to provoke any other person to challenge the offender or to commit a breach of the peace].

## ARTICLE 75.

DEFINITION.

<sup>4</sup> In Articles 76-79 the expression "prize fight" means an encounter or fight with fists or hands, between two persons who have met for such purpose by previous arrangement made by or for them.

## ARTICLE 76.

CHALLENGING TO FIGHT A PRIZE FIGHT—ACCEPTING—TRAINING THEREFOR.

<sup>5</sup> Every one who sends or publishes, or causes to be

<sup>1</sup> S. D. Art. 67.

<sup>2</sup> [3 Inst. 158; 1 Russ. Cr. 395; Draft Code, s. 97.

<sup>3</sup> *R. v. Phillips*, 6 East, 463. It appears from the judgment in this case (pp. 470-5) that the offence defined in clause (b.) is only a special illustration of the general law as to incitement].

<sup>4</sup> R. S. C. c. 153, s. 1.

<sup>5</sup> R. S. C. c. 153, s. 2.

sent or published, or otherwise made known, any challenge to fight a prize fight, or accepts any such challenge, or causes the same to be accepted, or goes into training preparatory to such fight, or acts as trainer or second to any person who intends to engage in a prize fight, is guilty of a misdemeanor, and liable, on summary conviction, to a penalty not exceeding one thousand dollars and not less than one hundred dollars, or to imprisonment for a term not exceeding six months, or to both.

ARTICLE 77.

ENGAGING AS PRINCIPAL IN A PRIZE FIGHT.

<sup>1</sup> Every one who engages as a principal in a prize fight is guilty of a misdemeanor, and liable, on summary conviction, to imprisonment for a term not exceeding twelve months and not less than three months.

ARTICLE 78.

ATTENDING OR PROMOTING A PRIZE FIGHT.

<sup>2</sup> Every one who is present at a prize fight as an aid, second, surgeon, umpire, backer, assistant or reporter, or who advises, encourages or promotes such fight, is guilty of a misdemeanor, and liable, on summary conviction, to a penalty not exceeding five hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding twelve months, or to both.

ARTICLE 79.

LEAVING CANADA TO ENGAGE IN A PRIZE FIGHT.

<sup>3</sup> Every one who, being an inhabitant or resident of Canada, leaves Canada with intent to engage in a prize

<sup>1</sup> R. S. C. c. 153, s. 3.

<sup>2</sup> R. S. C. c. 153, s. 4.

<sup>3</sup> R. S. C. c. 153, s. 5.

fight without the limits thereof, is guilty of a misdemeanor, and liable, on summary conviction, to a penalty not exceeding four hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding six months, or to both.

ARTICLE 80.

WHERE THE FIGHT IS NOT A PRIZE FIGHT—DISCHARGE OR FINE.

<sup>1</sup> If, after hearing evidence of the circumstances connected with the origin of the fight or intended fight, the person before whom the complaint is made is satisfied that such fight or intended fight was *bonâ fide* the consequence or result of a quarrel or dispute between the principals engaged or intended to engage therein, and that the same was not an encounter or fight for a prize, or on the result of which the handing over or transfer of money or property depends, such person may, in his discretion, discharge the accused or impose upon him a penalty not exceeding fifty dollars.

<sup>2</sup> ARTICLE 81.

AFFRAY.

<sup>3</sup> [An affray is the fighting of two or more persons in a public place to the terror of Her Majesty's subjects.]

<sup>4</sup> Every one who commits an affray is guilty of a misdemeanor and liable, on summary conviction, to three months' imprisonment.

<sup>1</sup> R. S. C. c. 153, s. 9.

<sup>2</sup> S. D. Art. 69.

<sup>3</sup> [3 Inst. 158; 1 Russ. Cr. 366; Draft Code, s. 96.]

<sup>4</sup> R. S. C. c. 147, s. 14.

<sup>1</sup> ARTICLE 82.

## UNLAWFUL ASSEMBLY.

<sup>2</sup> [An unlawful assembly is an assembly of three or more persons :—

(a.) with intent to commit a crime by open force ; or  
 (b.) with intent to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighborhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it.]

<sup>3</sup> Every member of an unlawful assembly is guilty of a misdemeanor and liable to two years' imprisonment.

*Illustrations.*

[ (a.) <sup>4</sup> Sixteen persons met for the purpose of going out to commit the offence of being by night, unlawfully, upon land, armed in pursuit of game. This is an unlawful assembly.

(b.) <sup>5</sup> A, B, and C meet for the purpose of concerting an indictable fraud. This, though a conspiracy, is not an unlawful assembly.

(c.) <sup>6</sup> A, B, and C having met for a lawful purpose, quarrel and fight. This (though an affray) is not an unlawful assembly.

(d.) <sup>7</sup> A large number of persons hold a meeting to consider a petition to parliament lawful in itself, but they assemble in such numbers, with such a show of force and organization, and when assembled make use of such language, as to lead persons of ordinary firmness and courage in the neighborhood to apprehend a breach of the peace. This is an unlawful assembly.]

<sup>1</sup> S. D. Art. 70.

<sup>2</sup> [Brook's Abt. "Riot"; Viner's Abt. "Riot"; Lambarde, c. v. 172-184; Dalton, pp. 310-14; 1 Hawk. P. C. 513-16. See also Report of Criminal Code Commission of 1873, p. 20, and Draft Code, ss. 84-88.] R. S. C. c. 147, s. 11, the words of which are "With intent unlawfully to execute any common purpose with force and violence, or in a manner calculated to create terror and alarm." See *R. v. Graham*, 16 Cox C. C. 420; *R. v. Burns*, 16 Cox C. C. 355.

<sup>3</sup> R. S. C. c. 147, s. 11.

<sup>4</sup> [*R. v. Brodrick*, 6 C. & P. 571. The meeting in this case was in a private house.

<sup>5</sup> (SUMMITED.) Compare 1 Hawk. P. C. 515.

<sup>6</sup> 1 Hawk. P. C. 514.

<sup>7</sup> *Redford v. Birley*, 3 Starkie, N. P. 107-8; *R. v. Vincent*, 9 C. & P. 91.] See also *R. v. Burns*, 16 Cox C. C. 355.

<sup>1</sup> ARTICLE 83.

## ROUITS.

<sup>2</sup> [A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled.]

<sup>3</sup> Every one who is guilty of a rout is liable to three years' imprisonment.

<sup>4</sup> ARTICLE 84.

## RIOTS.

<sup>5</sup> [A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public; or

<sup>6</sup> A lawful assembly may become a riot if the persons assembled form and proceed to execute an unlawful purpose to the terror of the people, although they had not that purpose when they assembled.]

<sup>7</sup> Every one who is guilty of a riot is liable to four years' imprisonment.

*Illustration.*

[A, B, and C meet at A's house for the purpose of beating D, who lives a mile off. They then go together to D and there beat him. At A's house the meeting is an unlawful assembly, on the road it is a rout, and when the attack is made upon D it is a riot.]

<sup>1</sup> S. D. Art. 71.

<sup>2</sup> [See note to Art. 82. Draft Code, ss. 85-87.]

<sup>3</sup> R. S. C. c. 147, s. 12.

<sup>4</sup> S. D. Art. 72.

<sup>5</sup> See note to Art. 82; *R. v. Kelly*, 6 U. C. C. P. 372. A, one of a procession attacked by rioters, fires a pistol first in the air and then at the rioters. A is not guilty of riot. *R. v. Corcoran*, 26 U. C. C. P. 134.

<sup>6</sup> [Founded on the language of Holt, C.J., in *R. v. Soley*, 11 Modern, 116.]

<sup>7</sup> R. S. C. 147 s. 13.

<sup>1</sup> ARTICLE 85.PREVENTING READING PROCLAMATION AND CONTINUING TO  
RIOT AFTER PROCLAMATION.

<sup>2</sup> Every sheriff, deputy sheriff, mayor or other head officer, and justice of the peace, of any county, city or town, 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,<sup>3</sup> shall resort to the place where such unlawful, riotous and tumultuous assembly is, and among the rioters, or as near to them as he can safely come, with a loud voice command or cause to be commanded silence, and, after that, openly and with loud voice, make or cause to be made a proclamation in these words, or to the like effect :—

“ Our Sovereign Lady the Queen charges and commands all persons being assembled immediately to disperse and peaceably 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 imprisonment for life.

“ GOD SAVE THE QUEEN.”

All persons are guilty of felony and liable to imprisonment for life<sup>4</sup> who,

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

(b.) continue together to the number of twelve, for one hour after such proclamation has been made, or if they

<sup>1</sup> S. D. Art. 78.

<sup>2</sup> R. S. C. c. 147, ss. 1, 2; 1 Geo. 1, st. 2, c. 5, ss. 1, 2, 5, 8; Draft Code, ss. 88, 89.

<sup>3</sup> [Actual riot is not necessary. *R. v. James*, 5 C. & P. 153.

<sup>4</sup> The omission of “ God save the Queen ” defeats the effect of the proclamation; *R. v. Child*, 4 C. & P. 442].

<sup>5</sup> The time within which a prosecution may be commenced is limited to twelve months.

know that its making was hindered as aforesaid, continue together and do not disperse themselves within one hour after such hindrance.

<sup>1</sup> ARTICLE 86.

RIOTOUS DEMOLITION OF HOUSES, ETC.

<sup>2</sup> All persons are guilty of felony, and are liable to imprisonment for life, who being riotuously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish, or pull down, or destroy, any building, machinery, or mining plant, as defined in the note hereto,<sup>3</sup> or begin to do so.

<sup>1</sup> ARTICLE 87.

RIOTOUS DAMAGE OF HOUSES, ETC.

<sup>5</sup> All persons are guilty of a misdemeanor, and liable to seven years' imprisonment, who being so assembled as aforesaid unlawfully and with force injure or damage any of the things aforesaid.

<sup>1</sup> S. D. Art. 74.

<sup>2</sup> R. S. C. c. 147, s. 9; [24 & 25 Vict. c. 97, s. 11 (redrawn); Draft Code, s. 90]. *R. v. Elston*, 5 All. 2 was decided under the repealed statute R. S. N. B. c. 147, s. 1 which did not make the riotous assembly a necessary ingredient of the offence.

<sup>3</sup> "Building" means any church, chapel, meeting-house, or other place of divine worship, house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, granary, shed, hovel, fold, and any building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof, and also any building other than those above mentioned, belonging to the Queen, or to any county, municipality, riding, city, town, village, parish or place, university, college, or hall of any university, or to any corporation, unincorporated body, society or persons associated for lawful purposes, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution.

"Machinery" means any machinery, whether fixed or movable, prepared for, or employed in, any manufacture, or in any branch thereof.

"Mining plant" means any steam-engine, or other engine for sinking, working, ventilating, or draining any mine, or any shaft, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or track for conveying minerals from any mine.

<sup>4</sup> S. D. Art. 75.

<sup>5</sup> R. S. C. c. 147, s. 10; [24 & 25 Vict. c. 97, s. 12 (redrawn); Draft Code, s. 91].

## ARTICLE 88.

## INCITING INDIANS TO RIOTOUS ACTS.

<sup>1</sup> Every one is guilty of a misdemeanor and liable to two years' imprisonment who induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds apparently acting in concert,

(a.) to make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or

(b.) to do any act calculated to cause a breach of the peace.

<sup>2</sup> ARTICLE 89.<sup>3</sup> FORCIBLE ENTRY AND DETAINER.

[Every one commits the misdemeanor called a forcible entry who, in order to take possession thereof, enters upon any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats, or in breaking open any house, or in collecting together an unusual<sup>4</sup> number of persons for the purpose of making such entry.

It is immaterial<sup>5</sup> whether the person making such an entry had or had not a right to enter, provided that a person who enters upon land or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of forcible entry.

<sup>1</sup> R. S. C. c. 43, s. 111.

<sup>2</sup> S. D. Art. 79.

<sup>3</sup> [1 Russ. Cr. 404-417; 1 Hawk. P. C. 495-512. There are many statutes in force on the subject, viz. 5 Ric. 2, st. 1, c. 7 (8 in common editions); 15 Ric. 2, c. 2; 8 Hen. 6, c. 9; 31 Eliz. c. 11; 21 Ja. 1, c. 15. These statutes give no definition of the offence, but provide a mode of procedure for giving possession to the party forcibly dispossessed. It is curious to compare these provisions with the Indian Code of Criminal Procedure, Act X, of 1872, c. 40. See on forcible entry, *Lowe v. Telford*, L. R. 1 App. Cas. 414. Draft Code, s. 95.] *R. v. Martin*, 10 L. C. R. 435; *Bertram v. Bonham*, 3 R. & C. 460.

<sup>4</sup> *R. v. Smith*, 43 U. C. Q. B. 360.

<sup>5</sup> *R. v. Cobely*, 13 U. C. Q. B. 521.



Every one commits the misdemeanor called a forcible detainer who, having wrongfully entered upon any lands or tenements, detains such lands and tenements in a manner which would render an entry upon them for the purpose of taking possession forcible].

<sup>1</sup> ARTICLE 90

UNLAWFUL DRILLING.

<sup>2</sup> All meetings and 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 for so doing, are unlawful and prohibited.

Every one is guilty of a misdemeanor and liable to two years' imprisonment who,

(a.) is present at or attends any such meeting or assembly for the purpose of training any other person or persons to the use of arms or to the practice of military exercises, movements or evolutions; or

(b.) without lawful authority for so doing, trains or drills any other person or persons to the use of arms, or to the practice of military exercises, movements or evolutions; or

(c.) aids or assists therein; or

(d.) attends or is present at any such meeting or assembly, for the purpose of being trained or drilled to the use of arms or to the practice of military exercises, movements or evolutions; or

(e.) at any such meeting is so trained or drilled.

<sup>1</sup> S. D. Art. 82.

<sup>2</sup> R. S. C. c. 147, ss. 4, 5, 6; 6) Geo. 3, and 1 Geo. 4, c. 1, s. 1. The time within which a prosecution may be commenced is limited to six months; (s. 8).

## ARTICLE 91.

## DEFINITIONS.

<sup>2</sup> In Articles 92, 93 and 94,

(a.) the expression "Attorney General" means the Attorney General of the Province of Canada in which any proceedings are taken under this Act, and, with respect to the North-West Territories and the District of Keewatin, the Attorney General of Canada;

(b.) the expression "explosive substance" includes any materials for making any explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; and also any part of any such apparatus, machine or implement.

## ARTICLE 92.

## CAUSING DANGEROUS EXPLOSIONS.

<sup>3</sup> Every one is guilty of felony and liable to imprisonment for life who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property is actually caused or not.

<sup>1</sup> S. D. Art. 376 A.

<sup>2</sup> R. S. C. c. 150, s. 2; 46 Vict. c. 3, s. 9.

<sup>3</sup> R. S. C. c. 150, s. 3; 46 Vict. c. 3, s. 2. In Stephen's Digest the provisions founded on this Act are to be found in the chapter on *Malicious Injuries to Property*, but as they relate as well to offences against the person, and in either case the offence is not ordinarily directed against an individual or his property, but is committed against the public and with an intent to alarm it, I thought the Act might, with propriety, find a place with offences against public order. As to offences committed by means of explosive substances involving or with intent to murder or to do bodily injuries see Arts. 289 (e) 290, and as to similar offences involving injury to property or committed with intent to do such injury, see Arts. 568 (e), 570 (a).

## ARTICLE 93.

DOING ANYTHING, OR POSSESSING EXPLOSIVE SUBSTANCES,  
WITH INTENT TO CAUSE DANGEROUS EXPLOSIONS.

