he owed him out of the proceeds of the note when discounted is not sufficient to sustain a conviction of obtaining a signature with intent to defraud under section. 78.—*R.* v. *Pickup*, 10 *L. C. J.* 310.

80. Every one who, by any fraud or unlawful device or ill practice in playing any game of cards or dice, or of any other kind, or at any race, or in betting on any event, wins or obtains any money or property from any other person, shall be held to have unlawfully obtained the same by false pretences, and shall be punishable accordingly.—32-33 *V.*, *c.* 21, *s.* 97. 8-9 *V.*, *c.* 109, *s.* 17, *Imp.*

Indictment.—The Jurors for Our Lady the Queen, upon their oath present, that W. M., on ..... by fraud, unlawful device and ill-practice in playing at and with cards, unlawfully did win from one A. B., and obtain for himself, the said W. M., a sum of money, to wit, fifty pounds, of the monies of the said A. B., and so the jurors aforesaid, upon their oath aforesaid, do say that the said W. M. then, in manner and form aforesaid, unlawfully did obtain the said sum of money, to wit, fifty pounds, so being the monies of the said A. B. as aforesaid, from the said A. B. by a false pretence, with intent to cheat and defraud the said A. B. of the said sum of money, to wit, fifty pounds, against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

(2nd count): And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. M. afterwards, to wit, on the day and year aforesaid, by fraud, unlawful device and ill-practice, in playing at and with cards, unlawfully did win from the said A. B. and obtain for himself, the said W. M., a certain sum of money with intent to cheat him, the said A. B., to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—*Archbold.*

An indictment in the form contained in the above second count was held good after verdict, although it was objected that it should have alleged that the money won was the property of the person defrauded.—*R.* v. *Moss*, *Dears. & B.* 104.

Where the offence was committed by two or more, and there is any doubt whether the game or fraud comes within this section, a count should be added as in *R.* v. *Hudson*, *Bell*, *C. C.* 263, charging a conspiracy to cheat.

The fraud or unlawful device, or ill-practice must be proved.—*R.* v. *Darmely*, 1 *Stark. R.* 259; *R.* v. *Rogier*, 2 *D. & R.* 431. It does not seem necessary to state the name of the game.—*Archbold.* *See R.* v. *Bailey*, 4 *Cox*, 390.

Winning by fraud at tossing with coins falls under this section.—*R.* v. *O'Connor*, 15 *Cox*, 3.

81. Every one who, by means of any false ticket or order, or of any other ticket or order, fraudulently and unlawfully obtains or attempts to obtain any passage on any railway, or in any steam or other vessel, is guilty of a misdemeanor, and liable to six months' imprisonment.—32-33 *V.*, *c.* 21, *s.* 98.

The clause provides for the offence and the attempt to commit the offence ..... Under sect. 183 of the Procedure Act, upon the trial of an indictment for any offence against this clause, the jury may convict of the attempt to commit the offence charged, if the evidence warrants it.

RECEIVING STOLEN GOODS.

82. Every one who receives any chattel, money, valuable security or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling and otherwise disposing whereof amounts to felony, either at common law or by virtue of this Act, knowing the same to have

been feloniously stolen, taken, extorted, obtained, embezzled or disposed of, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 21, *s.* 100, *part.* 24-25 *V.*, *c.* 96, *s.* 91, *Imp.*

83. Every one who receives any chattel, money, valuable security or other property whatsoever, the stealing, taking, obtaining, converting or disposing whereof is made a misdemeanor by this Act, knowing the same to have been unlawfully stolen, taken, obtained, converted or disposed of, is guilty of a misdemeanor, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 21, *s.* 104, *part.* 24-25 *V.*, *c.* 96, *s.* 95, *Imp.*

84. Every one who receives any property whatsoever, knowing the same to be unlawfully come by, the stealing or taking of which property is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, shall, on summary conviction, be liable, for every first, second or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence of stealing or taking such property is by this Act liable.—32-33 *V.*, *c.* 21, *s.* 106. 24-25 *V.*, *c.* 96, *s.* 97, *Imp.*

See sec. 20 of Procedure Act, as to venue.

Clause 82 applies to all cases where property has been feloniously extorted, obtained, embezzled, or otherwise disposed of, within the meaning of any section of this act. —*Greaves, Cons. Acts*, 179.

See secs. 135, 136, 137, 138, 199, 200, 203, and 204 of the Procedure Act.

As to the meaning of the words "valuable security," "property" and "having in possession," see, *ante*, sect. 2.

Indictment against a receiver of stolen goods, under sect. 82, *as for a substantive felony.*—..... that A. B., on..... at..... one silver tankard, of the goods and chattels of J. N. before then feloniously stolen, taken and carried away, feloniously did receive and have, he the said A. B. at the time when he so received the said silver tankard as aforesaid, then well knowing the same to have been feloniously stolen, taken and carried away, against the form.....*Archbold*, 434.

Any number of receivers at different times of stolen property may now be charged with substantive felonies in the same indictment. Sec. 138 Procedure Act.

And where the indictment contains several counts for larceny, describing the goods stolen as the property of different persons, it may contain the like number of counts, with the same variations, for receiving the same goods.—*R.* v. *Beeton*, 1 *Den.* 414. It not necessary to state by whom the principal felony was committed, *R.* v. *Jervis*, 6 *C. & P.* 156; and, if stated, it is not necessary to aver that the principal has not been convicted. *R.* v. *Baxter*, 5 *T. R.* 83. Where an indictment charged Woolford with stealing a gelding, and Lewis with receiving it, knowing it to have been "so feloniously stolen as aforesaid," and Woolford was acquitted, Patteson, J., *held* that Lewis could not be convicted upon this indictment, and that he might be tried on another indictment, charging him with having received the gelding, knowing it to have been stolen by some person unknown.—*R.* v. *Woolford*, 1 *M. & Rob.* 384; 2 *Russ.* 556.

An indictment charging that a certain evil-disposed person feloniously stole certain goods, and that C. D. and E. F. feloniously received the said goods, knowing them to be stolen, was holden good against the receivers, as for a substantive felony.—*R.* v. *Caspar*, 2 *Moo. C. C.* 101. The defendant may be convicted both on a count charging him as accessory before the fact and on a count for receiving.—*R.* v. *Hughes, Bell, C. C.* 242.—The first count of the indictment charged the prisoner with stealing certain goods and chattels; and the second count charged him with receiving "the goods and chattels aforesaid of the value aforesaid, so as aforesaid feloniously stolen." He was acquitted on the first count but found guilty on the

second: *Held*, that the conviction was good.—*R.* v. *Huntley, Bell, C. C.* 238; *R.* v. *Craddock*, 2 *Den.* 31.

Indictment against the principal and receiver jointly.—The Jurors for Our Lady the Queen, upon their oath present that C. D. on ..... at ..... one silver spoon and one table-cloth, of the goods and chattels of A. B., feloniously did steal, take and carry away, against the peace of Our Lady the Queen, her crown and dignity; and the jurors aforesaid, upon their oath aforesaid, do further present, that J. S. afterwards, on.....the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive and have, he the said J. S. then well knowing the said goods and chattels to have been feloniously stolen, taken and carried away, against the form..... *Archbold*, 440; 3 *Burn*, 323.

Indictment against the receiver as accessory, the principal having been convicted.—The Jurors for Our Lady the Queen upon their oath present, that heretofore, to wit, at the general sessions of the..... holden at..... on .....it was presented, that one J. T. *(continuing the former indictment to the end; reciting it, however, in the past and not in the present tense:)* upon which said indictment the said J. T., at..... aforesaid, was duly convicted of the felony and larceny aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that A. B. after the committing of the said larceny and felony as aforesaid, to wit, on..... the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive and have, he the said A. B. then well knowing the said goods and chattels to have been feloniously stolen, taken and carried away, against the from..... *Archbold*, 440.

Indictment against a receiver, under sect. 83, *where the principal offence is a misdemeanor.*—.....on..... at.....one silver tankard of the goods and chattels of J. N. then lately before unlawfully, knowingly, and designedly obtained from the said J. N. by false pretences, unlawfully did receive and have, he the said A. B. at the time when he so received the said silver tankard as aforesaid, then well knowing the same to have been unlawfully, knowingly, and designedly obtained from the said J. N. by false pretences against the form..... *Archbold*, 439.

The indictment must allege the goods to have been obtained by false pretences, and known to have been so; it is not enough to allege them to have been "unlawfully obtained, taken and carried away."—*R.* v. *Wilson*, 2 *Moo. C. C.* 52.

In *R.* v. *Goldsmith*, 12 *Cox*, 479, upon an indictment, under this section, an objection was taken that the indictment did not set out what the particular false pretences were as in the form above given. It was held that the objection, not having been taken before plea, was cured by the verdict of guilty, but the judges did not adjudicate upon the merit of the objection itself; Bramwell, B., intimated, that, for the future, it might be safer, in indictments of this nature, to state specifically what the false pretences were, as in indictments for obtaining under false pretences; see *R.* v. *Hill*, *note r*, 2 *Russ.* 554, where it was held that an indictment, for so receiving goods obtained by false pretences would be held bad on demurrer (or motion to quash) if it did not allege what were the false pretences.

At common law, receivers of stolen goods were only guilty of a misdemeanor, even when the thief had been convicted of felony.—*Fost.* 373. *See Secs.* 136, 137 *of Procedure Act.*

The goods must be so received as to divest the possession out of the thief.—*R.* v. *Wiley*, 2 *Den.* 37. But a person having a joint possession with the thief may be convicted as a receiver.—*R.* v. *Smith, Dears.* 494. Manual possession is unnecessary, it is sufficient if the receiver has a control over the goods.—*R.* v. *Hobson, Dears.* 400; *R.* v. *Smith, Dears.* 494; see, *ante*, sect. 2, as to the words "having in possession." The defendant may be convicted of receiving, although he assisted in the theft.—*R.* v. *Dyer*, 2 *East*, 767; *R.* v. *Craddock*, 2 *Den.* 31; *R.* v. *Hilton, Bell, C. C.* 20; *R.* v. *Hughes, Bell, C. C.* 242. But not if he actually stole the goods.—*R.* v. *Perkins*, 2 *Den.* 459. Where the jury found that a wife received the goods without the knowledge or control of her husband, and apart from him, and that he afterwards adopted his wife's receipt, no active receipt on his part being shown, it was held that the conviction of the husband could not be sustained.—*R.* v. *Dring, Dears. & B.* 329; but see *R.* v. *Woodward, L. & C.* 122.

There must be a receiving of the thing stolen, or of part of it; and where A. stole six notes of £100 each, and having changed them into notes of £20 each, gave some of them to B.: it was held that B. could not be convicted of receiving the said notes, for he did not receive the notes that were stolen.—*R.* v. *Walkley*, 4 *C. & P.* 132. But where the principal was charged with sheep-stealing, and the accessory with receiving "twenty pounds of mutton, parcel of the goods," it was held good.—*R.* v. *Cowell*, 2 *East, P. C.* 617, 781. In the last case, the thing received is the same, for part, as the thing stolen, though passed under a new denomination, whilst in the first case nothing of the article or articles stolen have been received, but only the proceeds thereof. And says *Greaves' note*, 2 *Russ.* 561, it

is conceived that no indictment could be framed for receiving the proceeds of stolen property. The section only applies to receiving *the* chattel stolen, knowing *that* chattel to have been stolen. In the case of gold or silver, if it were melted after the stealing, an indictment for receiving it might be supported, because it would still be the *same* chattel, though altered by the melting; but where a £100 note is changed for other notes, the identical chattel is gone, and a person might as well be indicted for receiving the money, for which a stolen horse was sold, as for receiving the proceeds of a stolen note.

The receiving must be subsequent to the theft. If a servant commit a larceny at the time the goods are received both servant and receiver are principals, but if the goods are received subsequently to the act of larceny, it becomes a case of principal and receiver.—*R.* v. *Butteris*, 6 *C. & P.* 147; *R.* v. *Gruncell*, 9 *C. & P.* 365; *R.* v. *Roberts*, 3 *Cox*, 74.

The receiving need not be *lucri causâ*; if it is to conceal the thief, it is sufficient.—*R.* v. *Richardson*, 6 *C. & P.* 365; *R.* v. *Davis*, 6 *C. & P.* 177.

There must be some evidence that the goods were stolen by another person.—*R.* v. *Densley*, 6 *C. & P.* 399; *R.* v. *Cordy*, 2 *Russ.* 556.

A husband may be convicted of receiving property which his wife has voluntarily stolen, *R.* v. *M'Athey, L. & C.* 250, if he receive it, knowing it to have been stolen.

The principal felon is a competent witness to prove the larceny.—*R.* v. *Haslam*, 1 *Leach*, 418. But his confession is not evidence against the receiver, *R.* v. *Turner*, 1 *Moo. C. C.* 347, unless made in his presence and assented to by him.—*R.* v. *Cox*, 1 *F. & F.* 90. If the principal has been convicted, the conviction, although erroneous, is evidence

against the receiver until reversed.—*R.* v. *Baldwin*, *R. & R.* 241.

To prove guilty knowledge, other instances of receiving similar goods stolen from the same person may be given in evidence, although they form the subject of other indictments, or are antecedent to the receiving in question.—*R.* v. *Dunn*, 1 *Moo. C. C.* 146; *R.* v. *Davis*, 6 *C. & P.* 177; *R.* v. *Nicholls*, 1 *F. & F.* 51; *R.* v. *Mansfield*, *C. & M.* 140. But evidence cannot be given of the possession of goods stolen from a different person.—*R.* v. *Oddy*, 2 *Den.* 264. Where the stolen goods are goods that have been found, the jury must be satisfied that the prisoner knew that the circumstances of the finding were such as to constitute larceny.—*R.* v. *Adams*, 1 *F. & F.* 86. Belief that the goods are stolen, without actual knowledge that they are so, is sufficient to sustain a conviction.—*R.* v. *White*, 1 *F. & F.* 665. *See secs.* 203 *and* 204 *of Procedure Act.*

Recent possession of stolen property is not generally alone sufficient to support an indictment under this section, —2 *Russ.* 555. However, in *R.* v. *Langmead*, *L. & C.* 427, the judges would not admit this as law, and maintained the conviction for receiving stolen goods, grounded on the recent possession by the defendant of stolen property. See also *R.* v. *Deer*, *L. & C.* 240.

A partner stole goods belonging to the firm, and rendered himself liable to be dealt with as a felon, under sec. 58 of our Larceny Act, and sold the same to the prisoner, who knew of their having been stolen. *Held*, that the prisoner could not be convicted on an indictment for feloniously receiving, but might have been convicted as an accessory after the fact on an indictment properly framed.—*R.* v. *Smith*, 11 *Cox*, 511. It is observed, in *Archbold*, 436, that in this last case, if the only thing that could have been proved against the prisoner was the receiving with a guilty knowledge, he ought to have been indicted for the common law misdemeanor of receiving stolen property. *Sed quære?*

An indictment charged S. with stealing eighteen shillings and sixpence, and G. with receiving the same. The facts were: S. was a barman at a refreshment bar, and G. went up to the bar, called for refreshments and put down a florin. S. served G. took up the florin, and took from his employer's till some money, and gave G. as his change eighteen shillings and six pence, which G. put in his pocket and went away with it. On leaving the place he took some silver from his pocket, and was counting it when he was arrested. On entering the bar, signs of recognition took place between S. and G., and G. was present when S. took the money from the till. The jury convicted S. of stealing and G. of receiving. *Held*, that this was evidence which the judge ought to have left to the jury as reasonable evidence upon which G. might have been convicted as a principal in the second degree, and that therefore the conviction for receiving could not be sustained.—*R.* v. *Coggins*, 12 *Cox*, 517.

On the trial of a prisoner on an indictment charging him with receiving property which one M. had feloniously stolen, etc., the crime charged was proved, and evidence for the defence was given to the effect that M. had been tried on a charge of stealing the same property and acquitted. The counsel for the crown then applied to amend the indictment by striking out the allegation that M. had stolen the property, and inserting the words "some evil disposed person" which was allowed.

Held, 1. That the record of the previous acquittal of M. formed no defence on the trial of this indictment, and was improperly received in evidence.

2. That the amendment was improperly allowed. The *Queen* v. *Ferguson*, 4 *P. & B. (N. B.)* 259.

Defendant sold to C., among other things, a horse power and belt, part of his stock in the trade of a butcher in which he also sold a half interest to C. The horse power had been hired from one M. and at the time of the sale the term of hiring had not expired. At its expiry M. demanded it and C. claimed that he had purchased it from the defendant. Defendant then employed a man to take it out of the premises where it was kept and deliver it to M., which he did. Defendant was summarily tried before a police magistrate and convicted of an offence against 32-33 V., c. 21, s. 100.

Held, that the conviction was bad, there being no offence against that section.

Remarks upon the improper use of criminal law in aid of civil rights.—*The Queen* v. *Young*, 5 *O. R.* 400.

OFFENCES NOT OTHERWISE PROVIDED FOR.

85. Every one who, unlawfully and with intent to defraud, by taking, by embezzling, by obtaining by false pretences, or in any other manner whatsoever, appropriates to his own use or to the use of any other person any property whatsoever, so as to deprive any other person temporarily or absolutely of the advantage, use or enjoyment of any beneficial interest in such property in law or in equity, which such other person has therein, is guilty of a misdemeanor, and liable to be punished as in the case of simple larceny; and if the value of such property exceeds two hundred dollars, the offender shall be liable to fourteen years' imprisonment.—32-33 *V., c. 21, s. 110, part.*

The words "real or personal, in possession or in action," after the words "any property whatsoever," have been expunged from the 32-33 V., c. 21, s. 110.

This clause is not in the English Act.

The court would not inflict the additional punishment

provided for in the last part of this clause, unless it be *alleged in the indictment* and duly *proved upon the trial* that the property stolen, embezzled or obtained by false pretences is over two hundred dollars in value.

Sec. 85 of the Larceny Act applies only to a temporary privation of the property.—*R.* v. *Warner*, 7 *R. L.* 116.

An indictment under 32-33 V., c. 21, s. 110, for unlawfully taking and appropriating property with intent to defraud need not state the value of the property taken, although, perhaps, a prisoner could not be tried, under the second clause of the section, if the value was not stated.

On the trial of such an indictment it is a proper direction to tell the jury that they should acquit the prisoner if they thought he bonâ fide believed he had a claim of right in the property taken.—*The Queen* v. *Horseman*, 4 *P. & B. (N. B.)* 529.

By sec. 201 of the Procedure Act, it is enacted that

"If, on the trial of any person for larceny, for embezzlement, or for obtaining any property by false pretences, the jury is of opinion that such person is not guilty of the offence charged in the indictment, but is of opinion that he is guilty of an offence against section eighty-five of "*The Larceny Act*," it may find him so guilty, and he shall be liable to be punished as therein provided, as if he had been convicted on an indictment under such section."

The offence created by this section 85 of the Larceny Act is unknown in the English criminal law, and, it is believed, was unknown throughout the whole of the Dominion of Canada before the act of 1869.

In answer to our enquiries about it, Mr. R. J. Wicksteed, of the Law Department of the House of Commons, the author of the valuable "Table of the Statutes of the Dominion of Canada," had the kindness to give us the following information, inserted here with his permission:

"..... C. 21 of 32-33 V. (1869) or the act respecting larceny, was prepared, as well as the other criminal acts, by the law clerk. In the preparation, old materials were used as much as possible, the provisions found in the laws of the various Provinces of the Dominion, and the English Acts being freely used ; but, in some instances, new sections were written to meet cases at that time unprovided for. Section 110 of chap. 21, as to which you enquire, whence taken, etc., was new, written by my father to supply a deficiency. He informs me that it was suggested to him by some work on English Criminal Law, and thinks it was the book entitled 'General View of the Criminal Law of England,' by J. Fitz Stephen. This book, having been removed from the Parliamentary library, I cannot give you the writer's exact arguments, but the sense you have in section 110 of chap. 21. The English Commissioners on criminal law, in their fourth report to Her Majesty, of 8th of March, 1839 (Vol. 1), remarking on the law of England as to theft or larceny, observe, page 52: 'It is further observable, that the intent essential to the offence must extend to the fraudulent appropriation of the whole property, and that the mere intent to deprive the owner of the temporary possession only is not sufficient to constitute the offence. For, although, under particular circumstances, a fraudulent privation of possession may justly be made penal, such an offence cannot, without great inconvenience, be included with so general a predicament as that of theft. A law designed for the protection of the right of property would be far too general in its operation, were it to be extended to mere temporary privations of possession. In practice, this would be to injure, if not to destroy, the important boundary between the crime of theft and a mere civil trespass.' And again, on

page 56: 'And although the intent be not to commit a collateral fraud, but to enjoy the temporary possession in fraud of another's right of possession, the offence cannot properly constitute a theft; for this is an offence, as we have already observed, against the right of property, as distinguished from the mere right of possession, and the law of England does not, as the Roman law did, notice the *furtum possessionis* as constituting a branch of the law of theft. The offence properly consists in the unlawful appropriation of that which belongs to another, which cannot be where another has not the property, but only the right of temporary possession. A law might no doubt be made to comprehend mere wrongs to the temporary right of possession; but the same principles of policy and convenience, which occasion the distribution of offences into defined classes, must also regulate the limits of each separate class of offences, and we have already observed that to extend the class of thefts to mere injuries to the possession, would be to extend its boundaries too widely, and render the limits between theft and a mere trespass indistinct.' But, see *Bishop, on Criminal Law, 2nd Edition, vol.* 1, *section* 429 *(section* 579 *of the fifth edition).* 'Then we have a very extensive influence exerted by the universal rule that the law does not regard small things. We have seen that in the application of this rule, the general, rather than the particular, consequence of the act is to be regarded. Therefore, although it is criminal to steal personal property which is of some value, however small the value may be, yet it is not so for a trespasser to take and carry away such property, be the value great or small, with the intent of appropriating to himself, not the property itself, but its mere *use*, too small a thing, in respect of the general consequence, for the criminal law, not for the civil, to notice.

But this rule of small things can be accurately understood only as we see it applied in the cases, for the decisions are not harmonious with any general principle. There is no reason, in principle, why many things deemed too small for the law to notice, should not in fact be noticed by it; for instance, if a man converts to his own use, with a bad motive, a valuable thing, which he takes, intending to return it after he has served his end, there is no reason of principle why he should not be as severely punished as he who converts the entire property in a piece of paper worth one mill.' It was upon reasoning similar to this of Mr. Bishop, that my father submitted section 110 to Sir John Macdonald, then Minister of Justice, who approved of it and the act passed with it included ....."

Certainly, Bishop's observations are entitled to great consideration, but it must be admitted, that, in practice, the legislation contained in the clause in question, "destroys the important boundary between the crime of theft and a mere civil trespass."—*Crim. L. Comm. Report, loc. cit.* And is it very clear, as stated by Bishop, that the rule of the English criminal law, that *possession* or *use* of property is not the subject of larceny, is based on the maxim "*de minimis non curat lex.*" And the English Commissioners, in a footnote to page 56 of their report, cited, *ante*, say: "It is worthy of remark, that the necessity of abandoning this principle of the Roman law has been felt in nations whose systems depend more immediately upon that law than our own, inasmuch as the doctrine of the *furtum possessionis*, as well as the *furtum usus*, has no place in any of the modern German codes."

Is the full extent of the Roman law, on the subject, to be now considered as forming part of our law? "*Furtum autem fit, non solum quum quis intercipiendi causâ rem alienam amovet, sed generaliter quum quis alienam rem invito domino contractat. Itaque, sive creditor pignore, sive is apud quem res deposita est, eâ re utatur; sive is qui rem utendam accepit, in alium usum eam transferat quam cujus gratiâ ei data est, furtum committat; veluti, si quis argentum utendum acceperit quasi amicos ad cœnam invitaturus, et id peregre secum tulerit, aut si quis equum, gestandi causâ commodatum sibi, longius aliquo duxerit.—Ins. lib.* 4, *tit.* 1, *par.* 6.

Would the defendants in *R.* v. *Philips*, 2 *East, P. C.* 662; *R.* v. *Holloway*, 1 *Den.* 370; *R.* v. *Poole, Dears. & B.* 345; *R.* v. *Kilham*, 11 *Cox*, 561, have been convicted under such a clause?

86. Every one who is convicted of an offence against this Act by stealing, embezzling or obtaining by false pretences any property whatsoever, the value of which is over two hundred dollars, is liable to seven years' imprisonment, in addition to any punishment to which he would otherwise be liable for such offence.—32-33 *V., c.* 21, *s.* 110, *part.*

The value of over two hundred dollars must be inserted in the indictment.

87. Every one who, without the consent of the owner thereof, takes, holds, keeps in his possession, collects, conceals, receives, appropriates, purchases, sells or causes or procures or assists to be taken possession of, collected, concealed, received, appropriated, purchased or sold, any timber, mast, spar, saw-log or other description of lumber which is found adrift in any river, stream or lake, or cast ashore on the bank or beach of any river, stream or lake, or without the consent of the owner thereof, wholly or partially defaces or adds, or causes or procures to be defaced or added, any mark or number on any such timber, mast, spar, saw-log or other description of lumber, or makes, or causes, or procures to be made any false or counterfeit mark on any such timber, mast, spar, saw-log or other description of lumber,—or refuses to deliver up to the proper owner thereof, or to the person in charge thereof, on behalf of such owner, or

authorized by such owner to receive the same, any such timber, mast, spar, saw-log or other description of lumber, is guilty of a misdemeanor and liable to be punished as in the case of simple larceny.—38 *V.*, *c.* 40, *s.* 1, *part.*

See sec. 228 of Procedure Act, *post*, as to evidence on trials for offences against the above clause, and sec. 54 as to search warrants.

88. Every one who brings into Canada, or has in his possession therein, any property stolen, embezzled, converted or obtained by fraud or false pretences in any other country, in such manner that the stealing, embezzling, converting or obtaining it in like manner in Canada would, by the laws of Canada, be a felony or misdemeanor, knowing it to have been so stolen, embezzled or converted, or unlawfully obtained, is guilty of an offence of the same nature and punishable in like manner as if the stealing, embezzling, converting or unlawfully obtaining such property had taken place in Canada.—32-33 *V.*, *c.* 21, *s.* 112, *part.*

This clause is not in the English Act.

Under sect. 8, chap. 158, of the Revised Statutes of New Brunswick, it was held that, upon an indictment in New Brunswick, for a larceny committed in Maine, the goods stolen having been brought into New Brunswick, it was necessary to prove that the taking was larceny, *according to the law of Maine.—Clark's Crim. L.* 317. This clause was as follows: When any person shall be feloniously hurt or injured at any place out of this Province, and shall die in this Province of such hurt or injury, or when any person shall steal any property out of this Province and shall bring the same within the Province, any such offence, whether committed by any person as principal or accessory before or after the fact, may be dealt with in the county in which such death may happen, or such property shall be brought. The words "in such manner that the stealing, etc., would by the laws of Canada be a felony or misdemeanor," in the present Act, sect 88, *ante*, constitute a wide difference from this New Brunswick Act, and the

case noticed by Mr. Clark would probably not now be followed.

See special remarks under sec. 21 of Procedure Act as to the power of parliament to pass the above clause.

89. Every one who corruptly takes any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security or other property whatsoever, which, by any felony or misdemeanor, has been stolen, taken, obtained, extorted, embezzled, converted or disposed of, as in this Act before mentioned (unless he has used all due diligence to cause the offender to be brought to trial for the same), is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 21, *s.* 115. 24-25 *V.*, *c.* 96, *s.* 101, *Imp.*

As to the meaning of the words "valuable security" and "property," sec, *ante*, sect. 2.

Indictment.—The Jurors for Our Lady the Queen upon their oath present that A. B. on ..... feloniously, unlawfully and corruptly did take and receive from one J. N. certain money and reward, to wit, the sum of five pounds of the monies of the said J. N. under pretence of helping the said J. N. to certain goods and chattels of him the said J. N. before then feloniously stolen, taken and carried away, the said A. B. not having used all due diligence to cause the person by whom the said goods and chattels were so stolen, taken and carried away as aforesaid, to be brought to trial for the same; against the form. ..... —*Archbold*, 837.

It was held to be an offence within the repealed statute to take money under pretence of helping a man to goods stolen from him, though the prisoner had no acquaintance with the felon, and did not pretend that he had, and though he had no power to apprehend the felon, and though the goods were never restored, and the prisoner had no power to restore them.—*R.* v. *Ledbitter*, 1 *Moo. C. C.* 76. The section

of the repealed statute, under which this case was decided, was similar to the present section.—2 *Russ.* 575.

If a person know the persons who have stolen any property, and receive a sum of money to purchase such property from the thieves, not meaning to bring them to justice, he is within the statute, although the jury find that he did not mean to screen the thieves, or to share the money with them, and did not mean to assist the thieves in getting rid of the property by procuring the prosecutrix to buy it.—*R.* v. *Pascoe*, 1 *Den.* 456.

A person may be convicted of taking money on account of helping a person to a stolen horse, though the money be paid after the return of the horse. *R.* v. *O'Donnell*, 7 *Cox*, 337. As to the meaning of the words "*corruptly* takes," see *R.* v. *King*, 1 *Cox*, 36.

90. Every one who publicly advertises a reward for the return of any property whatsoever, which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked, or makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property, or promises or offers in any such public advertisement to return to any pawnbroker or other person who advanced money by way of loan on, or has bought any property stolen or lost, the money so advanced or paid, or any other sum of money for the return of such property, or prints or publishes any such advertisement, shall incur a penalty of two hundred and fifty dollars for every such offence, recoverable with costs by any person who sues for the same in any court of competent jurisdiction;

2. No action to recover any forfeiture under this section shall be brought against the printer or publisher of a newspaper, defined as a newspaper for the purposes of the acts, for the time being in force, relating to the carriage of newspapers by post, except within six months after the forfeiture is incurred.—32-33 *V.*, *c.* 21, *s.* 116. 35 *V.*, *c.* 35, *ss.* 2 *and* 3. 24-25 *V.*, *c.* 96, *s.* 102, *Imp.*

91. Every one who, being a seller or mortgagor of land, or of any chattel, real or personal or chose in action, or the solicitor or agent of any such seller or mortgagor, and having been served with a written demand of an abstract of title by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage, conceals any settlement, deed, will or other instrument, material to the title, or any incumbrance, from such purchaser or mortgagee, or falsifies any pedigree upon which the title depends, with intent to defraud and in order to induce him to accept the title offered or produced to him, is guilty of a misdemeanor and liable to a fine or to two years' imprisonment or to both;

2. No prosecution for any such offence shall be commenced without the consent of the Attorney General of the Province within which the offence is committed, given after previous notice to the person intended to be prosecuted of the application to the Attorney General for leave to prosecute;

3. Nothing in this section, and no proceeding, conviction or judgment had or taken thereon, shall prevent, lessen or impeach any remedy which any person aggrieved by any such offence would otherwise have had.—29 *V.* (*Can.*), *c.* 28, *s.* 20, *part.*

92. The three sections next following apply only to the Province of Quebec.

93. Every one who, knowing the existence of any unregistered prior sale, grant, mortgage, hypothec, privilege or incumbrance, of or upon any real property, fraudulently makes any subsequent sale of the same, or of any part thereof, is guilty of a misdemeanor, and liable to a fine not exceeding two thousand dollars, and to one year's imprisonment.—*C. S. L. C.*, *c.* 37, *s.* 113.

