Library and Archives Canada

Access to Information, Privacy and Personnel Records Division
395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque et Archives Canada

Division de l'accès à l'information, de la protection des renseignements personnels et des documents du personnel
395, rue Wellington
Ottawa (Ontario)
K1A 0N4

February 14, 2007

Your file - Votre référence

Mr. Francois Lareau
55 - 890 Cahill Drive West
Ottawa, Ontario
K1V 9A4

Our file - Notre référence
A-2006-00395 / cbo

Dear Mr. Lareau:

This is in response to your request submitted under the *Access to Information Act* on September 20, 2006 for a copy of Sedgewick's letter to Thompson dated 13 February 1893 (letter, with annex, addendum). Your request was received in Library and Archives Canada on September 25, 2006.

Following your complaint to the Office of the Information Commissioner and their recommendation to provide you with the material, a total of 34 pages were examined and I am pleased to release them to you in their entirety. No exemptions or exclusions have been applied pursuant to the *Access to Information Act*. This completes the processing of your request.

Should you have any questions concerning the processing of your request, I can be reached at (613) 996-9775.

Sincerely,

Manager

Encl.

CC: Christopher Montgomery

Canada

Office of the Information Commissioner of Canada
Commissariat à l'information du Canada

112 Kent Street, Ottawa, Ontario K1A 1H3
(613) 995-2410
1-800-267-0441
Fax (613) 995-1501

112, rue Kent, Ottawa (Ontario) K1A 1H3
(613) 995-2410
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Fax (613) 995-1501

November 27, 2006

Our file: 57037/001
Institution's file: A-2006-00395/cbo

Mr. François Lareau
55 - 890 Cahill Drive West
Ottawa ON K1V 9A4

Dear Mr. Lareau:

This is to confirm receipt of your letter of November 6, 2006.

Your complaint against Library and Archives Canada has been assigned to Christopher Montgomery, an investigator in our office.

Should you have any questions about how the investigation is being handled, or if you have any representations or additional information about your complaint, please feel free to call the investigator at any time.

Yours sincerely,

Eric Murphy
Correspondence Officer

François Lareau
55-890 Cahill Dr. W.
Ottawa, ON, K1V 94

Tel. (613) 521-3689 (home)
(613) 947-6569 (office)

6 November 2006

Office of the Information Commissioner
Place de Ville, 22nd Floor, Tower B
112 Kent St., Ottawa, K1A 1H3

Ms. / Sir:

I wish to make a complaint against Library and Archives Canada for refusal to process my ATI request.

I attach a copy of the relevant documents.

Sincerely,

François Lareau

Library and Archives
Canada

Access To Information and Privacy
395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque et Archives
Canada

Accès à l'information et Protection des renseignements personnels
395, rue Wellington
Ottawa (Ontario)
K1A 0N4

October 10, 2006

Your file - Votre référence

Mr. Francois Lareau
55 - 890 Cahill Drive West
Ottawa, Ontario
K1V 9A4

Our file - Notre référence
A-2006-00395 / cbo

Dear Mr. Lareau:

On September 25, 2006, we received a request from you for a copy of Sedgewick's letter to Thompson dated 13 February 1893 (letter, with annex, addendum). As you may know, your request effectively invoked the *Access to Information Act*.

These records are available to the general public without restrictions and without recourse to the *Access to Information Act.* Your will find your $5 application fee enclosed.

As a research institution, Library and Archives Canada maintains an informal service that deals with request such as yours. I have forwarded your request to our Client Services Division for action by the appropriate section.

You are entitled to bring a complaint to the Office of the Information Commissioner regarding the processing of your request. Notice of complaint should be addressed to:

Office of the Information Commissioner
Place de Ville, 22nd Floor, Tower B
112 Kent Street
Ottawa, ON K1A 1H3

Telephone: (613) 995-2410
Toll-free: 1-800-267-0441

If you have any questions concerning the processing of your request, you should direct them to: Client Service Division, Library and Archives Canada, 395 Wellington St., Ottawa, ON, K1A 0N4, Tel. (613) 996-5115 or (866) 578-7777, Fax: (613) 995-6274 or you may contact me at (613) 996-3125.

Sincerely,

Céline Bourgeois
Senior Analyst

François Lareau
55-890 Cahill Dr. W.
Ottawa, ON, K1V 94

Tel. (613) 521-3689 (home)
(613) 947-6569 (office)

20 September 2006

Library and Archives Canada
Access to Information and privacy Coordinator
395 Wellington St., Room 650
Ottawa K1A 0N3

Ms. / Sir:

I enclosed a cheque of $5.00 for an *Access to Information Act* request.

Please send me a copy of Sedgewick's letter to Thompson dated 13 February 1893 (letter, with annex, addendum). It should be around 32 p. in total.

Background information

These documents are in the files of the national archives. On 20 January 1893, Judge Taschereau, a Supreme Court of Canada judge, writes a long letter to Sir Thompson, the federal minister of Justice. The letter criticizes some provisions of the first Canadian *Criminal Code* about to come into force.

Sedgewick, deputy minister of the Department of Justice, prepares for Thompson, his superior, a reply dated 13 February 1893.

I attach pages from Brown's book dealing with the story which should prove helpful in locating the documents.