<sup>1</sup> Every one is guilty of felony, and liable to fourteen years' imprisonment, who unlawfully and maliciously—

(a.) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property; or

(b.) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or to cause serious injury to property or to enable any other person by means thereof to endanger life or to cause serious injury to property—

whether any explosion takes place or not, and whether any injury to person or property is actually caused or not.

## ARTICLE 94.

UNLAWFULLY MAKING OR POSSESSING EXPLOSIVE  
SUBSTANCES.

<sup>2</sup> Every one is guilty of felony and liable to seven years' imprisonment, who makes or knowingly has in his possession or under his control any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it or has it not in his possession or under his control for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object.

In any proceeding against any person for any such offence, such person and his wife, or her husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

<sup>1</sup> R. S. C. c. 150, s. 4; 46 Viet. c. 3 s. 3.

<sup>2</sup> R. S. C. c. 150, s. 5; 46 Viet. c. 3, ss. 4, 7 (1).

If any person is charged before a justice of the peace with any such offence, no further proceeding shall be taken against such person without the consent of the Attorney-General, except such as the justice of the peace thinks necessary, by remand or otherwise, to secure the safe custody of such person.

ARTICLE 95.

CARRYING PISTOL WITHOUT REASONABLE CAUSE.

<sup>1</sup> Every one who has upon his person a pistol or air gun without reasonable cause to fear an assault or other injury to his person or his family or property, may, upon complaint made before any justice of the peace, be required to find sureties for keeping the peace for a term not exceeding six months; and in default of finding such sureties, may be imprisoned for any term not exceeding thirty days.

ARTICLE 96.

HAVING A PISTOL ON PERSON WHEN ARRESTED.

<sup>2</sup> Every one who when arrested, either on a warrant issued against him for an offence or whilst committing an offence, has upon his person a pistol or air-gun, shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding fifty dollars and not less than twenty dollars, or to imprisonment for any term not exceeding three months.

<sup>1</sup> R. S. C. c. 148, s. 1. The time within which a prosecution may be commenced for any offence defined in Articles 95-100, and 102, is limited to one month; (s. 9).

<sup>2</sup> R. S. C. c. 148, s. 2. As to the punishment of any person found loitering near any ship, and being at the time armed, and not giving a satisfactory account of himself, see R. S. C. c. 74, s. 87, Art. 251.

## ARTICLE 97.

HAVING A PISTOL ON THE PERSON WITH INTENT TO  
INJURE ANY PERSON.

<sup>1</sup> Every one who has upon his person a pistol or air-gun, with intent therewith unlawfully and maliciously to do injury to any other person, shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for any term not exceeding six months; and the fact of the pistol or air-gun being on the person shall be *prima facie* evidence of such intent.

## ARTICLE 98

## POINTING ANY FIREARM AT ANY PERSON.

<sup>2</sup> Every one who, without lawful excuse, points at another person any firearm or air-gun, whether loaded or unloaded, shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding fifty dollars and not less than twenty dollars, or to imprisonment for any term not exceeding thirty days.

## ARTICLE 99.

## CARRYING OFFENSIVE WEAPONS ABOUT THE PERSON.

<sup>3</sup> Every one who carries about his person any bowie-knife, dagger or dirk, or any weapons called or known as iron-knuckles, skull-crackers or slung shot, or other offensive weapons of a like character, or secretly carries about his person any instrument loaded at the end, or sells or exposes for sale, publicly or privately, any such weapon,

<sup>1</sup> R. S. C. c. 148, s. 3.

<sup>2</sup> R. S. C. c. 148, s. 4.

<sup>3</sup> R. S. C. c. 148, s. 5.

shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding fifty dollars and not less than ten dollars, and in default of payment thereof to imprisonment for any term not exceeding thirty days.

ARTICLE 100.

CARRYING SHEATH-KNIVES IN SEAPORTS.

<sup>1</sup> Every one, not being a seaman or rigger occupied or engaged in his lawful trade or calling, who is found, in any of the seaport towns or cities of Canada, carrying about his person any sheath-knife, shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment thereof to imprisonment for any term not exceeding thirty days.

ARTICLE 101.

GOING ARMED SO AS TO CAUSE FEAR.

<sup>2</sup> [Every one commits a misdemeanor who goes armed in public, without lawful occasion, in such a manner as to alarm the public.]

ARTICLE 102.

TWO OR MORE PERSONS OPENLY CARRYING DANGEROUS WEAPONS SO AS TO CAUSE ALARM.

<sup>3</sup> If two or more persons openly carry dangerous or unusual weapons in any public place, in such a manner and under such circumstances as are calculated to create terror

<sup>1</sup> R. S. C. c. 148, s. 6.

<sup>2</sup> S. D. Art. 68.

<sup>3</sup> [2 Edw. 3, c. 3, paraphrased with reference to the explanations given in 1 Hawk. P. C. 483-9.]

<sup>4</sup> R. S. C. c. 148, s. 8.

and alarm, each of such persons is liable, on summary conviction before two justices of the peace, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment to imprisonment for any term not exceeding thirty days.

## ARTICLE 103.

## EXCEPTION AS TO SOLDIERS, ETC.

<sup>1</sup> It is not an offence for any soldier, sailor or volunteer in Her Majesty's service, constable or other policeman, to carry loaded pistols in the discharge of his duty.

## ARTICLE 104.

## HAVING POSSESSION OF ARMS FOR PURPOSES DANGEROUS TO THE PUBLIC PEACE.

<sup>2</sup> Every one is guilty of a misdemeanor and liable to five years' imprisonment <sup>3</sup> who has in his custody or possession, <sup>4</sup> or carries, <sup>5</sup> any arms <sup>6</sup> for any purpose dangerous to the public peace.

## ARTICLE 105.

## REFUSING TO DELIVER OFFENSIVE WEAPON TO A JUSTICE.

<sup>7</sup> Every one attending any public meeting or being on his way to attend the same who, upon demand made by any justice of the peace within whose jurisdiction such

<sup>1</sup> R. S. C. c. 148, s. 10.

<sup>2</sup> R. S. C. c. 149. The prosecution must be commenced within six months after the offence is committed; (s. 6).

<sup>3</sup> Art. 17.

<sup>4</sup> R. S. C. c. 149, s. 2.

<sup>5</sup> Ibid. s. 4.

<sup>6</sup> The expression "arms" includes any pike, pike-head, spear, dirk, dagger, sword, pistol, gun, rifle or other weapon, gunpowder, lead, cartridges, bullets and other ammunition or munitions of war; (R. S. C. c. 149, s. 1.)

<sup>7</sup> R. S. C. c. 152, s. 1.

public meeting is appointed to be held, declines or refuses to deliver up, peaceably and quietly, to such justice of the peace, any <sup>1</sup>offensive weapon with which he is armed or which he has in his possession, is guilty of a misdemeanor.

The justice of the peace may record the refusal and adjudge the offender to pay a penalty not exceeding eight dollars, or the offender may be proceeded against by indictment as in other cases of misdemeanors.

## ARTICLE 106.

## COMING ARMED WITHIN TWO MILES OF PUBLIC MEETING.

<sup>2</sup> Every one except the sheriff, deputy sheriff and justices of the peace for the district or county, or the mayor and justices of the peace for the city or town respectively, in which any public meeting is held, and the constables and special constables employed by them, or any of them, for the preservation of the public peace at such meeting, who, during any part of the day upon which such meeting is appointed to be held, comes within two miles of the place appointed for such meeting, armed with any offensive weapon, is guilty of a misdemeanor, and liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both.

## ARTICLE 107.

## LYING IN WAIT FOR PERSONS RETURNING FROM PUBLIC MEETING.

<sup>3</sup> Every one is guilty of a misdemeanor and liable to a penalty not exceeding two hundred dollars, or to im-

<sup>1</sup> "Offensive weapon" in Articles 105, 106, 108 and 109 means fire-arms, swords, staves, bludgeons and the like.

<sup>2</sup> R. S. C. c. 152, s. 5.

<sup>3</sup> R. S. C. c. 152, s. 6.



prisonment for a term not exceeding six months, or to both, who lies in wait for any person returning, or expected to return, from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets or other offensive demeanor, directed to, at or against such person, to provoke such person, or those who accompany him, to a breach of the peace.

ARTICLE 108.

REFUSING TO DELIVER OFFENSIVE WEAPONS TO RETURNING OFFICER.

<sup>1</sup> Every one who on nomination day, or on any day whereon any poll is holden for the election of a member to serve in the House of Commons of Canada, or under *The Canada Temperance Act*, on demand made by any returning officer or deputy returning officer, within half a mile of the place of nomination or polling, refuses to deliver to such officer any offensive weapon in his possession, is liable to a penalty of one hundred dollars<sup>2</sup> and in default of payment to three months' imprisonment.

ARTICLE 109.

COMING ARMED INTO POLLING DISTRICT, OR WITHIN ONE MILE OF POLLING PLACE.

<sup>3</sup> Every one is guilty of a misdemeanor and liable to a penalty of one hundred dollars or three months' imprisonment, or both,

(a.) who, being within a polling district during any part of a day on which a poll for any such election as mentioned in the next preceding Article is being holden,

<sup>1</sup> R. S. C. c. 8, s. 76; c. 106, s. 64.

<sup>2</sup> As to the manner of enforcing the penalty see p. 128 note 2. As to the limitation of time for instituting proceedings see R. S. C. c. 8, s. 117; c. 106, s. 90.

<sup>3</sup> R. S. C. c. 8, ss. 78, 82; c. 106, ss. 70, 73.

arms himself with any offensive weapon and thus armed approaches within one mile of the polling place ; or

(b.) who, not being one of the persons described in the note hereto,<sup>1</sup> during any part of the day upon which any such poll is to remain open, comes into the polling district armed with any offensive weapon.

## ARTICLE 110.

## SMUGGLERS CARRYING OFFENSIVE WEAPONS.

<sup>2</sup> Every one is guilty of felony and liable to imprisonment for life<sup>3</sup> who is found with any goods liable to seizure or forfeiture under any law relating to the customs, trade or navigation and carrying offensive arms or weapons or in any way disguised.

## ARTICLE 111.

## SALE OF ARMS IN THE NORTH-WEST TERRITORIES.

<sup>4</sup> Every one is guilty of a misdemeanor and liable, on summary conviction before two justices of the peace,<sup>5</sup> to a penalty of two hundred dollars or to six months' imprisonment, or to both, who during any time when, and within any place in the North-West Territories where, section one hundred and one of *The North-West Territories Act* is in force,

(a.) without the permission in writing (the proof of

<sup>1</sup> The statute excepts the following persons ; the returning officer, deputy returning officer, any constable or special constable appointed by the returning officer or his deputy for the preservation of peace at the election, and any person who has had a stated residence in the polling district for at least six months next before the day of election, and, in the case of the election of a member to serve in the House of Commons, the poll clerk.

<sup>2</sup> R. S. C. c. 32, s. 213.

<sup>3</sup> Art. 17.

<sup>4</sup> R. S. C. c. 50, s. 101. As to the power of the Superintendent-General of Indian Affairs to prohibit any sale, gift or other disposal to any indian in Manitoba or the Territories of fixed ammunition or ball cartridge, and the punishment of offenders, see R. S. C. c. 43, s. 118.

<sup>5</sup> "Or a Judge of the Supreme Court."

which shall be on him) of the Lieutenant-Governor, or of a commissioner appointed by him to give such permission, has in his possession or sells, exchanges, trades, barter or gives to or with any person, any <sup>1</sup> improved arm or ammunition; or

(b.) having such permission, sells, exchanges, trades, barter or gives any such arm or ammunition to any person not lawfully authorized to possess the same.

#### ARTICLE 112.

##### POSSESSING WEAPONS NEAR PUBLIC WORKS.

<sup>2</sup> Every one employed upon or about any public work, within any place in which the <sup>3</sup> *Act respecting the preservation of peace in the vicinity of public works* is then in force, who, upon or after the day named in the proclamation by which such Act is brought into force, keeps or has in his possession or under his care or control, within any such place, any <sup>4</sup> weapon, is liable on summary conviction, to a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession.

Every one who, for the purpose of defeating the said Act, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed within any place in which the said Act is at the time in force, any weapon belonging to or in custody of any person employed on or about any public work, is liable, on summary

<sup>1</sup> "Improved arm" in this connection means any arm except a smooth bore shotgun; and "ammunition" means fixed ammunition or ball cartridge.

<sup>2</sup> R. S. C. c. 151, ss. 1, 5, 6, 21.

<sup>3</sup> The expression "Act" means such sections thereof as are in force by virtue of the proclamation, and the provisions of the article would not be in force unless sections five and six were included in such proclamation.

<sup>4</sup> The expression "weapon" includes any gun or other firearm, or air-gun or any part thereof, or any sword, sword-blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, or other instrument intended for cutting or stabbing, or any steel or metal knuckles, or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon.

conviction, to a penalty not exceeding one hundred dollars and not less than forty dollars.

## ARTICLE 113.

## SALE, ETC., OF LIQUORS NEAR PUBLIC WORKS.

<sup>1</sup> Upon and after the day named in any proclamation putting in force in any place *an Act respecting the preservation of peace in the vicinity of public works* and during such period as such proclamation remains in force, no person shall, at any place within the limits specified in such proclamation, sell, barter, or directly or indirectly, for any matter, thing, profit or reward, exchange, supply or dispose of any intoxicating liquor; nor expose, keep or have in possession any <sup>2</sup>intoxicating liquor intended to be dealt with in any such way:

The provisions of this article do not extend to any person selling <sup>2</sup>intoxicating liquor by wholesale and not retailing the same, if such person is a licensed distiller or brewer.

Every one who, by himself, his clerk, servant, agent or other person, violates any of the foregoing provisions, is liable, on a summary conviction for a first offence, to a penalty of forty dollars and costs, and, in default of payment, to imprisonment for a term not exceeding three months,—and on every subsequent conviction, to the said penalty and the said imprisonment in default of payment, and also to further imprisonment for a term not exceeding six months.

Every clerk, servant, agent or other person who, being in the employment of, or on the premises of, another person, violates or assists in violating any of such provi-

<sup>1</sup> R. S. C. c. 151, ss. 1, 13, 14, 15, 21. As to the meaning of the word "Act," see note (3) to Art. 112.

<sup>2</sup> The expression "intoxicating liquor" means and includes any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor, a part of which is spirituous or vinous, fermented or otherwise intoxicating.

sions, for the person in whose employment or on whose premises he is, is equally guilty with the principal offender, and liable to the same punishment.

#### ARTICLE 114.

##### INTOXICATING LIQUORS ON BOARD HER MAJESTY'S SHIPS.

<sup>1</sup> Every one who, without the previous consent of the officer commanding the ship or vessel,—

(a.) conveys any spirituous or fermented liquor on board any of Her Majesty's ships or vessels;

(b.) approaches or hovers about any of Her Majesty's ships or vessels for the purpose of conveying any such liquor on board the same;

(c.) gives or sells to any man in Her Majesty's service, on board any such ship or vessel, any spirituous or fermented liquor;

Is guilty of a misdemeanor and liable, on summary conviction before two justices of the peace, to a fine not exceeding fifty dollars for each offence, and in default of payment to imprisonment for a term not exceeding one month.