Conviction under this sect.—*R.* v. *Palliser*, 4 *L. C. J.* 277.

94. Every one who pretends to hypothecate any real property to which he has no legal title, is guilty of a misdemeanor, and liable to a fine not exceeding one hundred dollars and to one year's imprisonment, and the proof of the ownership of the real estate shall rest with the person so pretending to hypothecate the same.—*C. S. L. C.*, *c.* 37, *s.* 114.

95. Every person who, knowingly, wilfully, and maliciously causes or procures to be seized and taken in execution, any lands and tenements, or other real property, situate within any township in the Province of Quebec, not being, at the time of such seizure, the *bonâ fide* property of the person or persons against whom, or whose estate, the execution is issued, knowing the same not to be the property of

the person or persons against whom the execution is issued, is guilty of a misdemeanor, and liable to one year's imprisonment;

2. Nothing in this section, and no proceeding, conviction or judgment had or taken thereunder, shall prevent, lessen or impeach any remedy which any person aggrieved by any such offence would otherwise have had.—*C. S. L. C., c.* 46, *ss.* 1 *and* 2.

96. The following sections apply only to the Province of British Columbia.

97. Every one who, in any proceeding to obtain the registration of any title to land or otherwise, or in any transaction relating to land, which is or is proposed to be put on the register, acting either as principal or agent, knowingly and with intent to deceive, makes or assists or joins in, or is privy to the making of any material false statement or representation, or suppresses, conceals, assists or joins in, or is privy to the suppression, withholding or concealing from any judge or registrar, or any person employed by or assisting the registrar, any material document, fact or matter of information, is guilty of a misdemeanor, and liable to three years' imprisonment;

2. Nothing in this section, and no proceeding, conviction or judgment had or taken thereon, shall prevent, lessen or impeach any remedy which any person aggrieved by any such offence would otherwise have had;

3. Nothing in this section shall entitle any person to refuse to make a complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court; but no answer to any such bill, question or interrogatory shall be admissible against any such person in evidence in any criminal proceeding.—*R. S. B. C., c.* 143, *ss.* 81, 82, 83 *and* 85.

98. Every one who steals, or without the sanction of the Lieutenant Governor of the Province, cuts, breaks, destroys, damages or removes any image, bones, article or thing deposited in or near any Indian grave, or induces or incites any other person so to do, or purchases any such article or thing after the same has been so stolen, or cut or broken, destroyed or damaged, knowing the same to have been so acquired or dealt with, shall, on summary conviction, be liable, for a first offence, to a penalty not exceeding one hundred dollars, or to three months' imprisonment, and for a subsequent offence, to the same penalty and to six months' imprisonment with hard labor;

2. In any proceeding under this section it shall be sufficient to state that such grave, image, bones, article or thing, is the property of the crown.—*R. S. B. C., c.* 69, *ss.* 2, 3 *and* 4.

FORGERY.

GENERAL REMARKS.

"To forge is metaphorically taken from the smith who beateth upon his anvil, and forgeth what fashion and shape he will; the offence is called *crimen falsi*, and the offender *falsarius*, and the Latin word, to forge, is *falsare* or *fabricare*."—*Coke, 3rd Inst.* 169.

"Forgery is the fraudulent making or alteration of a writing, to the prejudice of another's right."—4 *Blackstone*, 247.

In *Coogan's Case* (1 *Leach*, 448), Buller, J., said "it is the making of a false instrument with intent to deceive," and Eyre, B., in Taylor's case, defined it to be "a false signature made with intent to deceive." In the word "deceive" must doubtless be intended to be included an intent to "defraud"[?]—and so it was defined by Grose, J., in delivering the opinion of the judges in the case of Parkes and Brown, viz.: "the false making a note or other instrument with intent to defraud." Again Eyre, B., in the case of Jones and Palmer, defined it to be "the false making an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud any person or persons."—(1 *Leach*, 367.) 2 *East, P. C.* 853. And East himself, 2 *P. C.* 852, says "forgery at common law denotes a false making, which includes every alteration of or addition to a true instrument, a making *malo animo*, of any written instrument for the purpose of fraud and deceit."

"Forgery is the false making of an instrument with intent to prejudice any public or private right."—*3rd Rep. Crim. Law Comm. 10th June*, 1847, *p.* 34.

"Forgery is the fraudulent making of a false writing, which, if genuine, would be apparently of some legal efficacy."—*Bishop*, 2 *Cr. L.* 523.

"The characteristic of the crime of forgery is the false making of some written or other instrument for the purpose of obtaining credit by deception. The relation this offence bears to the general system may be thus briefly established. In most affairs of importance, the intentions, assurances, or directions, of men are notified and authenticated by means of written instruments. Upon the authenticity of such instruments the security of many civil rights, especially the right of property, frequently depends; it is, therefore, of the highest importance to society to exclude the numerous frauds and injuries which may obviously be perpetrated by procuring a false and counterfeited written instrument, to be taken and acted on as genuine. In reference to frauds of this description, it is by no means essential that punishment should be confined to cases of actually accomplished fraud; the very act of falsely making and constructing such an instrument with the intention to defraud is sufficient, according to the acknowledged principles of criminal jurisprudence, to constitute a crime,—being in itself part of the endeavour to defraud, and the existence of the criminal intent is clearly manifested by an act done in furtherance and in part execution of that intention. The limits of the offence are immediately deducible from the general principle already adverted to. As regards the subject matter, the offence extends to every writing used for the purpose of authentication.....

..... The crime is not confined to the falsification of mere writings; it plainly extends to seals, stamps, and all other visible marks of distinction by which the truth of any fact is authenticated, or the quality or genuineness of any

article is warranted; and, consequently, where a party may be deceived and defrauded, from having been by false signs induced to give credit where none was due. With respect to the false making of any such instrument, the offence extends to every instance where the instrument is, under the circumstances, so constructed as to induce a party to give credit to it as genuine [illegible] it is false and deceptive. And in this respect, a forged instrument differs from one which is merely false and untrue in stating facts which are false. Where the instrument is forged, as where a certificate purporting to be signed by an authorized officer was not, in truth, signed by him, a party to whom it is shown is deceived in being induced to suppose that the fact certified is accredited by the officer whose certificate it purports to be, and he is deceived in that respect, whether the fact certified be true or false. If, on the other hand, such a certificate be in truth signed by the officer whose name it bears, the instrument is not forged although the fact certified be falsely certified, for here the party receiving the certificate is deceived, not by being falsely induced to believe that the officer had accredited the instrument by his signature, but from the officer having falsely certified the fact. The instrument may, therefore, be forged, although the fact authenticated be true. The instrument may be genuine, although the fact stated be false. Where money or other property is obtained by an instrument of the latter description, that is, where it is false merely, as containing a false statement or representation, the offence belongs to the class of obtaining money or other property by false pretences."—*5th Rep. Crim. L. Comm. 22nd of April*, 1840.

"Consistently with the principles which govern the offence of forgery, an instrument may be falsely made,

although it be signed or executed by the party by whom it purports to be signed or executed. This happens where a party is fraudulently induced to execute a will, a material alteration having been made, without his knowledge, in the writing; for, in such a case, although the signature be genuine, the instrument is false, because it does not truly indicate the testator's intentions, and it is the forgery of him who so fraudulently caused such will to be signed, for he made it to be the false instrument which it really is."—*Cr. L. Comm. Rep. loc. cit.*

This passage of the Criminal Law Commissioners seems to be based on a very old case, cited in *Noy's Reports*, 101, *Combe's Case*; but in a more recent case, *R.* v. *Collins*, 2 *M. and Rob.* 461, it was held that, fraudulently to induce a person to execute an instrument, on a misrepresentation of its contents, is not a forgery; and, in a case of *R.* v. *Chadwick*, 2 *M. and Rob.* 545, that to procure the signature of a person to a document, the contents of which have been altered without his knowledge, is not a forgery.

The report *(loc. cit.)* of the criminal law Commissioners continues as follows: "Upon similar grounds, an offender may be guilty of a false making of an instrument, although he sign or execute it in his own name, in case it be false in any material part, and calculated to induce another to give credit to it as genuine and authentic where it is false and deceptive. This happens where one, having conveyed land, afterwards, for the purpose of fraud, executes an instrument, purporting to be a prior conveyance of the same land; here again, the instrument is designed to obtain credit by deception, as purporting to have been made at a time earlier than the true time of its execution."—*5th Report, loc. sit.*

This doctrine was approved of in a case, in England, of *R.* v. *Ritson*, 11 *Cox*, 352, and it was there held, upon a case reserved, that a man may be guilty of forgery by making a false deed in his own name. Kelly, C. B., delivering the judgment of the Court, said: "I certainly entertained some doubt at one time upon this case, because most of the authorities are of an ancient date, and long before the passing of the statutes of 11 Geo. 4 and 1 Will. 4, and 24-25 V. However, looking at the ancient authorities and the text-books of the highest repute, such as *Com. Dig.*, *Bacon's Abr.*, 3 *Co. Inst.*, *and Foster's C. L.* 117, they are all uniformly to the effect, not that every instrument containing a false statement is a forgery, but that every instrument which is false in a material part, and which purports to be that which it is not, or to be executed by a person who is not the real person, or which purports to be dated on a day which is not the real day, whereby a false operation is given to it, is forgery."

"Forgery, *at common law*, is an offence in falsely and fraudulently making and altering any matter of record, of any other authentic matter of a public nature, as a parish register or any deed or will, and punishable by fine and imprisonment. But the mischiefs of this kind increasing, it was found necessary to guard against them by more sanguinary laws. Hence we have several acts of Parliament declaring what offences amount to forgery, and which inflict severer punishment than there were at the common law."—*Bacon's Abr. Vol.* 3, 277. Curwood, 1 *Hawkins*, 263, is of opinion that this last definition is wholly inapplicable to the crime of forgery *at common law*, as, even at *common law*, it was forgery to make false "*private*" writings.

"The notion of forgery does not seem so much to consist in the counterfeiting a man's hand and seal, which

may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation, which in truth and justice it ought not to have."—1 *Hawkins*, 264.

The definitions containing only the words "with intent to defraud" without the words "with intent to deceive" seem defective. In fact, there are many acts held to be forgery, where no intent to defraud, as this expression is commonly understood, exists in the mind of the person committing the act; as, for instance, if the man, forging a note, means to take it up, and even has taken it up, so as not to defraud any one, this is clearly forgery, if he issued it, and got money or credit, or anything upon it.—*R.* v. *Hill*, 2 *Moo. C. C.* 30; *R.* v. *Geach*, 9 *C. and P.* 499; or forging a bill payable to the prisoner's own order, and uttering it without indorsement, *R.* v. *Birkett, R. and R.* 86; or if one, while knowingly passing a forged bank note, agrees to receive it again should it prove not to be genuine, or if a creditor executes a forgery of the debtor's name, to get from the proceeds payment of a sum of money due him, *R.* v. *Wilson*, 1 *Den.* 284; or if a party forges a deposition to be used in court, stating merely what is true, to enforce a just claim. All these acts are forgery; yet where is the intent to defraud, in these cases? It may be said that the law infers it. But why make the law infer the existence of what does not exist? Why not say that "forgery is the false making of an instrument with intent to defraud or *deceive*." The word "*deceive*" would cover all the cases

above cited; in each of these cases, the intent of the forger is that the instrument forged should be used as good, should be taken and received as signed and made, by the person whose name is forged, in consequence, to deceive *quoad hoc*, and for this, though he did not intend to defraud, though no one could possibly be defrauded by his act, he is in law guilty of forgery. See 2 *Russ.* 774.

It is true that the Court of Crown cases reserved, in England, held in *R.* v. *Hodgson, Dears. & B.* 3, that, upon an indictment for forgery at common law, it is necessary to prove, not only an intent to defraud, but also an intent to defraud a particular person, though, when this case was decided, the statute, in England (14-15 V., c. 100, s. 8,) enacted that it was not necessary in indictments for forgery to allege an intent to defraud any particular person. S. 114 of our Procedure Act. In this, *Hodgson's Case*, the prisoner had forged and uttered a diploma of the college of surgeons; the jury found that the prisoner forged the document with the general intent to induce the belief that it was genuine, and that he was a member of the college, and that he showed it to certain persons with intent to induce such belief in them; but that he had no intent, in forging or uttering it, to commit any particular fraud or specific wrong to any individual .....

Though the offence charged in this case was under the common law, it must be remembered that s. 8, of 14-15 V., c. 100, applied to indictments under the common law as well as to indictments under the statutes, as now also do sect. 44 of the English Forgery Act and sect. 114 of our Procedure Act.

Greaves remarks on the decision in this case:—

"As the clause of which this is a re-enactment (44

of the English Act, was considered in *R.* v. *Hodgson*, and as that case appears to me to have been erroneously decided, it may be right to notice it here. The prisoner was indicted at common law for forging and uttering a diploma of the college of surgeons, and the indictment was in the common form. The college of surgeons has no power of conferring any degree or qualification, but before admitting persons to its membership, it examines them as to their surgical knowledge, and, if satisfied therewith, admits them, and issues a document called a diploma, which states the membership. The prisoner had forged one of these diplomas. He procured one actually issued by the college of surgeons, erased the name of the person mentioned in it, and substituted his own. He hung it up in his sitting room, and, on being asked by two medical practitioners whether he was qualified, he said he was, and produced this document to prove his assertion. When a candidate for an appointment as vaccinating officer, he stated he had his qualification, and would show it, if the clerk of the guardians, who were to appoint to the office, would go to his gig; he did not, however, then produce or show it.

The prisoner was found guilty; the fact to be taken to be, that he forged the document with the general intent to induce a belief that it was genuine, and that he was a member of the college of surgeons, and that he showed it to two persons with the particular intent to induce such belief in these two persons; but that he had no intent in forging or in altering, to commit any particular fraud, or any specific wrong to any individual. And, upon a case reserved, it was held that the 14-15 V., c. 100, s. 8, altered the form of pleading only, and did not alter the character of the offence charged, and that the law as to that is the

same as if the statute had not been passed; and that, in order to make out the offence of forgery at common law, there must have been at the time the instrument was forged, an intention to defraud some particular person. Now, this judgment is clearly erroneous. The 14-15 V., c. 100, s. 8, does, in express terms, alter the law as well as the form of indictment, for it expressly enacts, that "*on the trial* of any of the offences in this section mentioned *(forging, uttering, disposing of or putting off any instrument whatsoever)* it shall not be necessary to *prove* that the defendant did the act charged with an intent to defraud." The judgment, therefore, and the clause in the act are directly in contradiction to each other, and, consequently, the former cannot be right. The clause was introduced advisedly for the very purpose of altering the law. See my note to Lord Campbell's Acts, page 13. It is a fallacy to suppose that there must have been an intent to defraud any particular person at the time of forging the document. In *Tatlock* v. *Harris*, 3 *T. R.* 176, that great lawyer, Shepherd, said in argument, "it is no answer to a charge of forgery to say that there was no *special* intent to defraud any *particular* person, because *general intent* to defraud is sufficient to constitute the crime;" and this position was not denied by that great lawyer, Wood, who argued on the other side, and was apparently adopted by the court. It is cited in 1 *Leach*, 216, *note a*; 3 *Chitty, Cr. L.* 1036, and, as far as we are aware, was never doubted before this case. Indeed, in *R.* v. *Tylney*, 1 *Den.* 319, it seems to have been assumed on all hands to be the law. There the prisoners forged a will, but there was no evidence to show that any one existed who could have been defrauded by it, and the judges were equally divided whether a count for forgery with intent to defraud some

person unknown, could, under such circumstances, be supported. It is obvious that this assumed that, if there had been evidence that there was any one who might have been defrauded, though there was no evidence that the prisoners even knew of the existence of any such person, the offence would have been forgery. Indeed it would be very startling to suppose that a man who forged a will, intending to defraud the next of kin, whoever they might happen to be, was not guilty of forgery because he had only that general intent.

The point is too obvious to have escaped that able criminal lawyer, Mr. Prendergast, and, as he did not take it, he clearly thought it wholly untenable, and so, also, must the judges who heard the case. See also the observations of Cresswell, J., in *R.* v. *Marcus*, 2 *C. & K.* 356. In *R.* v. *Nash*, 2 *Den.* 493, Maule, J., expressed a very strong opinion that it was not necessary in order to prove an intent to defraud that there should be any person who could be defrauded, and this opinion was not dissented from by any of the other judges.

It has long been settled that making any instrument, which is the subject of forgery, in the name of a non-existing person, is forgery, and in *Wilks' Case*, 2 *East, P. C.* 957, all the judges were of opinion that a bill of exchange drawn in fictitious names was a forged bill. Now, every one knows that, at the time when such documents are forged, the forger has no intent to defraud any particular person, but only an intent to defraud any person whom it may afterwards meet with, and induce to cash the bill; and no suggestion has ever been made in any of these cases that that offence was not forgery. The ground of the present judgment seems to have been that formerly the particular person who was intended to be

defrauded must have been named in the indictment; no doubt, it is a general rule of criminal pleading that the names of persons should be stated, but this rule is subject to the exception that, wherever the stating the name of any person in an indictment is highly inconvenient or impracticable, the name need not be stated, for *lex neminem cogit ad vana seu impossibilia*. Therefore, the names of inhabitants of counties, hundreds and parishes need never be stated; so, too, where there is a conspiracy to defraud tradesmen in general the names need not be stated. So, where there is a conspiracy to raise the funds, it is not necessary to state the names of the persons who shall afterwards become purchasers of stock "for the defendants could not, except by a spirit of prophecy, divine who would be the purchasers on a subsequent day," per Lord Ellenborough, C. J., *R.* v. *de Berenger*, 3 *M. and S.* 68; which reason is equally applicable to the case, where, at the time of forging an instrument, there is no intent to defraud any particular person. Indeed, it is now clearly settled that, where a conspiracy is to defraud indefinite individuals, it is unnecessary to name any individuals.—*R.* v. *Peck*, 9 *A. & E.*, 686; *R.* v. *King*, 7 *Q. B.* 782. This may be taken to be a general rule of criminal pleading, and it has long been applied to forgery. In *R.* v. *Birch*, 1 *Leach*, 79, the prisoners were convicted of forging a will, and one count alleged the intent to be "to defraud the person or persons who would by law be entitled to the messuages" whereof the testator died seized. And it has been the regular course in indictments for forging wills, at least ever since that case, to insert counts with intent to defraud *the heir-at-law* and *the next of kin*, generally.—3 *Chitty Cr. L.* 1069. It is true that in general there have

also been counts specifying the heir-at-law or the next of kin by name. But in *R.* v. *Tylney* there was no such count. No objection seems ever to have been taken to any such general count. So, also, in any forgery with intent to defraud the inhabitants of a county, hundred or parish, the inhabitants may be generally described. These instances clearly show that it is not necessary in forgery any more than in other cases to name individuals where there is either great inconvenience or inpractibility in doing so. A conviction for conspiracy to negotiate a bill of exchange, the drawers of which were a fictitious firm, and thereby fraudulently to obtain goods from the *King's subjects*, although it did not appear that any particular person to be defrauded was contemplated at the time of the conspiracy, has been held good; *R.* v. *Hevey*, 2 *East, P. C.* 858, *note a;* and this case bears considerably on the present question. If a person forged a bill of exchange with intent to defraud any one whom he might afterwards induce to cash it, and he uttered it to A. B., it cannot be doubted that he would be guilty of uttering with intent to defraud A. B., and it would indeed be strange to hold that he was guilty of uttering, but not of forging, the bill. No doubt the offence of forgery consists in the intent to deceive or defraud; but a general intent to defraud is just as criminal as to defraud any particular individual. In each case, there is a wrongful act done with a criminal intent, which, according to *R.* v. *Higgins*, 2 *East*, 5, is sufficient to constitute an indictable offence. In the course of the argument, Erle, J., said: "Would it not have been enough to allege an intent to deceive divers persons to the jurors unknown, to wit, all the patients of his late master?" This approaches very nearly to the correct

view, viz., that it would have been enough before the 14-15 V., c. 100, s. 8, to have alleged and proved an intent to deceive any persons who should afterwards become his patients. Wightman, J., during the argument said: "The question is, whom did he intend to deceive when the forgery was committed?" And Jervis, C. J., said: "The intent must not be a roving intent, but a specific intent." Now, if these remarks are confined to a count for forging, they are correct; though, in *Bolland's Case*, 1 *Leach*, 83, the prisoner was executed for forging an indorsement in the name of a non-existing person, with intent to defraud a person whom he does not even seem to have known when he forged the indorsement.

But it cannot be doubted that a man may be guilty of intending to defraud divers persons at different times by the same instrument, as where he tries to utter a forged note to several persons one after another, in which case he may be convicted of uttering with intent to defraud each of them. Thus much has been said, because it is very important that the law on the subjects discussed in this note should not be left in uncertainty, and it is much to be regretted that *R.* v. *Hodgson* was ever decided as it was, as it may encourage ignorant pretenders to fabricate diplomas, and thereby not only to defraud the poor of their money, but to injure their health." —*Greaves, Cons. Acts*, 303.

The case of *Tatlock* v. *Harris*, hereinbefore cited by Greaves, is cited by almost all who have treated this question; 2 *Russ.* 774; 2 *East, P. C.* 854, etc. In *R.* v. *Nash*, 2 *Den.* 493, Maule, J., said: "The recorder seems to have thought, that, in order to prove an intent to defraud there should have been some person defrauded or who might

possibly have been defrauded. But I do not think that at all necessary. A man may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers, and a friend, with his knowledge, forges his name to a cheque, either to try his credit, or to imitate his handwriting, there would be no intent to defraud, though there would be parties who might be defrauded. But where another person has no account at his bankers, but a man supposes that he has, and on that supposition forges his name, there would be an intent to defraud in that case although no person could be defrauded."

And in *R.* v. *Mazagora, R. & R.* 291, it has been holden that the jury ought to infer an intent to defraud the person who would have to pay the instrument if it were genuine, although from the manner of executing the forgery, or from that person's ordinary caution, it would not be likely to impose upon him; and although the object was general to defraud whoever might take the instrument, and the intention of defrauding, in particular, the person who would have to pay the instrument, if genuine, did not enter into the prisoner's contemplation. See *R.* v. *Crooke*, 2 *Str.* 901; *R.* v. *Goate*, 1 *Ld. Raym.* 737; *R.* v. *Holden, R. & R.* 154. And even, if the party to whom the forged instrument is uttered believes that the defendant did not intend to defraud him, and swears it, this will not repel the presumption of an intention to defraud.—*R.* v. *Sheppard, R. & R.* 169. *R.* v. *Trenfield*, 1 *F. & F.* 43, is wretchedly reported, and cannot be relied upon.—2 *Russ.* 790, *note by Greaves.* See also *R.* v. *Crowther*, 5 *C. & P.* 316, and *R.* v. *James*, 7 *C. & P.* 853, on the question of the necessary intent to defraud, in forgery; and *R.* v. *Boardman*, 2 *M. & Rob*, 147; *R.* v. *Todd*, 1 *Cox*, 57. Though the

present statute, see s. 114 of the Procedure Act, has the words "where it shall be necessary to allege an intent to defraud," showing evidently that there are cases where such an averment is not necessary, it has been held, in *R.* v. *Pounor*, 12 *Cox*, 235, that, in all cases, an intent to defraud must be alleged. This doctrine seems to have been since repudiated by Martin, B., in *R.* v. *Asplin*, 12 *Cox*, 391.

It should be observed that the offence of forgery may be complete, though there be no publication or uttering of the forged instrument, for the very making with a fraudulent intention, and without lawful authority, of any instrument which, at common law or by statute, is the subject of forgery, is of itself a sufficient completion of the offence before publication, and though the publication of the instrument be the medium by which the intent is usually made manifest, yet it may be proved as plainly by other evidence.—2 *East, P. C.* 855. Thus in a case where the note, which the prisoner was charged with having forged was never published, but was found in his possession at the time he was apprehended, the prisoner was found guilty, and no one even thought of raising the objection that the note had never been published.—*R.* v. *Elliot*, 1 *Leach*, 175. At the present time, most of the statutes which relate to forgery make the publication of the forged instrument, with knowledge of the fact, a substantive felony.

Not only the fabrication and false making of the whole of a written instrument, but a fraudulent insertion, alteration, or erasure, even of a letter, in *any material part* of a true instrument, and even if it be afterwards executed by another person, he not knowing of the deceit, or the fraudulent application of a true signature to a false instrument, for which it was not intended or *vice versâ*, are as much

forgeries as if the whole instrument had been fabricated. As by altering the date of a bill of exchange after acceptance, whereby the payment was accelerated.—2 *East, P. C.* 855.

Even where a man, upon obtaining discount of a bill, indorsed it in a fictitious name, when he might have obtained the money as readily by indorsing it in his own name, it was holden to be a forgery.—*R.* v. *Taft*, 1 *Leach*, 172; *R.* v. *Taylor*, 1 *Leach*, 214; *R.* v. *Marshall. R. & R.* 75; *R.* v. *Wiley, R. & R.* 90; *R.* v. *Francis, R. & R.* 209.

It is a forgery for a person having authority to fill up a blank acceptance or a cheque for a certain sum, to fill up the bill or cheque for a larger sum.—*R.* v. *Hart*, 1 *Moo. C. C.* 486: and the circumstance of the prisoner, alleging a claim on his master for the greater sum, as salary then due, is immaterial, even if true.—*R.* v. *Wilson*, 1 *Den.* 284.

In respect of the persons who might formerly be witnesses in cases of forgery, it was an established point that a party by whom the instrument purported to be made was not admitted to prove it forged, if, in case of its being genuine, he would have been liable to be sued upon it.—2 *Russ.* 817. But now, see *sects.* 214 *and* 218 *of the Procedure Act.*

A forgery must be of some document or writing; therefore the putting an artist's name in the corner of a picture, in order falsely to pass it off as an original picture by that artist, is not a forgery.—*R.* v. *Close, Dears & B.* 460; though it may be a cheat at common law.

The false signature *by a mark* is forgery.—*R.* v. *Dunn*, 1 *Leach*, 57.

When the writing is invalid on its face, it cannot be the subject of forgery, because it has no legal tendency to effect a fraud. It is not indictable, for example, to forge a will attested by a less number of witnesses than the law requires.

—*R.* v. *Wall*, 2 *East* 953; *R.* v. *Martin*, 14 *Cox*, 375; *R.* v. *Harper*, 14 *Cox*, 574; *R.* v. *Moffat*, 1 *Leach*, 431.

But a man may be indicted for forging an instrument, which, if genuine, could not be made available by reason of some circumstance not appearing upon the face of the instrument, but to be made out by extrinsic evidence.—*R.* v. *McIntosh*, 2 *Leach*, 883. So, a man may be indicted for forging a deed, though not made in pursuance of the provisions of particular statutes, requiring it to be in a particular form.—*R.* v. *Lyon, R. & R.* 255.

And a man may be convicted of forging an unstamped instrument, though such instrument can have no operation in law.—*R.* v. *Hawkeswood*, 1 *Leach*, 257. This question, a few years afterwards, again underwent considerable discussion, and was decided the same way, though, in the meantime, the law, with regard to the procuring of bills and notes to be subsequently stamped, upon which in *R.* v. *Hawkeswood*, the judges appear in some degree to have relied, had been repealed. The prisoner was indicted for knowingly uttering a forged promissory note. Being convicted the case was argued before the judges, and for the prisoner it was urged that the 31 Geo. 3., c. 25, s. 19, which prohibits the stamps from being afterwards affixed, distinguished the case from *R.* v. *Hawkeswood*. Though two or three of the judges doubted at first the propriety of the latter case if the matter were *res integra*, yet they all agreed that, being an authority in point, they must be governed by it; and they held that the statute 31 Geo. 3 made no difference in the question. Most of them maintained the principle in *R.* v. *Hawkeswood* to be well founded, for the acts of Parliament referred to were mere revenue laws, meant to make no alteration in the crime of forgery, but only to provide

that the instrument should not be available for recovering upon it in a court of justice, though it might be evidence for a collateral purpose; that it was not necessary to constitute forgery, that the instrument should be available; that the stamp itself might be forged, and it would be a strange defence to admit, in a court of justice, that because the man had forged the stamp, he ought to be excused for having forged the note itself, which would be setting up one fraud in order to protect him from the punishment due to another.—*R.* v. *Morton*, 2 *East, P. C.* 955. The same principle was again recognized in *R.* v. *Roberts*, and *R.* v. *Davies*, 2 *East, P. C.* 955, *and in R.* v. *Teague*, 2 *East, P. C.* 979, where it was holden that supposing the instrument forged to be such on the face of it as would be valid, provided it had a proper stamp, the offence was complete.

As to the uttering.—These words, *utter, uttering*, occur frequently in the law of forgery, counterfeiting and the like; meaning, substantially, to offer. If one offers another a thing, as, for instance, a forged instrument or a piece of counterfeit coin, intending it shall be received as good, he utters it, whether the thing offered be accepted or not. It is said that the offer need not go so far as a tender.—*R.* v. *Welch*, 2 *Den.* 78; *R.* v. *Ion.*, 2 *Den.* 475. (See Greaves' remarks on this case, 2 *Russ.* 830.) But, to constitute an uttering, there must be a complete attempt to do the particular act the law forbids, though there may be a complete conditional uttering, as well as any other, which will be criminal. The words "pay," "put off," in a statute are not satisfied by a mere uttering or by a tender; there must be an acceptance also.—*Bishop, Stat. Crimes*, 306.