Sincerely,

François Lareau

Dear Mr. J.

In drawing up the Supreme Court has pointed out to me a mistake in section 853 of the Criminal Code which, I think, ought to be corrected by the Amending Act of this Session. The reference in the last clause of that section ought to be to section 563 not to section 560.

The reference was right in the Bill of 1891 (See Section 847 of that Bill), but in the Bill of 1892 it was wrong (See Section 853) and the mistake seems to have escaped observation.

It is of great importance, I think, as the section as it stands will be very puzzling to magistrates, and indeed, might vitiate their proceedings in many cases.

The amendment might be made by inserting in the schedule the following:—

Memo for Sir John Thompson.

We have gone carefully and critically over every section commented on by Mr. Justice Taschereau in his letter and notes. Of the I20 sections to which the Judge asks attention we have discovered II sections only which suggest amendment, and these amendments are necessary in two or three cases only, although on the whole, we think them all desirable. I will refer to these sections and amendments.

Section I33. Insert "indictable" before "offence" in first line. A clerical error; amendment not necessary, but perhaps desirable.

Section I8I. Change "and" to "or" in second line. There was no mistake here; old law retained; amendment perhaps desirable.

Section I83. Strike out "and everyone" in line 3 and insert "or".

A slip occasioned by altering the form of original section and specifying the punishment before the offenee.

Section 2I5. Add to section "unless the offence amounts to culpable homicide".

Amendment expedient as an ignorant magistrate might otherwise be misled.

Section 266. Transfer the "carnal knowledge" clause to the "interpretation clauses" so as to remove doubts as to its general application.

Section 543. We adopt the Judge's suggestion, by amending section 613. This, however, not necessary.

Section 684. In Clause "C", change "I2" to "I3".

A clerk's error, but not material.

Section 705. Amend clerical error.

Section 735. Amend last two lines of sub-section 4, by giving the correct reference.
A law clerk's error.

Error

Section 838 — at present prescribes that offences committed before the Ist of July are to be tried under old procedure. On reflection we think the new procedure should apply to all offences, whether before or after the Act comes in force, and propose to amend accordingly.

Error

You can state positively that the foregoing are the only amendments which his long criticism would seem in any way necessarily to call for, and you may, therefore, point out the absurdity of his suggestion that Parliament should temporarily withdraw the code or postpone the date of its coming into force.

To this memo I annex full notes dealing with everyone of the Judge's criticisms.

13-2-23

Ottawa. 3rd February 1898

MEMORANDUM AS TO MR. JUSTICE TASCHEREAU'S OPEN LETTER ON THE CRIMINAL CODE.

At the outset it will be well to admit that in the Code as passed we ourselves have discovered, and others have discovered as well, several defects and omissions which it will be well when a convenient opportunity arises to cure by appropriate legislation. I will point out as I proceed such of the Judge's criticisms as require consideration.

Judge Taschereau adopts as his idea of a code what the Chief Justice of England said in 1879 the main idea being that a perfect code should contain the whole law upon the subject in respect to which it deals so that even a layman might find the whole law within the four corners of the volume. That may be right in theory. It has never been found possible in practice. The Judge observes that the English Bill proposing to adopt the Code was dropped in 1880 in consequence of defects. This will be ~~I do not so understand it, but it has never been adopted by the English Parliament principally for want of time (See References in Margin)~~. The rule followed in the preparation of the Code--and it is submitted that it is a good rule--was that laid down by the English Commissioners in the report of 1878, page 12, et seq, and in that report they state several classes of offences which are left out. For example,—

(a) They leave out a number of statutes creating indictable offences which are rather historical monuments of the political

and

and religious struggles of former times than parts of the criminal law.

(b) A number of statutes creating indictable offences which could not perhaps be said to be obsolete but were passed under special circumstances and which are seldom or ever enforced.

(c) Statutes creating indictable offences ~~xxxx~~ of so special a nature and so closely connected with branches of the law which have little or nothing to do with crime commonly so called, that it seemed better to leave them as they stood than to introduce them into the Criminal Code, for instance the Slave Trade Act, The Foreign Enlistment Act, Customs Act &c., &c.' &c.

(d) A number of statutes containing clauses of a penal nature intended to sanction their other provisions.

(e) Irish Peace Preservation Acts, The White Boy Acts, &c. &c. &c

Our Code instead of being less complete than the English draft code is more complete. In the former only indictable offences were included. ~~Unless~~ More we have inserted those general offences against the criminal law which are punishable by summary conviction. A bill was submitted to the Canadian Parliament in 1885 codifying the English law but ours is much fuller even than that.

Mr.Justice Taschereau goes on to say

> That our code of 1892 is deficient, in respect of completeness, to a still greater degree than that one in reference to which the Lord Chief Justice so expressed his views on the essential requisites of a codification, must, it seems to me, be conceded, when it is taken into consideration that, whilst the latter superseded all the ~~former~~ common law, the former leaves all others in force, with, besides, a number of important enactments, scattered all over the statute book. So that, in future, anyone desirous of ascertaining what is, on a given point, the criminal law of the country will have to refer first, to the common law, secondly, to our unrepealed statutory law, thirdly, to the case law, fourthly, to the Imperial special statutory enactments on the subject in force in Canada, not even alluded to in the code, and fifthly, to the Code. I shall not attempt to here enter into details on what, to anyone at all conversant with the subject, appears <u>on the face of the record</u>"

The complaint here is practically that the law is found in too many places. It is stated apparently as a matter of reproach that anyone wishing to know the criminal law must be referred to

(1) The criminal law (2) the unrepealed statute law (3) Case law (4) Imperial statutes in force in Canada, and (5) the code of 1892.