<sup>1</sup> 50 & 51 Vict. (D.) c. 46, s. 1; 16 & 17 Vict. c. 59, s. 12. The object aimed at in the Act from which this Article is taken is the maintenance of discipline on board Her Majesty's ships, and in R. S. C. c. 151, the preservation of the peace in the vicinity of public works. Of a similar character are the prohibitions of the sale of spirituous liquors within the polling district on the day on which any poll is holden for any election of a member of the House of Commons (R. S. C. c. 8, s. 83) or under *The Canada Temperance Act* (R. S. C. c. 106, s. 74). By the 23rd section of *The Railway Act* (51 Vict. (D.) c. 20), the sale or gift of any intoxicating liquor to any servant of any railway company while on duty is made an offence punishable on summary conviction by a fine of fifty dollars, or one month's imprisonment with or without hard labor, or by both fine and imprisonment.

There are various other prohibitions of the sale of liquors, the primary object of which is rather to lessen drunkenness than to prevent such breaches of the peace, or danger to life or property, as at times result therefrom. See R. S. C. c. 43, ss. 94-105; 50 & 51 Vict. (D.) c. 33, s. 10; 51 Vict. (D.) c. 22, s. 4, and R. S. B. C. c. 85, ss. 10, 11 as to the sale of intoxicating liquors to Indians; R. S. C. c. 50, ss. 92-100, and 51 Vict. (D.) c. 19, s. 18, as to such sales in the Territories; and R. S. C. c. 53, ss. 35-43, in Keewatin. See also *The Temperance Act, 1864* (27 & 28 Vict. (P. C.) c. 18, and *The Canada Temperance Act* (R. S. C. c. 106, s. 99 *et seq.*

## CHAPTER IX.

*OFFENCES AGAINST INTERNAL TRANQUILLITY BY  
UNLAWFUL ENGAGEMENTS AND COMBINATIONS  
AND CONFEDERACIES.*<sup>1</sup> ARTICLE 115.

## UNLAWFUL OATHS.

<sup>2</sup> EVERY one is guilty of felony who in Quebec or (probably) in British Columbia, Manitoba or the North-West Territories,

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

(i.) to commit treason or murder or any felony punishable with death ;

(ii.) to engage in any seditious, rebellious or treasonable purpose ;

(iii.) to disturb the public peace ;

(iv.) to be of any association, society, or confederacy formed for any such purpose ;

(v.) to obey 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 ;

(vi.) not to inform or give evidence against any associate, confederate, or other person ;

(vii.) not to reveal or discover any illegal act done or to

<sup>1</sup> S. D. Arts. 83, 84.

<sup>2</sup> C. S. L. C. c. 10, ss. 1, 3, 5 ; [52 Geo. 3, c. 114, ss. 1, 6. See 2 Hist. Cr. Law, 294-7, and Draft Code, s. 93.]

be done; or any illegal oath or engagement administered or tendered to, or taken by any person, or the import of any such oath or engagement; or

(b.) Takes any such oath or engagement, not being compelled thereto.

The offender is liable to imprisonment for life<sup>1</sup> if the offence is committed in British Columbia, Manitoba or the North-West Territories, and to twenty-one years' imprisonment if in Quebec he commits any offence mentioned in clause (a.), and to seven years' imprisonment if he commits the offence mentioned in clause (b.)

#### <sup>2</sup> ARTICLE 116.

##### COMPULSION, HOW FAR A DEFENCE.

<sup>3</sup> No person who takes any oath or engagement referred to in Article 115, under compulsion, shall be justified or excused thereby, unless within the time mentioned in the note hereto<sup>4</sup> if not prevented by actual force or sickness, and then within the time mentioned in the note hereto,<sup>4</sup> after the cessation of the hindrance produced by such force or sickness, he declares the same, and the whole of what he knows touching the same, and the persons by whom, and in whose presence, and when or where such oath or engagement was administered or taken, by information on oath before one of Her Majesty's justices of the peace.

#### <sup>5</sup> ARTICLE 117.

##### UNLAWFUL SOCIETIES.

<sup>6</sup> In Quebec every society or association is an unlawful combination or confederacy,

<sup>1</sup> Art. 17.

<sup>2</sup> S. D. Art. 85.

<sup>3</sup> C. S. L. C. c. 10, s. 2; [52 Geo. 3, c. 104, s. 2; 37 Geo. 3, c. 123, s. 2; Draft Code, s. 23.]

<sup>4</sup> In Quebec, eight days in all cases. In British Columbia, Manitoba, and the North-West Territories, fourteen days in the case referred to in (a.) (i.), and four days in the other cases (a.) (ii.), (iii.), (iv.), (v.), (vi.), (vii.)

<sup>5</sup> S. D. Art. 86.

<sup>6</sup> C. S. L. C. c. 10, s. 6; 39 Geo. 3, c. 79, s. 2; 57 Geo. 3, c. 19, ss. 24-25.

- (a.) If its members, according to the rules thereof, or to any provision or agreement for that purpose,
- (i.) are required to keep secret the acts or proceedings thereof, or
- (ii.) are admitted to take any unlawful oath or engagement within the meaning of Article 115; or any oath or engagement not required or authorized by law; or
- (b.) If its members or any of them take or in any manner bind themselves by any such oath or engagement, or in consequence of being members thereof; or
- (c.) If its members or any of them take, subscribe or assent to any engagement of secrecy, test or declaration not required by law; or
- (d.) If the names of the members, or any of them, are kept secret from the society at large; or
- (e.) <sup>1</sup> If there is any committee or select body so chosen or appointed that the members constituting the same are not known by the society at large to be members of such committee or select body; or
- (f.) If there is any president, treasurer, secretary, delegate, or other officer so chosen or appointed that his election or appointment to such office is not known to the society at large; or
- (g.) If the names of all the members, and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers, are not entered in a book or books to be kept for that purpose, and to be open to the inspection of all the members of such society; or
- (h.) If the society is composed of different divisions or branches, or of different parts acting in any manner separately or distinct from each other, or of which any part has any separate or distinct president, secretary, treasurer, delegate, or other officer elected or appointed by or for such part or to act as an officer for such part.

<sup>1</sup> The word "secret," instead of "select," occurs in one place in C. S. L. C. c. 10, s. 6.



<sup>1</sup> ARTICLE 118.

## FREEMASONS EXCEPTED.

<sup>2</sup> The provisions of Article 117 do not extend to the meetings of any lodge of freemasons held under such denomination and in conformity to the rules prevailing among lodges, if the lodge is constituted by or under the authority of a warrant granted by or derived from any grandmaster or grand lodge in the United Kingdom of Great Britain and Ireland or grandmaster or grand lodge of Canada.

<sup>3</sup> ARTICLE 119.

## PUNISHMENT OF MEMBERS.

<sup>4</sup> Every member of any such society, and every person who acts as a member thereof, or directly or indirectly maintains correspondence or intercourse with any such society, or with any division, branch, committee, or other select body, president, treasurer, secretary, delegate, or other officer or member thereof as such, or by contribution of money or otherwise aids, abets or supports any such society, or any member or officer thereof as such, is guilty of an unlawful combination or confederacy and liable to seven years' imprisonment.

<sup>5</sup> ARTICLE 120.

## PERMITTING MEETINGS OF UNLAWFUL SOCIETIES.

<sup>6</sup> Every one who in Quebec knowingly permits any meeting of any society or association declared in Article

<sup>1</sup> S. D. Art. 87.<sup>2</sup> C. S. L. C. c. 10, s. 9; 29 Viet. (P. C.) c. 46; 39 Geo. 3, c. 79, ss. 1-6.<sup>3</sup> S. D. Art. 88.<sup>4</sup> C. S. L. C. c. 10, ss. 6, 7; 39 Geo. 3, c. 79, ss. 8, 9; 57 Geo. 3, c. 19, s. 25.<sup>5</sup> S. D. Art. 89.<sup>6</sup> C. S. L. C. c. 10, s. 8.

117 to be an unlawful combination or confederacy, or any division, branch, or committee thereof, to be held in his house, apartment, barn, outhouse, or other building, is liable on conviction for a first offence to a fine of two hundred dollars.

Every one who in Quebec commits any such offence after a conviction for a first offence is deemed guilty of an unlawful combination or confederacy, and is liable to seven years' imprisonment.

#### <sup>1</sup> ARTICLE 121.

##### SEDITIONOUS WORDS AND LIBELS.

[Every one commits a misdemeanor who with a seditious intention speaks any words or publishes anything capable of being a libel. If the matter published consists of words spoken, the offence is called the speaking of seditious words. If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a seditious libel.

The word "publish" in this Article is used in the same sense as in Article 343, and the word "libel" in the second of the two senses specified in Article 340.

#### <sup>2</sup> ARTICLE 122.

##### SEDITIONOUS CONSPIRACY.

<sup>3</sup> Every one commits a misdemeanor who agrees with any other person or persons to do any act for the furtherance of any seditious intention common to both or all of them. Such an offence is called a seditious conspiracy.

<sup>1</sup> S. D. Art. 91.

<sup>2</sup> (1 Hawk. P. C. 66, 480; 4 Steph. Com. 238; and see 2 Hist. Cr. Law, ch. xxiv, pp. 298-306, Draft Code, s. 192.)

<sup>3</sup> S. D. Art. 92.

<sup>4</sup> [See Wright on the Law of Conspiracy, 28-31. Draft Code, s. 162.]

<sup>1</sup> ARTICLE 123.

## SEDITIONOUS INTENTION DEFINED.

[A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against, the person of Her Majesty, her heirs or successors, or the government and constitution of the United Kingdom] or of Canada, [as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in the State by law established,<sup>2</sup> or to incite any person to commit any crime, in disturbance of the peace, 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.

<sup>3</sup> An intention to shew that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the government or constitution as by law established, with a view to their reformation, or to excite Her Majesty's subjects to attempt, by lawful means, the alteration of any matter in the 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 ill-will between classes of Her Majesty's subjects, is not a seditious intention.

<sup>1</sup> S. D. Art. 93.

<sup>2</sup> [60 Geo. 3 & 1 Geo. 4, c. 8; and *O'Connell v. R.*, 11 Cl. & F. 155, 234. Draft Code, s. 102.] See also *R. v. Burns*, 16 Cox C. C. 358.

<sup>3</sup> [These words were not in the earlier editions of this work. I do not think they enlarge the sense, but they make it more explicit. They were intended to meet such cases as those of Most and Mertens, tried in 1881 and 1882 for publishing articles in the *Freiheit* applauding the assassination of the Emperor of Russia and that of Lord Frederick Cavendish and Mr. Burke at Dublin. See, too, the case of *R. v. Collins*, 9 C. & P. 456, and judgment of Littledale, J., 460.

<sup>4</sup> *R. v. Lambert and Perry*, 2 Camp. 398; *R. v. Vincent*, 9 C. & P. 91.]

<sup>1</sup> ARTICLE 124.

## PRESUMPTION AS TO INTENTION.

<sup>2</sup> [In determining whether the intention with which any words were spoken, any document was published, or any agreement was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.]

<sup>3</sup> ARTICLE 125.

## SPREADING FALSE NEWS.

<sup>4</sup> Every one commits a misdemeanor who cites or publishes any false news or tales whereby discord or occasion of discord or slander may grow between the Queen and her people or the great men of the realm (<sup>5</sup> or which may produce other mischiefs).

<sup>1</sup> S. D. Art. 94.

<sup>2</sup> [*R. v. Burdett*, 4 B. & Ald. 95; *R. v. Harvey*, 2 B. & C. 257.]

<sup>3</sup> S. D. Art. 95.

<sup>4</sup> [3 Edw. 1, c. 34.]

<sup>5</sup> See Starkie on Slander, by Folkard, 670-2. The definition is very vague and the doctrine exceedingly doubtful.]

## CHAPTER X.

OFFENCES AGAINST EXTERNAL PUBLIC TRANQUILLITY,  
OFFENCES AGAINST FOREIGN NATIONS.<sup>1</sup> ARTICLE 126.

## VIOLATION OF AMBASSADORS' PRIVILEGES.

<sup>2</sup> [EVERY one is guilty of a misdemeanor who, by force or personal restraint, violates any privilege conferred upon the diplomatic representatives of foreign countries by the law of nations, as collected by Her Majesty's Courts from the practice of different nations, and the authority of writers thereon.

<sup>3</sup> ARTICLE 127.

## ARREST OF AMBASSADOR.

<sup>4</sup> Every one commits a misdemeanor who sets forth or prosecutes or executes any writ or process whereby is arrested or imprisoned the person of any ambassador or other public minister of any foreign prince or state, authorized and received as such by Her Majesty, or any domestic servant of any such ambassador or minister, registered as such in the office of a principal secretary of state, or in the office of the sheriff of London and Middlesex.

<sup>1</sup> S. D. Art. 96.

<sup>2</sup> [*Triquet and Others v. Bath*, 3 Burr. 1451. As to what constitutes authority on a question of international law, see *R. v. Keyn*, L. R. 2 Ex. D. 63.]

<sup>3</sup> S. D. Art. 97.

<sup>4</sup> [7 Anne, c. 12, ss. 3, 4, 6.] It is doubtful if this article and more especially the provisions as to domestic servants, would, if the case should arise, be held to be in force in Canada.

<sup>1</sup> ARTICLE 128.

## LIBELS ON FOREIGN POWERS.

<sup>2</sup> [Every one is guilty of a misdemeanor who publishes any libel tending to degrade, revile, or expose to hatred and contempt any foreign prince or potentate, ambassador or other foreign dignitary, with intent to disturb peace and friendship between the United Kingdom and the country to which any such person belongs.

The word "publish" is used here in the same sense as in Article 343, and the word "libel" in the second of the two senses specified in Article 340.

(SUBMITTED.) Nothing is an offence against this Article which is a fair criticism on a matter of public interest as defined in Article 347.

<sup>3</sup> ARTICLE 129.

## INTERFERENCE IN FOREIGN HOSTILITIES.

<sup>4</sup> Every one commits a misdemeanor, and is liable to fine and imprisonment, with or without hard labour, or either of such punishments, at the discretion of the Court, who does any of the following acts <sup>5</sup> without the

<sup>1</sup> S. D. Art. 99.

<sup>2</sup> [*R. v. D'Eu*, 1 W. Bl. 510; *R. v. Lord G. Gordon*, 22 St. Tr. 213-233. (This was the case of a libel on Marie Antoinette seven years after the defendant's acquittal for high treason.) *R. v. Vint* (1801). Vint wrote of the Emperor Paul, "The Emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency." Starkie (by Folkard), 609. *R. v. Peltier*, 28 State Trials, 589; 6th Rep. C. L. Com. Art. 50, p. 34. Draft Code, s. 104.]

<sup>3</sup> S. D. Art. 100; the Act on which this article is founded extends to all Her Majesty's dominions, including adjacent territorial waters (s. 2) but is to be brought into operation in any British possession by proclamation of the Governor thereof, which he is to issue as soon as may be after he receives notice of the Act (s. 3). The Act and the letter of the Secretary of State for the Colonies forwarding copies of it, were published in the Royal Gazette (1870-71, p. 204) but I am not aware that any proclamation of the Governor General in the usual sense of that word has ever been published putting this Act in force in Canada. 59 Geo. 3. c. 69, repealed by 33 & 34 Vict. c. 90, s. 31, was held to be in force in Upper Canada in *R. v. Schram*, 14 U. C. C. P. 318. See *The Atalaya*, 6 Q. L. R. 174.

<sup>4</sup> 33 & 34 Vict. c. 90 (redrawn). As to the history of this offence, see 3 Hist. Cr. Law, 257-62.

<sup>5</sup> Sect. 15.]