The Forgery Act now describes the offence of uttering by the words "offer, utter, dispose of or put off," which include attempts to make use of a forged instrument, as well as the cases where the defendant has actually succeeded in making use of it.

Showing a man an instrument, the uttering of which would be criminal, though with an intent of raising a false idea in him of the party's substance, is not an uttering. Nor with the leaving it, afterwards, sealed up, with the person to whom it was shown, under cover, that he may take charge of it, as being too valuable to be carried about, be an uttering.—*R.* v. *Shukard*, *R. & R.* 200. But the showing of a forged receipt, to a person with whom the defendant is claiming credit for it, was held to be an offering or uttering, though the defendant refused to part with the possession of it.—*R.* v. *Radford*, 1 *Den.* 59.

In *R.* v. *Ion*, 2 *Den.* 475, *supra*, cited by Bishop, the rule laid down by the Court is, that a using of the forged instrument in some way, in order to get money or credit upon it *or by means of it*, is sufficient to constitute the offence described in the statute.

Giving a forged note to an innocent agent or an accomplice that he may pass it is a disposing of and putting it away.—*R.* v. *Giles*, 1 *Moo. C. C.* 166. So, if a person knowingly deliver a forged bank note to another, who knowingly utters it accordingly, the prisoner who delivered such note to be put off may be convicted of having disposed of and put away the same.—*R.* v. *Palmer*, *R. & R.* 72.

On the charge of uttering, the guilty knowledge is a material part of the evidence. *Actus non facit reum, nisi mens sit rea.* If there is no guilty knowledge, if the person who utters a forged instrument really thinks it genuine, there is no *mens rea* with him; he commits no offence. Therefore, the prosecutor must prove this guilty knowledge by the defendant, to obtain a conviction.

This is not capable of direct proof. It is nearly in all cases proved by evidence of facts, from which the jury may presume it.—*Archbold*, 570. And by a laxity of the general rules of evidence, which has long prevailed in the English Courts, the proof of collateral facts is admitted to prove the guilty knowledge of the defendant. Thus, on an indictment for knowingly uttering a forged instrument, or a counterfeit bank note, or counterfeit coin, proof of the possession, or of the prior or *subsequent* utterance, either to the prosecutor himself *or to other persons*, of other false documents or notes, or bad money, *though of a different description*, and though themselves *the subjects of separate indictments*, is admissible as material to the question of *guilty knowledge* or intent.—*Taylor, Evid.*, 1 *vol., par.* 322; *R.* v. *Aston*, 2 *Russ.* 841; *R.* v. *Lewis*, 2 *Russ.* 841; *R.* v. *Oddy*, 2 *Den.* 264. But in these cases, it is essential to prove distinctly that the instruments offered in evidence of guilty knowledge were themselves forged.—*Taylor, loc. cit.*

It seems also, that though the prosecutor may prove the uttering of other forged notes by the prisoner, and his conduct at the time of uttering them, he cannot proceed to show what the prisoner said or did at another time, with respect to such uttering; for these are collateral facts, too remote for any reasonable presumption of guilt to be founded upon them, and such as the prisoner cannot by any possibility be prepared to contradict.—*Taylor, loc. cit.*; *R.* v. *Philipps*, 1 *Lewin*, 105; *R.* v. *Cooke*, 8 *C. & P.* 586. In *Philipps' case*, the judge said: "That the prosecutor could not give in evidence anything that was said by the prisoner at a time collateral to a former uttering in order to show that what he said at the time of such former

uttering was false, because the prisoner could not be prepared to answer or explain evidence of that description; that the prisoner is called upon to answer all the circumstances of a case under consideration, but not the circumstances of a case which is not under consideration; that the prosecutor is at liberty to show other cases of the prisoner having uttered forged notes, and likewise his conduct at the time of uttering them; but that what he said or did *at another time collateral to such other utterings*, could not be given in evidence, as it was impossible that the prisoner could be prepared to combat it." See *R.* v. *Browne*, 2 *F. & F.* 559, and Paterson's, J., remarks therein on *R.* v. *Cooke*, cited, *ante*, and *R.* v. *Forbes* 7 *C. & P.* 224. The rule, in such cases, seems to be that you cannot bring collateral evidence of a collateral fact, or that you cannot bring evidence of a collateral circumstance of a collateral fact.

The prosecutor must also prove that the uttering was accompanied by an intent to defraud. As to which, see remarks, *ante*, on the necessity of this intent in forgery, generally. Baron Alderson told the jury, in *R.* v. *Hill*, 2 *Moo. C. C.* 30, that if they were satisfied that the prisoner uttered the bill as true, knowing at the time that it was forged, and meaning that the person to whom he offered it should believe it to be genuine, they were bound to infer that he intended to defraud this person, and this ruling was held right by all the judges. And in *R.* v. *Todd*, 1 *Cox*, 57, Coleridge, J., after consulting Cresswell, J., said: "If a person forge another person's name, and utter any bill, note, or other instrument with such signature, knowing it not to be the signature of the person whose signature he represents it to be, but intending it to be taken to be such by the party to whom it is given, the inference, as well in point of fact as of law, is strong

enough to establish the intent to defraud, and the party so acting becomes responsible for the legal consequences of his act, whatever may have been his motives. The natural, as well as the legal consequence, is that this money is obtained, for which the party obtaining it profess to give but cannot give a discharge to the party given up the money on the faith of it. Supposing a person in temporary distress puts another's name to a bill, intending to take it up when it becomes due, but cannot perform it, the consequence is that he has put another under the legal liability of his own act, supposing the signature to pass for genuine." See *R.* v. *Vaughan*, 8 *C. & P.* 276; *R.* v. *Cooke*, 8 *C. & P.* 582; *R.* v. *Geach*, 9 *C. & P.* 499.

A consequence of the judgment for forgery was an incapacity to be a witness until restored to competency by the king's pardon.—2 *Euss.* 844. But now by sect. 214 of the Procedure Act, it is enacted that "no person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating or incidental to each case." And sect. 215 of the same act enacts that every person shall be admitted and be compellable to give evidence, in criminal cases, notwithstanding that such person has been previously convicted of a crime or offence.

Indictment.—(General form, under statute.) The Jurors for Our Lady the Queen, upon their oath present, and J. S. on ..... feloniously did forge a certain *(here name the instrument)* which said forged is as follows: that is to say *(here set out the instrument verbatim)* (see *post* sections 114, 131, 132 of the Procedure Act) with intent thereby then to defraud; against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., afterwards, to wit, on the day and year aforesaid, feloniously did forge a certain other *(state the instrument forged by any name or designation by which it is usually known)* with intent thereby then to defraud; against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged....which said last mentioned forged ..... is as follows: that is to say *(here set out the instrument verbatim)* with intent thereby then to defraud, he, the said J. S., at the time he so uttered, offered, disposed of and put off the said last mentioned forged ..... as aforesaid, well knowing the same to be forged; against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged *(as in the second count)* with intent thereby then to defraud, he, the said J. S., at the time he so uttered, offered, disposed of and put off the said last mentioned forged ..... as aforesaid, well knowing the same to be forged; against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

This indictment is not intended as a general precedent to serve in all cases of forgery; because the form in each particular case must depend upon the statute on which the indictment is framed. But, with the assistance of it, and upon an attentive consideration of the operative words in the statute creating the offence, the pleader can find no difficulty in framing an indictment in any case.—*Archbold*, 559.

Indictment for forgery at common law.—The Jurors for Our Lady the Queen upon their oath present, that J. S., on ..... unlawfully, knowingly and falsely did forge and counterfeit a certain writing purporting to be *(describe the instrument)* with intent thereby then to defraud: to the evil example of all others in like case offending, and against the peace of Our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., afterwards, to wit, on the day and year aforesaid, unlawfully, falsely and deceitfully did utter and publish as true a certain other false, forged and counterfeited writing, purporting to be *(describe the instrument)* with intent thereby then to defraud, he the said J. S., at the same time he so uttered and published the said last mentioned false, forged and counterfeited writing as aforesaid, well knowing the same to be false, forged and counterfeited, to the evil example of all others in the like case offending and against the peace of Our Lady the Queen, her crown and dignity. —*Archbold.*

At common law, forgery is a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the court.

The court of quarter sessions has no jurisdiction in

cases of forgery, 2 Russ 814, and never had: "why?" said Lord Kenyon, "I know not, but having been expressly so adjudged, I will not break through the rules of law.—*R.* v. *Higgins*, 2 *East* 18.—See also *R.* v. *Rigby*, 8 *C. & P.* 770, *and R.* v. *McDonald*, 31 *U. C. Q. B.* 337. See secs. 114, 130, 131 and 132 of Procedure Act as to indictments for forgery, and sec. 18 thereof as to venue.

A prisoner extradicted from the United States on a charge of forgery can, upon an indictment for forgery, be found guilty of a felonious uttering.—*R.* v. *Paxton*, 3 *L. C. L. J.* 117.

Making false entries in a book does not constitute the crime of forgery. *Ex parte Lamirande*, 10 *L. C. J.* 280. See *R.* v. *Blackstone*, *post*, *under sec.* 12, *and ex parte Eno*, 10 Q. L. R. 194.

Definition of the term forgery considered. *In re Smith*, 4 *P. R.* (*Ont.*) 215. *R.* v. *Gould*, 20 *U. C. C. P.* 154.

Where the prisoner was indicted for forging a note for $500, having changed a note of which he was the maker from $500 to $2,500. *Held*, a forgery of a note for $500, though the only fraud committed was on the endorser.—*R.* v. *McNevin*, 2 *R. L.* 711.

CHAPTER 165.

AN ACT RESPECTING FORGERY.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

INTERPRETATION.

1. In this Act, unless the context otherwise requires, the expression "Province of Canada" includes the late Province of Canada and the late Provinces of Upper Canada and Lower Canada, also the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, as they respectively existed before they became part of Canada, and also the several Provinces, Territories and Districts now or hereafter forming part of Canada.

2. When the having any matter or thing in the custody or possession of any person is, in this Act, expressed to be an offence, if any person has any such matter or thing in his personal custody and possession, or knowingly and wilfully has any such matter or thing in the actual custody and possession of any other person, or knowingly and wilfully has any such matter or thing in any dwelling-house or other building, lodging, apartment, field or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter or thing is so had for his own use, or for the use or benefit of another, every such person shall be deemed and taken to have such matter or thing in his custody or possession within the meaning of this Act.—32-33 *V.*, *c.* 19, *s.* 52. 24-25 *V.*, *c.* 98, *s.* 45, *Imp.*

The words "or knowingly and wilfully has any such matter or thing in the actual custody of any other person" remove the doubts mentioned in *R.* v. *Rogers*, 2 *Moo. C. C.* 85. *R.* v. *Gerrish*, 2 *M. & Rob.* 219, and *R.* v. *Williams*, *C. & M.* 259.

3. The wilful alteration, for any purpose of fraud or deceit, of any document or thing written, printed or otherwise made capable of being read, or of any document or thing the forging of which is made punishable by this Act, shall be held to be a forging thereof.—32-33 *V.*, *c.* 19, *s.* 45, *part.*

Not in the English Act.

An indictment under this clause should charge the alteration to have been done "wilfully and for a purpose of fraud," and in another count "wilfully and for the purpose of deceit."

In consideration of law, every *alteration* of an instrument amounts to a forgery of the whole, and an indictment for *forgery* will be supported by proof of a *fraudulent alteration*, though, in cases where a genuine instrument has been altered, it is perhaps better to allege the *alteration* in one count of the indictment.—1 *Starkie's Crim. pl.* 99.

THE GREAT SEAL, ETC.

4. Every one who forges or counterfeits, or utters, knowing the same to be forged or counterfeited, the Great Seal of the United Kingdom, or the Great Seal of Canada, of any Province of Canada, or of any one of Her Majesty's colonies or possessions, Her Majesty's Privy Seal, any Privy Signet of Her Majesty, Her Majesty's Royal sign manual, or any of Her Majesty's seals, appointed by the twenty-fourth article of the union between England and Scotland, to be kept, used and continued in Scotland, the Great Seal of Ireland, or the Privy Seal of Ireland, or the Privy Seal or Seal at Arms of the Governor General of Canada, or of the Lieutenant Governor of any Province of Canada, or of any person who administers or, at any time, administered the Government of any Province of Canada, or of the Governor or Lieutenant Governor of any one of Her Majesty's colonies or possessions, or forges or counterfeits the stamp or impression of any of the seals aforesaid, or utters any document or instrument whatsoever, having thereon or affixed thereto the stamp or impression of any such forged or counterfeited seal, knowing the same to be the stamp or impression of such forged or counterfeited seal, or any forged or counterfeited stamp or impression made or apparently intended to resemble the stamp or impression of any of the seals aforesaid, knowing the same to be forged or counterfeited, or forges, or alters, or utters, knowing the same to be forged or altered, any document or instrument having any of the said stamps or impressions thereon, or affixed thereto, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 1. 24-25 *V.*, *c.* 98, *s.* 1, *Imp.*

5. Every one who forges or fraudulently alters any document bearing or purporting to bear the signature of the Governor General of Canada, or of any deputy of the Governor General, or of the Lieutenant Governor of any Province of Canada, or of any person who administers or, at any time, administered the Government of any Province of Canada, or offers, utters, disposes of or puts off any such forged or fraudulently altered document as aforesaid, knowing the same to be so forged or altered, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 2.

LETTERS PATENT AND PUBLIC REGISTERS.

6. Every one who forges or alters, or in any way publishes, puts off, or utters as true, knowing the same to be forged or altered, any copy of letters patent, or of the enrolment or enregistration of letters patent, or of any certificate thereof, made or given or purporting to be made or given by virtue of any Act of Canada or of any Province of Canada, is guilty of felony, and liable to seven years' imprisonment. —32-33 *V.*, *c.* 19, *s.* 3.

7. Every one who forges or counterfeits or alters any public register or book appointed by law to be made or kept or any entry therein, or wilfully certifies or utters any writing as and for a true copy of such public register or book or of any entry therein, knowing such writing to be counterfeit or false, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 4.

Upon the trial of an indictment for any offence under these Sections, the jury may, if the evidence warrants it, under s. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.

Indictment.— .... under sec. 4 ..... that A. B., on ..... the Great Seal of the United Kingdon, falsely, deceitfully and feloniously did forge and counterfeit, against the form ..... And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B. afterwards, to wit, on the day and year aforesaid, falsely, deceitfully and feloniously did utter a certain other false, forged and counterfeited Great Seal as aforesaid, then well knowing the same to be false, forged and counterfeited

against the form ..... *Add counts stating the instrument to which the counterfeit seal was appended, or which had thereon or affixed thereto the stamp or impression of such counterfeit, seal, etc.—Archbold*, 571.

Before the recent statutes, this offence was treason.—1 *Hale*, 183. See general remarks on forgery.

TRANSFER OF STOCK, ETC.

8. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any transfer of any share or interest of or in any stock, annuity or other public fund which now is or here after may be transferable in any of the books of the Dominion of Canada, or of any Province of Canada or of any bank at which the same is transferable, or of or in the capital stock of any body corporate, company or society, which now is or hereafter may be established by charter, or by, under or by virtue of any Act of Parliament of the United Kingdom or of Canada, or by any Act of the Legislature of any Province of Canada, or forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund or capital stock, *or any claim for a grant of land from the Crown in Canada, or for any script or other payment or allowance in lieu of any such grant of land*, or to receive any dividend or money payable in respect of any such share or interest, or demands or endeavors to have any such share or interest transferred, or to receive any dividend or money payable in respect thereof, or any such grant of land, or script or payment or allowance in lieu thereof as aforesaid, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 5. 24-25 *V.*, *c.* 98, *s.* 2, *Imp.*

The words in *italics* are not in the English Act.

See general remarks on forgery.

Indictment for forging and uttering a transfer of stock.— ..... that A. B., on ..... feloniously did forge a transfer of a certain share and interest in certain stock and annuities, to wit ..... which said stock and

annuities were then transferable at the bank of ..... and which said transfer then purported to be made by one J. N. with intent thereby then to defraud, against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

(2nd Count.)— ..... did offer, utter, dispose of, and put off, a certain other forged transfer of a certain share and interest of, and in certain other stock and annuities, to wit ..... which said last mentionned stock and annuities were then transferable at the bank of ....., and which said last mentionned transfer purported to be made by one J. N., with intent thereby then to defraud, he the said A. B., at the time he so uttered the said last mentioned forged transfer of the said share and annuity, well knowing the some to be forged, against the form .....—*Archbold*, 590.

Indictment for forging and uttering a power of attorney to sell out stock.— ..... that A. B., on ..... feloniously did forge a certain power of attorney to transfer a certain share and interest in certain stock and annuities which were then transferable at the bank of ....., which said forged power of attorney is as follows, that is to say (*here set it out*) with intent thereby then to defraud, against the form ..... (2nd Count.) ..... feloniously did offer, utter, dispose of and put off a certain other forged power of attorney, purporting to be a power of attorney to transfer a certain share and interest of the said J. N. in certain stock and annuities which were then transferable at the bank of ..... to wit, ... with intent thereby then to defraud, he the said A. B. then well knowing the said last mentioned power of attorney to be forged, against the form ..... (3rd Count.) ..... feloniously did demand and endeavour to have a certain share and interest of the said J. N. in certain stock and annuities, which were then transferable at the bank of..... to wit, ... transfered, in the books of the said bank of ....., by virtue of a certain other forged power of attorney, purporting to be a power of attorney, to transfer the said share and interest of the said J. N. in the said stock and annuities so transferable as aforesaid, with intent thereby then to defraud, he the said A. B., at the time he so demanded and endeavoured to have the said share and interest transferred as aforesaid, well knowing the said last mentioned power of attorney to be forged, against the form ..... —*Archbold*, 590.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.—2 *Russ.* 865.

9. Every one who, falsely and deceitfully, personates any owner of any share, or interest of or in any stock, annuity or other public fund, which now is or hereafter may be transferable in any of the books of the Dominion of Canada, or of any Province of Canada, or of any bank at which the same is transferable, or any owner of any share or interest of or in the capital stock of any body corporate, company or society which now is or hereafter may be established by charter, or by, under or by virtue of any Act of Parliament of the United Kingdom or of Canada, or by any Act of the Legislature of any Province of Canada, *or of any claim for a grant of land from the Crown in Canada, or for any scrip or other payment or allowance in lieu of such grant of land*, or any owner of any dividend or money payable in respect of any such share or interest as aforesaid, and thereby transfers or endeavors to transfer any share or interest belonging to any such owner, or thereby receives or endeavors to receive any money due to any such owner, *or to obtain any such grant of land, or such scrip or allowance in lieu thereof as aforesaid*, as if such offender were the true and lawful owner, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 19, *s.* 6. 24-25 *V., c.* 98, *s.* 3, *Imp.*

The words in *italics* are not in the English Act.

Indictment.—..... feloniously did, falsely and deceitfully, personate one J. N., the said J. N. then being the owner of a certain share and interest in certain stock and annuities, which were then transferable at the bank of ....., to wit *(state the amount and nature of the stock;)* and that the the said A. B. thereby did then transfer the said share and interest of the said J. N. in the said stock annuities, as if he, the said A. B., were then the true and lawful owner thereof, against the form.....—*Archbold*, 614.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act convict the prisoner of an attempt to commit the same.—2 *Russ.* 865.

10. Every one who forges any name, handwriting or signature, purporting to be the name, handwriting or signature of a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund or capital stock, or grant of land or scrip or allowance in lieu thereof, as in either of the two sections next preceding mentioned, or to receive any dividend or money payable in respect of any such share or interest, or offers, utters, disposes of or puts off any such power of attorney or other authority, with any such forged name, handwriting or signature thereon, knowing the same to be forged, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 7. 24-25 *V.*, *c.* 98, *s.* 4, *Imp.*

11. Every one who, with intent to defraud, wilfully makes any false entry in, or wilfully alters any word or figure in any of the books of account kept by the Government of Canada, or of any Province of Canada, or of any bank at which any of the books of account of the Government of Canada or of any Province of Canada are kept, in which books the accounts of the owners of any stock, annuities or other public funds, which now are or hereafter may be transferable in such books, are entered and kept, or in any manner wilfully falsifies any of the accounts of any of such owners in any of the said books, or wilfully makes any transfer of any share or interest of or in any stock, annuity or other public fund which now is or hereafter may be transferable as aforesaid, in the name of any person not being the true and lawful owner of such share or interest, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 8. 24-25 *V.*, *c.* 98, *s.* 5, *Imp.*

12. Every one who, being a clerk, officer or servant of, or other person employed or intrusted by the Government of Canada or of any Province of Canada, or being a clerk or officer or servant of, or other person employed or intrusted by any bank in which any of such books and accounts as are mentioned in the next preceding section are kept, knowingly and with intent to defraud, makes out, or delivers any dividend warrant, or warrant for payment of any annuity, interest or money payable as aforesaid, for a greater or less amount than the person on whose behalf such warrant is made out is entitled to, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 9. 24-25 *V.*, *c.* 98, *s.* 6, *Imp.*

Indictment under sec. 10.—.....feloniously did forge a certain name, handwriting and signature, as and purporting to be the name, handwriting and signature of one ..... as and purporting to be a witness attesting the execution of a certain power of attorney to transfer a certain share and interest of one J. N. in certain stock and annuities which were then transferable at the bank of ....., to wit *(here state the amount and nature of the stock;)* against the form.....

(2nd Count.).....did utter, dispose of and put off a certain other forged power of attorney to transfer a certain share and interest of the said J. N. in certain stock and annuities which were then transferable at the bank of ....., to wit, with the name, handwriting and signature of the said ..... forged, on the said last mentioned power of attorney, as an attesting witness to the execution thereof, he the said *(defendant,)* at the time he so offered, uttered, disposed of and put off the same, well knowing the said name and handwriting, purporting to be the name and handwriting of the said ..... thereon, as attesting

witness thereof as aforesaid, to be forged, against the form .....—*Archbold.*

Indictment for making false entries of stock, under sec. 11.— ..... feloniously did wilfully alter certain words and figures, that is to say *(here set out the words and figures, as they were before the alteration)* in a certain book of account kept by ....., in which said book the accounts of the owners of certain stock, annuities and other public funds, to wit, the *(state the stock)* which were then transferable at ..... were then kept and entered, by *(set out the alteration and the state of the account or item when so altered)* with intent thereby then to defraud; against the form.....—*Archbold.*

Indictment for making a transfer of stock in the name of a person not the owner, under sec. 11.—.....feloniously did wilfully make a transfer of a certain share and interest of and in certain stock and annuities, which were then transferable at the bank of....., to wit, the share and interest of....., in the ..... *(state the amount and nature of the stock)*, in the name of one C. D., he the said C. D. not being then the true and lawful owner of the said share and interest of and in the said stock and annuities, or any part thereof, with intent thereby then to defraud, against the form.....—*Archbold.*

Indictment, under sec. 12..... then being a clerk of..... and employed and entrusted by the said ..... feloniously did knowingly make out and deliver to one J. N. a certain dividend warrant for a greater amount than the said J. N. was then entitled to, to wit, for the sum of five hundred pounds; whereas, in truth and in fact, the said J. N. was then entitled to the sum of one hundred pounds only; with intent thereby then to defraud, against the form.....—*Archbold.*

Upon the trial of any indictment for any offence under these sections, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.—2 *Russ.* 865.

Where a bank clerk made certain false entries in the bank books under his control, for the purpose of enabling him to obtain the money of the bank improperly.

Held, that he was not guilty of forgery.—*The Queen* v. *Blackstone*, 4 *Man. L. R.* 296.

DEBENTURES, STOCK, EXCHEQUER BILLS, ETC.

13. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any debenture or other security, issued under the authority of any Act of the Parliament of Canada, or of the Legislature of any Province of Canada, or any exchequer bill or exchequer bond, or any Dominion or Provincial note, or any indorsement on or assignment of any such debenture, exchequer bill or exchequer bond or other security, issued under the authority of any Act of the Parliament of Canada, or of the Legislature of any Province of Canada, or any coupon, receipt or certificate for interest accruing thereon, or any scrip in lieu of land as aforesaid, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 19, *s.* 10. 24-25 *V., c.* 98, *s.* 8, *Imp.*

14. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, makes or causes or procures to be made, or aids or assists in making, or knowingly has in his custody or possession, any frame, mould or instrument, having therein any words, letters, figures, marks, lines or devices, peculiar to or appearing in the substance of any paper provided or to be provided and used for any such debentures, exchequer bills or exchequer bonds, Dominion notes or Provincial notes or other securities as aforesaid, or any machinery for working any threads into the substance of any such paper, or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads or devices,—or any plate peculiarly employed for printing such debentures, exchequer bills or exchequer bonds, or such notes or other securities, or any die or seal peculiarly used for preparing any such plate, or for sealing such debentures, exchequer bills or exchequer bonds, notes or other securities, or any plate, die or seal, intended to imitate any such plate, die or seal as aforesaid, is

guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 11. 24-25 *V.*, *c.* 98, *s.* 9, *Imp.*

15. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, makes, or causes, or procures to be made, or aids or assists in making any paper in the substance of which appear any words, letters, figures, marks, lines, threads or other devices peculiar to and appearing in the substance of any paper provided or to be provided or used for such debentures, exchequer bills or exchequer bonds, notes or other securities aforesaid, or any part of such words, letters, figures, marks, lines, threads or other devices, and intended to imitate the same, or knowingly has in his custody or possession any paper whatsoever, in the substance whereof appear any such words, letters, figures, marks, lines, threads or devices as aforesaid, or any parts of such words, letters, figures, marks, lines, threads or other devices, and intended to imitate the same, or causes or assists in causing any such words, letters, figures, marks, lines, threads or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads and other devices, and intended to imitate the same, to appear in the substance of any paper whatsoever, or takes, or assists in taking an impression of any such plate, die or seal, as in the next preceding section mentioned, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 12. 24-25 *V.*, *c.* 98, *s.* 10, *Imp.*

16. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, purchases or receives, or knowingly has in his custody or possession, any paper manufactured and provided by or under the direction of the Government of Canada or of any Province of Canada, for the purpose of being used as such debentures, exchequer bills or exchequer bonds, notes or other securities as aforesaid, before such paper has been duly stamped, signed and issued for public use, or any such plate, die or seal, as in the two sections next preceding mentioned, is guilty of a misdemeanor, and liable to imprisonment for any term less than two years.—32-33 *V.*, *c.* 19, *s.* 13. 24-25 *V.*, *c.* 98, *s.* 11, *Imp.*

See, *ante*, sec. 2, as to what constitutes a criminal possession under this act.

Sec. 183 of the Procedure Act applies to trials under these sections.—2 *Russ.* 939.

STAMPS.

17. Every one who forges, counterfeits or imitates, or procures to be forged, counterfeited or imitated any stamp or stamped paper, issued or authorized to be used by any Act of the Parliament of Canada, or of the Legislature of any province of Canada, by means whereof any duty thereby imposed may be paid, or any part or portion of any such stamp,—or knowingly uses, offers, sells or exposes for sale any such forged, counterfeited or imitated stamp,—or engraves, cuts, sinks or makes any plate, die or other thing whereby to make or imitate such stamp or any part or portion thereof, except by permission of an officer or person who, being duly authorized in that behalf by the Government of Canada or of any Province of Canada, may lawfully grant such permission,—or has possession of any such plate, die or thing, without such permission, or, without such permission, uses or has possession of any such plate, die or thing lawfully engraved, cut or made,—or tears off or removes from any instrument, on which a duty is payable, any stamp by which such duty has been wholly or in part paid, or removes from any such stamp any writing or mark indicating that it has been used for or towards the payment of any such duty, is guilty of felony, and liable to twenty-one years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 14. 32-33 *V.*, *c.* 48, *s.* 8, *and* 33-34 *V.*, *c.* 98, *Imp.*

As to what constitutes a criminal possession under this act—see, *ante*, sec. 2.

See sec. 125 of the Procedure Act, as to indictment.

The Post Office Act, c. 35, Rev. Statutes, provides for the forgery of postage stamps, etc.

See *R.* v. *Collicott*, *R. & R.* 212, and *R.* v. *Field*, 1 *Leach*, 383.—And see general remarks on forgery. The words "with intent to defraud" are not necessary in the indictment, since the statute does not contain them.—See *R.* v. *Aspin*, 12 *Cox*, 391.

It was held, in *R.* v. *Ogden*, 6 *C. & P.* 631, under a similar statute, that a fraudulent intent was not necessary, but in a case of *R.* v. *Allday*, 8 *C. & P.* 136, Lord Abinger ruled the contrary: "The act of Parliament, he said, does not say that an intent to deceive or defraud

is essential to constitute this offence, but it is a serious question whether a person doing this thing innocently, and intending to pay the stamp duty, is liable to be transported. I am of opinion, and I hope I shall not be found to be wrong, that to constitute this offence, there must be a guilty mind. It is a maxim older than the law of England, that a man is not guilty unless his mind be guilty."