Now looking at these in the reverse order and see how the matter can be bettered.

(5) Of course we must have our code; that will not be disputed.

(4) The Code itself repealed all Imperial statutes relating to crime which we have power to repeal and which are not embodied in the code. It will not, however, I suppose, affect those Imperial enactments which are made expressly applicable to the colonies. It will not at all events repeal such acts as were passed after Confederation. It is foolishness therefore to expect that Imperial enactments having the force of law in Canada by virtue of express provisions therein contained making them applicable to Canada should be inserted as part

of

of the code. It would have been ultra vires of the Parliament to do so.

(3) Mr.Justice Taschereau would want all case law inserted in the code. For my part,I cannot see how we can possibly get rid of case law even with a perfect code,but even supposing if we could ~~get rid of case law~~ by enacting it in the code,it would immediately begin to grow again,and assert itself.

(2) As far as unrepealed Canadian statutes containing offences are concerned,as the Commissioners pointed out,they cannot all be given a place in a code. The definitions of offences against the customs laws,trade and navigation,inland revenue and many other subjects would lose their force and meaning if translated from their context to the code.

(1) Then as to common law,we thought it was not desirable (inasmuch as it might be unsafe) to do away with the common law. It is however debatable ground. By retaining it,however,there will be no danger that our criminal law will be less lax than it is at present. I do not think/however,that to compel a person to look to the criminal law in order to find whether or not an act is a criminal offence is a very burdensome matter. There is this to be said of the common law that no one need ever look to it to ascertain whether or not an act is criminal. There is no common law offence that does not involve such a breach of moral law ~~but~~ that the offender knows when he commits the offence that he is doing wrong and violating the law. As for students and lawyers and those who are interested tovknow what our laws are it is well that the code should be as full and complete as possible. We have kept that principle in view. No omissions of common law offences have been pointed out that have not been

the

the result of our purpose to omit them.

Mr. Justice Taschereau proceeds to say

> "To cite here a few instances, under the head of omissions, I may more particularly allude to the following offences, which I have not been able to find treated of anywhere; negligent escape, compunding felonies, or offences generally, abortive inciting to commit any of the offences provided for by the code, one maiming himself, either to increase his chances of begging or to avoid military service champerty, malfeasance, or culpable nonfeasance of a public officer in relation to his office; extortion and bribery, generally, various statutory indictible crimes, the number of which I have not ascertained; conspiracy to commit an unlawful, not indictable act. Then, as to accessories before the fact, I find that though section 63 defines what is an accessory after the act, what is an accessory before the act is nowhere to be found. The very name disappears from the law, even in the index."

So far as there is anything in this charge I venture to say that every one of these omissions to which Judge Taschereau refers were considered by us in the preparation of the code, and that the omissions complained of are proper omissions. For example, as to negligent escape-there were provisions as to negligent escape in the bill as submitted to the House by the joint committee. Paragraph 168 was struck out by you and me when dealing with negligent escapes when going over it together privately. We had provided for the case of persons assisting an escape or for peace officers voluntarily or intentionally permitting the escape of a prisoner, (Clause 164 (draft code), or knowingly or wilfully permitting an escape. The clause which we struck out was as follows:

"Everyone is guilty of an indictable offence and liable to "one year's imprisonment who by failing to perform any legal " duty permits a person in his lawful custody on a criminal "charge to escape therefrom"

because we thought we would not subject an officer who had done his best (though his best was not very good) open

to

to a prosecution and that it was sufficient to punish an officer who had voluntarily or intentionally permitted an escape. We did this all the more willingly because we had retained the common law on the subject.

Compounding felonies or Offences generally.

Section 155 of the Act deals with compunding penal actions, the offence of compunding a felony or misprision. Burbidge's Digest, Article 201 was important in relation to its effect upon civil remedies rather than in reference to the prosecution of an offender. By section 534 of the Code the civil remedy is not to be suspended. The offence was previously omitted from the Canadian code, as was also the similar offence defined in Article 202 of Burbidge's Digest, an agreement not to prosecute. We thought it better rather than defining the offence to leave it to the operation of the common law which is criticised at pages 501 and 503 of the 1st Volume of Stephen's history of the Criminal Law. The answer removes to that "compounding felonies" is included in 154(d)

Then as to abortive inciting to commit any of the offences provided for by the code, I beg to refer you to sections 527-529 in which we deal with "conspiracy" to commit an offence and "attempting" to commit an offence. I imagine that where one "incites" another to commit an offence, he may be indicted for "conspiracy" to commit that offence. Besides section 61 provides that "everyone is a party to and guilty of an offence who **** counsels or procures any person to commit the offence". However, these sections 528 and 529 might be amended so as to include "inciting " or "attempting to incite" as well as "attempting" as in the draft English Code, Sections 422-423.