[license of Her Majesty under her sign manual, or signified by Order in Council, or by proclamation, that is to say—

(a.) <sup>1</sup> who, within the limits of Her Majesty's dominions, prepares or fits out any naval or military expedition to proceed against the dominions of any <sup>2</sup> friendly state, or is engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in such expedition; or

(b.) <sup>3</sup> who, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid; or

(c.) <sup>4</sup> who, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent; or

(d.) <sup>5</sup> who, being the master or owner of any ship, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any illegally enlisted person as defined in Article 130; or

<sup>1</sup> Sect. 11. The purchase of guns and ammunition and their shipment for the purpose of being put on board a ship in a foreign port with a knowledge of the purchaser and shipper that they are to be used in a hostile demonstration against a friendly state is a fitting out of an expedition within the statute; *R. v. Sandoval*, 16 Cox, C. C. 206.

<sup>2</sup> ["Friendly state" means "any foreign state at peace with Her Majesty (sect. 4)."]

<sup>3</sup> 33 & 34 Vict. c. 90, s. 4.

<sup>4</sup> Sect. 5.

<sup>5</sup> Sect. 7.]

[(e.) <sup>1</sup> who, within Her Majesty's dominions, with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with any friendly state, builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any ship, or issues or delivers any commission for any ship ;

Provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, is not liable to any of the penalties specified in this Article in respect of such building or equipping—

(i.) if forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State; and

(ii.) if he gives such security; and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered, or removed without the license of Her Majesty until the termination of such war as aforesaid.

<sup>2</sup> ARTICLE 130.

SHIPS, ETC., REFERRED TO IN ARTICLE 129 TO BE  
FORFEITED—DEFINITIONS.

<sup>3</sup> All ships and their equipments used in or forming part of any such expedition as is mentioned in Article 129 (a.), or in respect of which is committed any of the

<sup>1</sup> [Sect. 8 (redrawn)].

<sup>2</sup> S. D. Art. 101.

<sup>3</sup> [Sec section referred to in the Article mentioned.]



[offences defined in Article 129 (e), and all arms and munitions of war used in forming part of any such expedition as is mentioned in Article 129 (a), are forfeited to Her Majesty.

The expression "illegally enlisted person" in Article 129 (d.) means—

(i.) any person who, being a British subject, within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state;

(ii.) any person, being a British subject, who, without the license of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state;

(iii.) any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state.

Every ship referred to in Article 129 (d.) is to be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace; and

All illegally enlisted persons must, immediately on the discovery of the offence, be taken on shore, and must not be allowed to return to the ship.

<sup>1</sup> ARTICLE 131.

INCREASING FORCE OF SHIPS FOR FOREIGN BELLIGERENTS,  
AND PROCURING ENLISTMENT BY MISREPRESENTATION.

[Every one is guilty of a misdemeanor, and is liable] to fine and imprisonment with or without hard labor, or to either of such punishments at the discretion of the court, [who

(a.) <sup>2</sup> within the dominions of Her Majesty, and without such licence as is mentioned in Article 129, by adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting, the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state; or

(b.) <sup>3</sup> who induces any other person to quit Her Majesty's dominions, or to embark on any ship within Her Majesty's dominions, under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state.

<sup>4</sup> ARTICLE 132.

PRESUMPTION OF KNOWLEDGE OF PURPOSE FOR WHICH  
SHIP IS BUILT.

Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state, or is

<sup>1</sup> S. D. Art. 102.

<sup>2</sup> 33 & 34 Vict. c. 90, s. 10.

<sup>3</sup> Sect. 6.

<sup>4</sup> S. D. Art. 103.

<sup>5</sup> 33 & 34 Vict. c. 90, s. 9.

[delivered to or to the order of such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship must, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state lies on the builder of such ship.]

## CHAPTER XI.

OFFENCES AGAINST PERSONS ON THE HIGH SEAS—PIRACY—  
SLAVE-TRADING.

## ARTICLE 133.

## PIRACY.

<sup>2</sup> [PIRACY by the law of nations is—

Taking a ship on the high seas or within the jurisdiction of the Lord High Admiral from the possession or control of those who are lawfully entitled to it, and carrying away the ship itself, or any of its goods, tackle, apparel, or furniture, under circumstances which would have amounted to robbery if the act had been done within the body of an English county.

Whoever commits piracy, by the law of nations is liable to the same punishment as if the act constituting piracy

<sup>1</sup> S. D. Art. 104.

<sup>2</sup> [The definition is founded on one given by Sir Charles Hedges in *H. v. Dixon*, 13 St. Tr. 454, and recognized by the Judicial Committee of the Privy Council in *A. G. of Hong Kong v. Kwok-a-sing*, L. R. 5 P. C. 179, 199; see, too, 7th Rep. C. L. C. p. 70. As to the punishment, the text gives what I suppose is the result of 28 Hon. 8, c. 15, ss. 2 & 3; 39 Geo. 3, c. 37, s. 1; 1 Geo. 4, c. 90, s. 1; 7 & 8 Geo. 4, c. 28, s. 12. The doubt expressed at the end of the Article is founded on the absence of any express authority for the affirmative of the proposition, and on the absurdity of the negative. If a Queen's ship were to fall in with an armed vessel belonging to no state, and obviously cruising for piratical purposes, would the commanding officer hesitate to seize that vessel because it had not actually taken a prize? It seems equally difficult to suppose that the vessel would be permitted to escape, or that it could lawfully be arrested if the crew were not pirates. The language of several of the statutes given in Articles 137, 138, and 139, seems to imply that a pirate is the name of a known class of persons, like a soldier or sailor, and that a man may be a pirate though he has never actually robbed, as he may be a soldier though he has not actually fought. By 13 & 14 Viet. c. 26 the Admiralty Courts are empowered when any of Her Majesty's ships attack or are engaged with any persons alleged to be pirates afloat or ashore, to "take cognizance of and determine whether the persons or any of them so attacked or engaged were pirates." The object of the Act was to determine the amount of certain rewards to be paid to the captors; no definition of pirates is given. See 2 Hist. Cr. Law, pp. 27-28, and Draft Code, s. 105.]

had been committed within the] jurisdiction of the Court before which the offender is brought for trial.<sup>1</sup>

[It is doubtful whether persons cruising in armed vessels, with intent to commit piracies, are pirates or not.

<sup>2</sup> ARTICLE 134.

PIRACY WITH VIOLENCE.

<sup>3</sup> Every one commits felony and must upon conviction thereof be sentenced to death who, with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel, assaults with intent to murder any person on board of or belonging to such ship or vessel, or stabs, cuts, or wounds any such person, or unlawfully does any act by which the life of such person may be endangered.

<sup>4</sup> ARTICLE 135.

COMMITTING ACTS OF HOSTILITY UNDER FOREIGN COMMISSION.

<sup>5</sup> Every one is deemed to be a pirate who, being a natural-born subject of Her Majesty, or denizen of this kingdom, commits any piracy, robbery, or act of hostility against others, Her Majesty's subjects, on the sea, under color of any commission from any foreign prince or state, or pretence of authority from any person whatever.

<sup>6</sup> ARTICLE 136.

ADHERING ON THE SEA TO THE QUEEN'S ENEMIES.

<sup>7</sup> Every one is deemed to be a pirate who, being a

<sup>1</sup> R. S. C. c. 174, s. 8; 12 & 13 Vict. c. 96, ss. 1, 2.

<sup>2</sup> S. D. Art. 105.

<sup>3</sup> [7 Will. 4 & 1 Vict. c. 88, s. 2; Draft Code, s. 106.] 12 & 13 Vict. c. 96, ss. 1 & 2.

<sup>4</sup> S. D. Art. 106.

<sup>5</sup> [11 & 12 Will. 3, c. 7, s. 8. For this and the four following Articles, see Draft Code, ss. 107-109.]

<sup>6</sup> S. D. Art. 107.

<sup>7</sup> [13 Geo. 2, c. 30.]

[natural-born subject or denizen of Her Majesty, during any war commits any hostility against Her Majesty's subjects upon the sea, or in any haven, river, creek or place where the admiral has power or jurisdiction, by virtue or under color of any commission from any of Her Majesty's enemies, or is in any way adherent, or gives aid or comfort, to Her Majesty's enemies upon the sea or in any other such place as aforesaid.

<sup>1</sup> ARTICLE 137.

BOARDING SHIPS AND THROWING CARGO OVERBOARD.

<sup>2</sup> Every one is deemed to be a pirate who, belonging to any ship or vessel whatever, upon meeting any merchant ship or vessel on the high seas, or in any port, haven, or creek, forcibly boards and enters into such 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 or merchandises belonging to such ship or vessel.

<sup>3</sup> ARTICLE 138.

MASTERS AND SEAMEN FAVORING PIRATES.

<sup>4</sup> Every one is deemed to be a pirate who, being the commander or master of any ship, or a seaman or mariner in any place where the admiral has jurisdiction, betrays his trust, and turns pirate, enemy, or rebel, and piratically and feloniously runs away with his ship, or any barge, boat, ordnance, ammunition, goods, or merchandise; or yields them up voluntarily to any pirate; or brings any seducing message from any pirate, enemy, or rebel; or

<sup>1</sup> S. D. Art. 108.

<sup>2</sup> [8 Geo. 1, c. 24, s. 1 (last part).]

<sup>3</sup> S. D. Art. 109.

<sup>4</sup> [11 Will. 3, c. 7, s. 8. Section 9 enacts in substance that accessories to piracy shall be punished as pirates.]

[consults, combines, or confederates with or attempts to corrupt any commander, master, officer, or mariner to yield up or run away with any ship, goods or merchandise, or turn pirate or go over to pirates ; or

lays violent hands on his commander whereby to hinder him from fighting in defence of his ship and goods committed to his trust ; or

confines his master, or makes or endeavors to make a revolt in the ship (<sup>1</sup> even if the object of such revolt is to redress real grievances).

## <sup>2</sup> ARTICLE 139.

### TRADING WITH PIRATES AND CONSPIRING WITH THEM.

<sup>3</sup> Every one is deemed to be a pirate who in any wise trades with any pirate by truck, barter, exchange, or in any other manner, or furnishes any pirate, felon, or robber upon the seas with any ammunition, provision, or stores of any kind ; or

fits out any ship or vessel knowingly and with a design to trade with, or supply, or correspond with any pirate, felon, or robber on the seas ; or

in any way consults, combines, confederates, or corresponds with any pirate, felon, or robber on the seas knowing him to be guilty of any such piracy, felony, or robbery.]

## <sup>4</sup> ARTICLE 140.

### PUNISHMENT FOR STATUTORY PIRACIES.

<sup>5</sup> Every one who commits any of the offences defined in

<sup>1</sup> [The words in parentheses give the effect of *R. v. Hastings*, 1 Moody, 82; *R. v. M'Gregor*, 1 C. & K. 429. As to "confines," see *R. v. Jones*, 11 Cox, C. C. 293.]

<sup>2</sup> S. D. Art. 110.

<sup>3</sup> [8 Geo. 1, c. 24, s. 1 (first part).]

<sup>4</sup> S. D. Art. 111.

<sup>5</sup> By 7 Wm. 4 & 1 Vict. c. 88, s. 3, the offender was liable to be transported for life or for any term not less than fifteen years, or to be imprisoned for a term not exceeding three years. By 12 & 13 Vict. c. 95, s. 2, the offender, if tried in a colony, was liable to the

Articles 135-139, both inclusive, is liable to imprisonment for three years, and perhaps for life.

<sup>1</sup> ARTICLE 141.

NOT FIGHTING PIRATES.

<sup>2</sup> [Every one commits a misdemeanor, and must, on conviction thereof, be imprisoned for six months, 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 endeavor 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, so that the ship falls into the hands of such pirate.

<sup>3</sup> ARTICLE 142.

SLAVE-TRADING DEFINED.

<sup>4</sup> Each of the following acts and every contract to do any one of them is an act of slave-trading :—

(a.) To deal or trade in, purchase, sell, barter, or transfer slaves or persons intended to be dealt with as slaves.

(b.) To carry away or remove slaves or other persons as, or in order to their being dealt with as, slaves.

(c.) To import or bring into any place whatsoever slaves or other persons as, or in order to their being dealt with as, slaves.

(d.) To ship, tranship, embark, receive, detain or confine on board any <sup>5</sup> vessel slaves or other persons—

punishment prescribed by any law then (1840) in force in England. 16 & 17 Vict. c. 99 introduced penal servitude in lieu of transportation, and by 20 & 21 Vict. c. 3, s. 2, it was provided that no person should be sentenced to transportation after July 1st, 1857. See also R. S. C. c. 181, s. 24, (Art. 17.)

<sup>1</sup> S. D. Art. 112.

<sup>2</sup> [8 Geo. 1. c. 24, s. 6. Draft Code, s. 110.]

<sup>3</sup> S. D. Art. 113.

<sup>4</sup> [5 Geo. 4, c. 113, s. 2. The language of this Act is very elaborate, and I have not noticed every deviation from it. I believe that this and the next Article give its effect quite correctly, though in a very different shape. For the history of these Acts, see 3 Hist. Cr. Law, 255-6.

<sup>5</sup> Ship, vessel, or boat.]



[for the purpose of their being carried away or removed as, or in order to their being dealt with as, slaves ; or

for the purpose of their being imported into any place whatever as, or in order to their being dealt with as, slaves.

(e.) To fit out, man, navigate, equip, dispatch, use, employ, let, or take to freight, or on hire, any <sup>1</sup> vessel, in order to do any act of slave-trading before mentioned.

(f.) To lend or advance, or become security for the loan or advance of, money, goods or effects, employed or to be employed in any act of slave-trading before mentioned.

(g.) To become guarantee or security for agents employed or to be employed in any act of slave-trading before mentioned.

(h.) To engage in any other manner in any act of slave-trading before mentioned, directly or indirectly, as a partner, agent or otherwise.

(i.) To ship, tranship, lade, receive, or put on board of any <sup>1</sup> vessel money, goods, or effects to be employed in any act of slave-trading before mentioned.

(j.) To take the charge or command, or to navigate, or enter and embark on board any <sup>1</sup> vessel in <sup>2</sup> any capacity, knowing that such <sup>1</sup> vessel is employed in any act of slave-trading before mentioned, or is intended to be so employed upon the voyage or upon the occasion in which the embarkation takes place.

(k.) To insure slaves or property employed or intended to be employed in slave-trading.

### <sup>3</sup> ARTICLE 143.

#### PIRATICAL SLAVE-TRADING.

<sup>4</sup> Every subject of Her Majesty, and every person resi-

<sup>1</sup> "Ship, vessel, or boat."

<sup>2</sup> "As captain, master, mate, petty officer, surgeon, supercargo, seaman, marine, or servant, or in any other capacity."

<sup>3</sup> S. D. Art. 114.

<sup>4</sup> [5 Geo. 4. c. 113, s. 9, redrawn.] As to punishment see 7 Wm. 4 & 1 Viet. c. 91, s. 1, and Art. 140 note.

[dent or being in any of Her Majesty's dominions<sup>1</sup> commits piracy, felony, and robbery, and is liable] to imprisonment for three years and perhaps for life [who upon the high seas, or in any place where the admiral has jurisdiction, knowingly and wilfully does or assists in doing any of the following things, that is to say:—

(a.) Who carries away, conveys, or removes any person as a slave; or

for the purpose of his being imported or brought as a slave into any<sup>2</sup> place whatsoever; or

for the purpose of his being used, transferred, sold or dealt with as a slave, or

(b.) Who ships, embarks, receives, detains, or confines any person on board any vessel for the purpose of his being carried away, conveyed, or removed as a slave; or

for the purpose of his being imported or brought as a slave into any<sup>2</sup> place whatsoever; or

for the purpose of his being sold, transferred, used, or dealt with as a slave.