Lord Abinger, in *R.* v. *Page*, 8 *C. & P.* 122, held, upon the same principle, that giving counterfeit coin in charity, knowing it to be such, is not criminal, though in the statute there are no words with respect to defrauding. But this is overruled, as stated by Baron Alderson in *R.* v. *Ion*, 2 *Den.* 484; and Greaves well remarks *(on R.* v. *Page)*: "As every person is taken to intend the probable consequence of his act, and as the probable consequence of giving a piece of bad money to a beggar is that that beggar will pass it to some one else, and thereby defraud that person, *quære*, whether this case rests upon satisfactory grounds? In any case a party *may* not be defrauded by taking base coin, as he *may* pass it again, but still the probability is that he will be defrauded, and that is sufficient."—1 *Russ.* 126, *note Z.*

And are there not cases, where a party, receiving a counterfeit coin or a false note, not only *may* not be defrauded, but will *certainly not* be defrauded. As for example, suppose that during an election any one buys an elector's vote, and pays it with a forged bill,—is the uttering of this bill, with guilty knowledge, not criminal? Yet, the whole bargain is a nullity; the seller has no right to sell; the buyer has no right to buy; if he buys, and does not pay, the seller has no legal or equitable claim against him, though *he* may have fulfilled his part

of the bargain. If the buyer does not pay, he *does not* defraud the seller; he *cannot* defraud him, since he does not owe him anything; it, then, cannot be said that he defrauds him in giving him, in payment, a forged note. Why see in this a fraud, and no fraud in giving a counterfeit note, in charity, to a beggar? Nothing is due to this beggar, and he is not defrauded of anything by receiving this forged bill, nor is this elector, who has sold his vote, defrauded of anything, since nothing was due to him; they are both *deceived* but not *defrauded*. In the general remarks on forgery, *ante*, an opinion was expressed that forgery would be better described as "a false making with the intent to defraud *or deceive*," and such cases as the above seem to demonstrate the necessity of a codification of our criminal laws. And, when the statute makes no mention of the intention, does it not make the act prohibited a crime in itself, apart from the intention? Of course, it is a maxim of our law that "*actus non facit reum nisi mens sit rea*" or, as said in other words, by Starkie, 1 *Cr. Pl.* 177, that, "to render a party criminally responsible, a vicious will must concur with a wrongful act." "But," continues Starkie, "though it be universally true, that a man cannot become a criminal unless his mind be in fault, it is not so general a rule that the guilty intention must be averred upon the face of the indictment." And then, for example, does not the man who forges a stamp, or, *scienter*, utters it, do wilfully an unlawful act? Does not the law say that this act, by itself, is criminal? Has Parliament not the right to say: "The forging, false-making a stamp, or knowingly uttering it, is a felony, by itself, whether the person who does it means wrong, or whether he means right, or whether he means nothing at all?" And this is exactly

what it has said with regard to stamps, the Great Seal, records of the courts of justice, etc. It has said of these: "they shall be sacred, inviolable: you shall not deface them, imitate them, falsify, or alter them in any way or manner whatsoever, and if you do, you will be a felon." And to show that, as regards these documents, the intent to defraud was not to be a material element of the offence, it has expressly, in all the other clauses of the statute, where it *did* require this intent to make the act criminal, inserted the words "with intent to defraud," and left them out in the clause concerning the said stamps, Great Seal, court records, etc. And no one would be prepared to say, that the maxim, "*la fin justifie les moyens*," has found its introduction into the English criminal law; and that, for instance, a clerk of a court of justice is not guilty of a criminal act, if he alters a record, provided that the alteration is done with a *good intent*, and to put the record, as *he* thinks, it ought to be, and should, in fact, be. Is it not better to say that, in such cases, the guilty mind, the evil intent, the *mens rea*, consist in the wilful disobedience to a positive law, in the rebellious infraction of the enactments of the legislative authority?

Against the preceding remarks, it must be noticed that Bishop, 1 *Cr. L.* 345, and 2 *Cr. L.* 607, cites these two cases, *R.* v. *Allday*, and *R.* v. *Page*, and apparently approves of them; but Baron Alderson's remarks on *R.* v. *Page*, in *R.* v. *Ion*, do not appear to have been noticed in Bishop's learned books. At the same time, it may be mentioned that in his 1 Cr. Procedure, after remarking, par. 521, that the adjudged law, on this question, seems to be not quite consistent with the general doctrine, and not quite clear and uniform in itself, this distinguished author says, in a foot note to par. 522: "Now, in this

complication of things, where also practice has run on without decision, and then decision has proceeded without much reference to the principles adhering in the law, it is not suprising that, on this question of alleging the intent, legal results have been reached, not altogether harmonious with one another, and not uniformly correct in principle. Still, as this is a practical question, the practical good sense of the judges has prevented any great inconvenience attending this condition of things."

See remarks by Greaves, on *R.* v. *Hodgson*, under general remarks on forgery, *ante*, and s. 114 Procedure Act.

BANK NOTES.

18. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any note or bill of exchange of any body corporate, company or person carrying on the business of bankers, commonly called a bank note, a bank bill of exchange or bank post bill, or any indorsement on or assignment of any bank note, bank bill of exchange or bank post bill, is guilty of felony, and liable to imprisonment for life. —32-33 *V.*, *c.* 19, *s.* 15. 24-25 *V.*, *c.* 98, *s.* 12, *Imp.*

Indictment.— ..... feloniously did forge a certain note of the bank of ..... commonly called a bank note, for the payment of ten dollars, with intent thereby then to defraud, against the form .....

(*2nd Count.*)—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged note of the bank of ..... commonly called a bank-note, for the payment of ten dollars with intent thereby then to defraud,—he said J. S. at the time he so offered, uttered, disposed of and put off the said last mentioned forged note as aforesaid, then and there well knowing the same to be forged, against the form .....—*Archbold.*

It is unnecessary to set out the forged instrument: it is sufficient to describe it by any name or designation by which it is usually known, or by its purport.—Sections 130 and 131 of the Procedure Act.

An indictment need not state, in the counts for uttering, to whom the note was disposed of.—*R.* v. *Holden, R. & R.* 154. The intent to defraud any particular person need not be alleged or proved. Sect. 114 Procedure Act.

Under the counts for uttering, evidence may be given that the defendant offered or tendered the note in payment, or that he actually passed it, or otherwise disposed of it to another person. Where it appeared that the defendant sold a forged note to an agent employed by the bank to procure it from him, the judges held this to be within the act, although it was objected that the prisoner had been solicited to commit the act proved against him, by the bank themselves, by means of their agents.—*R.* v. *Holden, ubi supra.* So where A. gave B. a forged note to pass for him, and upon B.'s tendering it in payment of some goods, it was stopped; the majority of the judges held, that A., by giving the note to B., was guilty of disposing of and putting away the note, within the meaning of the act.—*R.* v. *Palmer, R. & R.* 72; *R.* v. *Soares, R. & R.* 25; *R.* v. *Stewart, R. & R.* 363; and *R.* v. *Giles*, 1 *Moo. C. C.* 166, where it was held, that giving a forged note to an innocent agent, or an accomplice, that he may pass it, is a disposing of, and putting it away, within the meaning of the statute.

See general remarks on forgery.

Upon the trial of any indictment for any offence against this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.—2 *Russ.* 874.

19. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, purchases or receives from any other person, or has in his custody or possession any forged bank note, bank bill of exchange or bank post bill, or blank bank note, blank bank bill of exchange or blank bank post bill, knowing the same to be forged, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 16. 24-25 *V.*, *c.* 98, *s.* 13, *Imp.*

As to what constitutes a criminal possession under this act, see sec. 2.

Indictment.—The Jurors for Our Lady the Queen upon their oath present, that A. B. on ..... feloniously and without lawful authority or excuse, had in his custody and possession five forged bank notes for the payment of ten dollars each, the said A. B. then well knowing the said several bank notes and each and every of them respectively to be forged; against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—*Archbold*, 596; 2 *Burn*, 682.

In *R.* v. *Rowley, R. & R.* 110, it was held, that every uttering included having in custody and possession, and, by some of the judges, that, without actual possession, if the notes had been put in any place under the prisoner's control, and by his direction, it was a sufficient possession within the statute. See now sect. 2, *ante.*

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.—2 *Russ.* 874.

Held, that the alteration of a $2 Dominion note to one of the denomination of $20, such alteration consisting in the addition of a cypher after the figure 2, wherever that figure occurred in the margin of the note, was forgery, and the prisoner was rightly convicted therefor.—*The Queen* v. *Bail*, 7 *O. R.* 228.

See sec. 129, *Procedure Act.*

MAKING PAPER AND ENGRAVING PLATES FOR BANK NOTES, ETC.

20. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, makes or uses, or knowingly has in his custody or possession any frame, mould or instrument for the making of paper used for Dominion or Provincial notes, or for bank notes, with any words used in such notes, or any part of such words, intended to resemble or pass for the same, visible in the substance of the paper, or for the making of paper with curved or waving bar lines, or with laying wire lines thereof, in a waving or curved shape, or with any number, sum or amount, expressed in a word or words in letters, visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used for such notes, respectively,—or makes, uses, sells, exposes for sale, utters or disposes of, or knowingly has in his custody or possession any paper whatsoever with any words used in such notes, or any part of such words, intended to resemble and pass for the same visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum or amount expressed in a word or words in letters appearing visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used for any such notes, respectively,—or by any art or contrivance, causes any such words or any part of such words, intended to resemble and pass for the same, or any device or distinction peculiar to and appearing in the substance of the paper used for any such notes, respectively, to appear visible in the substance of any paper, or causes the numerical sum or amount of any such note, in a word or words in letters to appear visible in the substance of the paper, whereon the same is written or printed, is guilty of felony, and liable to fourteen years' imprisonment.—32 33 *V.*, *c.* 19, *s.* 17. 24-25 *V.*, *c.* 98, *s.* 14, *Imp.*

21. Nothing in the next preceding section contained shall prevent any person from issuing any bill of exchange or promissory note, having the amount thereof expressed in a numerical figure or figures denoting the amount thereof in pounds or dollars, appearing visible in the substance of the paper upon which the same is written or printed, or shall prevent any person from making, using or selling any paper having waving or curved lines, or any other devices in the nature of water marks visible in the substance of the paper, not being bar lines or laying wire lines, provided the same are not so contrived as to form the groundwork or texture of the paper, or to resemble the waving or curved, laying wire lines or bar lines, or the water-marks of the paper used for Dominion notes or Provincial notes or bank notes, as aforesaid.—32-33 *V.*, *c.* 19, *s.* 18. 24-25 *V.*, *c.* 98, *s.* 15, *Imp.*

22. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, engraves or in anywise makes upon any plate whatsoever, or upon any wood, stone or other material, any promissory note or part of a promissory note, purporting to be a Dominion or Provincial note, or bank note, or to be a blank Dominion or Provincial note, or bank note. or to be a part of any Dominion or Provincial note, or bank note, as aforesaid, as any name, word or character resembling, or apparently intended to resemble, any subscription to any such Dominion or Provincial note, or bank note, as aforesaid,—or uses any such plate, wood, stone or other material, or any other instrument or device for the making or printing of any such note, or part of such note,—or knowingly has in his custody or possession any such plate, wood, stone or other material, or any such instrument or device,—or knowingly offers, utters, disposes of or puts off, or has in his custody or possession any paper upon which any blank Dominion or Provincial note, or bank note, or part of any such note, or any name, word or character resembling, or apparently intended to resemble, any such subscription, is made or printed, is guilty of felony and liable to fourteen years' imprisonment.—31 *V.*, *c.* 46, *s.* 14. 32-33 *V.*, *c.* 19, *s.* 19. 24-25 *V.*, *c.* 98, *s.* 16, *Imp.*

23. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, engraves or in anywise makes upon any plate whatsoever, or upon any wood, stone or other material, any word, number, figure, device, character or ornament, the impression taken from which resembles, or is apparently intended to resemble any part of a Dominion or Provincial note, or bank note, or uses or knowingly has in his custody or possession any such plate, wood, stone or other material, or any other instrument or device for the impressing or making upon any paper or any other material, any word, number, figure, character or ornament, which resembles, or is apparently intended to resemble any part of any such note as aforesaid,—or knowingly offers, utters, disposes of or puts off, or has in his custody or possession any paper or other material upon which there is an impression of any such matter as aforesaid, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 20. 24-25 *V.*, *c.* 98, *s.* 17, *Imp.*

24. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, makes or uses any frame, mould or instrument for the manufacture of paper, with the name or firm of any bank or body corporate, company or person carrying on the business of bankers, appearing visible in the substance of the paper, or knowingly has in his custody or possession any such frame, mould or instrument,—or makes, uses, sells, or exposes for sale, utters or disposes of, or knowingly has in his custody or possession any paper, in the substance of which the name or firm of any such bank, body corporate, company or person appears visible,—or, by any art or contrivance causes the name or firm of any such bank, body corporate company or other person to appear visible in the substance of the paper upon which the same is written or printed, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 21. 24-25 *V.*, c. 98, *s.* 18, *Imp.*

25. Every one who forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any bill of exchange, promissory note, undertaking or order for payment of money, in whatsoever language or languages the same is expressed, and whether the same is or is not under seal, purporting to be the bill, note, undertaking or order of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate or body of the like nature, constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of Her Majesty, and every one who, without lawful authority or excuse, the proof whereof shall lie on him, engraves, or in anywise makes upon any plate whatsoever, or upon any wood, stone or other material, any bill of exchange, promissory note, undertaking or order for payment of money, or any part of any bill of exchange, promissory note, undertaking or order for payment of money, in whatsoever language the same is expressed, and whether the same is or is not, or is or is not intended to be under seal, purporting to be the bill, note, undertaking or order, or part of the bill, note, undertaking or order of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate or body of the like nature, constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country not under the Dominion of Her Majesty, or uses or knowingly has in his custody or possession any plate, stone, wood or other material, upon which any such foreign bill, note, undertaking or order, or any part thereof is engraved or made,—or knowingly offers, utters, disposes of or puts off, or has in his custody or possession any paper upon which any part of any such foreign bill, note, undertaking or order is made or printed, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, c. 19, *s.* 22. 24-25 *V.*, *c.* 98, *s.* 19, *Imp.*

The first part of this section is not in the English Act.

As to what is a criminal possession—see, *ante*, sec. 2.

Upon the trial of any indictment for any offence under these sections, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.—2 *Russ.* 874.

It was held in *R.* v. *Brackenridge*, 11 *Cox* 96, that it is an offence, under sect. 16 of the Imperial Act (sect. 22 of our act), feloniously, and without lawful excuse, to engrave upon a plate in England a note of a bank in Scotland, or in the colonies; but see 37 *L. J. M. C.* 88.

In *R.* v. *Keith*, *Dears* 486, a decision was given on what is a part of a bank note, but Greaves, *note a*, 2 *Russ.* 874, questions the legality of the decision.

R. v. *Warshaner*, 1 *Moo. C. C.* 466; *R.* v. *Harris*, and *R.* v. *Balls*, 1 *Moo. C. C.* 470, are cases under a clause similar to sect. 25, *ante*, as to foreign bills and notes.

In *R.* v. *Hannon*, 2 *Moo. C. C.* 77, the having, in England, in possession, a plate upon which was engraved a note of the Bank of Upper Canada, was declared to be within the then existing statute.

In *R.* v. *Rinaldi*, *L. and C.* 330, it was held, that the taking of a "positive" impression of a note on glass by means of the photographic process is a "making" of a note within 24-25 V., c. 98., s. 19 (sect. 25, *ante*, of our statute) although the impression so taken is evanescent, and although it cannot be printed or engraved from until it has been converted into a "negative." The report of this case gives at full length a copy of the indictment therein.

If several concur in employing another to make a forged instrument, knowing its nature, they are all guilty of the forgery.—*R.* v. *Mazeau*, 9 *C. and P.* 676.

See secs. 114, 131 and 132 of Procedure Act, as to indictment, and sec. 55 as to search warrants.

DEEDS, WILLS, BILLS OF EXCHANGE, ETC.

26. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any deed or any bond or writing obligatory, or any assignment at law or in equity of any such bound or writing obligatory, or forges any name, handwriting or signature purporting to be the name, handwriting or signature of a witness attesting the execution of any deed, bond or writing obligatory, or offers, utters, disposes of or puts off any deed, bond or writing obligatory, having thereon any such forged name, handwriting or signature, knowing the same to be forged, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 19, *s.* 23. 24-25 *V., c.* 98, *s.* 20, *Imp.*

Indictment ..... a certain bond and writing obligatory feloniously did forge, with intent thereby then to defraud, against the form.....

(2nd Count).....that the said J. S. afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off, a certain other forged bond and writing obligatory, with intent thereby then to defraud, he the said J. S. at the time he so offered, uttered, disposed of and put off the said last-mentioned forged bond and writing obligatory as aforesaid, well knowing the same to be forged, against the form .....—*Archbold.*

A power of attorney is a deed within the meaning of 2 Geo. 2, c. 25, and forging a deed is within the statute, though there may have been subsequent directory provisions by statute, that instruments for the purpose of such forged deed shall be in a particular form, or shall comply with certain requisites, and the forged deed is not in that

form, or does not comply with those requisites.—*R.* v. *Lyon, R. & R.* 255. And a power of attorney to transfer government stock was holden to be a deed under the repealed statutes.—*R.* v. *Fauntleroy*, 1 *Moo. C. C.* 52; but the forging of such a power of attorney is now provided for by sect. 8, *ante.*

R. made an equitable deposit of title deeds with G. for £750, and afterwards assigned all his property to B. for the benefit of his creditors. R. and his assignee, B. then, for an additional advance, conveyed to G. the freehold of the property to which the deeds deposited related. After this, the prisoner R. executed a deed of assignment to the other prisoner of a large part of the land so conveyed to G. for a long term of years; but this deed was falsely antedated before the conveyance by R. and B. to G., and upon this deed, the prisoners resisted G.'s title to possession of this part of the land. *Held*, that this deed so antedated for the purpose of defrauding G. amounted to forgery, and that a man may be guilty of forgery by making a false deed in his own name.—*R.* v. *Ritson*, 11 *Cox*, 352.

Letters of orders issued by a bishop, certifying that so and so has been admitted into the holy orders, is not a deed within this section, and a forgery of such letters is not within the statute, but a misdemeanor at common law. —*R.* v. *Morton*, 12 *Cox*, 456.

Upon any indictment, for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.

27. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any will, testament, codicil, or testamentary instrument, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 19, *s.* 24. 24-25 *V., c.* 98, *s.* 21, *Imp.*

Indictment.—..... feloniously did forge a certain will and testament purporting to be the last will and testament of one ..... with intent thereby then to defraud, against the form .....

(2nd Count).....did offer, utter .....*(as in the last precedent)*.....—*Archbold*, 575.

The judges were equally divided upon the question whether in the absence of the existence of some person who could have been defrauded by the forged will, a count for forging it with intent to defraud a person or persons unknown could be supported.—*R.* v. *Tylney*, 1 *Den.* 319.

Forgery may be committed by the false making of the will of a living person; or of a non-existing person.—*R.* v. *Murphy*, 2 *East, P. C.* 949; *R.* v. *Sterling*, 1 *Leach*, 99; *R.* v. *Coogan*, 1 *Leach*, 449; *R.* v. *Avery*, 8 *C. & P.* 596. So, though it be signed by the wrong christian name of the person whose will it purports to be.—*R.* v. *Fitzgerald*, 1 *Leach*, 20.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sec. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.

28. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any bill of exchange, or any acceptance, indorsement or assignment of any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any such promissory note, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 19 *s.* 25. 24-25 *V., c.* 98, *s.* 22, *Imp.*

Indictment.— ..... a certain bill of exchange feloniously did forge, with intent thereby then to defraud; against the form .....

(2nd Count)..... did offer, utter ..... *as form under sec.* 23.

If the acceptance be also forged, add counts for it, as follows:

(3rd Count.) ..... that the said J. S. afterwards, to wit, on the day and year last aforesaid, having in his custody and possession a certain other bill of exchange, feloniously did forge on the said last mentioned bill of exchange an acceptance of the said last mentioned bill of exchange, which said forged acceptance is as follows, that is to say: *(set it out verbatim)* with intent thereby then to defraud, against the form .....

(4th Count.) ..... that the said J. S., afterwards, to wit, on the year and day last aforesaid, having in his custody and possession a certain other bill of exchange, on which said last mentioned bill of exchange was then written a certain forged acceptance of the said last mentioned bill of exchange, which said forged acceptance of the said last mentioned bill of exchange is as follows, that is to say: *(set it out verbatim)* he, the said J. S., on the day and year last aforesaid, feloniously did offer, utter, dispose of and put off the said forged acceptance of the said last mentioned bill of exchange, with intent thereby then to defraud, he the said J. S. at the time he so offered, uttered, disposed of and put off the said forged acceptance of the said last mentioned bill of exchange well knowing the said acceptance to be forged, against the form .....

If an indorsement be also forged, add counts for it as follows:

(5th Count.) ..... that the said J. S. afterwards, to wit, on the day and year last aforesaid, having in his custody and possession a certain other bill of exchange, feloniously did forge on the back of the said last mentioned bill of exchange, a certain indorsement of the said bill of exchange, which said forged indorsement is as

follows, that is to say: *(set it out verbatim)* with intent thereby then to defraud, against the form .....

(6th Count) ..... that the said J. S. afterwards, to wit, on the day and year last aforesaid, having in his custody and possession a certain other bill of exchange, on the back of which said last mentioned bill of exchange was then written a certain forged indorsement of the said last mentioned bill of exchange, which said last mentioned forged indorsement is as follows, that is to say: *(set it out verbatim)* he, the said J. S. on the day and year last aforesaid, feloniously did offer, utter, dispose of, and put off the said last mentioned forged indorsement of the said last mentioned bill of exchange, with intent thereby then to defraud,—he, the said J. S. at the time he so offered, uttered, disposed of and put off the said last mentioned forged indorsement of the said last mentioned bill of exchange, well knowing the said indorsement to be forged, against the form.....

From the above precedent, an indictment may readily be framed for forging and uttering a promissory note, merely substituting for the words "bill of exchange" the words "promissory note for the payment of money" and omitting, of course, the counts as to the acceptance.—*Archbold.*

A bill payable ten days after sight, purporting to have been drawn upon the Commissioners of the Navy, by a lieutenant, for the amount of certain pay due to him, has been holden to be a bill of exchange.—*R.* v. *Chisholm, R. & R.* 297. So a note promising to pay A. & B., "stewardesses" of a certain benefit society, or their "successors," a certain sum of money on demand, has been holden to be a promissory note within the meaning of the Act. It is not necessary that the note should be negotiable.—*R.* v. *Box, R. & R.* 300. An instrument drawn by A. on B., requiring him to pay to the administrators of C a certain sum, at a certain time "without acceptance," is a bill of exchange.—*R.* v. *Kinnear*, 2 *M. & Rob.* 117. So, though there be no person named as drawee, the defendant may be indicted for uttering a forged acceptance on a bill of exchange.—*R.* v. *Hawkes*, 2 *Moo. C. C.* 60. For the act of putting the acceptance is a sort of estoppel to say it was not a bill of exchange, but, without acceptance, this instrument is not a bill of exchange.—*R.* v. *Curry*, 2 *Moo. C. C.* 218.

In *R.* v. *Mopsey*, 11 *Cox*, 143, the acceptance to what purported to be a bill of exchange was forged, but at the time it was so forged the document had not been signed by the drawer, and it was held that, in consequence, the document was not a bill of exchange. And a document in the ordinary form of a bill of exchange, but requiring the drawee to pay to his own order, and purporting to be indorsed by the drawer, and accepted by the drawer, cannot, in an indictment for forgery or uttering, be treated as a bill of exchange.—*R.* v. *Bartlett*, 2 *M. & Rob.* 362. But an instrument payable to the order of A, and directed "*At* Messrs. P. & Co., bankers," was held to be properly described as a bill of exchange.—*R.* v. *Smith*, 2 *Moo. C. C.* 295. It is necessary that the promissory note should be *for the payment of money* only to be within the statute. In *R.* v. *Howie*, 11 *Cox*, 320, the prisoner had forged a seaman's advance note. He was indicted for forging or uttering a certain promissory note or order for the payment of money. *Held*, that a seaman's advance note was not a promissory note or order for the payment of money, and that the indictment was therefore bad as the advance note was conditional, and there must be no condition in a promissory note or order for payment of money. The adding of a false address to the name of the drawee

of a bill, while the bill is in the course of completion, in order to make the acceptance appear to be that of a different existing person, is a forgery.—*R.* v. *Blenkinsop*, 1 *Den.* 276. See *R.* v. *Mitchell*, 1 *Den.* 282 A nurseryman and seedsman got his foreman to accept two bills, the acceptance having no addition, description or address, and afterwards, without the acceptor's knowledge, he added to the direction a false address, but no description, and represented in one case that the acceptance was that of a customer, and in the other case that it was that of a seedsman, there being in fact no such person at the supposed false address: *Held*, that in the one case, the former, he was not guilty of forgery of the acceptance, but that, in the other case, he was.—*R.* v. *Epps*, 4 *F. & F.* 81. A bill of exchange was made payable to A, B, C, D, or other executrixes. The indictment charged that the prisoner forged on the back of the bill a certain forged indorsement, which indorsement was as follows (naming one of the executrixes); *Held*, a forged indorsement, and indictment sufficient.—*R.* v. *Winterbottom*, 1 *Den.* 41. Putting off a bill of exchange of A, an existing person, as the bill of exchange of A, a fictitious person, is a felonious uttering of the bill of a fictitious drawer.—*R.* v. *Nisbett*, 6 *Cox*, 320. If there are two persons of the same name, but of different discriptions or additions, and one signs his name with the description or addition of the other for the purpose of fraud, it is forgery.—*R.* v. *Webb, cited in Bayley on Bills*, 432.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.

There can be no conviction for forgery of an indorsement of a bill of exchange under the above section, if the bill of exchange itself is not a complete instrument as such.—*R.* v. *Harper*, 14 *Cox*, 574.

W. a bailiff had an execution against prisoner and H. M. and to settle same it was arranged to give a note made by A. M. and indorsed by A. D. M. A note was drawn up payable to the order of A. D. M., and prisoner took it away and brought it back with the name A. D. M. indorsed. It was then signed by A. M. and given to the bailiff. The indorsement was a forgery, and prisoner was indicted for forging an indorsement on a promissory not, and convicted. *Held*, following *R.* v. *Butterwick*, 2 *M. & Rob.* 196; *R.* v. *Mopsey*, 11 *Cox*, 143; and *R.* v. *Hunter*, 7 *Q. B. D.* 78, that the conviction could not be sustained on the indictment as framed as the instrument, for want of the maker's name at the time of the forgery, was not a promissory note; nor could it stand on the count for uttering as after it was signed it was never in prisoner's possession.—*R.* v. *McFee*, 13 *O. R.* 8.

An indictment for forgery of a promissory note must allege that the promissory note was for the payment of money.—*Kelly* v. *R.*, 3 *Stephens' Dig. (Quebec,)* 222.

29. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any undertaking, warrant, order, authority or request for the payment of money or for the delivery or transfer of any goods or chattels, or of any note, bill or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertaking, warrant, order, authority or request, or any accountable receipt, acquittance or receipt for money or for goods, or for any note, bill or other security for the payment of money, or any indorsement on or assignment of any such accountable receipt, or *any account, book or thing, written or printed, or otherwise made capable of being read*, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 26. 24-25 *V.*, *c.* 98, *s.* 23, *Imp.*

The words in *italics* are not in the English Act; they constitute an important extension of the clause.

Greaves says: "This clause is new as far as it relates to any authority or request for the payment of money, or to any authority for the delivery or transfer of any goods, etc., or to any indorsement on or assignment of any such undertaking, warrant, order, authority, request or accountable receipt, as is mentioned in the clause.—*R.* v. *Arscott*, 6 *C. & P.* 408, is therefore no authority on this clause. The words 'authority, or request for the payment of money' are introduced to get rid of the question so commonly arising in cases of this kind, whether the forged instrument were either a warrant or order for the payment of money. Requests for the payment of money were not within these words."—*R.* v. *Thorn*, *C. & M.* 206; 2 *Moo. C. C.* 210.

It would be a waste of space, and of no practical use to refer to the cases that have occurred on these points; for, whenever there is any doubt as to the legal character of the instrument, different counts should be inserted describing it in each by one only of the terms *warrant, order, authority or request.* A forged indorsement on a warrant or order for the payment of money was not within the former enactments.—*R.* v. *Arscott*, 6 *C. & P.* 408. But this clause includes that and other forged indorsements.

Indictment.—..... feloniously did forge a certain warrant for the payment of money, with intent thereby then to defraud, against the form.....

(2nd Count.) ... . feloniously did offer, utter..... *(as, ante, form under sect.* 23.) *Add separate counts, as suggested by Greaves, supra.* See *R.* v. *Kay*, 11 *Cox*, 529, under next section. In *R.* v. *Goodwin*, March, 1876, *Q. B.*, Montreal, the above form was held good, on motion in arrest of judgment.

A draft upon a banker, although it be post-dated, is a warrant and order for the payment of money.—*R.* v. *Taylor*, 1 *C. & K.* 213; *R.* v. *Willoughby*, 2 *East, P. C.* 944. So is, even, a bill of exchange.—*R.* v. *Sheppard*, 1 *Leach*, 226; *R.* v. *Smith*, 1 *Den.* 79. An order need not specify any particular sum to fall under the statute.—*R.* v. *McIntosh*, 2 *East, P. C.* 942. A writing in the form of a bill of exchange, but without any drawee's name, cannot be charged as an order for the payment of money; at least, unless shown by averments to be such.—*R.* v. *Curry*, 2 *Moo. C. C.* 218. In *R.* v. *Howie*, 11 *Cox*, 320, it was held that a seaman's advance note was not an order for payment of money. It would seem, however, to be an *undertaking* for the payment of money within the statute.—*R.* v. *Bamfield*, 1 *Moo. C.C.* 416; *R.* v. *Anderson*, 2 *M. & Rob.* 469; *R.* v. *Reed*, 2 *Moo. C. C.* 62; *R.* v. *Joyce*, *L. & C.* 576. The statute applies as well to a written promise for the payment of money by a third person, as by the supposed party to the instrument.—*R.* v. *Stone*, 1 *Den.* 181. An instrument, professing to be a scrip certificate of a railway company, is not an undertaking within the statute.—*R.* v. *West*, 1 *Den.* 258. But perhaps the words *in italics* in the present section would cover this case.

In *R.* v. *Rogers*, 9 *C. & P.* 41, it was held, that a warrant for the payment of money need not be addressed to any particular person. See *R.* v. *Snelling, Dears.* 219.

As to what is a warrant or order for the delivery of goods, the following cases may be cited:—A pawnbroker's ticket is a warrant for the delivery of goods.—*R.* v. *Morrison, Bell, C. C.* 158. At the London docks, a person bringing a "tasting order" from a merchant having wine there, is not allowed to taste until the order

has across it the signature of a clerk of the company; the defendant uttered a tasting order with the merchant's name forged to it, by presenting it to the company's clerk for his signature across it, which the clerk refused; it was held to be, in this state, a forged order for the delivery of goods within the statute.—*R.* v. *Illidge*, 1 *Den.* 404. A request for the delivery of goods need not be addressed to any one.—*R.* v. *Carney*, 1 *Moo. C. C.* 351; *R.* v. *Cullen*, 1 *Moo. C. C.* 300; *R.* v. *Pulbroke*, 9 *C. & P.* 37. Nor need it be signed by a person who can compel a performance of it, or who has any authority over or interest in the goods.—*R.* v. *Thomas*, 2 *Moo. C. C.* 16; *R.* v. *Thorn*, 2 *Moo. C. C.* 210. Formerly, if upon an indictment for the misdemeanor of obtaining goods under false pretences, a felonious forgery were proved, the judge had to direct an acquittal.—*R.* v. *Evans*, 5 *C. & P.* 553; but now, see sect. 184 of the Procedure Act.