Then as to maiming.

The offence of maiming one's self to supply a pretence for begging or to avoid military service has been left to common law as an offence of an unusual character and altogether unlikely to happen. It is probable that no case of the kind has ever occurred in Canada and no case is cited in Russell. His statement is supported by reference to text writers only. Russell on Crime,1877,Page 981. The offence, however,is included in the New York code,sections 207 and 209.

Then as to champerty-

The offence of champerty and maintenance is deliberately omitted from the code. They are not in the English draft and we did not refer to them as they were more or less obsolete and because it was not worth while to emphasize the fact of their existence by giving them a place in modern legislation.

Malfeasance in office.

The Judge has evidently overlooked section 135 of the code which provides that any public officer is liable to five years imprisonment 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.

Then as to extortion and bribery generally-

Following the English draft we have ommitted any special provision in regard to these offences. It would have been manifestly improper to include in the Criminal Code the provisions of the election law in relation to this subject. They for many reasons form part of the whole of the law relating to elections rather than to the general criminal law.

So to the objection that various Statutory indictable crimes have been omitted. We could not with any propriety have transferred to the Criminal Code the clauses of the election law relating to bribery or the clauses in the Customs and Inland Revenue Acts, where offences against the revenue are made indictable. If these were "Omissions" they are proper ones.

Then as to conspiracy to commit an unlaw act.

Besides section 527, which deals with the conspiracy to commit an indictable offence there are a number of offences of conspiracy to do certain things, and among others to defraud (section 394). Possibly a case might arise that would not be covered by the code, but if so, it may well for the present be left to the Common law.

Then as to accessories, before the fact.

The use of this expression was discontinued because it had ceased to have any appropriate meaning (See English Report 1878, p.19) where the Commissioners say "we have thought it better to discontinue the use of an expression which has ceased to have any appropriate meaning, the law putting accessories before the fact in all respects as principals" (See page 76 of the English Rep. and section 71 of the draft Bill attached, which is the same as section 61 of the code)

Mr. Justice Taschereau then refers to another class of omissions by asking whether a man can be indicted ten timesnfor stealing ten sheep or ten sovereigns. From his statement it would appear that the common law is clear on that question if Lord Hale is any authority. Whether "A" killed "B" and "C" by one shot, he has committed two murders or one murder of two men is not, I should imagine, such a question as Parliament would trouble itself about. Anyone acquainted with the meaning of language, not to say a Judge of the Supreme Court should be able to answer that question.

Then Mr. Justice Taschereau notices a third class of "omissions", namely--Imperial Statutory enactments in force in Canada. He would be a very wise man if he would enlighten us to how we could insert in the code any legislation affecting an Imperial Statute expressly purporting to be in force in Canada.

As to Offences committed outside of Canada (See Burbidges Digest, Art. 1, and note thereto (art.1)

Mr. Justice Taschereau then proceeds to make an observation as to the changes and innovations both in the substantive and in the adjective law and by quoting what a Committee of the House of Commons said on Fitzjames Stephens Bill in 1875, and suggests that these changes were smuggled through Parliament. You will be able to deal with this charge. You know how careful we were, as well before the Joint Committee as in the House to point out any change made by the Bill, either in the common or statute law. He refers, however to a change of the law in respect to infanticide by starvation or neglect of natural duties. There is in this particular case reason for amending the code (See part 16, section 210, 211 and 215). This part of the code was in the original Bill confined to the definition of duties. The punishment for breach of such duties appearing in another part of the Act, part 22. There was no error in including in the definition the words "if the death of such child is caused", and the corresponding words in the other clauses. They ought to be there, and where death ensues from the failure to perform the duty in such cases as are mentioned in Art. 220, the offender is guilty of culpable homicide.

Section 215 has been drafted in too general terms and should conclude with the following or similar words "so that the life of the person under his charge is endangered or his health permanently injured by some such omission". The section should, I think, be redrafte

on the first occasion that offered. ~~In the Bill as originally introduced~~ sections 215, 216 and 217 were taken from a different part of the Bill where they were when first introduced and ordered to be placed where they now are by the Joint Committee, but under present conditions it is probable that section 215 will not occasion any difficulty if it gets a reasonable construction and is confined to cases where death does not ensue though ~~it is critical enough to justify~~ amendment may perhaps be made concerning clauses.

Mr. Justice Taschereau asks whether that portion of section 64 providing that the question of remoteness shall be a question of law has been designedly made.

Parliament had before it Mr. Justice Cockburn's letter(page 19) criticising this provision, and notwithstanding passed it — I suppose, bearing in mind the analogous principle of civil law upon the question of remoteness of damages in civil action, which as I understand are always questions of law. Another change complained of is that certain offences are now made triable at the Quarter Sessions. As you are aware, there was always a very great deal of conflict as to what offences the quarter sessions had a right to try, and in this respect I claim, that the code is a very great improvement upon existing legislation, inasmuch as all such questions are now set at rest. There was clearly no smuggling, so far as a change in the law was concerned. The whole question was fully pointed out and discussed before the Joint Committee and to some extent when the Bill was before the House of Commons. The county courts if New Brunswick, which superseded the sessions have

since 1868 exercised criminal jurisdiction over all cases not capital.