### <sup>3</sup> ARTICLE 144.

#### PUNISHMENT OF SLAVE-TRADING.

<sup>4</sup> Every one (owing allegiance to Her Majesty) commits felony, and is liable] to imprisonment for a term not exceeding five years and not less than three years [who (in any part of the world) does any of the acts of slave-trading specified in Article 142, clauses (a.), (b.), (c.), (d.), (e.); or

knowingly and wilfully does any of the acts of slave-

<sup>1</sup>["Dominions, ports, settlements, factories, or territories now or hereafter belonging to Her Majesty, or being in Her Majesty's occupation or possession."]

<sup>2</sup>"Island, colony, country, territory, or place."]

<sup>3</sup>S. D. Art. 115.

<sup>4</sup>[5 Geo. 4, c. 113, s. 10 (re drawn).

<sup>5</sup>These words are inserted to give the effect of *R. v. Zulueta*, 1 C. & K. 215, 226-7. See, however, *Santos v. Hudge*, 8 C. B. (N.S.) 861, in which the Court of Exchequer Chamber was equally divided upon a very similar though not identical point.]

[trading specified in Article 142, clauses (*f.*), (*g.*), (*h.*), (*i.*), or (*k.*)

<sup>1</sup> ARTICLE 145.

SERVING ON A SLAVE-SHIP, FELONY.

<sup>2</sup> Every one commits the same offence, and is liable to the same punishment, as is specified in the last Article, who takes charge or command, or navigates, or embarks on board any vessel as captain, master, mate, surgeon, or supercargo, or contracts to do so, knowing that such vessel is actually employed, or is on that voyage or occasion intended to be employed, in any act of slave-trading.

<sup>3</sup> ARTICLE 146.

SERVING ON A SLAVE-SHIP, MISDEMEANOR.

<sup>4</sup> Every one commits a misdemeanor, and is liable to two years' imprisonment, who with the knowledge mentioned in the last Article does any of the things mentioned in that Article, as petty officer, seaman, marine, or servant, or in any other capacity not specifically mentioned therein.]

<sup>1</sup> S. D. Art. 116.

<sup>2</sup> [5 Geo. 4, c. 113, s. 10.]

<sup>3</sup> S. D. Art. 117.

<sup>4</sup> [5 Geo. 4, c. 113, s. 11.]

PART III.

ABUSES AND OBSTRUCTIONS OF PUBLIC AUTHORITY.

CHAP. XII.—ABUSES OF AUTHORITY—OPPRESSION—EXTORTION—FRAUD—NEGLECT OF DUTY—REFUSAL TO ACT.	SUBORNATION — ADMINISTERING EXTRA-JUDICIAL OATHS. — FALSE CERTIFICATE AS TO EXECUTION.
CHAP. XIII.—DISOBEDIENCE TO LAWFUL ORDERS.	CHAP. XVI.—ESCAPE—RESCUE—PRISON BREACH—MISPRISONS—COMPOUNDING OFFENCES—TAKING OR ADVERTIZING REWARDS FOR RECOVERY OF STOLEN PROPERTY.
CHAP. XIV.—BRIBERY AND CORRUPTION—SALE OF OFFICES.	
CHAP. XV.—MISLEADING JUSTICE—PERJURY—FALSE SWEARING—	

CHAPTER XII.

ABUSES OF AUTHORITY, OPPRESSION, EXTORTION, FRAUD, NEGLECT OF DUTY—REFUSAL TO ACT.

<sup>1</sup> ARTICLE 147.

“PUBLIC OFFICER” DEFINED.

<sup>2</sup> [THE expression “public officer,” in this chapter, means a person invested with authority to execute any public duty, and legally bound to do so, but does not include any member of either House of Parliament as such, or any ecclesiastical, naval, or military officer acting in the discharge of duties for the due discharge of which he can be made accountable only by an ecclesiastical, naval, or military court.]

<sup>1</sup> S. D. Art. 118.

<sup>2</sup> [See 7 Rep. Crim. Law Crs. c. iv. p. 153, and cf. 5 Rep. Crim. Law Crs. p. 40. It would be foreign to the purpose of this work to discuss the question of the limits of the jurisdiction of the Courts of Common Law, and Ecclesiastical and Military Courts.]

## ARTICLE 148.

## EXTORTION AND OPPRESSION BY PUBLIC OFFICERS.

<sup>2</sup> [Every public officer commits a misdemeanor who, in the exercise, or under color of exercising the duties of his office, does any illegal act, or abuses any discretionary power with which he is invested by law from an improper motive, the existence of which motive may be inferred either from the nature of the act, or from the circumstances of the case. But an illegal exercise of authority, caused by a mistake as to the law, made in good faith, is not a misdemeanor within this Article.]

<sup>3</sup> If the illegal act consists in taking under color of office from any person any money or valuable thing which is not due from him at the time when it is taken, the offence is called "extortion."

If it consists in inflicting upon any person any bodily harm, imprisonment, or other injury, not being extortion, the offence is called "oppression."

*Illustrations.*

(1.) <sup>4</sup>The Lord Chief Justice of England passes upon B and C sentences for similar offences so disproportionate as to show partiality. He commits oppression.

(2.) <sup>5</sup>The Governor-General of India wrongfully compels a native prince to pay sums of money to the Indian government. He commits extortion.

<sup>1</sup> S. D. Art. 118.

<sup>2</sup> [*R. v. Wyatt*, 1 Salk. 380; *R. v. Bembridge*, 3 Doug. 327, and 22 St. Tr. 1-159; Bacon, Abridgment, tit. "Office and Officer," N.; *R. v. Borron*, 3 B. & Ald. 434; and see cases referred to in the Illustrations.]

<sup>3</sup> *R. v. Tisdale*, 20 U. C. Q. B. 272; *Parsons v. Crabbe*, 31 U. C. C. P. 151.

<sup>4</sup> [4th Article of impeachment against Seroggs, C.J., 8 St. Tr. 199.

<sup>5</sup> This was the gist of the Cheyte Singh charge in the impeachment of Warren Hastings. It is remarkable that neither in Debrett's History of the Trial, nor in Mr. Mill's History of India, nor in Lord Macaulay's elaborate Essay on Warren Hastings, nor in Marshman's History of India, are the charges against Hastings distinctly stated. It seems to a lawyer natural to give at least an abstract of the indictment in order to render an account of a trial intelligible, but historians are apt to take a different view. Lord]

[3.] <sup>1</sup> A and B, justices of the peace, refuse licenses to the keepers of public houses, because they refuse to vote as the justices wish. A and B commit oppression.

(4.) <sup>2</sup> A, a justice of the peace, sends his servant to the house of correction for being saucy and giving too much corn to his horses. A commits oppression.

(5.) <sup>3</sup> A, a justice, acting as such, orders B to be whipped, without such proof or information as the law requires. A commits oppression.

(6.) <sup>4</sup> A, a constable, having B in custody on a warrant for an assault, obtains money from B upon color and pretence that A will procure the warrant to be discharged. A commits extortion.

(7.) <sup>5</sup> A, a justice, commits B, a pauper, to prison for refusing to answer questions which A had a right to put as to B's settlement, believing in good faith that A had a legal right to commit B. A does not commit a misdemeanor.

(8.) <sup>6</sup> A, a justice, illegally refuses to accept bail for a person entitled to be bailed, under an opinion, hastily adopted in a crisis of real danger, that it was right to do so. A does not commit a misdemeanor.

#### <sup>7</sup> ARTICLE 149.

##### FRAUDS AND BREACHES OF TRUST BY OFFICERS.

<sup>8</sup> Every public officer commits a misdemeanor who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person.

[Macaulay in particular is so much interested in Burke's rhetoric that he omits to say what it was all about. In Mr. Massey's History of George III., vol. iii, p. 837, Burke's summary of the ten charges which he opened is given, but Mr. Massey observes that only one of the ten was distinct and substantive. The transactions with Cheyte Singh are described in Mill's British India, iv, 321, &c., in Lord Macaulay's Essays, p. 620 (ed. of 1850), and in Marshman's History, i, 424.]

<sup>1</sup> *R. v. Williams*, 3 Burr. 1317.

<sup>2</sup> *R. v. Okey*, 8 Mod. 46. According to *R. v. Morfit*, Rus. & R. 307, decided long afterwards, A might have committed his servant for theft.

<sup>3</sup> See precedent of indictment, 2 Chit. Crim. Law, 235.

<sup>4</sup> Precedent of indictment, 2 Chit. Crim. Law, 293.

<sup>5</sup> *R. v. Jackson*, 1 T. R. 653.

<sup>6</sup> *R. v. Badger*, 4 Q. B. 475.]

<sup>7</sup> S. D. Art. 121.

<sup>8</sup> [See cases in Illustrations.] As to telegraph operators divulging, without lawful authority, the contents of telegrams, see R. S. C. c. 134, ss. 3, 4.

*Illustrations.*

[(1.) <sup>1</sup> A, an accountant in the office of the Paymaster-General, fraudulently omits to make certain entries in his accounts, whereby he enables the cashier to retain large sums of money in his own possession, and to appropriate the interest on such sums to himself after the time when they ought to have been paid to the Crown. A commits a misdemeanor.

(2.) <sup>2</sup> A, a commissary-general of stores in the West Indies, makes contracts with B to supply stores, on the condition that B should divide the profits with A. A commits a misdemeanor.

<sup>3</sup> ARTICLE 150.

## NEGLECT OF OFFICIAL DUTY.

<sup>4</sup> Every public officer commits a misdemeanor who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter.

*Illustrations.*

(1.) <sup>5</sup> A, the mayor of B, neglects to perform various acts which it was in his power to do, and which a man of ordinary prudence, firmness, and activity, might have been expected to do, in order to suppress riots in B. A is guilty of a misdemeanor.

(2.) <sup>6</sup> A, the Lord Mayor of London, refrains from making the proclamation in the Riot Act, and from ordering soldiers to disperse a mob, because he is afraid to do so, in circumstances in which a man of ordinary courage would not have been afraid. A commits a misdemeanor.

(3.) <sup>7</sup> A, a sheriff, refuses to execute a criminal condemned to death. A commits a misdemeanor.

<sup>1</sup> [*R. v. Bembridge*, 3 Doug. 332; 22 St. Tr. 1-159. This would now, in England, be an offence in the case of a private person under 38 & 39 Vict. c. 24, s. 2. See S. D. Art. 352.]

<sup>2</sup> *R. v. Valentine Jones*, 31 St. Tr. 251.]

<sup>3</sup> S. D. Art. 122.

<sup>4</sup> [*R. v. Wyatt*, 1 Salk. 331; *R. v. Bembridge*, 3 Doug. 332; 22 St. Tr. 1-159; Comyn's Digest, tit. Indictment, D.; *R. v. Jones*, Strange, 1143; 4 Steph. Com. 326.]

<sup>5</sup> *R. v. Pinney*, 5 C. & P. 254, and 3 B. & Ad. 947. This is the case of the Bristol riots. Mr. Pinney was, in fact, acquitted; but the case involves the principle of the illustration.

<sup>6</sup> *R. v. Kennet* (Lord Mayor in 1780), printed in 5 C. & P. 282, as a note to *R. v. Pinney*.

<sup>7</sup> *R. v. Antrobus*, 2 A. & E. 798.]

[(4.) <sup>1</sup> A, a coroner, refuses to take an inquest on a body, after notice that it is lying dead in his jurisdiction. A commits a misdemeanor.

(5.) <sup>2</sup> A, a constable, wilfully refuses to arrest a person who commits a felony in his presence. A commits a misdemeanor.

(6.) <sup>3</sup> A, a clergyman of the Church of England, refuses to solemnize marriage between persons who might lawfully be married and who tender themselves for that purpose. He commits a misdemeanor.]

(7.) <sup>4</sup> A, an overseer of the poor, wilfully neglects to perform the duty imposed upon him of accounting for money received by him as such overseer. A commits a misdemeanor.

## ARTICLE 151.

## MISCONDUCT OF OFFICERS INTRUSTED WITH EXECUTION OF WRITS.

<sup>5</sup> Every one is guilty of a misdemeanor, and liable to a fine and imprisonment, in the discretion of the court, who, being a sheriff, deputy sheriff, coroner, elisor, bailiff, constable or other officer intrusted with the execution of any writ, warrant or process, wilfully misconducts himself in the execution of the same, or wilfully and without the consent of the person in whose favor the writ, warrant or process was issued, makes any false return thereto.

<sup>1</sup> 2 Hale, P. C. 53; and see precedent of indictment, 2 Chit. Crim. Law, 255.

<sup>2</sup> 2 Hawk. P. C. p. 129; *cf.* p. 115.

<sup>3</sup> *R. v. James*, 2 Don. 1. The conviction in this case was quashed on the narrow ground that the parties did not sufficiently tender themselves for marriage. The objection that the offence was only an ecclesiastical one was taken, but no judgment was delivered on it. A refusal to bury would probably stand on the same footing. By 1 Edw. 6, c. 1, it is enacted that a minister "shall not without lawful cause deny" (the Sacrament) "to any person that will devoutly and humbly desire it." An indictment for such a denial would be incongruous and indecent, but it is difficult to find any definite legal ground for saying that it would not lie. (See *Jenkins v. Cook*, L. R. 1 P. D. 89.)

<sup>4</sup> *R. v. Matthews*, 2 Kerr 543.

<sup>5</sup> R. S. C. c. 173, s. 29: As to disobedience of orders and neglect of duty by certain peace officers, see R. S. C. c. 45, s. 18 (North-West Mounted Police); 23 Vict. (P.C.) c. 29, s. 4; R. S. C. c. 38, s. 55, and 51 Viet. (D.) c. 21, s. 285 (railway constables); R. S. C. c. 89, s. 5 (harbor and river police, Quebec); R. S. C. c. 184, s. 6 (Dominion police). As to peace officers not conveying to custom house goods detained by them as liable to seizure under the Customs Acts, see R. S. C. c. 32, s. 219. As to defaults, &c., by census officers, see R. S. C. c. 58, s. 16.



<sup>1</sup> ARTICLE 152.

## REFUSAL TO SERVE AN OFFICE.

<sup>2</sup> [Every one commits a misdemeanor who unlawfully refuses or omits to take upon himself and serve any public office which he is by law required to accept if duly appointed; but this Article does not extend to cases in which any other penalty is imposed by law for such refusal or neglect, or to any case in which by law or by custom any person is permitted to make any composition in place of serving any office.]

*Illustration.*

A person may be indicted for refusing to exercise the office of overseer of the poor or parish constable.]

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<sup>1</sup> S. D. Art. 123.

<sup>2</sup> [*R. v. Boicer*, 1 B. & C. 535; and see 5th Report, C. L. C. 41, where many authorities are cited. Also 1 Russ. Cr. 307-8.]

## CHAPTER XIII.

## DISOBEDIENCE TO LAWFUL ORDERS.

## ARTICLE 153.

## DISOBEDIENCE TO A STATUTE.

[EVERY one commits a misdemeanor who wilfully disobeys any statute by doing any act which it forbids or by

<sup>1</sup> S. D. Art. 124.

<sup>2</sup> [R. v. Wright, 1 Burr. 543; R. v. Harris, 4 T. R. 205; 5th Report, C. L. C. 43; 2 Hawk. P. C. 289. Draft Code, s. 114.] R. S. C. c. 173, s. 25. The wilful disobedience of an Order in Council authorized by statute (R. v. Harris, 4 T. R. 202) or of an order made by Commissioners under a statute, the matter of which concerns the public in general (R. v. Walker, 1. R. 10 Q. B. 355) is an indictable misdemeanor at common law.