As to what is a receipt, under this section.—As remarked by Greaves, *supra*, the additions in the present clause render many of the cases on the subject of no practical importance. A turnpike toll-gate ticket is a receipt for money within this section.—*R.* v. *Fitch*, *R.* v. *Howley*, *L. & C.* 159. If a person, with intent to defraud, and to cause it to be supposed contrary to the fact, that he has paid a certain sum into a bank, make in a book, purporting to be a pass-book of the bank, a false entry, which denotes that the bank has received the sum, he is guilty of forging an accountable receipt for money.—*R.* v. *Moody*, *L. & C.* 173; *R.* v. *Smith*, *L. & C.* 168. A document called a "clearance" issued to members of the Ancient Order of Foresters' Friendly Society, certified that the member had paid all his dues and demands, and authorized any Court of the Order to accept the bearer as a clearance member: *Held*, that this was not a receipt for money under this section.—*R.* v. *French*, 11 *Cox*, 472. An ordinary railway ticket is not an acquittance, or receipt, within this section, *R.* v. *Gooden*, 11 *Cox*, 672; but now, by sect. 33, *post*, forging a railway ticket is a felony. The prisoner being pressed by a creditor for the payment of £35 obtained further time by giving an I. O. U. for £35 signed by himself, and also purporting to be signed by W. W's name was a forgery; *held*, that the instrument was a security for the payment of money by W., and that the forgery of his name was a felony within this section.—*R.* v. *Chambers*, 12 *Cox*, 109.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.

An indictment for forging a receipt under this section must allege a receipt either for money or for goods.—*R.* v. *McCorkill*, 8 *L. C. J.* 283. But the intent to defraud any particular person need not be alleged.—*R.* v. *Hathaway*, 8 *L. C. J.* 285.

The evidence of the uttering of a forged *indorsement* of a negotiable check or order is insufficient to sustain a conviction for uttering *a forged order* or check, under sec. 29 of the Forgery Act.—*R.* v. *Cunningham*, *Cassel's Dig.* 107.

The prisoner was indicted for forging a request for the payment of money, the said request consisting in a forged telegram upon which he obtained $85. Held, a forgery as charged.—*R.* v. *Stewart*, 25 *U. C. C. P.* 440.

30. Every one who with intent to defraud draws, makes, signs, accepts or indorses any bill of exchange or promissory note, or any

undertaking, warrant, order, authority or request for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill, note or other security for money, by procuration or otherwise, for, in the name, or on the account of any other person, without lawful authority or excuse, or offers, utters, disposes of or puts off any such bill, note, undertaking, warrant, order, authority or request, so drawn, made, signed, accepted or indorsed, by procuration or otherwise, without lawful authority or excuse, knowing the same to have been so drawn, made, signed, accepted or indorsed, as aforesaid, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 27. 23-24 *V.*, *c.* 98, *s.* 24, *Imp.*

Greaves says : " This clause is new, and was framed in order to make persons punishable, who, without authority, make, accept, or indorse bills or notes " per procuration," which was not forgery under the former enactments.—*Maddock's* case, 2 *Russ.* 947 ; *R.* v. *White*, 1 *Den.* 208."

Indictment, as under sect. 28. See general remarks on forgery.

A deposited with a building society £460, for two years, at interest, through the prisoner, who was an agent of the society. Having obtained the deposit note from A., who gave it up on receiving an accountable receipt for £500, being made up by the £460, and interest, the prisoner wrote, without authority, the following document: " Received of the S. L. Building Society the sum of £417 13s. 0d., on account of my share, No. 8071, *pp.*, Susey Ambler,—William Kay," and obtained £417 13s. 0d., by means thereof and giving up the deposit note. The jury having found that, by the custom of the society, such documents were treated as an "authority to pay," and as " a warrant to pay," and as " request to pay " money, the prisoner was convicted under 24-25 V., c. 98, s. 24 (sect. 30, *ante*, of our statute): *held*, that the conviction was right.—*R.* v. *Kay*, 11 *Cox*, 529.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.

31. Whenever any cheque or draft on any banker is crossed with the name of a banker, or with two transverse lines with the words " and company," or any abbreviation thereof, every one who, with intent to defraud, obliterates, adds to or alters any such crossing, or offers, utters, disposes of or puts off any cheque or draft whereon any such obliteration, addition or alteration has been made, knowing the same to have been made, is guilty of felony, and liable to imprisonment life.—32-33 *V.*, *c.* 19, *s.* 28. 24-25 *V.*, *c.* 98, *s.* 25, *Imp.*

32. Every one who forges or fraudulently alters, or offers, utters, disposes of or puts off, knowing the same to be forged or fraudulently altered, any debenture issued under any lawful authority whatsoever, either within Her Majesty's dominions or elsewhere, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 29. 24-25 *V.*, *c.* 98, *s.* 26, *Imp.*

On Sec. 31, Greave's says : " This clause is so framed as to meet the case of a draft in either issue with a crossing on it, or crossed after it was issued."

Under Sec. 32, no intent to defraud is necessary in the indictment.

PASSENGER TICKETS.

33. Every one who, with intent to defraud, forges, offers or utters disposes of or puts off, knowing the same to be forged, any ticket or order for a free or paid passage on any railway or any steam or other vessel, is guilty of felony, and liable to three years' imprisonment. —32-33 *V.*, *c.* 19, *s.* 32.

This clause is the 14th of c. 94, C. S. C. It will meet such cases as *R.* v. *Gooden*, 11 *Cox*, 672.

RECORDS, PROCESS, INSTRUMENTS OF EVIDENCE, ETC.

34. Every one who forges or fraudulently alters or offers, utters, disposes of or puts off, knowing the same to be forged, or fraudulently altered, any record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognizance, *cognovit*

actionem, warrant of attorney, bill, petition, process, notice, rule, answer, pleading, interrogatory, report, order or decree, or any original document whatsoever of or belonging to any court of justice, or any document or writing, or any copy of any document or writing, used or intended to be used as evidence in any such court, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V., c.* 19 *s.* 33. 24-25 *V., c.* 98, *s.* 27, *Imp.*

35. Every one who, being the clerk of any court or other officer, having the custody of the records of any court, or being the deputy of any such clerk or officer, utters any false copy or certificate of any record, knowing the same to be false; and every one, other than such clerk, officer or deputy, who signs or certifies any copy or certificate of any record as such clerk, officer or deputy, and every one who forges or fraudulently alters or offers, utters, disposes of or puts off, knowing the same to be forged or fraudulently altered, any copy or certificate of any record, or offers, utters, disposes of or puts off any copy or certificate of any record having thereon any false or forged name, handwriting or signature, knowing the same to be false or forged and every one who forges the seal of any court of record, or forges or fraudulently alters any process of any court whatsoever, or serves or enforces any forged process of any court whatsoever, knowing the same to be forged, or delivers or causes to be delivered to any person any paper, falsely purporting to be any such process or a copy thereof, or to be any judgment, decree or order of any court whatsoever, or a copy thereof, knowing the same to be false, or acts or professes to act under any such false process, knowing the same to be false, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V., c.* 19, *s.* 34. *C. S. U. C., c.* 16, *s.* 16, *part.* 24-25 *V., c.* 98, *s.* 28, *Imp.*

36. Every one who forges or fraudulently alters, or offers, utters, disposes of, puts off, tenders in evidence, knowing the same to be forged or fraudulently altered, any instrument, whether written or printed, or partly written and partly printed, which is made evidence by any Act of the Parliament of Canada or of the Legislature of any Province of Canada, and for which offence no other punishment is in this Act provided, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V., c.* 19, *s.* 35. 39 *V., c.* 26, *s.* 14. *C. S. C., c.* 80, *s.* 7, *part.* 24-25 *V., c.* 98, *s.* 29, *Imp.*

37. Every one who,—

(*a*) Prints any proclamation, order, regulation or appointment, or notice thereof, and causes the same falsely to purport to have been printed by the Queen's Printer for Canada, or the Government Printer for any Province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment, which falsely purports to have been printed as aforesaid, knowing that the same was not so printed; or

(*b*) Forges, or tenders in evidence, knowing the same to be forged, any certificate authorized to be made or given by any Act of the Parliament of Canada, or of the Legislature of any Province of Canada, for the purpose of certifying or verifying any copy or extract of any proclamation, order, regulation, appointment, paper, document or writing, of which a certified copy may lawfully be offered as *prima facie* evidence.

Is guilty of felony, and liable to seven years' imprisonment.—44 *V., c.* 28, *s.* 4. 31-32 *V., c.* 37, *s.* 4, *Imp.*

In *R.* v. *Powner*, 12 *Cox* 235, it was held by Quain, J., that an indictment for forgery under sect. 28 of the English Act (sect. 35 of our Act, *supra*) must allege an intent to defraud; but that this averment was unnecessary in a count for *fraudulently* altering under the same section.—The "process" alleged to have been altered in that case was an order by two justices of the peace, under the poor laws, and was held to fall under the aforesaid section.

Upon the trial of any indictment for any offence under these sections, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.—2 *Russ.* 857.

NOTARIAL ACTS, REGISTERS OF DEEDS, ETC.

38. Every one who forges or fraudulently alters, or offers, utters, disposes of or puts off, knowing the same to be forged or fraudulently altered, *any notarial act or instrument or copy, purporting to be an authenticated copy thereof or any proces verbal of a surveyor, or like copy thereof, or forges or* fraudulently alters, or offers or utters, disposes of or puts off, knowing the same to be forged or fraudulently altered, *any duplicate of any instrument*, or any memorial, affidavit, affirmation, entry, certificate, indorsement, document or writing, made or issued under the provisions of any Act of the Parliament of Canada, or of the Legislature of any Province of Canada, for or relat-

ing to the registry of deeds *or other instruments or documents respecting or concerning the title to or claims upon any real or personal property whatsoever*, or forges, or counterfeits the seal of or belonging to any office for the registry of deeds or other instruments as aforesaid, or any stamp or impression of any such seal, or forges any name, handwriting or signature, purporting to be the name, handwriting or signature of any person to any such memorial, affidavit, affirmation, entry, certificate, indorsement, document or writing required or directed to be signed by or by virtue of any such Act, or offers, utters, disposes of or puts off any such memorial or other writing as in this section mentioned, having thereon any such forged stamp or impression of any such seal, or any such forged name, handwriting or signature, knowing the same to be forged, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 37. 24-25 *V.*, *c.* 98, *s.* 31, *Imp.*

The words in *italics* are not in the Imperial Act. Sec. 183 of the Procedure Act applies.—2 *Russ.* 939.

ORDERS OF JUSTICES OF THE PEACE.

39. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any summons, conviction, order or warrant, of any justice of the peace, or any recognizance purporting to have been entered into before any justice of the peace, or other officer authorized to take the same, or any examination, deposition, affidavit, affirmation or solemn declaration, taken or made before any justice of the peace, is guilty of felony, and liable to three years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 38. 24-25 *V.*, *c.* 98, *s.* 32, *Imp.*

R. v. *Powner*, 12 *Cox*, 235, is not very clear as to what is the difference between a "process" of a court under sections 34 and 35, and an "order" under the present section. The forgery of an affidavit taken before a Commissioner would not fall under this section.

40. Every one who, with intent to defraud, forges or alters any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing made or purporting or appearing to be made by any judge, commissioner, clerk or other officer of any court in Canada, or the name, handwriting or signature of any

such judge, commisssoner, clerk, or other officer, as aforesaid, or offers, utters, disposes of or puts off any such certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing, knowing the same to be forged or altered, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 39. *C. S. U. C.*, *c.* 16, *s.* 16, *part.* 24-25 *V.*, *c.* 98, *s.* 33, *Imp.*

See general remarks on forgery.

41. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, in the name of any other person, acknowledges any recognizance of bail, or any *cognovit actionem*, or judgment, or any deed or other instrument, before any court, judge, *notary*, or other person lawfully authorized in that behalf, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 40. 24-25 *V.*, *c.* 98, *s.* 34, *Imp.*

Indictment.— ..... on ..... feloniously did, without lawful authority or excuse, before ..... (the said ..... then being lawfully authorized in that behalf) acknowledge a certain recognizance of bail in the name of J. N. in a certain cause then pending in the said court *(or in the court of .....)* wherein A. B. was plaintiff, and C. D. defendant, against the form ..... —*Archbold*, 615; 2 *Russ.* 1016.

Upon the trial of any indictment, for any offence under this section, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.

MARRIAGE LICENSES.

42. Every one who forges or fradulently alters any license or certificate for marriage, or offers, utters, disposes of or puts off any such license or certificate, knowing the same to be forged or fraudulently altered, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 41. 24-25 *V.*, *c.* 98, *s.* 35, *Imp.*

REGISTERS OF BIRTHS, MARRIAGES AND DEATHS.

43. Every one who unlawfully destroys, defaces or injures, or causes or permits to be destroyed, defaced or injured, any register of

births, baptisms, marriages, deaths or burials, authorized or required to be kept in Canada, or in any Province of Canada, or any part of any such register, or any certified copy of any such register, or of any part thereof, or forges or fraudulently alters in any such register any entry relating to any birth, baptism, marriage, death or burial, or any part of any such register, or any certified copy of such register, or of any part thereof, or knowingly and unlawfully inserts, or causes or permits to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death or burial, or knowingly and unlawfully gives any false certificate relating to any birth, baptism, marriage, death or burial, or certifies any writing to be a copy or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract is so given, to be false in any material particular, or forges or counterfeits the seal of or belonging to any registry office or burial board, or offers, utters, disposes of or puts off any such register, entry, certified copy, certificate or seal, knowing the same to be false, forged or altered, or offers, utters, disposes of, or puts off any copy or any entry in any such register, knowing such entry to be false, forged or altered, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 42. 24-25 *V.*, *c.* 98, *s.* 36, *Imp.*

44. Every one who, knowingly and wilfully, inserts or causes, or permits to be inserted, in any copy of any register directed or required by law, to be transmitted to any registrar or other officer, any false entry of any matter relating to any baptism, marriage or burial, or forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any copy of any register so directed or required to be transmitted as aforesaid, or knowingly or wilfully signs or verifies any copy of any register so directed or required to be transmitted as aforesaid, which copy is false in any part thereof, knowing the same to be false, or unlawfully destroys, defaces or injures, or for any fraudulent purpose, takes from its place of deposit, or conceals any such copy of any register, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 43. 24-25 *V.*, *c.* 98, *s.* 37, *Imp.*

Indictment under sect. 43 *for making a false entry in a marriage register.*—..... feloniously, knowingly and unlawfully did insert in a certain register of marriages, which was then by law authorized to be kept, a certain false entry of a matter relating to a supposed marriage, and

which said false entry is as follows: that is to say *(set it out verbatim with innuendoes if necessary to explain it;)* whereas in truth and in fact the said A. B. was not married to the said C. D., at the said church, on the said ..... day of ..... as in the said entry is falsely alleged and stated; and whereas, in truth and in fact, the said A. B. was not married to the said C. D. at the said church or elsewhere, at the time in the said entry mentioned, or at any other time whatsoever, against the form .....

(2nd Count.)..... feloniously did, knowingly and wilfully, offer, utter, dispose of and put off a copy of a certain other false entry relating to a certain supposed marriage, which said last mentioned false entry was before then inserted in a certain register of marriages, by law authorized to be kept, and which said last mentioned false entry is as follows: that is to say *(set it out)* whereas in truth and in fact ..... *(as above)*. And the jurors aforesaid, upon their oath aforesaid, do say that the said J. S. at the time he so offered, uttered, disposed of and put off the said copy of the said last mentioned false entry well knew the said last mentioned false entry to be false against the form..... —*Archbold. See R.* v. *Sharpe*, 8 *C. & P.* 436.

In *R.* v *Bowen*, 1 *Den.* 22, the indictment was under what is now the first part of sect. 43, and charged that..... "John Bowen ..... feloniously and *wilfuly (wilfully* must now be *unlawfully)* did destroy, deface and injure a certain register of ..... to wit, the register of ..... which said register was then and there kept *(and by law authorized to be kept)* as the register of the parish of..... and was then and there in the custody of ....., rector of the said parish of ..... against the form ..... It was objected that the indictment was bad for charging three offences, *destroying, defacing* "and" *injuring*, the

statute saying, *destroying, defacing* "or" *injuring.* A second objection was taken that no scienter was charged, and that the word "knowingly" was not in the indictment. The indictment was held good.

In *R.* v. *Asplin*, 12 *Cox* 391, it was held by Martin, B., that upon an indictment under sect. 36 (sect. 43 of our Act,) for making a false entry into a marriage register, it is not necessary that the entry should be made with intent to defraud, and that it is no defence that the marriage solemnized was null and void, being bigamous; also that, if a person knowing his name to be A., signs another name without authority, he is guilty, and it is immaterial that he is a third witness, the Marriage Act only requiring two.

Upon the trial of any indictment for any offence under these sections, the jury may, if the evidence warrants it, under sect. 183 of the Procedure Act, convict the prisoner of an attempt to commit the same.—2 *Russ.* 939.

DEMANDING PROPERTY UPON FORGED INSTRUMENTS.

45. Every one who, intent to defraud, demands, receives or obtains, or causes or procures to be delivered or pay to any person, or endeavors to receive or obtain, or to cause or procure to be delivered or paid to any person, any chattel, money, security for money or other property whatsoever, under, upon or by virtue of any forged or altered instrument whatsoever, knowing the same to be forged or altered, or under, upon or by virtue of any probate or letters of administration, knowing the will, testament, codicil, or testamentary writing on which such probate or letters of administration were obtained, to have been forged or altered, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation or affidavit, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 19, *s.* 44. 24-25 *V.*, *c.* 98, *s.* 38, *Imp.*

Greaves says: "This clause is new. It is intended to embrace every case of demanding, etc., any property whatsoever upon forged instruments; and it is intended to include bringing an action on any forged bill of exchange, note, or other security for money. The words 'procure to be delivered or paid to any person were inserted to include cases where one person' by means of a forged instrument causes money to be paid to another person, and to avoid the difficulty which had arisen in the cases as to obtaining money by false pretences.—*R.* v. *Wavell*, 1 *Moo. C. C.* 224; *R.* v. *Garrett, Dears.* 232."

In *R.* v. *Adams*, 1 *Den.* 38, the prisoner had obtained goods at a store with a forged order; this was held not to be larceny; it would now fall under this clause.

The clause seems to cover the attempt to commit the offence, as well as the offence itself, and if, under sec. 183 of the Procedure Act, a verdict of guilty of the attempt to commit the offence could be given by the jury, the prisoner would stand convicted of a felony, and punishable under this clause, though see *R.* v. *Connell*, 6 *Cox*, 178.

CASES NOT OTHERWISE PROVIDED FOR.

46. Every one who, for any purpose of fraud or deceit, forges or fraudulently alters any document or thing written, printed or otherwise made capable of being read, or offers, utters, disposes of or puts off any such forged or altered document or thing, knowing the same to be forged or altered, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 45, *part.*

See remarks under sec. 3, *ante.*

47. If by this or any other Act any person is liable to punishment for forging or altering, or for offering, uttering, disposing of or putting off, knowing the same to be forged or altered, any instrument or writing designated in such Act by any special name or description, and such instrument or writing, however designated, is in law a will, testament, codicil or testamentary writing, or a deed, bond or writing obligatory, or a bill of exchange, or a promissory note for the payment of money, or an indorsement on or assignment of a bill of exchange or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, order, authority or

request for the payment of money, or an indorsement on or assignment of an undertaking, warrant, order, authority or request for the payment of money, within the true intent and meaning of this Act, every one who forges or alters such instrument or writing, or offers, utters, disposes of or puts off such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender against this Act, and punished accordingly.—32-33 *V.*, *c.* 19, *s.* 46. 24-25 *V.*, *c.* 98, *s* 39, *Imp.*

48. Every one who, in Canada, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any writing or matter of which the forging or altering, or the offering, uttering, disposing of or putting off, knowing the same to be forged or altered, is, in this Act, expressed to be an offence, in whatsoever country or place out of Canada, whether under the dominion of Her Majesty or not, such writing or matter purports to be made or has been made, and in whatsoever language the same or any part thereof is expressed, and every one who aids, abets or counsels the commission of any such offence, shall be deemed to be an offender within the meaning of this Act, and shall be punishable in the same manner as if the writing or matter purported to be made or was made in Canada.—32-33 *V.*, *c.* 19, *s.* 47, *part.* 24-25 *V.*, *c.* 98, *s.* 40, *Imp.*

49. Every one who, in Canada, forges or alters or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, order, authority or request for the payment of money, or for the delivery or transfer of any goods or security, or any deed, bond or writing obligatory for the payment of money (whether such deed, bond or writing obligatory is made only for the payment of money, or for the payment of money together with some other purpose), or any [illegible] or assignment of any such undertaking, warrant order, authority, request, deed, bond or writing obligatory, in whatsoever place or country out of Canada, whether under the dominion of Her Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, authority, request, deed, bond or writing obligatory is or purports to be payable, and in whatsoever language the same respectively or any part thereof is expressed, and whether such bill, note, undertaking, warrant, order, authority or request is or is not under seal, and every one who aids, abets or counsels the commission of any such offence, shall be deemed to be an offender within the meaning of this Act, and shall be punishable in the same manner as if the money purported to be payable or was payable in Canada.—32-33 *V.*, *c.* 19, *s.* 47, *part.* 24-25 *V.*, *c.* 98, *s.* 40, *Imp.*

In *R.* v. *Lee*, 2 *M. & Rob.* 281, it was held that in an indictment under this last section for uttering a forged foreign bill or note, the bill or note need not be alleged to be payable out of England. Sec. 47 was at first enacted in England as 11 Geo. 4 and 1. Will 4. See 2 *Bishop*, 2 *Cr. Proc.* 446, as to this section.

Prisoner was indicted along with W. The first count charged W. with forging a circular note of the National Bank of Scotland, and the second with uttering it, knowing it to have been forged. Prisoner was charged as an accessory before the fact. Evidence was admitted showing that two persons, named F. and H., been tried and convicted in Montreal for uttering similar forged circular notes, printed from the same plate as those uttered by W.; that prisoner was in Montreal with F., they having arrived and registered their names together at the same hotel and occupied adjoining rooms; that after H. and F. had been convicted on one charge they admitted their guilt on several others: and that a number of these circular notes were found on F. and H., which were produced at the trial of the prisoner. Before the evidence was tendered it was proved that the prisoner was in company with W., who was proved to have uttered similar notes. Evidence was also admitted, showing that a large number of the notes were found concealed at a place near where the prisoner had been seen, and were concealed, as alleged, by him after W. had been arrested. *Held*, that the evidence was properly received in proof of the guilty knowledge of the prisoner.—*The Queen* v. *Bent*, 10 *O. R.* 559.

50. Whenever, by any Act, any person falsely making, forging, counterfeiting, erasing or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting off or making use of any matter whatsoever, knowing the same to have been falsely made, forged, counterfeited, erased or altered, or any person demanding or endeavoring to receive or have anything, or to do or to cause to be done any act, upon or by virtue of any matter whatsoever, knowing such matter to have been falsely made, forged, counterfeited, erased, or altered,—or whenever, by any such Act, any person falsely personating another, or falsely acknowledging anything in the name of another, or falsely representing any other person than the real person to be such real person, or wilfully making a false entry in any book, account or document, or in any manner wilfully falsifying any part of any book, account or document, or wilfully making a transfer of any stock, annuity or fund in the name of any person not being the owner thereof, or knowingly taking any false oath, or knowingly making any false affidavit or false affirmation, or demanding or receiving any money or other thing by virtue of any probate or letters of administration, knowing the will on which such probate was obtained to have been false or forged, or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation,—or whenever, by any such Act, any person making or using, or knowingly having in his custody or possession any frame, mould or instrument for the making of paper, with certain words visible in the substance thereof, or any person making such paper, or causing certain words to appear visible in the substance of any paper, would, according to the provisions contained in any such Act, be guilty of felony, and be liable to any greater punishment than is provided by this Act,—if any person is convicted of any such felony as is in this section mentioned, or of aiding, abetting, counselling or procuring the commission thereof, and the same is not punishable under any of the other provisions of this Act, every such person shall be liable to imprisonment for life.—32-33 *V.*, *c.* 19, *s.* 56. 24-25 *V.*, *c.* 98, *s.* 48, *Imp.*

CHAPTER 167.

AN ACT RESPECTING OFFENCES RELATING TO THE COIN.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. In this Act, unless the context otherwise requires,—

(*a*) The expression "current gold or silver coin" includes any gold or silver coined in any of Her Majesty's mints, or gold or silver coin of any foreign prince or state, or country, or other coin lawfully current, by virtue of any proclamation or otherwise, in Canada, or in any other part of Her Majesty's dominions ;

(*b.*) The expression "current copper coin" includes any copper coin and any coin of bronze or mixed metal coined in any of Her Majesty's mints or lawfully current, by virtue of any proclamation or otherwise, in Canada, or any other part of Her Majesty's dominions ;

(*c.*) The expression "copper or brass coin" includes coins and tokens of bronze, or of any other mixed metal, or other than gold or silver ;

(*d.*) The expression "false or counterfeit coin, resembling or apparently intended to resemble or pass for current gold or silver coin," or other similar expression, includes any of the current coin which has been gilt, silvered, washed, colored or cased over, or in any manner altered so as to resemble or be apparently intended to resemble or pass for any of the current coin of a higher denomination ;

(*e.*) The expression "current coin" includes any coin coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in Canada, or any other part of Her Majesty's dominions ; and whether made of gold, silver, copper, bronze or mixed metal.—31 *V.*, *c.* 47, *s.* 10. 32-33 *V.*, *c.* 18, *s.* 1, *part.* 24-25 *V.*, *c.* 99, *s.* 1, *Imp.*

As to apprehension of offenders against this Act, see sec. 29 Procedure Act.

By sec. 205 of the Procedure Act, it is enacted that:

"Upon the trial of any person accused of any offence respecting

the currency or coin, or against the provisions of the "*Act respecting offences relating to the Coin,*" no difference in the date or year, or in any legend marked upon the lawful coin described in the indictment, and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed, for the purpose of conterfeiting or imitating any such lawful coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence; and it shall, in any case, be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it.

See also secs. 55, 56, 115, 209 and 229 of Procedure Act.

OFFENCES RELATING TO THE COIN.

The Imperial Act applies only to the "Queen's current, gold and silver coin," coined in any of Her Majesty's mints or lawfully current in any part or Her Majesty's dominions in or out of the United Kingdom. The Canadian Act includes gold or silver coin of any foreign prince, state or country current in Canada, or in any other part of Her Majesty's dominions. But the clause is so framed, in the English Act, as to include all such coin, though the words "of any foreign prince, state or country" are not inserted.

As to venue in certain cases, see sec. 23 of the Procedure Act.

2. Whenever the having any matter in the custody or possession of any person is mentioned in this Act, it shall include not only the having of it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any dwelling-house or other building, lodging, apartment, field or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter is so had for his own use or benefit, or for that of any other person.—32-33 *V.*, *c.* 18, *s.* 1, *part.* 24-25 *V.*, c. 99, *s.* 1, *Imp.*

This clause is to cover questions which came up in *R.* v. *Rogers*, 2 *Moo. C. C.* 45; *R.* v. *Gerrich*, 2 *M. & Rob*, 219, *and R.* v. *Williams*, 1 *C. & M.* 259.—*Greaves, Con. Acts*, 318.

3. Every one who falsely makes or counterfeits any coin resembling or apparently intended to resemble or pass for any current gold or silver coin, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 18, *s.* 2. 24-25 *V.*, c. 99, *s.* 2, *Imp.*

Indictment.—The Jurors for Our Lady the Queen upon their oath present, that J. S., on ..... of ten pieces of false and counterfeit coin, each piece thereof resembling and apparently intended to resemble and pass for a piece of current gold coin, called a sovereign, falsely and feloniously did make and counterfeit, against the form ..... —*Archbold*, 744.

It is rarely the case that the counterfeiting can be proved directly by positive evidence; it is usually made out by circumstantial evidence, such as finding the necessary coining tools in the defendant's house, together with some pieces of the counterfeit money in a finished, some in an unfinished state, or such other circumstances as may fairly warrant the jury in presuming that the defendant either counterfeited or caused to be counterfeited, or was present aiding and abetting in counterfeiting the coin in question. Before the modern statutes which reduced the offence of coining from treason to felony, if several conspired to counterfeit the Queen's coin, and one of them actually did so in pursuance of the conspirary, it was treason in all, and they might all have been indicted for counterfeiting the Queen's coin generally, 1 *Hale*, 214; but now only the party who actually counterfeits would be the principal felon, and the others, accessories before the fact, although triable as principals.

A variance between the indictment and the evidence in

the number of the pieces of coin, alleged to be counterfeited, is immaterial; but a variance as to the denomination of such coin, as guineas, sovereigns, shillings, would be fatal, unless amended. By the old law the counterfeit coin produced, in evidence must have appeared to have that degree of resemblance to the real coin that it would be likely to be received as the coin for which it was intended to pass by persons using the caution customary in taking money. In *R.* v. *Varley*, 1 *East, P. C.* 164, the defendant had counterfeited the semblance of a half-guinea upon a piece of gold previously hammered, but it was not round, nor would it pass in the condition in which it then was, and the judges held that the offence was incomplete. So, in *R.* v. *Harris*, 1 *Leach*, 135, where the defendants were taken in the very act of coining shillings, but the shillings coined by them were taken in an imperfect state, it being requisite that they should undergo another process, namely immersion in diluted *aqua fortis*, before they could pass as shillings, the judges held that the offence was incomplete; but now by sect. 27, *post*, of the Coin Act, the offence of counterfeiting shall be deemed complete although the coin made or counterfeited shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected.

Any credible witness may prove the coin to be counterfeit, and it is not necessary for this purpose to produce any moneyer or other officer from the mint, sect. 229 Procedure Act. If it become a question whether the coin, which the counterfeit money was intended to imitate, be current coin, it is not necessary to produce the proclamation to prove its legitimation; it is a mere question of fact to be left to the jury upon evidence of usage, reputation, etc.—*Hale*, 196, 212, 213. It is not necessary to

prove that the counterfeit coin was utered or attempted to be uttered.—1 *East, P. C.* 165; *Archbold*, 744; *R.* v. *Robinson*, 10 *Cox*, 107; *R.* v. *Connell*, 1 *C. and K.* 190; *R.* v. *Byrne*, 6 *Cox*, 475.