Mr. Justice Taschereau then proceeds to bring the charge of defective classification against the code, giving as instances, the offence of unlawfully digging up a dead body being put under the title of "nuisances," and the separating by eighty sections of the offence of defiling a girl under fourteen (Seq. ~~from~~ with the offence of defiling a girl above fourteen. The first offence is rightly classified under the title of which "offences against public convenience" forms part. ~~(illegible)~~, probably the heading of Part IV ~~of the Part IV~~ might have been larger, as for instance "nuisances and other offences against public inconvenience," but the clause is not out of place. Then as to defiling girls under and over 14 years, section 181, (offences against morality) deals with the seduction of girls between 14 and 16. Section 269, (offences against the person and in connection with rape) deals not with seduction, but with carnally knowing a girl under fourteen. Possibly it might have been inserted with the earlier provision, but is not out of place where it is. The offence in section 269, is allied to rape rather than seduction, because the child is young and cannot consent.

Mr. Justice Taschereau complains that the law in regard to adultery is different in New Brunswick to what it is in other Provinces. This is a matter of small importance so far as the repeal of the old Statutes is concerned. We did not repeal the New Brunswick Act in

1890 when we made incest an offence throughout Canada. No Judge would have any difficulty in knowing that he should follow the code of 1892. . As to adultery we left the law as it was. We even left the law in regard to unlawful societies as it was in the Province of Quebec. In both cases we did this, rather than raise discussions upon questions that were of no importance.

The Judge asks a number of questions why there were certain limitations as to certain offences and no limitations as to others. The answer to all of that is this : That we endeavored as far as possible to preserve the existing Statute law. That was the draftsman's duty. While the Bill was passing through the House an attempt was made--and to some extent a successful one-- to equalize punishments and to adjust limitations.

The Judge speaks generally of redundancy in several instances. I will venture to assert that in each of the cases to which he refers there is a difference in the description and character of the offence. The Judge asks the difference between an attempt to commit sodomy and an assalut with attempt to commit sodomy (See sections 175 and 260) Insection 260, the word"attempt"is a misprint for the word "intent" This is perfectly clear when we look at the section from which it is a copy R.S.C., Sec. 152. There may be an attempt to commit the offence with a person who consents and insuch case there is no assault though there is an attempt. The assault with intent involves an attempt, but an attempt does not

necessarily involve an assault. I should pity the Philadelphia lawyer to whom the Judge refers, who did not know of this difference. Some of the other points to which the Judge refers, I will deal with in commenting on his notes. The Judge charges that on the 1st of July next there will be two sets of law in force. Where is it enacted that the repeal of the Old Statutes takes effect, only on the 2nd ? Section 2 provides that the Act shall come into force on the 1st of July, 1893. Section 981 provides that the Acts specified in the schedule shall from and after the date appointed for the coming into force of this Act be repealed to the extent stated in this schedule. The date therein referred to is the 1st of July. The repealed Acts therefore, are repealed from the 1st of July and after the 1st of July. I would like to know a Judge who would hold that the old laws will be in force on the 1st of July. An amendable mistake discovered immediately after the code was passed, occurs in section 183, but I would suppose that a Judge might give effect even to the section in its present shape when reading it in connection with the provision for which it was substituted as affected by section 983, sub-section 3.

REMARKS ON NOTES.

I do not see why the words "Carnally know" should be defined. They are practically defined in section 266 The next suggestion is that the words"dealtwith" should apply to Justices of the Peace, "inquired of" to the Grad Jury, "tried" to the Petitf Jury and "determined and punished" to the Court. Probably the Act will do its work without such an enactment and the experience of the past suggests that it will also pull through, even if no improvement in the definition of "loaded arms" takes place

Section 5

Dealt with already.

Section 7

This objection is without weight. The principles and rules of the common law in all ordinary cases have been stated and in favor of thelife and liberty of the subject. There has been secured to him as there ought to have been secured to him, the benefit off any defence opened to him at common law, even although this should be of such an unusual character,as not hitherto to have been the subject of any decision. It is not every mind that has such a sublime confidence and conceit in its own powers as to feel safe in declaring that a statement of rules of excuse or justification is so complete as to justify the exclusion of the common law. On this subject generally and the reason for adopting the course that was adopted in the Code(See Report) of the English Commission, ppp 10 & 11, 1878)

Section 11

The reason for the omission complained of is to be found at page 18 ofthe Report just mentioned, where the Commissioners says"we have thought it unadvisable to introduce any express refereence to the well known doctrine, that drunkenness is no excuse for crime, though in particular instances, its existence may show the absence of specified intentoon Reference to the matter might suggest misunderstanding of a dangerous kind".

Section 60

The meaning is very plain and if it had been omitted the complaint would probably have been that another principle of the common law was left out.

SectIon 61

There is nothing in this objection.

Section 64

I venture to say that we may safely leave the law as we have stated it to its operation. It will be time enough to determine the cases suggested when they arrive. It is not likely that anyone will ever be indicted for attempting to murder a man if there is no more evidence that he made the attempt than thatnhe shot at a post.