A wilful disobedience of a statute is punishable by indictment.

(a.) If the statute specify no other mode of proceeding (2 Hawk. c. 25, s. 4; R. v. Davis, Sayer 133; R. v. Swinsbury, 4 T. R. 451; R. v. Price, 11 A. & E. 727.)

(b.) Although another mode of proceeding is specified,

(1.) If the offence were indictable at common law (R. v. Robinson, 2 Burr. 799; R. v. Wigg, 2 Ld. Raymond, 1163; R. v. Balme, Cowp. 648; R. v. Carlisle, 3 B. & Ald. 161; 2 Hale, 191); or

(2.) If such other mode of proceeding is prescribed by a subsequent statute (R. v. Boyall, 2 Burr. 832), or in a substantive clause of the same statute (2 Hale, 171; R. v. Wright, 1 Burr. 543; R. v. Jones, 2 Str. 1146; R. v. Harris, 4 T. R. 205; R. v. Buchanan, 8 Q. B. 883; R. v. Mason, 17 U. C. C. P. 534; R. v. Bennett, 21 U. C. C. P. 235);

But if such other mode of proceeding is contained in the clause that prohibits the act such mode must be pursued and no other (R. v. Robinson, 2 Burr. 805; R. v. Buck, 2 Str. 679) and such other mode may, in the cases (b.) (1.) and (2.) be pursued by the prosecutor at his option.]

There are in the statutes of Canada a number of special provisions as to wilful violations thereof, or of regulations made thereunder. As for instance, wilful violations by certain officers and servants of the Crown of regulations made under *The Public Works Act* (R. S. C. c. 35, ss. 27, 28); or under the Act respecting the Department of Railways and Canals (R. S. C. c. 37, ss. 17, 18); or under *The Government Railways Act*; or by officers and servants of railway companies of regulations made under *The Railway Act* (51 Vict. (D). c. 29, ss. 294, 296) or C. S. C. c. 66, ss. 158, 159. In the cases mentioned the punishment is to be more or less severe as the act or default causes or does not cause injury to any person or property, or exposes or not any person or property to the risk of injury.

As to the person having the custody of assessment rolls, voters' lists, &c., not furnishing same to revising officer, see *The Electoral Franchise Act* (R. S. C. c. 5, s. 40). See also R. S. C. c. 35, s. 104 (wilful violations of regulations made under *The Post Office Act*; R. S. C. c. 67, s. 20 (wilful violations of *The Chinese Immigration Act*); and R. S. C. c. 68, s. 11 (of quarantine regulations).

[omitting to do any act which it requires to be done, and which concerns the public or any part of the public, unless it appears from the statute that it was the intention of the Legislature to provide some other penalty for such disobedience.

<sup>1</sup> ARTICLE 154.

DISOBEDIENCE TO LAWFUL ORDERS OF COURT, &c.

<sup>2</sup> Every one commits a misdemeanor who disobeys any order, warrant, or command duly made, issued, or given by any court, officer, or person acting in any public capacity and duly authorized in that behalf, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience.

*Illustrations.*

(1.) <sup>3</sup> A refuses to assist a constable in the execution of his duty when lawfully called upon by the constable to do so. A commits a misdemeanor.

(2.) <sup>4</sup> A refuses to pay money for the support of his bastard child which he has been ordered to pay by the Quarter Sessions. A commits a misdemeanor.]

<sup>1</sup> S. D. Art. 125.

<sup>2</sup> [5th Report, C. L. C. 43; *Jones' Case*, 2 Moody 171; *R. v. Dale*, Dear. 37. Draft Code, s. 115.] Any wilful neglect or disobedience of a rule of court or order of a judge made under any of the following Acts respecting the liberty of the subject is by such Acts declared to be a misdemeanor, that is to say:—R. S. N. S. 3 Ser. c. 153, s. 9; 19 Vict. (N.B.) c. 42, s. 5; and 20 Vict. (P.E.I.) c. 10, s. 5.

<sup>3</sup> [*R. v. Sherlocks*, L. R. 1. C. C. R. 20.

<sup>4</sup> *R. v. Ferrall*, 2 Den. 51. In this case Pollock, C.B., asked how it would be if the man could not pay? and whether a refusal to pay a fine is indictable? The answer would seem to be that it is. Imprisonment on such an indictment would only be a roundabout way of doing what is commonly done in cases of fine, viz., inflicting an alternative term of imprisonment. Whether a man is sentenced to be fined £100 and to be imprisoned in default of payment, or to be imprisoned because he has not obeyed the order of the Court to pay a fine of £100, is rather a matter of form than anything else.] For special statutory provisions as to refusing to assist certain peace officers see 27 Vict. (N.B.) c. 8, s. 2; R. S. C. c. 50, s. 98 (in respect of unlawful sales of spirituous liquors in the North-West Territories); R. S. C. c. 53, s. 41 (the same in Keewatin). See also R. S. C. c. 34, s. 91 (neglecting to aid officers of Inland Revenue) and R. S. C. c. 32, s. 214 (refusing to stop vessel or conveyance when required to do so by any officer of the customs).

## CHAPTER XIV.

## BRIBERY AND CORRUPTION—SALE OF OFFICES.

## ARTICLE 155.

## JUDICIAL CORRUPTION.

<sup>2</sup> [EVERY one who gives or offers to any person holding any judicial office, and every person holding any judicial office who accepts, any bribe, commits a misdemeanor.

Every gift or payment made in respect of, or in relation to, any business having been, being, or about to be transacted before any such person in his office is a bribe, whether it is given in order to influence the judicial officer in something to be done, or to reward him for something already done, and whether the thing done or to be done is itself proper or improper.

## ARTICLE 156.

## CORRUPTION OF PUBLIC OFFICERS.

<sup>4</sup> Every one commits a misdemeanor who by any means endeavors to force, persuade, or induce any public officer, not being a judicial officer, to do or omit to do any act which the offender knows to be a violation of such officer's official duty.]

<sup>1</sup> S. D. Art. 126.

<sup>2</sup> [3 Inst. 144-8; 1 Hawk. P. C. 414-15; 5th Report, C. L. C. p. 20-1. See, too, Spedding's Life of Bacon, vii. 209-78. The crime is so rare that the definition is very imperfect and more or less conjectural. See 3 Hist. Cr. Law, 250-5; Draft Code, s. 111.]

<sup>3</sup> S. D. Art. 137.

<sup>4</sup> [5th Report, C. L. C. art. 3, 35, p. 47. Many authorities are cited, and in particular the chapters of the 3rd Inst. and Hawkins referred to in the last note; also *H. v. Vaughan*, Barr. 2494, see especially 2501.] As to bribery of a member of a Provincial Legislature see *R. v. Bunting*, 7 O. R. 524.

## ARTICLE 157.

CORRUPTION IN RESPECT TO CONTRACTS WITH THE  
GOVERNMENT.

<sup>1</sup> Every one is guilty of a misdemeanor and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding one year and not less than one month, and in default of payment of such fine, to imprisonment for a further term not exceeding six months, who makes any offer, proposal, gift, loan, promise, agreement, compensation or consideration, directly or indirectly, to any officer or person in the employment of the Government of Canada, or of any Province of Canada, with intent to secure the influence of such officer or person to promote either the obtaining or the execution of any contract with such government, or the payment of the consideration moneys therefor.

Every one in the employment of such government is guilty of a misdemeanor and liable to the same punishment who accepts, or agrees to accept, any such offer, proposal, gift, loan, promise, agreement, compensation or consideration.

Every one is guilty of a misdemeanor and liable to the same punishment who, in the case of tenders being called for by or on behalf of the Government of Canada, or of any Province of Canada, for any contract, directly or indirectly, by himself or by the agency of any other person on his behalf, with intent to obtain such contract, either for himself or for any other person, proposes or makes any gift, loan, offer, promise or agreement, or offers or gives any consideration or compensation whatsoever, to any person tendering for such contract, or to any officer or person in the employment of such government.

<sup>1</sup> R. S. C. c. 173, ss. 20, 21. The prosecution for any offence defined in Articles 157, 158, must be commenced within two years after the commission of the offence. (s. 24.)

Every one in the employment of the said government is guilty of a misdemeanor and liable to the same punishment who accepts or agrees to accept any such gift, loan, offer, promise, agreement, consideration or compensation whatsoever.

ARTICLE 158.

CORRUPTION IN RESPECT TO BUSINESS WITH THE GOVERNMENT.

<sup>1</sup> Every one is guilty of a misdemeanor, and liable to a fine not exceeding two thousand dollars, and shall be incapable, for the term of five years, of holding any public office, who, being a public officer or paid employee of the Government of Canada, or of any Province of Canada, receives, directly or indirectly, any promise, offer, gift, loan, compensation or consideration whatsoever, either in money or otherwise, from any person whomsoever, for fraudulently assisting or favoring any individual in the transaction of any business whatsoever connected with such government, or for doing so contrary to the duties of his special position as an officer or employee of the government.

Every one who makes any such offer is guilty of a misdemeanor and liable to the same punishment.

ARTICLE 159.

OTHER CONSEQUENCES OF CONVICTION FOR ANY SUCH OFFENCE.

<sup>2</sup> Every person convicted of any offence under the provisions of the two Articles next preceding shall be incapable of contracting with or holding any contract under any of the said governments.

<sup>1</sup> R. S. C. c. 173, s. 22.

<sup>2</sup> R. S. C. c. 173, s. 23.

## ARTICLE 160.

## REVENUE OFFICERS COMMITTING CORRUPT ACTS.

<sup>1</sup> Every officer, or person acting in any office or employment connected with the collection or management of the revenue, is guilty of a misdemeanor and liable to a fine of five hundred dollars and to one year's imprisonment and to be dismissed from office <sup>2</sup> who—

(a.) receives any compensation or reward for the performance of any official duty, except as by law prescribed, or ;

(b.) conspires or colludes with any other person to defraud the crown, or makes opportunity for any person to defraud the crown ; or

(c.) designedly permits any violation of the law by any other person ; or

(d.) wilfully makes or signs any false entry in any book, or wilfully makes or signs any false certificate or return in any case, in which it is his duty to make an entry, certificate or return ; or

(e.) having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the crown, under any revenue law of Canada, fails to report in writing, such knowledge or information to his next superior officer ; or

(f.) demands or accepts or attempts to collect, directly or indirectly as payment or gift or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized to do by law, or by the authority of the department of which he is an officer.

<sup>1</sup> R. S. C. c. 29, s. 69.

<sup>2</sup> " Shall be dismissed from office."

## ARTICLE 161.

## CORRUPTION OF REVENUE OFFICERS.

<sup>1</sup> Every one who, directly or indirectly, promises, offers or gives, or causes or procures to be promised, offered or given, any money, goods, right in action, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, right in action, bribe, present or reward, or any other valuable thing whatever, to any officer, or any person acting in any office or employment connected with the collection or management of the revenue with intent—

(a.) to influence his decision or action on any question or matter which is then pending, or may, by law, be brought before him in his official capacity ; or

(b.) to influence such officer or person to commit, or aid or abet in committing any fraud on the revenue, or to connive at, collude in, or allow or permit any opportunity for the commission of any such fraud ; and,

Every officer or person who in anywise accepts or receives any such moneys, goods, right in action, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery thereof, or any other valuable thing whatever, or any part of the same respectively,—

Is guilty of a misdemeanor, and liable to a fine not exceeding three times the amount so offered or accepted, and to imprisonment for one year.

Every officer or person holding any office or place under the crown who is convicted of any such offence forfeits his office or place.

Every person who is convicted of any such offence is for ever disqualified to hold any office of trust, honor or profit under the crown.

<sup>1</sup> R. S. C. c. 23, s. 70.



## ARTICLE 162.

## CUSTOMS OFFICERS COMMITTING CORRUPT ACTS.

<sup>1</sup> Every officer of the Customs, and every person employed, with the concurrence of the Minister of Customs, for the prevention of smuggling, who

(a.) makes any collusive seizure, or delivers up, or makes any agreement to deliver up or not to seize any vessel, boat, carriage, goods or thing liable to forfeiture under the Customs Act; or

(b.) takes or accepts a promise of any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty,—

Is guilty of a misdemeanor, and liable to a fine of five hundred dollars, and to imprisonment for a term not exceeding two years and not less than three months, and becomes incapable of serving Her Majesty in any office whatsoever.

## ARTICLE 163.

## CORRUPTION OF CUSTOMS OFFICERS.

<sup>2</sup> Every one is guilty of a misdemeanor, and liable to a fine of five hundred dollars, and to imprisonment for a term not exceeding two years, and not less than three months, who gives, offers or promises to give or procure to be given, any bribe, recompense or reward to, or makes any collusive agreement with, any such officer or person as aforesaid, to induce him in any way to neglect his duty, or to conceal or connive at any act whereby the provisions of any law relating to the customs, trade or navigation, may be evaded.

<sup>1</sup> R. S. C. c. 32, s. 221. It will be observed that officers of the Customs are Revenue officers and both are persons in the employment of the Government of Canada. It is very doubtful if the elaborate provisions represented by Articles 157-163 have ever been found more effective for the punishment of the class of offenders against whom they are directed than the common law as given in Articles 149, 156.

<sup>2</sup> R. S. C. c. 32, s. 221.

## ARTICLE 164.

## CORRUPT PRACTICES IN MUNICIPAL AFFAIRS.

<sup>1</sup> Every one is guilty of a misdemeanor and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding two years and not less than one month, and in default of payment of such fine, to imprisonment for a further term not exceeding six months, who directly or indirectly,—

(a.) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member of a municipal council,<sup>2</sup> whether the same is to enure to his own advantage or to the advantage of any other person, for the purpose of inducing such member either to vote or to abstain from voting at any meeting of the council of which he is a member or at any meeting of a committee of such council, in favor of or against any measure, motion, resolution, or question submitted to such council or committee; or

(b.) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member or to any officer of a municipal council for the purpose of inducing him to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favor of any person whomsoever; or

(c.) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any officer of a municipal council for the purpose of inducing him to perform or

<sup>1</sup>62 Viet. (D.) c. 42. The time within which a prosecution may be commenced for any offence defined in this Article is limited to two years; (s. 3.)

<sup>2</sup>The expression "municipal council" includes the municipal governing body of every county, union of counties, township, city, town, village, parish and municipality, having corporate powers in any Province of Canada.

abstain from performing, or to aid in procuring or preventing the performance of any official act whatsoever; or

(*d.*) being a member or officer of a municipal council, accepts or consents to accept any such offer, proposal, gift, loan, promise, agreement, compensation or consideration as is in this Article before mentioned; or in consideration thereof, votes or abstains from voting in favor of or against any measure, motion, resolution or question or performs or abstains from performing any official act; or

(*e.*) attempts by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a municipal council in giving or withholding his vote in favor of or against any measure, motion, resolution or question, or in not attending any meeting of the municipal council of which he is a member, or of any committee thereof; or

(*f.*) attempts by any such means as in the next preceding paragraph mentioned, to influence any member or any officer of a municipal council to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favor of any person whomsoever, or to perform or abstain from performing or to aid in procuring or preventing the performance of any official act whatsoever.