By sect. 183 of the Procedure Act, if, upon the trial for any felony, it appears that the defendant did not complete the offence charged, but was only guilty of an attempt to commit the same, a verdict may be given of guilty of the attempt.

4. Every one who gilds or silvers, or with any wash or materials capable of producing the color or appearance of gold or of silver, or by any means whatsoever, washes, cases over or colors any coin whatsoever, resembling or apparently intended to resemble or pass for any current gold or silver coin,—or gilds or silvers, or with any wash or materials capable of producing the color or appearance of gold or silver, or by any means whatsoever, washes, cases over or colors any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being, of a fit size and figure to be coined, and with intent that the same shall be coined into false and counterfeit coin resembling or apparently intended to resemble or pass for any current gold or silver coin,—or gilds or, with any wash or materials capable of producing the color and appearance of gold, or by any means whatsoever, washes, cases over or colors any current silver coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold coin,—or gilds or silvers or with any wash or materials capable of producing the color or appearance of gold or silver, or by any means whatsoever washes, cases over or colors any current copper coin, or files or in any manner alters such coin with intent to make the same resemble or pass for any current gold or silver coin, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 18, *s.* 3. 24-25 *V., c.* 99, *s.* 3, *Imp.*

Indictment for colouring coin.....falsely, deceitfully and feloniously did gild a certain false and counterfeit coin resembling a certain piece of current gold coin, called a sovereign, against the form.....—*Archbold.*

Prove the gilding, etc., or colouring as stated in the

indictment. Where the defendant was apprehended in the act of making counterfeit shillings, by steeping round blanks, composed of brass and silver in *aqua fortis*, none of which were finished, but exhibited the appearance of lead, though by rubbing they readily acquired the appearance of silver, and would pass current, it was doubted whether this was within the late Act, but the judges held the conviction to be right.—*R.* v. *Case*, 1 *Leach*, 145. In another case a doubt was expressed whether an immersion of a mixture, composed of silver and base metal, into *aqua fortis*, which draw the silver to the surface, was colouring within the repealed statutes, and whether they were not intended to apply only to a colouring produced by a superficial application. *R.* v. *Lavey*, 1 *Leach*, 153. But the words "capable of producing" seem to have been introduced into the recent statute for the purpose of obviating the doubt. Moreover the present statute adds the general words "or by any means whatsoever." Where a wash or material is alleged to have been used by the defendant, it must be shown either from the application by the defendant, or from an examination of their properties, that they are capable of producing the color of gold or silver. But an indictment charging the use of such material will be supported by proof of a colouring with gold itself.—*R.* v. *Turner*, 2 *Moo. C. C.* 41.—*Archbold*, 746. Where direct evidence of the act of colouring cannot be obtained, circumstances may be shown from which the act may be presumed, as that the prisoner was in possession of false coin, and that blanks coloured and materials for colouring were found in his house.—1 *Burn*, 806.

Indictment for colouring metal, etc ..... falsely, deceitand feloniously did gild ten pieces of silver, each piece thereof being respectively of a fit size and figure to be

coined, and with intent that each of the said pieces of silver respectively should be coined into false and counterfeit coin resembling a piece of current gold coin, called a sovereign, against the form ..... —*Archbold.*

An indictment charging the gilding of sixpences "with materials capable of producing the colour of gold" is good, and is supported by proof of colouring sixpences with gold.—*R.* v. *Turner*, 2 *Moo. C. C.* 41.

5. Every one who impairs, diminishes or lightens any current gold or silver coin, with intent that the coin so impaired, diminished, or lightened may pass for current gold or silver coin is guilty of felony, and liable to fourteen years' imprisonment.—32 33 *V., c* 18, *s.* 4. 24-25 *V., c.* 99, *s.* 4, *Imp.*

6. Every one who unlawfully has in his custody or possession any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution or otherwise, which have been produced or obtained by impairing, diminishing or lightening any current gold or silver coin, knowing the same to have been so produced or obtained, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V., c.* 18, *s.* 5. 24-25 *V., c.* 99, *s.* 5, *Imp.*

Indictment.—.....ten pieces of current gold coin, called sovereigns, falsely, deceitfully and feloniously did impair, with intent that each of the ten pieces so impaired might pass for a piece of current gold coin, called a sovereign, against the form ..... —*Archbold.*

The act of impairing must be shown, either by direct evidence of persons who saw the prisoner engaged in it, or by presumptive evidence, such as the possession of filings and of impaired coin, or of instruments for filing, etc. The intent to pass off the impaired coin must then appear. This may be done by showing that the prisoner attempted to pass the coin so impaired, or that he carried it about his person, which would raise a presumption that he intended to pass it. And if the coin were not so defaced by the process

by impairing, as apparently to affect its currency, it would, under the circumstances, without further evidence, be a question for the jury, whether the diminished coin was intended to be passed.—*Roscoe on Coining*, 19. As to sect. 5, Greaves remarks: "This clause is new. It has frequently happened that filings and clippings, and gold dust have been found under such circumstances as to leave no doubt that they were produced by impairing coin, but there has been no evidence to prove that any particular coin had been impaired. This clause is intended to meet such cases."

7. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, buys, sells, receives, pays or puts off, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, at or for a lower rate or value than the same imports, or was apparently intended to import, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 18, *s.* 6, *part.* 24-25 *V.*, *c.* 99. *s.* 6, *Imp.*

Indictment.—.....ten pieces of false and counterfeit coin, each piece thereof resembling a piece of the current gold coin, called a sovereign, falsely, deceitfully and feloniously, and without lawful authority or excuse did put off to one J. N. at and for a lower rate and value than the same did then import; against the..... *Archbold*, 750.

Prove that the defendant put off the counterfeit coin as mentioned in the indictment. In *R.* v. *Woolridge*, 1 *Leach*, 307, it was holden that the putting off must be complete and accepted. But the words offer to buy, sell, &c., in the above clause would now make the acceptation immaterial.

The last part of the clause refers to the indictment; by it, the cases of *R.* v. *Joyce*, and *R.* v. *Hedges*, 3 C. & *P.* 410, would not now apply.—*Archbold*, 751. If the names of the persons to whom the money was put off can be ascertained, they ought to be mentioned and laid severally in the indictment; but if they cannot be ascertained the same rule will apply which prevails in the case of stealing the property of persons unknown.—1 *Russ.* 135.

8. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, imports or receives into Canada any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, knowing the same to be false or counterfeit, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 18, *s.* 7. 24-25 *V.*, *c.* 99, *s.* 7, *Imp.*

Indictment.— ..... ten thousand pieces of false and counterfeit coin, each piece thereof resembling a piece of the current silver coin called a shilling, falsely, deceitfully and feloniously, and without lawful authority or excuse, did import into Canada,—he the said J. S. at the said time when he so imported the said pieces of false and counterfeit coin, well knowing the same to be false and counterfeit; against the form ..... —*Archbold*, 751; 1 *Russ.* 108; 1 *Burn*, 867.

The guilty knowledge of the defendant must be averred in the indictment and proved.

9. Every one who, without lawful authority or excuse the proof whereof shall lie on him, exports or puts on board any ship, vessel or boat or *on any railway or carriage or vehicle of any description whatsoever*, for the purpose of being exported from Canada, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current coin, *or for any foreign coin of any prince, country or state*, knowing the sa meto be false or counterfeit, is guilty of a misdemeanor, and liable to imprisonment for any term less than two years.—32-33 *V.*, *c.* 18, *s.* 8. 24-25 *V.*, *c.* 99, *s.* 8, *Imp.*

The words in *italics* are not in the Imperial Act.

The clause covers the attempt to export in certain cases.

Sec. 183 of the Procedure Act would cover other cases of attempts.

Indictment.— ..... One hundred pieces of false and

counterfeit coin, each piece thereof resembling a piece of the current coin called a sovereign, falsely, deceitfully and knowingly, and without lawful authority did export from Canada, he the said C. D. at the time when he so exported the said pieces of false and counterfeit coin, then well knowing the same to be false and counterfeit; against .....1 *Burn*, 825. See observations on last preceding clause.

10. Every one who tenders, utters or puts off, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, knowing the same to be false or counterfeit, is guilty of a misdemeanor, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 18, *s.* 9. 24-25 *V.*, *c.* 99, *s.* 9, *Imp.*

11. Every one who tenders, utters or puts off as being current, any gold or silver coin of less than its lawful weight, knowing such coin to have been impaired, diminished or lightened, otherwise than by lawful wear, is guilty of a misdemeanor, and liable to one year's imprisonment.—32-33 *V.*, *c.* 18, *s.* 10.

12. Every one who has in his custody or possession any false or counterfeit coin, resembling or apparently intended to resemble or pass for any cuarent gold or silver coin, knowing the same to be false or counterfeit coin, and with intent to utter or put off any such false or counterfeit coin, is guilty of a misdemeanor, and liable to three years' imprisonment.—32-33 *V.*, *c.* 18, *s.* 11. 24-25 *V.*, *c.* 99, *s.* 11, *Imp.*

Indictment for uttering counterfeit coin.— ..... One piece of false and counterfeit coin resembling a piece of the current gold coin, called a sovereign, unlawfully, falsely and deceitfully did utter to one J. N., he the said (defendant) at the time he so uttered the said piece of false and counterfeit coin, well knowing the same to be false and counterfeit; against the form.....—*Archbold.*

Prove the tendering, uttering or putting off the sovereign in question, and prove it to be a base and counterfeit sovereign. Where a good shilling was given to a Jew boy for fruit, and he put it into his mouth under pretence of trying whether it were good, and then taking a bad shilling out of his mouth instead of it, returned it to the prosecutor, saying that it was not good; this (which is called *ringing the changes*) was holden to be an uttering, indictable as such.—*R.* v. *Franks*, 2 *Leach*, 644; *Archbold*, 753. The giving of a piece of counterfeit money in charity is not an uttering, although the person may know it to be counterfeit; as in cases of this kind, there must be some intention to defraud.—*R.* v. *Page*, 8 *C. and P.* 122. But this case has been overruled.—*R.* v. *Ion*, 2 *Den.* 475; 1 *Russ.* 126.

A prisoner went into a shop, asked for some coffee and sugar, and in payment put down on the counter a counterfeit shilling: the prosecutor said that the shilling was a bad one; whereupon the prisoner quitted the shop, leaving the shilling and also the coffee and sugar: held that this was an uttering and putting off within the statute. —R. v. *Welch*, 2 *Den.* 78. The prisoner and J. were indicted for a misdemeanor in uttering counterfeit coin. The uttering was effected by J. in the absence of the prisoner, but the jury found that they were both engaged on the evening on which the uttering took place in the common purpose of uttering counterfeit shillings, and that in pursuance of that common purpose, J. uttered the coin in question: *Held*, that the prisoner was rightly convicted as a principal, there being no accessories in a misdemeanor.—*R.* v. *Greenwood*, 2 *Den.* 453. If two jointly prepare counterfeit coin, and utter it in different shops apart from each other but in concert, intending to share the proceeds, the utterings of each are the joint utterings of both, and they may be convicted jointly.—*R.* v. *Hurse*, 2 *M. and Rob.* 360.

R. v. *Else, R. & R.* 142; *R.* v. *Manners,* 7 *C. & P.* 801; *R.* v. *Page,* 9 *C. & P.* 756; 2 *Moo. C. C.* 219; are not law.—*Archbold,* 754. Husband and wife were jointly indicted for uttering counterfeit coin: held, that the wife was entitled to an acquittal, as it appeared that she uttered the money in the presence of her husband.—*R.* v. *Price,* 8 *C. & P.* 19. A wife went from house to house uttering base coin; her husband accompanied her but remained outside: *Held,* that the wife acted under her husband's compulsion.—*Conolley's case,* 2 *Lewin,* 229. Sarah McGinnes was indicted for uttering counterfeit coin. It appeared that at the time of the commission of the offence, she was in company with a man who went by the same name, and who was convicted of the offence at the last assizes. When the prisoners were taken into custody the police constable addressed the female prisoner as the male prisoner's wife. The male prisoner denied the fact (of her being his wife), in the hearing and presence of the woman. Sarah McGinnes since her committal had been confined of a child: *Held,* per Byles, J., that, under the circumstances, although the woman had not pleaded her coverture, and even although she had not asserted she was married to the male prisoner, when he stated she was not his wife, it was a question for the jury whether, taking the birth of the child and the whole circumstances, there was not evidence of the marriage, and the jury thought there was, and acquitted her, as being under the influence of her husband, when she uttered the coin.—*R.* v. *McGinnes,* 11 *Cox,* 391.

Proof of the guilty knowledge by the defendant must be given. This of course must be done by circumstantial evidence. If, for instance, it be proved that he uttered, either on the same day or at other times, whether before

or after the uttering charged, base money, either of the same or of a different denomination, to the same or to a different person, or had other pieces of base money about him when he uttered the counterfeit money in question; this will be evidence from which the jury may presume a guilty knowledge.—*Archbold,* 754; 1 *Russ.* 127.

Indictment for having in possession counterfeit gold or silver coin with intent, etc., ...unlawfully, falsely and deceitfully had in his custody and possession *four* pieces of false and counterfeit coin, resembling the current *silver* coin called.....with intent to utter the said pieces of false and counterfeit coin, he the said J. S. then well knowing the said pieces of false and counterfeit coin to be false and counterfeit; against.....—*Archbold,* 757. As to what constitutes the having in possession, see sect.

See *R.* v. *Hermann,* 14 *Cox,* 279.

13. Every one who, having been convicted of any such misdemeanor as in any of the three sections next preceding mentioned, or of any misdemeanor or felony against this or any other Act relating to the coin, afterwards commits any of the misdemeanors in any of the said sections mentioned, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 18, *s.* 12. 24-25 *V., c.* 99, *s.* 12, *Imp.*

The prisoner was indicted under this section. In the first instance, he was arraigned upon that part of the indictment relating to the subsequent offence and found guilty, and then upon the previous conviction and found not guilty. *Held,* that the conviction for a misdemeanor could be entered upon that verdict.—*R.* v. *Thomas,* 13 *Cox,* 52.

See sec. 139 and 207 of the Procedure Act, as to procedure when a previous offence is charged, corresponding to sect. 116 of the Imperial Larceny Act, and 37 of the Imperial Coin Act.—*R.* v. *Martin,* 11 *Cox,* 343.

14. Every one who, with intent to defraud, tenders, utters or puts off, as or for any current gold or silver coin, any coin not being such current gold or silver coin, or any medal, or piece of metal or mixed metals, resembling, in size, figure and color, the current coin as or for which the same is so tendered, uttered or put off, such coin, medal or piece of metal or mixed metals so tendered, uttered or put off, being of less value than the current coin as or for which the same is so tendered, uttered or put off, is guilty of a misdemeanor, and liable to one year's imprisonment.—32-33 *V.*, *c.* 18, *s.* 13. 24-25 *V.*, *c.* 99, *s.* 13, *Imp.*

A person was convicted, under the above section, of putting off, as and for a half sovereign, a medal of the same size and colour, which had on the obverse side a head similar to that of the Queen, but surrounded by the inscription "Victoria, Queen of Great Britain," instead of "Victoria Dei Gratiâ," and a round guerling and not square. And no evidence was given as to the appearance of the reverse side, nor was the coin produced to the jury; and it was held that there was sufficient evidence that the medal resembled, in figure, as well as size and colour, a half sovereign.—*R.* v. *Robinson, L. & C.* 604; the medal was produced, but, in the course of his evidence, one of the witnesses accidentally dropped it, and it rolled on the floor; strict search was made for it for more than half an hour, but it could not be found.

15. Every one who falsely makes or counterfeits any coin resembling or apparently intented to resemble or pass for any current copper coin, or without lawful authority or excuse, the proof of which shall lie on him, knowingly makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession, any instrument, tool or engine adapted and intended for the counterfeiting any current copper coin, or buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current copper coin, at or for a lower rate of value than the same imports or was apparently intended to import, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 18, *s.* 14. 24-25 *V.*, *c.* 99, *s.* 14, *Imp.*

16. Every one who tenders, utters or puts off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be false or counterfeit, or has in his custody or possession three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be false or counterfeit, with an intent to utter or put off the same, or any of them, is guilty of a misdemeanor, and liable to one year's imprisonment.—32-33 *V.*, *c.* 18, *s.* 15. 24-25 *V.*, *c.* 99, *s.* 15, *Imp.*

17. Every one defaces any current gold, silver or copper coin, by stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened, and afterwards tenders the same, is guilty of a misdemeanor, and liable to one year's imprisonment.—32-33 *V.*, *c.* 18, *s.* 16. 24-25 *V.*, *c.* 99, *s.* 16, *Imp.*

18. Every one who tenders, utters or puts off any coin so defaced, shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding ten dollars; but no person shall proceed for any such last mentioned penalty without the consent of the Attorney General for the Province in which such offence is alleged to have been committed.—32-33 *V.*, *c.* 18, *s.* 17, *part.* 24-25 *V.*, *c.* 99, *s.* 17, *Imp.*

Indictment for defacing Coin.—..... one piece of the current silver coin, called a half crown, unlawfully and wilfully did deface, by then stamping thereon certain names and words..... against the form .....—*Archbold*, 748.

Prove that the defendant defaced the coin in question, by stamping on it any names or words, or both. It is not necessary to prove that the coin was thereby diminished or lightened. There must be defacing and tendering, to bring the offence within section 17.

19. Every one who makes or counterfeits any kind of coin not being current gold or silver coin, but resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state or country, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 18, *s.* 18. 24-25 *V.*, *c.* 99, *s.* 18, *Imp.*

20. Every one who, without lawful authority or excuse, the proof

whereof shall lie on him, brings or receives into Canada any such false or counterfeit coin, resembling or apparently intended to resemble or pass for any gold of silver coin of any foreign prince, state or country, not being current coin, knowing the same to be false or counterfeit, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 18, *s.* 19. 24-25 *V.*, *c.* 99, *s.* 19, *Imp.*

21. Every one who tenders, utters or puts off any such false or counterfeit coin, resembling or apparently intended to resemble, or pass for any gold or silver coin of any foreign prince, state or country not being current coin, knowing the same to be false or counterfeit, is guilty of a misdemeanor, and liable to six months' imprisonment:

2. Every one who, having been convicted of any such offence, afterwards commits the like offence of tendering, uttering or putting off any such false or counterfeit coin, as aforesaid, knowing the same to be false or counterfeit, is guilty of a misdemeanor, and liable to imprisonment for any term less than two years;

3. Every one who, having been twice convicted of any such offence, afterwards commits the like offence of tendering, uttering or putting off any such false or counterfeit coin, as aforesaid, knowing the same to be false or counterfeit, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, c. 18, *ss.* 20 *and* 21. 24-25 *V.*, *c.* 99, *ss.* 20-21, *Imp.*

See sec. 207 of Procedure Act.

22. Every one who, without lawful authority or excuse, the proof whereon shall lie on him, has in his possession or custody any forged, false or counterfeit piece or coin, counterfeited to resemble any foreign gold or silver coin described in the three sections next preceding, knowing the same to be false or counterfeit coin, is guilty of a misdemeanor, and liable to three years' imprisonment.—32-33 *V.*, *c.* 18, *s.* 22. 24-25 *V.*, *c.* 99, *s.* 23, *Imp.*

23. Every one who falsely makes or counterfeits any kind of coin, not being current coin, but resembling or apparently intended to resemble or pass for any copper coin, or any other coin made of any metal or mixed metals, of less value than the silver coin of any foreign prince, state or country, is guilty of a misdemeanor, and liable, for the first offence, to one year's imprisonment; and for any subsequent offence, to seven years' imprisonment.—32-33 *V.*, *c.* 18, *s.* 23. 24-25 *V.*, *c.* 99, *s.* 22, *Imp.*

The remarks under the first part of the Act are all

applicable here, the enactments in those sections being the same, and repeated, to apply to foreign coin *not current here.*

See *R.* v. *Tierney*, 29 *U. C. Q. B.* 181.

24. Every one who, without lawful authority or excuse, the proof whereof shall lie on him,—

(*a.*) Knowingly makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession any puncheon, counter puncheon, matrix, stamp, die, pattern or mould, in or upon which there is made or impressed, or which will make or impress, or which is adapted and intended to make or impress the figure, stamp or apparent resemblance of both or either of the sides of any current gold or silver coin, or of any coin of any foreign prince, state or country, or any parts of both or either of such sides,—

(*b.*) Makes or mends, or begins or proceeds to make or mend or buys or sells, or has in his custody or possession any edger, edging or other tool, collars, instrument or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures, apparently resembling those on the edges of any such coin as in this section aforesaid, knowing the same to be so adapted and intended as aforesaid, or—

(*c.*) Makes or mends or begins or proceeds to make or mend, or buys or sell, or has in his custody or possession, any press for coinage, or any cutting engine for cutting by force of a screw or of any other contrivance, round blanks out of gold, silver or other metal or mixture of metals or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin as in this section aforesaid,—

is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 18, *s.* 24. 24-25 *V.*, *c.* 99, *s.* 24, *Imp.*

Indictment for making a puncheon for coining.—..... one puncheon, in and upon which there was then made and impressed the figure of one of the sides, that is to say, the head side of a piece of the current silver coin, commonly called a shilling, knowingly, falsely,

deceitfully and feloniously, and without lawful authority or excuse, did make, against the form .....—*Archbold.*

Prove that the defendant made a puncheon, as stated in the indictment; and prove that the instrument in question is a puncheon included in the statute. The words in the statute "upon which there shall be made or impressed" apply to the puncheon which being convex bears upon it the figure of the coin; and the words "which will make or impress" apply to the counter puncheon, which being concave will make and impress. However, although it is more accurate to describe the instruments according to their actual use, they may be described either way.—*R.* v. *Lennard*, 1 *Leach*, 90. It is not necessary that the instrument should be capable of making an impression of the whole of one side of the coin, for the words "or any part or parts" are introduced into the statute, and, consequently, the [illegible] *R.* v. *Sutton*, 2 *Str.* 1074, where the instrument was capable of making the sceptre only cannot now occur.

And on an indictment for making a mould "intended to make and impress the figure and apparent resemblance of the obverse side" of a shilling, it is sufficient to prove that the prisoner made the mould and a part of the impression, though he had not completed the entire impression.—*R.* v. *Foster*, 7 *C. & P.* 495. It is not necessary to prove under this branch of statute the *intent* of the defendant: the mere similitude is treated by the Legislature as evidence of the intent; neither is it essential to show that money was actually made with the instrument in question.—*R.* v. *Ridgely*, 1 *East, P. C.* 171. The proof of lawful authority or excuse, if any, lies on the defendant. Where the defendant employed a die-

sinker to make, for a pretended innocent purpose, a die calculated to make shillings; and the die-sinker, suspecting fraud, informed the authorities at the mint, and under their directions made the die for the purpose of detecting prisoner; it was held that the die-sinker was an innocent agent and the defendant was rightly convicted as a principal.—*R.* v. *Bannen*, 2 *Moo. C. C.* 309.

The *making* and *procuring* dies and other materials, with intent to use them in coining Peruvian half-dollars in England, not in order to utter them here, but by way of trying whether the apparatus would answer, before sending it out to Peru, to be there used in making the counterfeit coin for circulation in that country, was held to be an indictable misdemeanor at common law.—*R.* v. *Roberts, Dears.* 539; *Archbold*, 760; 1 *Burn*, 814; 1 *Russ.* 100. A galvanic battery is a machine within this section.—*R.* v. *Grover*, 9 *Cox*, 282.

Indictment for having a puncheon in possession.—..... one puncheon in and upon which there was then made and impressed the figure of one of the sides, that is to say, the head side of a piece of the current silver coin commonly called a shilling, knowingly, falsely, deceitfully and feloniously, and without lawful authority or excuse, had in his custody and possession, against the form .....—*Archbold.*

An indictment which charged that the defendant feloniously had in his possession a mould "upon which said mould was made and impressed the figure and apparent resemblance" of the observe side of a sixpence, was held bad on demurrer, as not sufficiently showing that the impression was on the mould at the time when he had it in his possession.—*R.* v. *Richmond*, 1 *C. & K.* 240.

As to evidence of possession, see sect. 2, *ante*.—*R.* v.

Rogers, 2 *Moo. C. C.* 85.—The prisoner had occupied a house for about a month before the police entered it, and found two men and two women there, one of whom was the wife of the prisoner. The men attacked the police, and the women threw something into the fire. The police succeeded, however, in preserving part of what the women threw away, which proved to be fragments of a plaster-of-Paris mould of a half crown. The prisoner came in shortly afterwards, and, on searching the house, a quantity of plaster-of-Paris was found up-stairs. An iron ladle and some fragments of plaster-of-Paris moulds were also found. It was proved that the prisoner, thirteen days before the day in question, had passed a bad half-crown, but there was no evidence that it had been made in the mould found by the police. He was afterwards tried and convicted for uttering the base half-crown. It was held that there was sufficient evidence to justify the conviction, and that, on a trial for felony, other substantive felonies which have a tendency to establish the scienter of the defendant may be proved for that purpose.—*R.* v. *Weeks*, *L. & C.* 18. In *R.* v. *Harvey*, 11 *Cox*, 662, it was *held*: 1. That an indictment under this section is sufficient if it charges possession without lawful excuse, as excuse would include authority; 2. That the words "the proof whereof shall lie on the accused" only shift the burden of proof, and do not alter the character of the offence; 3. That the fact that the Mint authorities, upon information forwarded to them, gave authority to the die maker to make the die, and that the police gave permission to him to give the die to the prisoner, who ordered him to make it, did not constitute lawful authority or excuse for prisoner's possession of the die; 4. That, to complete the offence, a felonious intent is not necessary; and, upon a case reserved, the conviction was affirmed.

Indictment for making a collar.— ..... one collar adapted and intended for the marking of coin round the edges with grainings apparently resembling those on the edges of a piece of the current gold coin called a sovereign, falsely, deceitfully and feloniously, and without lawful authority or excuse, did make, he the said J. S. then well knowing the same to be so adapted and intended as aforesaid, against the form .....—*Archbold*, 761.

It must be proved, upon this indictment that the defendant knew the instrument to be adapted and intended for the marking of coin round the edges.

It must be remarked that the said clause expressly applies to tools for making foreign coin, as well as current coin.

25. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, knowingly conveys out of any of Her Majesty's mints into Canada, any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press or engine, used or employed in or about the coining of coin, or any useful part of any of the several articles aforesaid, or any coin, bullion, metal or mixture of metals, is guilty of felony and liable to imprisonment for life.—32-33 *V.*, *c.* 18, *s.* 25. 24-25 *V.*, *c.* 99, *s.* 25, *Imp.*

26. If any coin is tendered as current gold or silver coin to any person who suspects the same to be diminished otherwise than by reasonable wearing, or to be counterfeit, such person may cut, break, bend or deface such coin, and if any coin so cut, broken, bent or defaced appears to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same is of due weight, and appears to be lawful coin, the person cutting, breaking, bending or defacing the same, shall be bound to receive the same at the rate for which it was coined:

2. If any dispute arises whether the coin so cut, broken, bent or defaced, is diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in a summary manner by any justice of the peace, who may examine, upon oath, the parties as well as any

other person, for the purpose of deciding such dispute, *and if he entertains any doubt in that behalf, he may summon three persons, the decision of a majority of whom shall be final:*

3. Every officer employed in the collection of the revenue in Canada shall cut, break or deface, or cause to be cut, broken or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which is tendered to him in payment of any part of such revenue in Canada.—32-33 *V.*, *c.* 18, *s.* 26. 24-25 *V.*, *c.* 99 *s.* 26, *Imp.*

The words in *italics* are not in the Imperial Act.

27. Every offence of falsely making or counterfeiting any coin, or of buying, selling, receiving, tendering, uttering or putting off, or of offering to buy, sell, receive, pay, utter or put off, any false or counterfeit coin, against the provisions of this Act, shall be deemed to be complete, although the coin so made or counterfeited, or bought sold, received, paid, tendered, uttered or put off, or offered to be bought, sold, received, paid, *tendered*, uttered or put off, was not in a fit state, to be uttered, or the counterfeiting thereof was not finished or perfected. 32-33 *V.*, *c.* 18, *s.* 32. 24-25 *V.*, *c.* 99, *s.* 30, *Imp.*

The word in *italics* is not in the Imperial Act.

MANUFACTURE AND IMPORTATION OF UNCURRENT COPPER COIN.

28. Every one who manufactures in Canada any copper or brass coin, or imports into Canada any copper or brass coin, other than current copper coin, with the intention of putting the same into circulation as current copper coin, shall, on summary conviction, be liable to a penalty not exceeding twenty dollars for every pound Troy of the weight thereof; and all such copper or brass coin so manufactured or imported shall be forfeited to Her Majesty, for the public uses of Canada.—31 *V.*, *c.* 47, *ss.* 1 *and* 2.

29. Any two or more justices of the peace, on the oath of a credible person, that any copper or brass coin has been unlawfully manufactured or imported, shall cause the same to be seized and detained, and shall summon the person in whose possession the same is found, to appear before them; and if it appears to their satisfaction, on the oath of a credible witness, other than the informer, that such copper or brass coin has been manufactured or imported in violation of this Act, such justices shall declare the same forfeited, and shall place the same in safe keeping to await the disposal of the Governor General, for the public uses of Canada.—31 *V.*, *c.* 47, *s.* 3.

30. If it appears, to the satisfaction of such justices, that the person in whose possession such copper or brass coin was found, knew the same to have been so unlawfully manufactured or imported, they may condemn him to pay the penalty aforesaid with costs, and may cause him to be imprisoned for a term not exceeding two months, if such penalty and costs are not forthwith paid.—31 *V.*, *c.* 47, *s.* 4.

31. If it appears, to the satisfaction of such justices, that the person in whose possession such copper or brass coin was found was not aware of it having been so unlawfully manufactured or imported, the penalty may, on the oath of any one credible witness, other than the plaintiff, be recovered, from the owner thereof, by any person who sues for the same in any court of competent jurisdiction.—31 *V.*, *c.* 47, *s.* 5.