Section 68

Levying war &c. The objection in thdicases a very cursory or carless examinat'on of the Act criticized. It is necessary to leave sections 6 & 7 of R.S.C., Chap. 146, unrepealed, as the offence is therein stated were triable as well before courts martial. The sections are reprinted in the Appendix to

the Act and are to be found at page 368 of the Code. As to the punishment for the offence, no change has been made in the law. The offender was always as he is now, liable to be sentenced to death. Courts martial had, however as they still have a discretion to impose some other punishment.

Section 70

It was not an oversight that section 70 (conspiracy to intimidate a Legislature) was not extended to the House of Commons. The latter are afforded ample protection by Section 65 and 69.

Sections 99, 100, 247, 248 and 488

The Judge, I fear has not mastered the subject. Sections 247, 248 and 488, represent the earlier law that was enacted for theprotection of persons and private property. Sections 99 and 100 embodied more modern legislation that had for its object the protection of the public and the punishment of dynamiters and others, where attacks were made upon the public and not upon individuals, therefore sections 99 and 100 naturally find their places with Offences against public order, Section 247 and 248 with offences against the person, and section 488 with offences relating to malicious injuries to property. I venture to think that nothing will begained by attempting to put the law all in one section or place and that something would be lost. If the subject could have been so concisely and briefly dealt with, it is somewhat remarkable that the English Parliament in 1883 and the Canadian Parliament in 1885 found it necessary to pass an Act containing similar provisions to supplement the existing law on the subject.

As for the words in section 100 and 248 are said to be absurdities and which in section 100 are "whether any explosion takes place or not, and whether any injury to person or property is actually caused or not" and in section 248 "whether or not any explosion takes place and whether or not any bodily injury is effected," I venture to think they are not. Mr. Justice Taschereau in the 2nd edition of his valuable work on the Criminal law did not publish or, so far as I can see, refer to "the Explosive Substance Act R.S.C., Chap. 150), though it was then in force, but he printed R.S.C., 162, s.23, in which the latter words occur, without further comment than that the words "whether or not any explosion takes place" were not in the Imperial Act (Taschereau p.174)

Section 104

The intent on was to punish smugglers who carry offensive weapons. It is possible the leading idea would have come out better if thesection had run something like this:--Everyone &c. who is found carrying offensive weapons and with any goods &c." but looking to the connection, there can be no doubt as to what the offencee is. Two elements must concur, but the leading one is the carrying of the weapon.

Section 133

The word "indictable" was accidently omitted. It however makes no difference on general principles as all criminal offences are punishable upon indictment, unless otherwise provided.

Sections 144 and 263 These sections should not form one. The offences are distinct. An officer may be re-

sisted or obstructed inways that do not mount to an assault, though such resistance or obstructions may consist in or be accompanied by an assault. But resistance or obstructions to officers in general is an offence against the administration of law and justice and section 144 is rightly placed. The assault is primarily an offence aga against the person, and an assault on a peace officer is properly included with other aggravated assaults. As to the punishment, the assault on a public or a peace officer may be punished by two years' imprisonment. The obstructions of a peace officer by six months imprisonment and a fine. The same punishment was by the Bill as drafted~~approposed~~ for a person who obstructed or resisted a public officer. There was considerable discussion in the House upon this subject, and a compromise was eventually come to between the life sentence permitted by R.S.C., chapter 32 section 231 (Customs Act) and R.S.C., chapter 181, section 24 and thesentence of five years prescribed by the Inland Revenue Act. R.S.C. chapter 34, sections 98 and 99 (See Burbidges Digest Art.316 317 and 17

Section 147

The enactment is not necessarily covered by sedtion 145, subsection 3. The same facts might possibly bring an offence with n one or other of the two sections or of sections 148 or 150. Possibly the same ground is covered more than once, but insofar not so as to cause any inconvenience.

Section 155

Previously dealt with

Section 158

Certainly not. The offence is one of cheating or misleading justice. It was properly included with the Substantitive offences and not with procedure of proceedings after conviction. It would be as logical to say that "perjury" should follow proceedings on the trial, because that would give the occasion for commiting the offence.

Section 159

Before dealt with.

Section 155, 175

Before dealt with.

Section 176

Before dealt with.

Section 181

Is a mere verbal criticism.

Section 183

This is a slip which was noticed immediately after the Bill went through and was occasioned by leaving out a few words in the redrafting of the clause

Section 187

The law on this subject in Canada has since 1886, when the enactment was first passed, been as it is probably the "and" should be "or", though an owner who was not also an occupier would not escape if he aided or assisted or acted in the management or control of the premises.

Section 192

At common law any nuisance is punishable by indictment, but hereafter all common nuisances are not to be considered criminal offences. Not to repair a

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highway will not be a crime, though section 193 saves the remedy for the [illegible]. To constitute a crime the nuisance must endanger the lives, safety or health of the public or occasion injury to the person of some individual.. It is a limitation in the law as to what nuisances are crimes, and why might it not happen that by a common nuisance an injury was occasioned to the person of a single individual ? (See Report of English Commission, 1878, p.22)

Section 193

I will refer to this when discussing Proceedure.

Section 194

There could I fancy be no objection to making the offence punishable on summary conviction if it were worth while to do so. I do not think that R.S.C., chapter 107 (Adulteration of food) should be relied upon as covered by this statement of the common law.