#### <sup>1</sup> ARTICLE 165.

##### EMBRACERY.

[<sup>2</sup> Every one commits a misdemeanor called embracery] and is liable to fine and imprisonment <sup>3</sup> [who by any means whatever except the production of evidence and argument in open court attempts to influence or instruct any jurymen, or to incline him to be more favorable to the one side than to the other in any judicial proceeding,

<sup>1</sup> S. D. Art. 128.

<sup>2</sup> [1 Hawk. P. C. 466; 1 Russ. Cr. 360.] R. S. C. c. 173, s. 30. *It. v. Cornallier*, 29 L. C. J. 69.

<sup>3</sup> See Arts. 17 and 12. [See Draft Code, s. 129.]

[whether any verdict is given or not, and whether such verdict, if given, is true or false.]

<sup>1</sup> Every juryman who wilfully and corruptly consents thereto is liable to the same punishment.

<sup>2</sup> ARTICLE 166.

DEFINITION OF BRIBERY OF VOTERS.

<sup>3</sup> [Every one is guilty of bribery

(a.) Who directly or indirectly by himself or by any other person on his behalf,

<sup>4</sup> in order to induce any voter to vote or refrain from voting at any election ;

<sup>4</sup> or corruptly on account of such voter's having voted or refrained from voting at any election ;

<sup>5</sup> or in order to induce any person to procure or endeavor to procure the return of any person at any election, or the vote of any voter at any election,

(i.) <sup>4</sup> gives, lends, or agrees to give or lend, or offers or promises, or promises to procure or to endeavor to procure any money or valuable consideration to or for any person <sup>6</sup> whatever ;

(ii.) <sup>7</sup> gives or procures, or agrees to give or procure, or offers or promises, or promises to procure or to endeavor to procure, any office, place, or employment to or for any person whatever ; or

(b.) <sup>8</sup> Who in consequence of any such gift, loan, offer,

<sup>1</sup> R. S. C. c. 173, s. 30.

<sup>2</sup> S. D. Art. 129.

<sup>3</sup> R. S. C. c. 8, s. 84; 17 & 18 Vict. c. 102, s. 2. See also R. S. C. c. 106, ss. 75, 76, as to elections under *The Canada Temperance Act*. As to application of certain sections of R. S. C. c. 8 to elections in North-West Territories, see R. S. C. c. 7, s. 67.

<sup>4</sup> R. S. C. c. 8, s. 84 (a), (b); 17 & 18 Vict. c. 102, s. 2 (1), (2). The expression "election" in Articles 166, 169 and 171, means an election of a member to serve in the House of Commons of Canada. It appears that bribery at a municipal election is an indictable offence at common law; *R. v. Hoag*, 15 U. C. Q. B. 142, 143.

<sup>5</sup> R. S. C. c. 8, s. 84 (a); 17 & 18 Vict. c. 102, s. 2 (3).

<sup>6</sup> "Any person" = any voter, or to or for any person on behalf of any voter, or to or for any other person.

<sup>7</sup> R. S. C. c. 8, s. 84 (b); 17 & 18 Vict. c. 102, s. 2 (2).

<sup>8</sup> R. S. C. c. 8, s. 84 (d); 17 & 18 Vict. c. 102, s. 2 (4).

[promise, procurement, or] agreement, [procures or engages promises or endeavors to procure the return of any person in any election or the vote of any voter at any election; or

(c.) <sup>1</sup> Who advances or pays or causes to be paid any money to, or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery] or corrupt practices [at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election<sup>2</sup>; or

(d.) <sup>3</sup> Who being a voter before or during any election directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; or

(e) <sup>4</sup> Who after any election directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration] for [having voted or refrained from voting, or having induced any other person to vote or to refrain from voting.

#### <sup>5</sup> ARTICLE 167.

##### DEFINITION OF UNDUE INFLUENCE.

<sup>6</sup> Every one commits the offence of undue influence

(a.) Who directly or indirectly by himself or by any other person on his behalf makes use of or threatens to

<sup>1</sup> R. S. C. c. 8, s. 84 (e); 17 & 18 Vict. c. 102, s. 2 (5.).

<sup>2</sup> The actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, are held to be expenses lawfully incurred, and the payment thereof is not a violation of the Act; R. S. C. c. 8, s. 84; 17 & 18 Vict. c. 102, s. 2.

<sup>3</sup> R. S. C. c. 8, s. 85 (a); 17 & 18 Vict. c. 102, s. 3 (1).

<sup>4</sup> R. S. C. c. 8, s. 85 (b); 17 & 18 Vict. c. 102, s. 3 (2).

<sup>5</sup> S. D. Art. 130.

<sup>6</sup> R. S. C. c. 8, s. 87; 46 & 47 Vict. c. 51, s. 2. See also R. S. C. c. 106, s. 79.

[make use of any force, violence, or restraint, or inflicts or threatens to inflict by himself or by any other person any injury, damage, harm, or loss,] or in any manner practices intimidation, [upon or against any person in order to induce or compel him to vote or refrain from voting, or on account of his having voted or refrained from voting at any election; or

(b.) Who by abduction, duress, or any fraudulent device or contrivance impedes, prevents,] or interferes with [the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon any voter either to give or refrain from giving his vote at any election.]

<sup>1</sup> ARTICLE 168.

DEFINITION OF TREATING.

<sup>2</sup> Every person is guilty of treating who corruptly, by himself or by or with any other person, or by any other ways or means on his behalf, at any time either before or during any election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for, any meat, drink, refreshment or provision to or for any person, in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election.

<sup>3</sup> ARTICLE 169.

PUNISHMENT OF BRIBERY, UNDUE INFLUENCE AND TREATING.

<sup>4</sup> Every person is guilty of a misdemeanor, and shall

<sup>1</sup> S. D. Art. 130 A.

<sup>2</sup> R. S. C. c. 8, s. 86; 46 & 47 Vict. c. 51, s. 1. To give to any voter, on nomination or polling day, any refreshment or money or ticket to procure any refreshment on account of such voter having voted, or being about to vote, is an unlawful act, punishable by a fine of ten dollars. See also R. S. C. c. 106, ss. 77, 78.

<sup>3</sup> S. D. Art. 131.

<sup>4</sup> R. S. C. c. 8, ss. 84, 85, 87. See also R. S. C. c. 106, ss. 75, 76, 79. A prosecution for a misdemeanor under R. S. C. c. 8 must be commenced within one year after the act committed, unless prevented by defendant's absence (s. 117), and for a misdemeanor under R. S. C. c. 106 within six months (s. 80).

also forfeit the sum of two hundred dollars with costs to any person who sues for the same, who commits bribery or undue influence at any election.

<sup>1</sup> Every candidate who commits the offence of treating is liable to forfeit the sum of two hundred dollars and costs to any person who sues for the same.

<sup>2</sup> Every one is guilty of a misdemeanor and liable to a penalty of one hundred dollars and to three months' imprisonment who, at any election, either provides or furnishes drink or other refreshment at the expense of a candidate, to any elector during such election, or pays for, procures or engages to pay for, any such drink or other refreshment.

<sup>1</sup> R. S. C. c. 8, s. 86. See also R. S. C. c. 106, s. 77.

<sup>2</sup> R. S. C. c. 8, ss. 79, 82; see also R. S. C. c. 106, ss. 71, 73. Offenders are also liable to disabilities as to voting, being elected, &c.

With reference generally to offences against *The Dominion Elections' Act*, it will be observed that some are declared to be misdemeanors, and in respect of others the offender is liable to a pecuniary penalty. By the 106 Section it is provided that all penalties and forfeitures (other than fines in cases of misdemeanors) imposed by the Act shall be recoverable with costs by any person who sues for the same in a court of competent jurisdiction, and if default is made in payment thereof the offender is liable to imprisonment for any term less than two years. Such cases would, however, fall within the rule mentioned in the note to Article 153, and the offender might be proceeded against by indictment. By R. S. C. c. 9, ss. 80-83, provision is made for the summary trial of persons guilty of corrupt practices at elections, under which any offender on conviction is liable to three months' imprisonment with or without hard labor, and to a fine of two hundred dollars and costs, and in default of payment to a further term of three months' imprisonment (s. 82).

As to imprisonment in case of misdemeanors where no special provision is made, see Art. 17.

In addition to the offences mentioned in Articles 166-171, various others are created by the Act (R. S. C. c. 8). Of these the following are punishable by fines recoverable by suit in a court of competent jurisdiction:—Elector taking ballot paper out of polling station (s. 48); violating provisions as to secrecy (s. 70); refusing to deliver up offensive weapon to returning officer (s. 76, Art. 108); selling spirituous liquors within polling district on election day (s. 83); paying for conveyance of voters to the poll, &c., (s. 88). By 51 Viet. (D.) c. 11, s. 13, further provisions are made to secure secret voting, violations of which are punishable on summary conviction. The following offences are declared to be misdemeanors:—Carrying arms, &c., on election day (s. 78, Art. 109); carrying flags, &c. (s. 80); wearing favors, (s. 81); and paying election expenses otherwise than through agent (s. 118).

As to batteries committed on election day within two miles of polling place, see s. 77 (Art. 320); and as to stealing or injuring election documents, see Articles 405, 600.

*The Canada Temperance Act* (R. S. C. c. 106, ss. 64-83,) contains provisions as to offences in respect of elections held under that Act similar to those enacted in the Dominion Elections Act, from which the former have been copied.

<sup>1</sup> ARTICLE 170.

## PERSONATION AT ELECTIONS.

<sup>2</sup> Every one who, at an election under *The Dominion Elections Act*,

(a.) applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead, or of a fictitious person; or

(b.) having voted once at any such election, applies at the same election for a ballot paper in his own name—

Is guilty of personation and liable to a penalty of two hundred dollars and to six months' imprisonment.

<sup>3</sup> Every one who aids, abets, counsels or procures the commission by any person of the offence of personation is liable to the same punishment.

<sup>4</sup> Every candidate who corruptly, by himself or by or with any other person on his behalf, compels or induces or endeavors to induce any person to personate any voter, or to take any false oath in any matter wherein an oath is required under the said Act, is guilty of a misdemeanor, and shall, in addition to any other punishment to which he is liable for such offence, forfeit the sum of two hundred dollars to any person who sues for the same.

<sup>5</sup> Every one who, at an election under *The North-West Territories Representation Act*, tenders a vote in the name of some other person, whether such name is that of a person living or dead, or a fictitious person, or having

<sup>1</sup> S. D. Art. 368 B.

<sup>2</sup> R. S. C. c. 8, s. 89; 35 & 36 Vict. c. 33, s. 24. See also R. S. C. c. 105, s. 82. The offence of personation, or aiding, &c., the commission of the offence, is under the Act of the United Kingdom (46 & 47 Vict. c. 51, s. 6 (2)) a felony. A person who applies for a ballot in the name by which he is described on the register of voters, although that is not his name of origin or the name by which he is generally known, does not commit personation; *R. v. Fox*, 16 Cox C. C. 166. It is not an indictable offence at common law to personate a voter at a municipal election; *R. v. Hogg*, 25 U. C. Q. B. 66.

<sup>3</sup> R. S. C. c. 8, s. 103. See also R. S. C. c. 105, s. 82.

<sup>4</sup> R. S. C. c. 8, s. 90. See also R. S. C. c. 105, s. 83.

<sup>5</sup> R. S. C. c. 7, s. 65.



voted once at any such election, tenders a vote at the same election, is guilty of personation, and is liable to a penalty of six hundred dollars, and to six months' imprisonment.

ARTICLE 171.

FORGERY OF BALLOT PAPERS, AND OTHER OFFENCES  
RESPECTING THE SAME.

<sup>1</sup> Every one who,—

(a.) forges, counterfeits, fraudently alters, defaces or fraudulently destroys any ballot paper or the initials of the deputy returning officer signed thereon ; or

(b.) without authority supplies any ballot paper to any person ; or

(c.) fraudulently puts into any ballot box any paper other than the ballot paper, which he is authorized by law to put in ; or

(d.) fraudulently takes out of the polling place any ballot paper ; or

(e.) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election ; or

(f.) attempts to commit any offence specified in this Article—

Is guilty of a misdemeanor ; and, if he is a returning officer, deputy returning officer or other officer engaged at the election, is liable to a fine of one thousand dollars and in default of payment to imprisonment for any term less than two years, and if he is not any such officer to a fine of five hundred dollars, and in default of payment to six months' imprisonment.<sup>2</sup>

<sup>1</sup> R. S. C. c. 8, s. 100; 35 & 36 Vict. c. 83, s. 3. See also R. S. C. 106, s. 85.

<sup>2</sup> With or without hard labor.

<sup>1</sup> ARTICLE 172.

## DEFINITION OF OFFICE.

[The word "office" in articles 173 and 174 includes

<sup>2</sup> Every office in the gift of the crown or of any officer appointed by the crown, and all commissions, civil, naval and military, and all places or employments in any public department or office whatever in any part of Her Majesty's dominions whatever, and all deputations to any such office and every participation in the profits of any such office or deputation.

<sup>3</sup> ARTICLE 173.

## SELLING OFFICES.

<sup>4</sup> Every one commits a misdemeanor who does any of the following things in respect of any office, or any appointment to or resignation of any office, or any consent to any such appointment or resignation, that is to say, every one who directly or indirectly

(a.) sells the same, or receives any reward or profit from the sale thereof, or agrees to do so;

(b.) purchases, or gives any reward or profit for the purchase thereof, or agrees or promises to do so.

<sup>5</sup> Whoever commits either of these misdemeanors, upon its commission forfeits to the Queen any right which he may have in the office, and is disabled to hold it for life, and it is not lawful for the Queen to dispense him from such disability.]

<sup>1</sup> S. D. Art. 132.

<sup>2</sup> [5 & 6 Edw. 6, c. 16; 49 Geo. 3, c. 126, s. 1.]

<sup>3</sup> S. D. Art. 133.

<sup>4</sup> [49 Geo. 3, c. 126, s. 3, greatly condensed.] *R. v. Mercer*, 17 U. C. Q. B. 602; *R. v. Mootie*, 20 U. C. Q. B. 389.

<sup>5</sup> [5 & 6 Edw. 6, c. 16, s. 1; 49 Geo. 3, c. 126, s. 2; *Ingram's Case*, 3 Inst. 154. The 5 & 6 Edw. 6, c. 16, s. 1, is repealed as to offices in the Customs by 6 Geo. 4, c. 105, s. 10. It was, however, extended to offices in the Customs as well as to many others by 49 Geo. 3, c. 126. I do not quite understand the result of this. The present Customs Act, 39 & 40 Vict. c. 36, throws no light on the subject.]

<sup>1</sup> ARTICLE 174.

## MAKING INTEREST FOR OFFICES FOR REWARD.

<sup>2</sup> [Every one commits a misdemeanor who does any of the following things directly or indirectly :—

(a.) receives or agrees to receive any reward or profit for any interest, request, or negotiation about any office, or under pretence of using any such interest, making any such request or being concerned in any such negotiation ;

(b.) gives or procures to be given any profit or reward, or makes or procures to be made any agreement for the giving of any profit or reward, for any such request or negotiation as aforesaid ;

(c.) solicits, recommends, or negotiates in any manner as to any appointment to or resignation of any office in expectation of any reward or profit ;

(d.) <sup>3</sup> keeps any office or place for transacting or negotiating any business relating to vacancies in or the sale or purchase of or appointment to or resignation of offices.]

<sup>1</sup> S. D. Art. 134.

<sup>2</sup> 49 Geo. 3, c. 126, s. 4.

<sup>3</sup> *Ibid.* s. 5.