32. Any officer of Her Majesty's customs may seize any copper or brass coin imported or attempted to be imported into Canada in violation of this Act, and may detain the same as forfeited, to await the disposal of the Governor General, for the public uses of Canada.—31 *V.*, *c.* 47, *s.* 6.

33. Every one who utters, tenders or offers in payment any copper or brass coin, other than current copper coin, shall forfeit double the nominal value thereof:

2. Such penalty may be recovered, with costs, in a summary manner, on the oath of one credible witness, other than the informer, before any justice of the peace, who, if such penalty and costs are not forthwith paid, may cause the offender to be imprisoned for a term not exceeding eight days.—31 *V.*, *c.* 47, *ss.* 7 *and* 8.

34. A moiety of any of the penalties imposed by any of the five sections next preceding, but not the copper or brass coin forfeited under the provisions thereof, shall belong to the informer or person who sues for the same, and the other moiety shall belong to Her Majesty, for the public uses of Canada.—31 *V.*, *c.* 47, *s.* 9.

CHAPTER 168.

AN ACT RESPECTING MALICIOUS INJURIES TO PROPERTY.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. In this Act, unless the context otherwise requires, the expression "cattle" includes any horse, mule, ass, swine, sheep, or goat, as well as any neat cattle or animal of the bovine species, and whatever is the age or sex of the animal, and whether castrated or not, and by whatever technical or trivial name it is known, and shall apply to one animal as well as to many.—32-33 *V.*, *c.* 22, *s.* 44. 40 *V.*, *c.* 29, *s.* 2.

This is the same definition of these words as is given in the Larceny Act, sec. 2.

INJURIES BY FIRE TO BUIDLINGS AND GOODS THEREIN.

2. Every one who unlawfully and maliciously sets fire to any church, chapel, meeting-house or other place of divine worship, is guilty of felony and liable to imprisonment for life—32-33 *V.*, *c.* 22, *s.* 1. 24-25 *V.*, *c.* 97, *s.* 1, *Imp.*

Indictment.—The Jurors for Our Lady the Queen, upon their oath present, that J. S. on the.....in the year.....feloniously, unlawfully and maliciously did set fire to a certain church, situate at ..... in the parish of ..... in the district of ..... against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

Local description necessary. *R.* v. *Woodward*, 1 *Moo. C. C.* 323.

Though it is not necessary to prove malice against the owner, yet the indictment must allege the act to have been done "unlawfully and maliciously." If a statute

makes it criminal to do an act unlawfully and maliciously, an indictment must state it to have been done so; stating that it was done feloniously, voluntarily and maliciously, is not enough.—*R.* v. *Turner*, 1 *Moo. C. C.* 239; *R.* v. *Lewis*, 2 *Russ.* 1067.

The definition of arson at common law is as follows: arson is the malicious and wilful burning the house of another, and to constitute the offence there must be an actual burning of some part of the house, though it is not necessary that any flames should appear.—3 *Burn*, 768. But now the words of the statute are *set fire to*, merely; and, therefore, it is not necessary in an indictment to aver that the house was burnt, nor need it be proved that the house was actually consumed. But under the statute, as well as at common law, there must be an actual burning of some part of the house; a bare intent or attempt to do it is not sufficient. But the burning or consuming of any part of the house, however trifling, is sufficient, although the fire be afterwards extinguished. Where on an indictment it was proved that the floor of a room was scorched; that it was charred in a trifling way; that it had been at a red heat but not in a blaze, this was held a sufficient burning to support the indictment. But where a small faggot having been set on fire on the boarded floor of a room, the boards were thereby scorched black but not burnt, and no part of the wood was consumed, this was held not sufficient.—*Archbold.*

The time stated in the indictment need not be proved as laid; if the offence be proved to have been committed at any time before or after, provided it be some day before the finding of the indictment by the grand jury, it is sufficient. Where the indictment alleged the offence to have been committed in the night time and it was proved

to have been committed in the day time, the judges held the difference to be immaterial. The parish is material, for it is stated as part of the description of the house burnt. Wherefore, if the house be proved to be situate in another parish the defendant must be acquitted, unless the variance be amended. If a man intending to commit a felony, by accident set fire to another's house, this, it should seem, would be arson. If intending to set fire to the house of A. he accidentally set fire to that of B., it is felony. Even if a man by wilfully setting fire to his own house, burns also the house of one of his neighbors it will be felony; for the law in such a case implies malice, particularly if the party's house were so situate that the probable consequence of its taking fire was that the fire would communicate to the houses in its neighborhood. And generally if the act be proved to have been done wilfully, it may be inferred to have been done maliciously, unless the contrary be proved.—*Archbold*; *R.* v. *Tivey*, 1 *C. & K.* 704; *R.* v. *Philp*, 1 *Moo. C. C.* 263.

It is seldom that the wilful burning by the defendant, can be made out by direct proof; the jury, in general, have to adjudicate on circumstantial evidence. Where a house was robbed and burnt, the defendant being found in possession of some of the goods which were in the house at the time it was burnt, was admitted as evidence tending to prove him guilty of the arson. So where the question is whether the burning was accidental or wilful, evidence is admissible to show that on another occasion, the defendant was in such a situation as to render it probable that he was then engaged in the commission of the like offence against the same property. But on a charge of arson, where the question was as to the identity of the prisoner, evidence that a few days previous to the fire in

question, another building of the prosecutor's was on fire and that the prisoner was then standing by with a demeanor which showed indifference or gratification, was rejected.—*Archbold.*

Upon an indictment for any offence mentioned in this chapter (except the attempts specially enacted to be felonies) the jury may, under s. 183, Procedure Act, convict the prisoner of an attempt to commit the same, and thereupon he may be punished in the same manner as if he had been convicted on an indictment for such attempt.—2 *Russ.* 1054.

SETTING FIRE TO A DWELLING-HOUSE, ANY PERSON BEING THEREIN.

3. Every one who unlawfully and maliciously sets fire to any dwelling-house, any person being therein, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 22, *s.* 2. 24-25 *V., c.* 97 *s.* 2, *Imp.*

This offence was formerly punishable with death.

As to verdict for an attempt to commit the offence charged upon an indictment for the offence, see Procedure Act, sect. 183.

Indictment.—.....feloniously, unlawfully and maliciously did set fire to a certain dwelling-house of J. N., situate in the parish of ..... in the district of ..... one J. L. and M. his wife then, to wit, at the time of the committing of the felony aforesaid, being in the said dwelling-house; against the form .....

Local description necessary as under sec. 2

In this section, no mention is made of the intent with which the act is done; and it seems it is not necessary to show that the prisoner knew that any person was in the house. It must be shown that some one was in the house at the time the house caught fire; and where a person was

in a house at the time the prisoner set fire to an outhouse, but left the house before the fire reached it, it was held that the offence was not proved within this section.—*R.* v. *Warren*, 1 *Cox*, 68; *R.* v. *Fletcher*, 2 *C. & K.* 215.

Under the repealed statute, a common gaol was held to be a dwelling-house; *Donnavan's Case*, 1 *Leach*, 69; but a mere lock-up where persons are never detained more than a night or two was held not to be a house.—*R.* v. *Connor*, 2 *Cox*, 65.

A building intended for a dwelling-house, but used as a place to deposit straw, etc., is neither a house, out-house nor barn.—*Elsemore* v. *St. Briavels*, 8 *B. & C.* 461. A dwelling-house must be one in which a person dwells; *R* v. *Allison*, 1 *Cox*, 24; but temporary absence is not sufficient to take the building out of the protection of the statute.—*R.* v. *Kimbrey*, 6 *Cox*, 464. A building not intended for a dwelling-house, but slept in by some one without the leave of the owner, and a cellar under a cottage separately occupied, were held not to be houses.—*R.* v. *England*, 1 *C. & K.* 533; *Anon.* 1 *Lewin* 8.

What is understood by the *house*. This extends at common law not only to the very dwelling-house, but to all out-houses which are parcel thereof, though not adjoining thereto, nor under the same roof.—2 *East, P. C.* 1020.

SETTING FIRE TO A HOUSE, OUT-HOUSE, MANUFACTORY, FARM BUILDING.

4. Every one who unlawfully and maliciously sets fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, storehouse, granary, hovel, shed or fold, or to any farm building, or to any building or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof, whether the same is then in the possession of the offender, or in the possession of any other person, with the intent thereby to injure or defraud any person, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 22, *s.* 3. 35 *V., c.* 34, *s.* 1. 24-25 *V., c.* 97, *s.* 3, *Imp.*

See sect. 183, Procedure Act, as to verdict for an attempt to commit the offence charged, in certain cases, upon an indictment for the offence.

Indictment.—.....feloniously, unlawfully, and maliciously did set fire to a certain dwelling-house of J. N., situate ..... with intent thereby then to injure the said J. N., *(or to defraud a certain insurance company called)* ..... against the form .....

Local description necessary as under sec. 2.

A was indicted for setting fire to an out-house. The building set on fire was a thatched pigsty, situate in a yard in the possession of the prosecutor, into which yard the back door of his house opened, and which yard was bounded by fences and by other buildings of the prosecutor, and by a cottage and barn which were lent to him by a tenant, but which did not open into this yard: *Held*, that this pigsty was an out-house within the repealed statute.—*R.* v. *Jones*, 2 *Moo. C. C.* 308.

A. was indicted for having set fire to a building twenty-four feet square, the sides of which were composed of wood with glass windows; it was roofed and was used by a gentleman, who built houses on his own property, for the purpose of disposing of them, as a storehouse for seasoned timber, as a place of deposit for tools, and as a place where timber was prepared for use: *Held*, that this was a shed, and also an erection used in carrying on trade.—*R.* v. *Amos*, 2 *Den.* 65.

Burning a stable is not supported by proof of burning a shed, which has been built for and used as a stable originally, but has latterly been used as a lumber shed only.—*R.* v. *Colley*, 2 *M. & Rob.* 475.

An unfinished structure intended to be used as a house is not a house within the meaning of this section.—*R.* v. *Edgell*, 11 *Cox*, 132.

An indictment under this section, for setting fire to a house, shop, etc., need not allege the ownership of the house. The evidence in support of the intent to injure was that the prisoner N. was under notice to quit, and a week before the fire was asked to leave but did not. Of the intent to defraud, the evidence was that in 1867 he called on an agent about effecting an assurance, and that in 1871, he called on him again, and said he had come to *renew* his policy for £500, and paid ten shillings: *Held*, that the evidence was sufficient to prove the intent to injure the owner of the house, and the intent to defraud the insurance company; though the policy of insurance was not produced, there was sufficient evidence of it by the defendant's implied admission of its existence by saying he wished to *renew* his policy.—*R.* v. *Newboult*, 12 *Cox*, 148.

Malice against owner is unnecessary; see sect. 60, *post*; and intent to injure or defraud any particular person need not be stated in the indictment, nor proved on the trial.

In *Farrington's Case*, *R.* v. *R.* 207, no motive of ill-feeling whatsoever against the owner of the property burnt could be proved against the prisoner; he was proved to be a harmless, inoffensive man; but upon a case reserved it was held that an injury to the burnt building being the necessary consequence of setting fire to it, the *intent to injure* might be inferred, for a man is supposed to intend the necessary consequence of his own act.

Under the statute, it is immaterial whether the building, house, etc., be that of a third person or of the defendant himself; but in the latter case, the intent to defraud cannot be inferred from the act itself, but it must be proved by other evidence. In *R.* v. *Kitson*, *Dears.* 187, the prisoner was indicted for arson, in setting fire to his own house, with intent to defraud an insurance office. Notice to produce the policy was served too late on the defendant, and it was held that secondary evidence of the policy was not admissible. "But it must not, however be understood, said Jervis, C. J., that it is absolutely necessary in all cases to produce the policy, but the intent to defraud alleged in the indictment must be proved by proper evidence."

A married woman cannot be indicted for setting fire to the house of her husband with intent to injure him.—*R.* v. *March*, 1 *Moo. C. C.* 182.

See remarks under sects. 2 and 3, *ante*.

An indictment charging a prisoner with having feloniously and maliciously set fire to a barn containing hay, etc., according to the form contained in the schedule to the act 32-33 V., c. 29, is good, and it is not necessary to allege an intent to injure or defraud the prosecutor.

Sec. 32 of 32-33 V., c. 30 is directory, and a statement made by a prisoner as provided for by that act may be used in evidence against him although the justice has not complied with the provisions of that section, if it appeared that the prisoner was not induced to make the statement by any promise or threat.—*The Queen* v. *Soucie*, 1 *P. & B. (N. B.)* 611.

SETTING FIRE TO ANY RAILWAY STATION, ETC.

5. Every one who unlawfully and maliciously sets fire to any station, engine-house, warehouse or other building, belonging or appertaining to any railway, port, dock or harbor, or to any canal or other navigable water, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 22. *s.* 4. 24-25 *V.*, *c.* 97, *s.* 4, *Imp.*

The words "or other navigable water" replace the words "or other navigation." in the Imperial Act.

See remarks under secs. 2 and 3, *ante*.

Indictment—Berkshire (to wit). The Jurors for our Lady the Queen upon their oath present, that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. feloniously, unlawfully, and maliciously did set fire to a certain station *(any station, engine-house, warehouse, or other building)* the property of the Great Western Railway Company, there situate, then and there, belonging *(belonging or appertaining)* to a certain railway there, called "*The Great Western Railway.*"

SETTING FIRE TO THE QUEEN'S DOCK-YARDS, SHIPS, ETC.

6. Every one who unlawfully and maliciously sets on fire or burns, or otherwise destroys or causes to be set on fire or burnt, or otherwise destroyed, any of Her Majesty's ships or vessels of war, whether afloat or building, or begun to be built in any of Her Majesty's dock-yards, or building or repairing by contract in any private yard, for the use of Her Majesty's or any of Her Majesty's arsenals, magazines, dock-yards, rope-yards, victualling offices, or any of the buildings erected therein or belonging thereto, or any timber or material there placed for building, repairing or fitting out of ships or vessels, or any of Her Majesty's military, naval or victualling stores or other ammunition of war, or any place or places where any such military, naval, or victualling stores, or other ammunition of war, are kept, placed or deposited, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 22, *s.* 5.

This clause is taken from 12 Geo. 3, c. 24, s. 1, Imp. See *ante*, remarks and form of indictment under secs. 2 and 3.

SETTING FIRE TO ANY PUBLIC BUILDING.

7. Every one who unlawfully and maliciously sets fire to any building, other than such as are in this Act before mentioned, belonging to Her Majesty or to any county, riding, division, city, town, village, parish or place, or belonging to any university or college, or hall of any university, or to any corporation, or to any unincorporated body or society of persons, associated together for any lawful purpose, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 22, *s.* 6. 24-25 *V., c.* 97, *s.* 5, *Imp.*

Greaves says: "This clause is new, and an extremely great amendment of the law. Before this act passed, there was no statute applicable to the burning of any public building, however important, unless it could be held to fall within the term "house." It would be easy to point out such buildings, the burning of which would have been looked upon as a national calamity. This section therefore has been introduced to protect all such buildings, as well as all the others specified in it."

See remarks under secs. 2 and 3, *ante*.

SETTING FIRE TO ANY OTHER BUILDING.

8. Every one who unlawfully and maliciously sets fire to any building, other than such as are in this Act before mentioned, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V., c.* 22, *s.* 7. 24-25 *V., c.* 97, *s.* 6, *Imp.*

Greaves says: "This clause is new. It will include every building not falling within any of the previous sections of the act. It will include ornamental buildings in parks and pleasure grounds, hot houses, pineries, and all those buildings which not being within the curtilage of a dwelling-house, and not falling within any term previously mentioned, were unprotected before this act passed. The term 'building' is no doubt very indefinite ..... but it was thought much better to adopt this term, and leave it to be interpreted as each case might arise, than to attempt to define it, as any such attempt would probably have failed in producing any expression more certain than the term 'building' itself."

In *R.* v. *Edgell*, 11 *Cox* 132, it was doubted whether an unfinished structure intended to be used as a house was a *building* within this section. The point was not determined.

But in *R.* v. *Manning*, 12 *Cox*, 106, upon a case reserved,

it was held that an unfinished dwelling-house of which the external and internal walls were built, and the roof covered in, and a considerable part of the flooring laid, and the walls and ceilings prepared for plastering, is a building, within this section. In this case, Lush, J., left it to the jury whether as a question of fact the erection was a building, and the Court of Crown cases reserved seemed to be of opinion that this had been correctly done. See remarks under secs. 2 and 3, *ante*. See *R.* v. *Labadie*, 32 *U. C. Q. B.* 429; *R.* v. *Greenwood*, 23 *U. C. Q. B.* 250.

Defendant was charged with having set fire to a building, the property of one J. H., "with intent to defraud." The case opened by the crown was that the prisoner intended to defraud several insurance companies, but the legal proof of the polices was wanting, and an amendment was allowed by striking out the words "with intent to defraud." The evidence showed that several persons were interested as mortgagees of the building, a large hotel, and J. H. as owner of the equity of redemption. It was left to the jury to say whether the prisoner intended to injure any of those interested. They found a verdict of guilty.

Held, that the amendment was authorised and proper, and the conviction was warranted by the evidence.

The indictment in such a case is sufficient without alleging any intent, there being no such averment in the statutory form; but an intent to injure or defraud must be shown on the trial.—*R.* v. *Cronin*, 36 *U. C. Q. B.* 342.

SETTING FIRE TO GOODS IN ANY BUILDING.

9. Every one who unlawfully and maliciously sets fire to any matter or thing, being in, against or under any building, under such circumstances that, if the building were thereby set fire to, the offence would amount to felony, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V., c.* 22, *s.* 8. 24-25 *V., c.* 97, *s.* 7, *Imp.*

Greaves says: The terms "under such circumstances that if the building were thereby set fire to the offence would amount to felony" were advisably substituted instead of the terms used *(before)* in consequence of the case of *R.* v. *Lyons*, 1 *Bell, C. C.* 38. Some of the enactments as to setting fire to buildings, ships, etc., make an intent to injure or defraud necessary, but others do not, and the terms in question were adopted in order to include both categories; so that if goods are set fire to in a building where an intent to injure or defraud is necessary to constitute the offence of the setting fire to such building (as in the cases included in sect. 3), the case will fall within this clause; as well as where no intent is necessary to constitute the offence of setting fire to the building in which the goods are set fire to (as in the cases included in secs. 4, 5, 6, 7). In an indictment under this clause, where no intent is necessary to constitute the offence of setting fire to the building in which the goods are set fire to, it will be sufficient to allege the setting fire to the goods in that building; but where an intent to injure or defraud is necessary to constitute the offence of setting fire to the building it would seem necessary to allege in addition an intent to injure or defraud as the case may be; and the evidence in the former case will suffice, if it prove the setting fire to the goods in the building, but in the latter case, it must also be sufficient to satisfy the jury that the prisoner had the intent alleged in the indictment.

Indictment.— ..... feloniously, unlawfully and maliciously did set fire to a certain heap of straw in a certain building of J. N., situate at ..... in the district of..... against the form ..... 3 *Burn*, 799. According to Greaves, if the heap of straw was in a *house* (as under sect. 3), the intent to injure or defraud should be added. But see *R.* v. *Heseltine*, 12 *Cox*, 404, *post*.

Where the prisoners were indicted for setting fire to letters in a post-office, divers persons being in the house, it was held that there was no evidence of any intent, but it was what is vulgarly called a lark, and even if the house had been burned, they would not have been guilty.—*R.* v. *Batstone*, 10 *Cox*, 20.

A person maliciously sets fire to goods in a house with intent to injure the owner of the goods, but he had no malicious intention to burn the house, or to injure the owner of it. The house did not take fire, but would have done so if the fire had not been extinguished: *Held*, that if the house had thereby caught fire, the setting fire to it would not have been within this section, as, under the circumstances, it would not have amounted to felony.—*R.* v. *Child*, 12 *Cox*, 64; *R.* v. *Nattrass*, 15 *Cox*, 73; *R.* v. *Harris*, 15 *Cox*, 75.

It is not necessary in a count in an indictment laid under this section to allege an intent to defraud, and it is sufficient to follow the words of the section without substantively setting out the particular circumstances relied on as constituting the offence. Evidence of experiments made subsequently to the fire is admissible in order to show the way in which the building was set fire to.—*R.* v. *Heseltine*, 12 *Cox*, 404.

As to verdict for an attempt to commit the offence charged in certain cases, same as under sect. 2, *ante*.

See remarks under sects. 2 and 3, *ante*.

ATTEMPTING TO SET FIRE TO BUILDINGS.

10. Every one who, unlawfully and maliciously, by any overt act, attempts to set fire to any building, or any matter or thing in the next preceding section mentioned, under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V., c.* 22, *s.* 12. 24-25 *V., c.* 97, *s.* 8, *Imp.*

Indictment.— ..... feloniously, unlawfully and maliciously did attempt, by then *(state the overt act)* feloniously, unlawfully and maliciously to set fire to a certain dwelling-house *(building)* of J. N. situate at the parish of ..... in the ..... with intent thereby then to injure the said J. N. against the form ..... —*Archbold*.

The words "any building" are not to be read as connected with the words "in the next preceding section mentioned."—*Archbold*, 518.

Lighting a match by the side of a stack with intent to set fire to it is an attempt to set fire to it, because it is an act immediately and directly tending to the execution of the crime.—*R.* v. *Taylor*, 1 *F. & F.* 511. On an indictment against two prisoners for attempting to set fire, one prisoner had not assisted in the attempt, but had counselled and encouraged the other; both were convicted.—*R.* v. *Clayton*, 1 *C. & K.* 128.

See *R.* v. *Goodman*, 22 *U. C. C. P.* 338.

SETTING FIRE BY NEGLIGENCE TO ANY FOREST, TREE, ETC.

11. Every one who, by such negligence as shows him to be reckless or wantonly regardless of consequences, or in violation of a municipal law of the locality, sets fire to any forest, tree, manufactured lumber, square timber, logs or floats, boom, dam or slide on the Crown domain, or land leased or lawfully held for the purpose of cutting timber, or on private property, on any creek or river, or rollway, beach or wharf, so that the same is injured or destroyed, is guilty of a misdemeanor, and liable to two years' imprisonment:

2. If, in the opinion of the magistrate investigating any charge under this section, the consequences have not been serious, he may, in his discretion, dispose of the matter summarily, without sending the offender for trial, by imposing a fine not exceeding fifty dollars, or in default of payment, by the committal of the offender to prison for any term not exceeding six months, with or without hard labor.—32-33 *V., c.* 22, *ss.* 9 *and* 10.

12. Every one who, unlawfully and maliciously, sets fire to any

forest, tree, manufactured lumber, square timber, logs or floats, boom, dam or slide, on the Crown domain, or on land leased or lawfully held for the purpose of cutting timber, or on private property, or on any creek, river, rollway, beach or wharf, so that the same is injured or destroyed, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 11.

See sect. 183 of the Procedure Act, as to a verdict for an attempt in certain cases.

These two clauses are not in the English statute. Both apply to forest, tree, lumber, etc.; but under the first, the act must have been done carelessly, or in contravention to a municipal law, whilst under the second, it must have been done *unlawfully and maliciously.*

Indictment under sect. 12 quashed, for want of the words "so as to injure or to destroy." *R.* v. *Berthe*, 16 *C. L. J.* 251. Such an indictment bad, even after verdict.—*R.* v. *Bleau*, 7 *R. L.* 571.

INJURIES BY EXPLOSIVE SUBSTANCES.

13. Every one who, unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or damages the whole or any part of any dwelling-house, any person being therein, or of any building, whereby the life of any person is endangered, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 22, *s.* 13. 24-25 *V.*, *c.* 97, *s.* 9, *Imp.*

14. Every one who unlawfully and maliciously places or throws in, into, upon, under, against or near any building, any gunpowder or other explosive substance, with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods or chattels, whether or not any explosion takes place, and whether or not any damage is caused, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 14. 24-25 *V.*, *c.* 97, *s.* 10, *Imp.*

Indictment for destroying by explosion part of a dwelling-house, some person being therein.— ..... feloniously, unlawfully, and maliciously did, by the explosion of a certain explosive substance, that is to say, gunpowder,

destroy a certain part of the dwelling-house of J. N., situate ..... one A. N. then being in the said dwelling-house, against the form ..... *(Add counts for throwing down and damaging part of the dwelling-house.)* See *R.* v. *McGrath*, 14 *Cox*, 598.

Prove that the defendant by himself or with others destroyed or was present aiding and abetting in the destruction of some part of the dwelling-house in question, by the explosion of gunpowder or other explosive substance mentioned in the indictment. It is apprehended that a destruction of some part of the *freehold* must be shown.—*R.* v. *Howell*, 9 *C. & P.* 437. It has been held that firing a gun loaded with powder through the keyhole of the door of a house, in which were several persons, and by which the lock of the door was blown to pieces, is not within this section. —*R.* v. *Brown*, 3 *F. & F.* 821. But Greaves is of opinion that this case would bear reconsideration.—2 *Russ.* 1045 *note.* Prove that it was the dwelling-house of J. N., and situate as described in the indictment. Prove that the act was done maliciously, that is, wilfully and not by accident. Prove also that N. was in the house at the time. No intent need be laid or proved.—*Archbold.* In *R.* v. *Sheppard*, 11 *Cox*, 302, it was held that, in order to support an indictment under this section, it is not enough to show simply that gunpowder or other explosive substance was thrown against the house, but it must also be shown that the substance was in a condition to explode at the time it was thrown, although no actual explosion did result.

Indictment for blowing up a house, whereby life was endangered.— ..... feloniously, unlawfully and maliciously did, by the explosion of a certain explosive substance, that is to say, gunpowder, destroy the dwelling-

house of J. N., situate ..... whereby the life of one A. N. was then endangered, against the form ..... *(Add a count for damaging the house with a like consequence.) Archbold.*

Same proof as under last preceding indictment, and that the life of A. N. was endangered by the defendant's act.

Indictment for throwing gunpowder into a house with intent, etc.— ..... feloniously, unlawfully and maliciously did throw into the dwelling-house of J. N., situate ..... a large quantity, to wit, two pounds of a certain explosive substance, that is to say, gunpowder, with intent thereby then to destroy the said dwelling-house, against the form .....*(Add counts varying the statement of the act, and also stating the intent to be to damage the house.)* —*Archbold.* See *R.* v. *Sheppard*, 11 *Cox*, 302, *ante*. Prove as under sect. 13, and prove circumstances from which the jury may infer the intent as laid.

Local description necessary in the indictment.—*R.* v. *Woodward*, 1 *Moo. C. C.* 323.

INJURIES TO BUILDINGS BY TENANTS.

15. Every one who, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, held for any term of years or other less term, or at will, or held over after the termination of any tenancy, unlawfully and maliciously pulls down or demolishes, or unlawfully and maliciously begins to pull down or demolish the same or any part thereof, or unlawfully and maliciously pulls down or severs from the freehold any fixture fixed in or to such dwelling-house or building, or part of such dwelling-house or building, is guilty of a misdemeanor.—32-33 *V.*, c. 22, *s.* 17. 24-25 *V.*, *c.* 97, *s.* 13, *Imp.*

Indictment.— ..... that on ..... J. S. was possessed of a certain dwelling-house, situate ..... then held by him the said J. S. for a term of years then unexpired; and that the said J. S. being so possessed as aforesaid, on

the day and year aforesaid did unlawfully and maliciously pull down and demolish the said dwelling-house *(or begin to pull down or demolish the said dwelling-house or any part thereof)* against the form ..... — *Archbold.*

Greaves says: "This clause is a very important improvement in the law of England, as tenants have very frequently, especially when under notice to quit, wilfully injured houses and buildings to a great extent." Mr. Cox says: "Malice is of the essence of this offence. It is not enough that it be unlawfully done, there must be a design to injure the owner." This is clearly wrong by the express terms of sect. 58, *post*, (60 of our statute). Mr. Welsby perfectly correctly says "prove that the act was done maliciously, that is wilfully and without any claim or pretence of right to do it." No punishment for the offence created by this section was inserted, because it was thought that the common law punishment of fine or imprisonment, or both, was the proper punishment." By the common law, when a fine is imposed, the offender may be imprisoned till the fine is paid.

This section only applies to any dwelling-house or building, but sect. 4, *ante*, provides for cases of setting fire to any of the things therein mentioned, whether in the offender's possession or not, and sect. 61, *post*, extends the provisions of the act generally to all offenders, whether in the possession of the property or not, if there be an intent to injure or defraud.—3 *Burn.* 775.

INJURIES TO MANUFACTURES, MACHINERY, ETC.

16. Every one who unlawfully and maliciously cuts, breaks or destroys, or damages, with intent to destroy or to render useless, any goods or article of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece,

stocking, hose or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture, or unlawfully and maliciously cuts, breaks, or destroys or damages with intent to destroy or render useless, any warp or shute of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other, or mixed with any other material, or unlawfully and maliciously cuts, breaks or destroys or damages with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool or implement, whether fixed or movable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing or otherwise manufacturing or preparing any such goods or articles, or by force enters into any house, shop, building or place, with intent to commit any of the offences in this section mentioned, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 22, *s.* 18. 24-25 *V.*, *c.* 97, *s.* 14, *Imp.*

17. Every one who unlawfully and maliciously cuts, breaks or destroys, or damages with intent to destroy or render useless, any machine or engine, whether fixed or movable, used or intended to be used for sowing, reaping, mowing, thrashing, ploughing or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement whether fixed or movable, prepared for or employed in any manufacture whatsoever except the manufacture of silk, woollen, linen, cotton, hair, mohair or alpaca goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose or lace, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 19. 24-25 *V.*, *c.* 97, *s.* 15, *Imp.*

As to verdict for an attempt to commit the offence charged upon an indictment for the offence itself, in certain cases, see sect. 183 Procedure Act. It is not necessary to prove malice against owner; *post*, sect. 60. To prove that the act was done maliciously, it is sufficient to prove that it was done wilfully.