Sections 198, 207.

In one case the offence is punishable on indictment and the other on summary conviction, and it is a common thing where that is the case to prescribe a lesser maximum punishment in the latter case.

See 207 defines what a keeper of a disorderly house is. useful if provision giving summary jurisdiction in certain cases to a Police Court or quarter sessions. Long under 198.

Section 198

Covers others than keepers of bawdy houses.

Sections 210, 211 and 215

I have referred to these before.

Section 220, 223

The Act gives so far as the decision

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have gone and covers, I think the case that is put, that is if being in "a critical state of health" is being sick . The cases are discussed in a note ~~xxxxx~~ Article 277 Burbidge's Digest.

Section 239.

The reason for the enactmat of this section is given in the Report of the English Commissioners, 1878 at page 25 and in a marginal note to section 185 and 186 of the Bill accompanying the Report.

Section 242.

"Wilfully and "unlawfully" are not synonomous terms and I know of no rule of drafting that compels one for the sake of uniformity to use but one of the two words. In the instances given they seem to be used appropriately enough. Something I think might be urged in favor of omitting the word "wilfully" in one or more of the cases mentioned and, but not in favor of substituting therefor the word "unlawfully"

Sections 250 and 489

The Judge has misunderstood the object in force of these sections.

Section 250

Punishes with imprisonment for life certain acts done with intent to injure or endanger safety of any person travelling on a railway, that is an offence against the person.

Section 489

Punishes with a like term of imprisonment such acts when done with intent to cause danger to valuable property without endangering life or person.

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(subsection 2) and with five years imprisonment the same acts when done in a manner when likely to cause danger to valuable property without endangering life or person. The danger mentioned in subsection 2 is "danger to valuable property" not "danger to life or person" The offences defined in section 489 are offences against property, not against the person. Obviously the two sections should not form one enactment.

Section 256, 257 and 546.

There is, I think nothing in the suggestion to call for amendment to the Code. The battery is merely a matter of aggravation.

Sections 263, 528, and 529,

The words which are suggested to be added are not, it is submitted necessary. The specific cases mentioned are not affected by the omission. I have already mentioned the confusion of thought which treats an attempt and an assault as the same thing. They may be attempts where there are no assaults. Conspiracy to commit indictable offences as provided for by section 527. The concluding words of 528 will do no harm.

Section 265

Comes from R.S.C., chapter 8 s.77. There is a like provision in R.S.C. chap. 106, s. 69. The provision might very well be extended to a provincial election of theProvinces, if the Provinces would not look upon it as an interference with their rights and they might do so with reason.

Section 266

I think the definition of carnal know-

ledge applies to every section dealing with carnal knowledge.

Section 372, 373, and 374

In Quebec a sheriff may in certain cases sell a greater interest in the Judgment debtor's land, than the latter has and for that reason I fancy it was thought necessary to lay some restraint on the Judge and creditor. In the other Provinces where it is not possible to sell under execution more than the debtor has, no such restraint is necessary.

Section 450

This is a mere verbal criticism. There is something in it doubtless, but these words have been on the Statute for years.

Section 534,

We consider the clause to be within the legislative authority of Parliament and it is not necessary here to be discussed

Section 540

There is not an oversight. It was considered that offences against religion such as blasphemous libels, obstructing clergymen or disturbing public worship, these being offenmes against religion, might properly be tried at the Sessions. For good reasons they were excluded from trying cases of defamatory libel. and so perjury, forgery &c., are intentionally made triable at the Sessions. It is a question between Judge and Parliament.

Section 542

The section does not assume that Canadian courts are competent to try offences committed by foreigners on board any ship within the jurisdiction of the Admiralty of England. Our courts have jurisdiction to try those cases only where our Parliament has given them jurisdiction or where the Imperial Parliament has given them jurisdiction. Speaking in general we have authority to legislate only in respect to Canada and its territorial waters. The Judge suggests that we should have enacted here the provisions of the Imperial Act of 1878, passed in consequence of the decision in the Franconia" case. We could not have effectually legislated in any way repugnant to the Act of 1878. If the criminal Court here should attempt to try a foreigner committed on board a foreign ship outside of our territorial waters, it could only do so by virtue of Imperial legislation and according to the decision in the Franconia case, it was only by virtue of Imperial legislatin that we could try a foreigner within the ~~two~~ three mile limit

Sections 543 and 548

This suggestion might be considered in any amendments to the Code.

Section 540

It is intentional

Section 551

One of the principal objects of the Code was to place in short and attainable compass the existing law. We did, not, to a very limited extent undertake to reform the law. We are not law reformers, and therefore the Bill as submitted contained as far as possible the existing law in regard to limitation. It is an easy thing to suggest changes in any Statute, but a sufficient answer for allthis criticism is, that we have not changed the existing law.

Section 552,

At Common law certain offenders might be arrested by a person not a peace officer"in flagrante delictu without warrant. We have endeavoured as far pespible to state in the schedule cases in which that may be done. There may not be philosophical accuracy in allowing him to arrest in certain offences and not to arrest in others.

Section 553.