## CHAPTER XV.

MISLEADING JUSTICE—PERJURY—FALSE SWEARING—  
SUBORNATION—ADMINISTERING EXTRA-JUDICIAL  
OATHS—FALSE CERTIFICATE AS TO EXECUTION.

ARTICLE 175.

PERJURY DEFINED.

<sup>3</sup> [PERJURY is an assertion upon an oath duly administered in a judicial proceeding, before a competent <sup>4</sup> court, of the truth of some matter of fact, material to the question depending in that proceeding, which assertion the assertor does not believe to be true when he makes it, or on which he knows himself to be ignorant.

<sup>5</sup> In this definition, the word "oath" includes every affirmation which any class of persons is by law permitted to make in place of an oath.

<sup>6</sup> The expression "duly administered" means administered in a form binding on his conscience, to a witness legally called before them by any court, judge, justice,

<sup>1</sup> The 18th section of *The Chinese Immigration Act* (R. S. C. c. 67) prohibits the organization of courts composed of Chinese persons for the determination of offences committed by them. The offence is a misdemeanor punishable by twelve months' imprisonment, or a fine of five hundred dollars, or both.

<sup>2</sup> S. D. Art. 135. [See 3 Hist. Cr. Law, pp. 240-50.

<sup>3</sup> 3rd Inst. 167; 1 Hawk. P. C. 429-435; 3 Russ. Cr. 1, &c., and see note, 5th Report, C. L. C. 28. Draft Code, s. 119.] False evidence given upon an examination in the absence of the authority competent to hold such examination is not perjury; *R. v. Lloyd*, L. R. 19 Q. B. D. 213; 16 Cox C. C. 235; *R. v. Gibson*, 7 R. L. 573.

<sup>4</sup> *R. v. Doty*, 13 U. C. Q. B. 308; *R. v. Row*, 14 U. C. C. P. 307; *R. v. Gagnon*, 17 U. C. C. P. 530; *R. v. Martin*, 21 L. C. J. 156; *McAdam v. Weaver*, 2 Kerr 173; *R. v. McIntosh*, 1 Han. 371; *R. v. Leonard*, 3 L. N. 138, 211.

<sup>5</sup> R. S. C. c. 1, s. 7 (28.) [Many statutes to this effect have been passed. See in particular 32 & 33 Vict. c. 68, s. 4; 33 & 34 Vict. c. 49; and see statutes as to particular religious bodies collected in 3 Russ. Cr. 26-9.

<sup>6</sup> See 14 & 15 Vict. c. 99, s. 16, passed to remove doubts in the question by whom an oath might be administered, 3 Russ. Cr. 3. As to using a form binding on the witness's conscience see 1 & 2 Vict. c. 105; *Omichund v. Barker*, Willes 538, 1 Sm. L. C. 455.]

[officer, commissioner, arbitrator, or other person, who by the law for the time being in force, or by consent of the parties, has authority to hear, receive, and examine evidence.

<sup>1</sup> The fact that a person takes an oath in any particular form is an admission that he regards it as binding on his conscience.

<sup>2</sup> The expression "judicial proceeding" means a proceeding which takes place in or under the authority of any court of justice, or which relates in any way to the administration of justice, or which legally ascertains any right or liability.

<sup>3</sup> A proceeding may be judicial although the person accused in it was brought before the court by which the proceeding is held by an irregular warrant.

<sup>4</sup> The word "fact" includes the fact that the witness holds any opinion or belief.

<sup>5</sup> The word "material" means of such a nature as to affect in any way, directly or indirectly, the probability of anything to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted.]

<sup>6</sup> All evidence and proof whatsoever, whether given or made orally, or by or in any affidavit, affirmation, declaration, examination or deposition, is deemed material with respect to the liability of any person proceeded against for wilful and corrupt perjury, or for subornation of perjury.

<sup>1</sup> [*Sells v. Hoare*, 3 B. & B. 232; 7 Moody 36.

<sup>2</sup> Illustrations (2), (3), (4).] The administering of an oath by a returning officer to a voter at a civic election, is not a judicial proceeding; *Thomas v. Platt*, 1 U. C. Q. B. 217. Wilful false swearing in an affidavit made in a judicial proceeding, and sworn before a commissioner duly appointed, is perjury; *Milner v. Gilbert*, 3 Kerr 617; and it is not necessary that the affidavit be used. The offence is complete on the false swearing; *Milner v. Gilbert*, 1 Allen 51.

<sup>3</sup> [*R. v. Hughes*, L. R. 4 Q. B. D. 614.

<sup>4</sup> Illustration (5).

<sup>5</sup> Illustrations (6), (7).]

<sup>6</sup> R. S. C. c. 154, s. 5; *R. v. Ross*, 28 L. C. J. 231; 1 M. L. R. 227; *R. v. Murphy*, 9 L.N. 96.

*Illustrations.*

[(1.) A swears that certain goods are of a certain value.

<sup>1</sup> A is entirely ignorant upon the subject. A is guilty of perjury whether the goods are of that value or not.

The goods are not of that value, and A knows it. A has committed perjury.

<sup>2</sup> The goods are of that value, but A believes that they are not. A has committed perjury.

The goods are not of that value, but A believes that they are. A has not committed perjury.

(2.) <sup>3</sup> A proceeding before a local marine board sitting under the Merchant Shipping Act, 1854, and having power to suspend or cancel the certificates of the masters and mates of ships, is a judicial proceeding.

(3.) <sup>4</sup> An inquiry before a sheriff as to the amount of damages is a judicial proceeding.

(4.) <sup>5</sup> An inquiry before a justice of the peace as to making a man find sureties for the peace is a judicial proceeding.

(5.) <sup>6</sup> A swears that he thinks that certain words are in his handwriting. The jury find that he did not think so. A commits perjury.

(6.) <sup>7</sup> A, a witness under cross-examination, denies an imputation which goes to his credit only. B is improperly permitted to contradict A. B swears falsely. B commits perjury on a material fact.

(7.) <sup>8</sup> A falsely swears that he has examined a paper, alleged to be a copy, with an original will, in order to make the copy admissible. The paper is not put in evidence, and it would not have been admissible if it had been tendered. A commits perjury on a material fact.

<sup>9</sup> ARTICLE 176.

## SUBORNATION OF PERJURY.

<sup>10</sup> Subornation of perjury is procuring a person to commit a perjury, which he actually commits in consequence of such procurement.]

<sup>1</sup> [*R. v. Mawbey*, 6 T. R. 687.

<sup>2</sup> *Gurney's Case*, 3 Inst. 188.

<sup>3</sup> *R. v. Tomlinson*, L. R. 1 C. C. R. 49.

<sup>4</sup> 1 Hawk. P. C. 430.

<sup>5</sup> [*Ibid.*] See also *R. v. Walker*, 21 U. C. Q. B. 34; *R. v. Mason*, 29 U. C. Q. B. 431.

<sup>6</sup> [*R. v. Schlesinger*, 10 Q. B. 670.

<sup>7</sup> *R. v. Gibbon*, L. & C. 109. In the later case of *R. v. Tyson*, L. R. 1 C. C. R. 107, *R. v. Gibbon* was followed, but the facts are not so strong. See, too, *R. v. Mullany*, L. & C. 593.

<sup>8</sup> *Philpott's Case*, 2 Den. C. C. 302, 309.]

<sup>9</sup> S. D. Art. 136.

<sup>10</sup> [If the perjury is not committed, the crime is incitement; see Article 50. See also 1 Hawk. P. C. 435. c. 27, s. 10. Draft Code, s. 119.]

<sup>1</sup> ARTICLE 177.

## PUNISHMENT OF PERJURY AND SUBORNATION.

<sup>2</sup> Perjury and subornation of perjury are misdemeanors, and every one who commits either is liable to a fine in the discretion of the court and to fourteen years' imprisonment.<sup>3</sup>

<sup>4</sup> ARTICLE 178.

## FALSE SWEARING.

<sup>5</sup> [Every one commits a misdemeanor who swears falsely before any person authorized to administer an oath upon a matter of public concern, under such circumstances that the false swearing if committed in a judicial proceeding would have amounted to perjury.]

*Illustrations.*

(1.) <sup>6</sup> A takes a false oath before a surrogate in order to obtain a marriage license. A commits a misdemeanor.

(2.) <sup>7</sup> A takes a false oath before commissioners appointed by the king to inquire into cases in which a royal grant was required to confirm title to lands. A commits a misdemeanor.

(3.) <sup>8</sup> A swears a false affidavit under the Bills of Sale Act (17 & 18 Vict. c. 36). A commits a misdemeanor.]

## ARTICLE 179.

## FALSE STATEMENTS—WILFUL OMISSIONS IN AFFIDAVITS, &amp;c.

<sup>9</sup> Every one is guilty of perjury who  
(a.) having taken any oath, affirmation, declaration or

<sup>1</sup> S. D. Art. 137.

<sup>2</sup> R. S. C. c. 154, s. 1.

<sup>3</sup> [The punishment at common law was whipping, imprisonment, fine, and pillory.]

<sup>4</sup> S. D. Art. 138. As to forging instruments admissible in evidence and tendering them in proof, &c., see Art. 505.

<sup>5</sup> [See Cases in Illustrations. Draft Code, s. 122.

<sup>6</sup> *Chapman's Case*, 1 Den. C. C. 452.

<sup>7</sup> Hobart, 62. This case is given by Hawkins, 1 P. C. 490, as an instance of perjury in a proceeding not judicial; but this, I think, is a misconception.

<sup>8</sup> *R. v. Hodgkiss*, L. R. 1 C. C. R. 212.]

<sup>9</sup> R. S. C. c. 154, s. 2.

affidavit in any case in which by any Act or law in force in Canada, or in any Province of Canada, it is required or authorized that facts, matters or things be verified, or otherwise assured or ascertained, by or upon the oath, affirmation, declaration or affidavit of any person, wilfully and corruptly, upon such oath, affirmation, declaration or affidavit, deposes, swears to or makes any false statement as to any such fact, matter or thing; or

(b.) knowingly, wilfully and corruptly, upon oath or affirmation, affirms, declares, or deposes to the truth of any statement for so verifying, assuring or ascertaining any such fact, matter or thing, or purporting so to do, or knowingly, wilfully and corruptly takes, makes, signs or subscribes any such affirmation, declaration or affidavit, as to any such fact, matter or thing,—such statement, affidavit, affirmation or declaration being untrue, in the whole or any part thereof; or,

(c.) knowingly, wilfully and corruptly omits from any such affidavit, affirmation or declaration, sworn or made under the provisions of any law, any matter which, by the provisions of such law, is required to be stated in such affidavit, affirmation or declaration.

#### ARTICLE 180.

##### MAKING FALSE AFFIDAVIT OUT OF PROVINCE IN WHICH IT IS USED.

<sup>1</sup> Every person who wilfully and corruptly makes any false affidavit, affirmation or declaration, out of the Province in which it is to be used, but within Canada, before any person authorized to take the same, for the purpose of being used in any Province of Canada, is guilty of perjury in like manner as if such false affidavit, affirmation or declaration were made before a competent authority in the Province in which it is used or intended to be used.

<sup>1</sup> R. S. C. c. 154, s. 3; 18 & 19 Vict. c. 42, s. 4.



## ARTICLE 181.

## ADMINISTERING OATHS WITHOUT AUTHORITY.

<sup>1</sup> Every justice of the peace or other person who administers, or causes or allows to be administered, or receives or causes, or allows to be received, any oath, affidavit or solemn affirmation, touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force at the time being, or authorized or required by any such law, is guilty of a misdemeanor and liable to a fine not exceeding fifty dollars, or to imprisonment for any term not exceeding three months.

<sup>2</sup> ARTICLE 182.<sup>3</sup> MAINTENANCE.

<sup>4</sup> [Maintenance is the act of assisting the plaintiff in any legal proceeding in which the person giving the assistance has no valuable interest, or in which he acts from any improper motive.

Champerty is maintenance in which the motive of the maintainer is an agreement that if the proceeding in which the maintenance takes place succeeds, the subject matter of the suit shall be divided between the plaintiff and the maintainer.

A common barrator is one who habitually moves,

<sup>1</sup> R. S. C. c. 141, s. 1; 5 & 6 Wm. 4, c. 62, s. 13.

<sup>2</sup> S. D. Art. 141. See Appendix, Note III.

<sup>3</sup> [In the earlier editions of this work I included under this head the offence of selling pretended titles. The whole matter is so indefinite, and partakes so much more of the nature of a civil penalty than of a crime, that I have left it out. The law upon the subject will be found in 32 Hen. 8, c. 9. See *Jenkins v. Jones*, L. R. 9 Q. B. D. 123, on the effect of 8 & 9 Vict. c. 106 upon 32 Hen. 8, c. 9, and *Kennedy v. Lyell*, L. R. 15 Q. B. D. 491, on the meaning of a "pretended title."

<sup>4</sup> 1 Russ. Cr. (5th ed.) 351-60. As to barratry, 362-3. See also 1 Hawk. P. C. 454-466, and Note III. in Appendix. See also 3 Hist. Cr. Law, 234-40. The old Statute of Conspirators, 33 Edw. 1, and many other ancient statutes (3 Edw. 1 c. 18; 13 Edw. 1 c. 49; 1 Edw. 3, st. 2, c. 14; 20 Edw. 3, c. 4; 1 Ric. 2, c. 4; 7 Ric. 2, c. 15; 32 Hen. 8, c. 9; 4 Edw. 3, c. 11) refer to these offences, but do not throw much light on their nature.]

[excites, or maintains suits or quarrels, either at law or otherwise.

Every one who commits maintenance, or champerty, or is a common barrator, is guilty of a misdemeanor.

<sup>1</sup> Every one who sues any person in the name of a fictitious plaintiff, or in the name of a real person but without his authority, commits a misdemeanor, and must, upon conviction thereof, be imprisoned for six months.

<sup>2</sup> ARTICLE 183.

CONSPIRACY TO DEFEAT JUSTICE—DISSUADING WITNESSES FROM TESTIFYING.

Every one commits a misdemeanor who

(a.) <sup>3</sup> conspires with any other person to accuse any person falsely of any crime, or to do anything to obstruct, prevent, pervert, or defeat the course of justice; or

(b.) <sup>4</sup> in order to obstruct the due course of justice, dissuades, hinders, or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence or endeavors to do so; or

(c.) <sup>5</sup> obstructs or in any way interferes with or knowingly prevents the execution of any legal process civil or criminal.]

ARTICLE 184.

SIGNING FALSE DECLARATION RESPECTING EXECUTION OF JUDGMENT OF DEATH.

<sup>6</sup> Every one who knowingly and wilfully signs any

<sup>1</sup> [18 Eliz. c. 5, s. 4 (redrawn and modernized).]

<sup>2</sup> S. D. Art. 142.

<sup>3</sup> Every one convicted of an offence against clause (a.) is liable to seven years' imprisonment; R. S. C. c. 173, s. 26; [Wright on Conspiracies, 30; 14 & 15 Viet. c. 100, s. 29; cf. Draft Code, ss. 126, 7, 8.

<sup>4</sup> 1 Hawk. P. C. 64; *R. v. Lady Lawley*, Strange, 904; and see 5th Rep. C. L. C. Art. 57.] See also R. S. C. c. 106, s. 121, as to tampering with witnesses in any prosecution under *The Canada Temperance Act*.

<sup>5</sup> [Cases collected in 1 Russ. Cr. 558-61.]

<sup>6</sup> R. S. C. c. 181, s. 19.

false certificate or declaration required with respect to the execution of judgment of death on any prisoner is guilty of a misdemeanor, and liable to imprisonment for any term less than two years.