The whole of this criticism is without poitn. The proceeding in relation to summary convictions, to summary trials, to speedy trials and to preliminary investigations, so far as Justices of the Peacse have anything to do wi h them are all practicali the same, down to the time when the accused appears before the Justice at the first hearing. a large number of The sections ~~from 1852 to 1870~~ 553-609 are applicable to the preliminary

proceedings in all these cases and when we deal with speedy summary convictions &c. we make these sections specially applicable. Otherwise after having made provisions for the preliminary investigation of persons accused of indictable offences, we should have to repeat the same provisions again and again when dealing with summary convictions, summary trials and speedy trials &c

Section 560

"Beyond the the seas" has a certain meaning and has heretofore been used in Canadian as well as Imperial legislation.

Section 590

The two sections to which the Judge refers makes the point clear. The Judge here pitches into the law Clerk.

Sub-section 4 of section 595 is practicably and is a useful provision.

Section 614

It is not made applicable to all these sections. It is only applicable to those sections which create indictable offences and all the indictable offences specified in Part IV are in their nature, treason

Section 626

will work well enough. If a person is accused of two or more offences upon the trial of one of which he is entitled to more challenges than upon the trial of the others. The case is provided for by sub-section 3. The Common Law determines the law in regard to separate trials of persons accused jointly.

Section 631 and 632

The issue is tried in the ordinary way at common law.

Section 633

The Judge has an elaborate note on this section and finds the law at present to be "where the second offence grounded on the same facts, is, as charged in the second indictment, greater than the offence that was charged in the first, an acquittal on the first bars the second &c. ". Our clause bars the second indictment if the two offences are substantially the same. There would however, I apprehend, be as much difficulty in determining whether one offence is greater than another offence, as there will be in determining whether they are substantially the same offence. How is the relative greatness of an offence to be determined ? By the penalty, or how ? The moral obliquity of an offence may to an extent be a question of opinion. There can be little room for doubt where there is a second indictment against the accused as to whether the offence for which he has been charged has not been practically tried before Sub-section 5 of section 631, to which the Judge refers is, I think, an eminently proper provision, notwithstanding his criticism.

Section 640

Section 557 gives the Justice power at any stage of the proceedings to send an accused person to the place where the offence was committed. Then section 651, provides for a change of venue. There is no authority giving the magistrate power to commit an accused person for trial to the place where the offence

was committed, but the express provision allowing the accused to be sent to the place where the offence was committed and the other provision changing the venue where the interests of justice require it, is sufficient for the purpose. The Judge proceeds to ~~xixx~~ quote the Imperial enactments giving colonial courts jurisdiction to try offences committed abroad and complains that they are not found in the Code. He suggests they should be there / I [redacted] to prevent a studnt preparing for his examination making a great mistake by simply relying on the code.!!!

Section 641, We did not propose in the Code to do away with criminal proceedings by way of information and the law in respect to such proceedings remains as heretofore.

Section 660-754

There is nothing here which specially calls for comment. We do not think it desirable to distinguish between felonies and misdemeanors as such The Judge seems detemimed that we should do so.

Section 661,

This is a question of details which may be left in its present shape or may be provided for by rule of court.

Section 645

This section will be left as it is. It has always been considered as directory in the English Courts.

Sections 684c and 171

Verbal criticisms/

Section 705

The words "commence or prosecute" un-

der section 289 should be eliminated.

Section 711

I have already dealt with this question

Section 712,

What the Judge refers to in his note was not overlooked, but it was considered that the offences which he refers to were covered by section 13 of the Bill, or that it should be left to the prosecutors either to prepare the indictment to cover any possible case or to have the indictment amended to meet the facts proved at the trial under the ample powers contained in the Bill for the purpose.

713, 714.

The Judges criticisms in reference to both these sections are matters for discussion. There is nothing in them justifying the broad charges made in his letter.

Section 726

This is the present Statute law.

Section 733, 734

From sections 742 et seq. it is clear that this is an appeal only at the instance of the defendant when convicted. It is true that the prosecutor under section 743 may ask the Judge to reserve a question, but the prosecutor may ask the Judge to reserve the question in the interest of he accused as well as the interest of he Crwn. There is no provision authorizing an appeal at the instance of the prosecutor.

Section 735

[redacted] "yes"

Section 747

A question of policy.

Sections 753 and 754

Section 753 is a desirable provision to extend throughout Canada. Section 754 is a prov sion originally intended to meet a ~~substantial~~ special case and retained in the Code.

Section 832 and 836,

These two sections, however are copies from the Imperial Statutes. The Act gives authority to make rules which may provide a machinery for the collection of these amounts.

Section 838

This is a clerical error occasioned by the renumbering of sections consequent upon changes in the House. The proper sections are 320 and 363.

Section 917,

It is not necessary to answer this.

Section 933,

This does not call for criticism.

Section 958,

The ~~Judge must be referring to some other section~~. will enquire as to this. I have drafted clause to limit [illegible]

Sections 933 and 981,

I have dealt with these before

Section 981a

By an oversight the schedule of repealed Acts includes the whole of chapter 157, whereas section 8, sub-section 4, should have been excluded and the same applies to section 15 (and also to section 23) of 51 Vic. chap. 41.

The ~~Judge must be referring to some other section~~ will enquire as to this
Sections 933 and 981,