Taking away part of a frame and thereby rendering it useless, *R.* v. *Tacey*, *R. & R.* 452, and screwing up parts of an engine, and reversing the plug of the pump, thereby rendering it useless and liable to burst, *R.* v. *Fisher*, 10 *Cox*, 146, are damaging within the act, although no actual permanent injury be done.—If a thrashing machine be taken to pieces and separated by the owner, the destruction of any part of it is within the statute.—*R.* v. *Mackerell*, 4 *C. & P.* 448. So is the destruction of a water-wheel, by which a thrashing machine is worked.—*R.* v. *Fidler*, 4 *C. & P.* 449.—So though the side boards of the machine be wanting, without which it will act, but not perfectly, it is within the statute. But if the machine be taken to pieces, and in part destroyed by the owner from fear, the remaining parts do not constitute a machine within the statute.—*R.* v. *West*, 2 *Russ.* 1087. It is not necessary that any part of the machine should be broken; a dislocation or disarrangement is sufficient.—*R.* v. *Foster*, 6 *Cox*, 25. A table with a hole in it for water, used in the manufacture of bricks, was held not to be a machine "prepared for or employed in any manufacture" within the repealed statute; but it would no doubt now be held to be within the words *tool or implement* contained in the present section.—3 *Burn*, 776.

Indictment for cutting goods in the loom.—..... twenty-five yards of woollen cloth of the goods and chattels of J. N. in a certain loom then being, feloniously, unlawfully and maliciously did cut and destroy, against the form .....

Indictment for breaking warp of silk ..... a certain warp of silk, of the goods and chattels of J. N., feloniously, maliciously and unlawfully did cut and destroy, against the form .....

Indictment for entering by force into a house with intent to cut or destroy woollen goods..... into a certain house of J. N. situate ..... feloniously and by force did enter, with intent certain woollen goods of the said J. N. in a certain loom then and there being, feloniously,

unlawfully and maliciously to cut and destroy, against the form .....

Indictment for destroying a thrashing machine ..... a certain thrashing machine, the property of J. N., feloniously, unlawfully and maliciously did cut, break and destroy, against the form ..... —*Archbold.*

INJURY TO CORN, TREES AND VEGETABLE PRODUCTIONS.

18. Every one who unlawfully and maliciously sets fire to any crop of hay, grass, corn, grain or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice or plantation of trees, or to any heath, gorse furze or fern wheresoever the same is growing, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V., c.* 22, *s.* 20. 24-25 *V., c.* 97, *s.* 16, *Imp.*

19. Every one who unlawfully and maliciously sets fire to any stack of corn, grain, pulse, tares, hay, straw, haulm or stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood or bark, or to any stere or pile of wood or bark, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 22, *s.* 21. 24-25 *V., c.* 97, *s.* 17, *Imp.*

20. Every one who unlawfully and maliciously, by any overt act, attempts to set fire to any matter or thing mentioned in either of the two sections next preceding, under such circumstances that if the same were thereby set fire to, the offender would be, under either of such sections, guilty of felony, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V., c.* 22, *s.* 22. 24-25 *V., c.* 97, *s.* 18, *Imp.*

Indictment for setting fire to a stack of wheat ..... feloniously, unlawfully and maliciously did set fire to a certain stack of wheat, of J. N., aginst the form .....

Where the word *unlawfully* was omitted, the judges held the indictment to be bad.—*R.* v. *Turner*, 1 *Moo. C. C.* 239. No intent need be stated. *R.* v. *Newill*, 1 *Moo. C. C.* 458; *R.* v. *Woodward* 1 *Moo. C. C.* 323.

Prove that the defendant wilfully set fire to the stack of wheat, as stated in the indictment, and prove the ownership of the property. An indictment for setting fire to a stack of beans, *R.* v. *Woodward*, 1 *Moo. C. C.* 323; or barley, *R.* v. *Swatkins*, 4 *C. & P.* 548, is good; for the court will take notice that beans are pulse, and barley, corn. A stack composed of the flax-plant with the seed or grain in it, the jury finding that the flax-seed is a grain, was held to be a stack of grain.—*R.* v. *Spencer*, *Dears. & B.* 131. The prisoner was indicted for setting fire to a stack of wood, and it appeared that the wood set fire to consisted of a score of faggots heaped on each other in a temporary loft over the gateway. *Held*, this not to be a stack of wood.—*R.* v. *Aris*, 6 *C. & P.* 348. Where the defendant set fire to a summer-house in a wood, and the fire was thence communicated to the wood, he was held to be properly convicted on an indictment charging him with setting fire to the wood.—*R.* v. *Price*, 9 *C. & P.* 729. An indictment for setting fire to a cock of hay cannot be sustained under a statute making it an offence to set fire to a stack of hay.—*R.* v. *McKeever*, 5 *Ir. R. C. L.* 86. A quantity of straw, packed on a lory, in course of transmission to market, and left for the night in the yard of an inn, is not a stack of straw within 24-25 Vict., c. 97, s. 17, Imp. (19 of our statute) and the setting fire thereto wilfully and maliciously is not felony.—*R.* v. *Satchwell*, 12 *Cox*, 449.

Sec. 19 does not apply to manufactured lumber.—*R.* v *Berthe*, 16 *C. L. J.* 251.

DESTROYING HOP-BINDS, ETC.

21. Every one who unlawfully and maliciously cuts or otherwise destroys any hop-binds growing on poles in any plantation of hops, *or any grape vines growing in any vineyard,* is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V., c.* 22, *s.* 23. 24-25 *V., c.* 97, *s.* 19, *Imp.*

The words in *italics* are not in the English Act.

As to verdict for an attempt to commit the felony charged upon an indictment under this section, see sect. 183 of the Procedure Act.

Indictment.—..... one thousand hop-binds, the property of J. N., then growing on poles in a certain plantation of hops of the said J. N., situate ..... feloniously, unlawfully and maliciously did cut and destroy; against the form ..... —*Archbold.* See *R.* v. *Woodward*, 1 *Moo. C. C.* 323.

Prove that the defendant cut or otherwise destroyed the hop-binds, or some part of them, as alleged: that they were at the time growing in a plantation of hops, situate as described, belonging to J. N. Prove also that the act was done maliciously, that is to say, wilfully, and without the belief of a supposed right.—*Archbold.*

DESTROYING TREES, ETC

22. Every one who unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood growing in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, if the amount of the injury done exceeds the sum of five dollars, is guilty of felony, and liable to three years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 24. 24-25 *V.*, *c.* 97, *s.* 20, *Imp.*

23. Every one who unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood growing in any public street or place or elsewhere than in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, if the amount of injury done exceeds the sum of twenty dollars, is guilty of felony, and liable to three years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 25. 24-25 *V.*, *c.* 97, *s.* 21, *Imp.*

Indictment under sect. 22 ..... two elm trees, the property of J. N.; then growing in a certain park, of the

said J. N., situate in ..... feloniously, unlawfully and maliciously did cut and damage, thereby then doing injury to the said J. N. to an amount exceeding the sum of five dollars, to wit, the amount of ten dollars, against the form ..... *(A count may be added for cutting with intent to steal the trees, under sect.* 18 *of the Larceny Act.)*—*Archbold.*

Indictment under sect. 23 ..... ten elm trees; the property of J. N., then growing in a certain close of the said J. N., situate ..... feloniously, unlawfully and maliciously did cut and damage, thereby then doing injury to the said J. N. to an amount exceeding the sum of twenty dollars, to wit, the sum of twenty-five dollars, against the form ..... *(Add a count, under sect.* 18 *of the Larceny Act.)*

See sec. 183, Procedure Act, as to a verdict for an attempt to commit the offence charged upon an indictment for the offence, in certain cases.

A variance in the number of trees is not material. It must be proved, under sect. 22, that the tree was growing in a park, and that the damage done exceeds five dollars.

Under sect. 23, the damage must exceed twenty dollars, and the trees growing elsewhere than in a park. The amount of injury done means the actual injury done to the trees, by the defendant's act; it is not sufficient to bring the case within the statute, that, although the amount of such actual injury is less than twenty dollars, the amount of *consequential* damage would exceed twenty dollars.—*R.* v. *Whiteman*, *Dears.* 353. An indictment under these sections is defective, if it does not allege the act to have been done *unlawfully and maliciously*, and it is not sufficient to state that it was done *feloniously*.—*R.* v. *Lewis*, 2 *Russ.* 1067.

Two indictments were preferred against defendants for feloniously destroying the fruit trees respectively of M. and C. The offences charged were proved to have been committed on the same night, and the injury complained of was done in the same manner in both cases. Defendants were put on trial on the charge of destroying the trees of M. and evidence relative to the offence charged in the other indictment was admitted as showing that the offences had been committed by the same persons.

Held, that such evidence was properly received.—*The Queen* v. *McDonald*, 10 *O. R.* 553.

DAMAGING TREES TO THE AMOUNT OF TWENTY-FIVE CENTS.

24. Every one who unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same is growing, the injury done being to the amount of twenty-five cents at the least, shall, on summary conviction, be liable to a penalty not exceeding five dollars over and above the amount of the injury done, or to one month's imprisonment, with or without hard labor;

2. Every one who having been convicted of any such offence, either against this or any other Act or law, afterwards commits any of the offences in this section mentioned, shall, on summary conviction, be liable to a penalty not exceeding twenty dollars over and above the amount of the injury done, or to three months' imprisonment with hard labor:

3. Every one who, having been twice convicted of any such offence, afterwards commits any of the offences in this section mentioned, is guilty, of a misdemeanor, and liable to imprisonment for any term less than two years.—32-33 *V., c.* 22. *s.* 26. 24-25 *V., c.* 97, *s.* 22, *Imp.*

If the injury done does not amount to twenty-five cents, the defendant may be punished under sect. 59, *post*.—*R.* v. *Dodson*, 9 *A. & E.* 704.

If a tree is cut or damaged, that is sufficient; it need not be totally destroyed.—*Taylor's Case*, *R. & R.* 373.

Indictment after two previous convictions for cutting or damaging trees to the value of twenty-five cents wheresoever growing.— ..... that J. S., on ..... one elm tree, the property of J. N., then growing on a certain land of the said J. N., in the ..... unlawfully and maliciously did cut and damage, thereby then doing injury to the said J. N., to the amount of forty cents, against the form of the statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do say, that heretofore and before the committing of the offence hereinbefore mentioned (*stating the two previous convictions.*)

See secs. 139 and 207 of the Procedure Act, as to indictments and procedure in indictable offences committed after previous convictions, and for which a greater punishment may be inflicted on that account.

If in answer to a charge under this section, the defendant sets up a bonâ fide claim of right, the justices of the peace have no jurisdiction.—*R.* v. *O'Brien*, 5 *Q. L. R.* 161.

DESTROYING PLANTS, ETC., IN A GARDEN.

25. Every one who unlawfully and maliciously destroys, or damages with intent to destroy, any plant, root, fruit or vegetable production, growing in any garden, orchard, nursery ground, house, hot-house green-house or conservatory, shall, on summary conviction, be liable to a penalty not exceeding twenty dollars over and above the amount of the injury done, or to three months' imprisonment, with or without hard labor:

2. Every one who, having been convicted of any such offence, either against this or any other Act or law, afterwards commits any of the offences in this section mentioned, is guilty of felony, and liable to two years' imprisonment.—32-33 *V., c.* 22, *s.* 27. 24-25 *V., c.* 97, *s.* 23, *Imp.*

Sects. 139 and 207 of the Procedure Act provide for the form of indictment and the procedure in cases of offences committed after a previous conviction, and for which, on

that account, a greater punishment may be inflicted.—*R.* v. *Martin*, 11 *Cox*, 343.

Indictment for destroying plants after a previous conviction.— ..... that J. S., on ..... one dozen heads of celery, the property of J. N., in a certain garden of the said J. N., situate ..... then growing, unlawfully and maliciously did destroy, against the form of the statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do say that heretofore and before the committing of the offence hereinbefore mentioned *(state the previous conviction.)* And so, the jurors aforesaid, upon their oath aforesaid, do say that the said J. S., on the day and year first aforesaid, one dozen heads of celery, the property of J. N. in a certain garden of the said J. N., situate ..... then growing, feloniously, unlawfully and maliciously did destroy, against the form .....

DESTROYING PLANTS, ETC., NOT IN A GARDEN.

26. Every one who unlawfully and maliciously destroys, or damages with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground, shall, on summary conviction, be liable to a penalty not exceeding five dollars over and above the amount of the injury done, or to one month's imprisonment, with or without hard labor, and in default of payment of such penalty and costs, if any, to imprisonment for any term not exceeding one month:

2. Every one who, having been convicted of any such offence, either against this or any other Act or law, afterwards commits any of the offences in this section mentioned, shall, on summary conviction, be liable to three months' imprisonment with hard labor.—32-23 *V.*, *c.* 22, *s.* 28. 24-25 *V.*, *c.* 97, *s.* 24, *Imp.*

See remarks under the last two preceding sections.

INJURIES TO FENCES.

27. Every one who, unlawfully and maliciously cuts, breaks, throws down, or in anywise destroys any fence of any description whatsoever, or any wall, stile or gate, or any part thereof, respectively, shall, on summary conviction, be liable to a penalty not exceeding five dollars, over and above the amount of the injury done:

2. Every one who, having been convicted of any such offence, either against this or any other Act or law, afterwards commits any of the offences in this section mentioned, shall, on summary conviction, be liable to three months' imprisonment with hard labor.—32-33 *V.*, *c.* 22, *s.* 29. 24-25 *V.*, *c.* 97, *s.* 25, *Imp.*

The act must have been done *maliciously* to be punishable under this clause.—*R.* v. *Bradshaw*, 38 *U. C. Q. B.* 564.

INJURIES TO MINES.

28. Every one who unlawfully and maliciously sets fire to any mine of coal, cannel coal, anthracite or other mineral fuel, *or to any mine or well of oil or other combustible substance*, is guilty of felony and liable to imprisonment for life.—32-33 *V.*, *c.* 22, *s.* 30. 24-25 *V.*, *c.* 97, *s.* 26, *Imp.*

29. Every one who unlawfully and maliciously, by any overt act attempts to set fire to any mine, *or to any such oil well*, under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 31. 24-25 *V.*, *c.* 97, *s.* 27, *Imp.*

The words in *italics* are not in the Imperial Act.

It is equally an offence within this section to set fire to a mine in the possession of the party himself, provided it is proved done with intent to injure or defraud any other person. The mine may be laid as the property of the person in possession of or working it, though only as agent.—*R.* v. 2 *Moo. C. C.* 293.

Indictment ..... feloniously, unlawfully and maliciously did set fire to a certain mine of coal of J. N., situate at ..... against the form .....

DROWNING MINES, ETC.

30. Every one who unlawfully and maliciously causes any water, earth, rubbish or other substance to be conveyed or to run or fall into any mine, *or into any oil well*, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine *or well*, or to hinder or delay the working thereof, or who, with the like intent, unlawfully and maliciously pulls down, fills up or obstructs or damages with intent to destroy, obstruct or render useless, any airway, waterway, drain, pit, level, or shaft of or belonging to any mine *or well*, is guilty of felony, and liable to seven years' imprisonment:

2. This section shall not extend to any damage committed underground by any owner of any adjoining mine or well in working the same, or by any person duly employed in such working.—32-33 *V., c.* 22, *s.* 32. 24-25 *V., c.* 97, *s.* 28, *Imp.*

The words in *italics* are additions to the English statute, and intended, no doubt, as in the last two preceding sections, to protect petroleum wells.

See the remarks under these two sections.

Indictment for drowning a mine.—..... feloniously, unlawfully and maliciously did cause a quantity of water to be conveyed into a certain mine of J. N., situate ..... with intent thereby then feloniously to destroy the said mine, against the form of the statute .....

Acts causing the damages mentioned in this section done in the bonâ fide exercise of a supposed right and without a wicked mind are not indictable.—*R.* v. *Matthews*, 14 *Cox*, 5.

DESTROYING OR DAMAGING ENGINES, ETC., USED IN MINES.

31. Every one who unlawfully, and maliciously pulls down or destroys or damages with intent to destroy or render useless any steam engine or other engine for sinking, draining, ventilating or working, or for in anywise assisting in sinking, draining, ventilating or working any mine or oil well or any appliance or apparatus in connection with any such steam or other engine, or any staith, building or erection used in conducting the business of any mine or oil well, or any bridge, waggon-way or track for conveying minerals or oil from any mine or well, whether such engine, staith, building, erection, bridge, waggon-way or track is completed or in an unfinished state, or unlawfully and maliciously stops, obstructs or hinders the working of any such steam or other engine, or of any such appliances or apparatus as aforesaid, with intent thereby to destroy or damage any mine or oil well, or to hinder, obstruct or delay the working thereof, or unlawfully and maliciously, wholly or partially, cuts through, severs, breaks or unfastens, or damages with intent to destroy or render useless any rope, chain or tackle, of whatsoever material the same is made, used in any mine or oil well, or in or upon any inclined plane, railway or other way or other work whatsoever, in anywise belonging or appertaining to or connected with or employed in any mine or oil well, or the working or business thereof, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V., c.* 22, *s.* 33. 24-25 *V., c.* 97, *s.* 29, *Imp.*

See sect. 183 of the Procedure Act as to a verdict for an attempt to commit the offence charged in certain cases.

Prove that the defendant pulled down or destroyed the engine, as alleged. A scaffold erected at some distance above the bottom of a mine, for the purpose of working a vein of coal on a level with the scaffold was holden to be an *erection* used in conducting the business of the mine, within the meaning of the statute.—*R.* v. *Whittingham*, 9 *C. & P.* 234.—Wrongfully setting a steam-engine in motion, without its proper machinery attached to it, and thereby damaging it and rendering it useless, is within the section.—*R.* v. *Norris*, 9 *C. & P.* 241. Damaging a drum moved by a steam-engine, but of which it forms no part, is not damaging a steam-engine.—*R.* v. *Whittingham*, *suprâ*. A trunk of wood used to convey water to wash the earth from the ore was held to be an erection used in conducting the business of a mine within the meaning of the statute.—*Barwell* v. *Winterstoke*, 14 *Q. B.* 704.

Indictment.— ..... a certain steam-engine, the property of J. N. for the draining and working of a certain

mine of the said J. N., situate ..... feloniously, unlawfully and maliciously did pull down and destroy, against the form.....

Acts causing the damages covered by this section must be done maliciously, and not in the bonâ fide exercise of a supposed right, to be punishable under its terms.—*R.* v. *Matthews*, 14 *Cox*, 5.

INJURIES TO SEA AND RIVER BANKS, AND TO WORKS ON RIVERS, CANALS, ETC.

32. Every one who unlawfully and maliciously breaks down or cuts down, or otherwise damages or destroys any sea bank, sea wall, dyke or aboiteau, or the bank, dam or wall of or belonging to any river, canal, drain, reservoir, pool or marsh, whereby any land or building is, or is in danger of being overflowed or damaged,—or unlawfully and maliciously throws, breaks or cuts down, levels, undermines or otherwise destroys any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, water-course or other work belonging to any port, harbor, dock or reservoir, or on or belonging to any navigable water or canal, or any dam or structure erected to create or utilize any hydraulic power, or any embankment for the support thereof, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 22, *s.* 34. 24-25 *V.*, *c.* 97, *s.* 30, *Imp.*

33. Every one who unlawfully and maliciously cuts off, draws up or removes any piles, stone or other materials, fixed in the ground and used for securing any sea bank or sea wall, or the bank, dam or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbor, dock, quay, wharf, jetty or lock,—or unlawfully and maliciously opens or draws up any floodgate or sluice, or does any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing or maintaining the navigation thereof, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 35. 24-25 *V.*, *c.* 97, *s.* 31, *Imp.*

Indictment under sect. 32—..... a certain part of the bank of a certain river called the river ..... situate..... feloniously, unlawfully and maliciously did cut down and break down, by means whereof certain lands were then overflowed and damaged *(or were in danger .....)* against .....

Indictment under sect. 33—..... a certain pile, then fixed in the ground, and then used for securing the bank of a certain river called the river ..... situate ..... feloniously, unlawfully and maliciously did cut off, against the form .....

See R. v. *Woodward* 1 *Moo. C. C.* 323.

INJURIES TO FISH PONDS.

34. Every one who unlawfully and maliciously cuts through, breaks down or otherwise destroys the dam, floodgate or sluice of any fish-pond, or of any water which is private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish,—or unlawfully and maliciously puts any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that are then or that may thereafter be put therein,—or unlawfully and maliciously cuts through, breaks down or otherwise destroys the dam or floodgate of any mill-pond, reservoir or pool, is guilty of a misdemeanor, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 36. 24-25 *V.*, *c.* 97, *s.* 32, *Imp.*

Indictment for breaking down the dam of a fish-pond—..... the dam of a certain fish-pond of one J. N., situate ..... unlawfully and maliciously did break down and destroy with intent thereby then to take and destroy the fish in the said pond then being, against the form.....

Indictment for putting lime into a fish-pond.—..... unlawfully and maliciously did put a large quantity, to wit, ten bushels of lime, into a certain fish-pond of one J. N., situate ..... with intent thereby then to destroy the fish in the said pond then being, against the form.. .....

Indictment for breaking down a mill dam.—.....

the dam of a certain mill-pond of J. N., situate ..... unlawfully and maliciously did break down and destroy, against the .....

Maliciously in all cases under this act means a wrongful act done intentionally without just cause or excuse. *R.* v. *Matthews* 14 *Cox*, 5 ; 2 *Russ.* 1073, *note by Greaves.* —See Procedure Act sec. 183, as to a verdict for an attempt to commit the misdemeanor charged in certain cases, upon an indictment for the misdemeanor itself.

INJURIES TO BRIDGES, VIADUCTS AND TOLL-BARS.

35. Every one who unlawfully and maliciously pulls or throws down, or in anywise destroys any bridge, whether over any stream of water or not, or any viaduct or aqueduct, over or under which bridge, viaduct or aqueduct any highway, railway or canal passes, or does any injury with intent and so as thereby to render such bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 22, *s.* 37. 24-25 *V.*, *c.* 97, *s.* 33, *Imp.*

This clause by the words *over any stream of water or not* does away with the difficulties raised in *R.* v. *Oxfordshire*, 1 *B. & A.* 289-297, and *R.* v. *Derbyshire*, 2 *Q. B.* 745.

The clause does not apply to private bridges, but any injury to a private bridge exceeding the sum of twenty dollars would bring the case within sect. 58, *post*, and if less than that sum within sect. 59, *post.*

Indictment for pulling down a bridge.—..... a certain bridge, situate ..... feloniously, unlawfully and maliciously did pull down and destroy, against the form .....

Indictment for injuring a bridge.—.....feloniously, unlawfully and maliciously did *(state the injury)* a certain bridge, situate ..... with intent thereby to render

the said bridge dangerous and impassable, against the form ..... —*Archbold.*

The intent, under this part of this section must be laid and proved, but if the bridge be proved to have been rendered dangerous or impassable, by the act of the defendant, it will be sufficient proof of the intent.—*Archbold.*

See sect. 183 Procedure Act, as to a verdict for an attempt to commit the offence charged in certain cases upon an indictment for the offence itself.

DESTROYING TURNPIKE GATES, TOLL-BARS, ETC.

36. Every one who unlawfully and maliciously throws down levels or otherwise destroys, in whole or in part, any turnpike gate or toll-bar, or any wall, chain, rail, post, bar or other fence belonging to any turnpike gate or toll-bar, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act or law relating thereto, or any house, building or weighing engine erected for the better collection, ascertainment or security of any such toll, is guilty of a misdemeanor, and liable to fine or imprisonment, or both, in the discretion of the court.—32-33 *V.*, *c.* 22, *s.* 38. 24-25 *V.*, *c.* 97, *s.* 34, *Imp.*

Indictment.— ..... a certain turnpike gate, situate ..... unlawfully and maliciously did throw down, level and destroy, against the form.....

See c. 181, *post*, secs. 24, 26 and 31, as to punishment.

INJURIES TO RAILWAYS AND TELEGRAPHS.

37. Every one who unlawfully and maliciously, and with intent to obstruct, endanger, upset, overthrow, injure or destroy any engine, tender, carriage, truck or vehicle, on any railway, or any property passing over or along any railway,

(*a.*) Puts, places, casts or throws any wood, stone or other matter or thing upon or across any railway,

(*b.*) Breaks, takes up, removes, displaces, injures or destroys any rail, railway switch, sleeper, bridge, fence or other matter or thing, or any portion thereof, belonging to any railway,

(*c.*) Turns, moves or diverts any point or other machinery belonging to any railway,

(*d.*) Makes or shows, hides or removes any signal or light upon or near any railway, or

(*e.*) Does or causes to be done, any other matter or thing,

Is guilty of a felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 22, *s.* 39. 42 *V.*, *c.* 9, *s.* 88, *part*. 44 *V.*, *c.* 25, *s.* 116, *part*. 24-25 *V.*, *c.* 97, *s.* 35, *Imp.*

38. Every one who unlawfully and maliciously—

(*a.*) Breaks, throws down, injures or destroys, or does any other hurt or mischief to,

(*b.*) Obstructs or interrupts the free use of, or

(*c.*) Obstructs, hinders or prevents the carrying on, completing, supporting or maintaining of

Any railway or any part thereof, or any building, structure, station, depot, wharf, vessel, fixture, bridge, fence, engine, tender, carriage, truck, vehicle, machinery or other work, device, matter or thing of such railway, or appertaining thereto or connected therewith,

Is guilty of a misdemeanor, and liable to five years' imprisonment. —42 *V.*, *c.* 9, *ss.* 87 *and* 90. 44 *V.*, *c.* 25, *ss.* 115 *and* 118.

39. Every one who, by any means, or in any manner or way whatsoever, or by any wilful omission or neglect, obstructs or interrupts, or causes to be obstructed or interrupted, or aids or assists in obstructing or interrupting, the free use of any railway or any part thereof, or any building, structure, station, depot, wharf, vessel, fixture, bridge, fence, engine, tender, carriage, truck, vehicle, machinery or other work, device or thing of such railway, or appertaining thereto, or connected therewith, is guilty of a misdemeanor, and liable to two years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 40. 42 *V.* *c.* 9, *s.* 86. 44 *V.*, *c.* 25, *s.* 114. 24-25 *V.*, *c.* 97, *s.* 36, *Imp.*

40. Every one who unlawfully and maliciously cuts, breaks, throws down, destroys, injures or removes any battery, machinery, wire, cable, post or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, electric light, telephone or fire alarm, or in the working thereof, or for the transmission of electricity for other lawful purposes, or unlawfully and maliciously prevents or obstructs, in any manner whatsoever, the sending, conveyance or delivery of any communication by any such telegraph, telephone or fire alarm, or the transmission of electricity for any such electric light or for any such

purpose as aforesaid, is guilty of a misdemeanor, and liable to imprisonment for any term less than two years.—32-33 *V.*, *c.* 22, *s.* 41. 24-25 *V.*, *c.* 97, *s.* 37, *Imp.*

41. Every one who unlawfully and maliciously, by any overt act, attempts to commit any of the offences in the next preceding section mentioned, shall, on summary conviction, be liable to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labor.—32-33 *V.*, *c.* 22, *s.* 42. 24-25 *V.*, *c.* 97, *s.* 38, *Imp.*

See sec. 25 of c. 162, page 177, *ante* The extension of sec. 40 to *telephones, electric lights and fire alarms, or to the transmission of electricity for any such electric light, or for any such purpose as aforesaid*, is new law.

See sec. 183 of the Procedure Act as to a verdict of attempt to commit the offence charged in certain cases.

The words "endanger" and "or any property passing over and along any railway" in sec. 37, are not in the Imperial Act. Neither are the words, "breaks, injures or destroys," nor "railway switch, bridge, fence" in sub. sec. b.

The prisoners were indicted in several counts for wilfully and maliciously placing a stone upon the North Woolwich Railway, with intent to damage, injure, and obstruct the carriages travelling upon it.

It appeared that the prisoners, who were respectively aged thirteen and fourteen, had placed a stone on the railway in such a way as to interfere with the machinery of the points, and prevent them from acting properly, so that if a train had come up at the time the stone remained as placed by the prisoners it would have been passed off the line, and a serious accident must have been the consequence. Gutteridge held up the points whilst Upton dropped in the stone.

Wightman, J., told the jury that in order to convict the prisoners it was necessary, in the first place, to prove that they had wilfully placed the stone in the position stated

upon the railway; and secondly, that it was done maliciously, and with the purpose of causing mischief. It was his duty to inform them that it was not necessary that the prisoners should have entertained any feeling of malice against the railway company, or against any person travelling upon it; it was quite enough to support the charge if the act was done with a view to some mischievous consequence or other, and if that fact was made out the jury would be justified in finding the prisoners guilty, notwithstanding their youth. They were undoubtedly very young; but persons of their age were just as well competent to form an opinion of the consequences of an act of this description as an adult person. *Verdict*, guilty upon the counts charging an intent to obstruct the engine.—*R.* v. *Upton (Greaves Lord Campbell's Acts, Appendix).*

Indictment under sect. 37.—.....feloniously, unlawfully and maliciously did put and place a piece of wood upon a certain railway called.....in ....., with intent thereby then to obstruct, upset, overthrow, and injure a certain engine and certain carriages using the said railway, against the form ..... —*Archbold. (The intent may be laid in different ways, in different counts, if necessary.)*

Prove that the defendant placed the piece of wood upon or across the railroad as described in the indictment, or was present aiding and assisting in doing so. The intent may be inferred from circumstances from which the jury may presume it. In general, the act being done wilfully, and its being likely to obstruct or upset the railway train, would be sufficient *primâ facie* evidence of an intent to do so. Where the engine or carriage is in fact obstructed, or the safety of the persons conveyed therein is in fact endangered by the defendant's act, but there is no evidence of any of the intents mentioned in sect. 37, the defendant

should be indicted for a misdemeanor under sect. 39—*R.* v. *Bradford, Bell, C. C.* 268.—A line of railway constructed under an Act of Parliament, but not yet opened for public traffic, and used only for the carriage of materials and workmen, is within the statute.—*Idem.* A drunken man got upon the railway and altered the signals and thereby caused a luggage train to pull up and proceed at a very slow pace: *Held*, upon a case reserved, Martin, B. dissentient, that this was a causing of an engine and carriage using a railway to be obstructed within the meaning of sect. 36 (39 of our statute) of the act in question.—*R.* v. *Hadfield*, 11 *Cox*, 574. A person improperly went upon a line of railway and purposely attempted to stop a train approaching by placing himself on the space between two lines of rails, and holding up his arms in the mode adopted by inspectors of the line when desirous of stopping a train: *Held*, that this amounted to the offence of unlawfully obstructing an engine or carriage using a railway under sect. 36 (39 of our statute) of the statute in question.—*R.* v. *Hardy*, 11 *Cox*, 656.

Indictment under sec. 37 *b.*—.....*Berkshire* (to wit). The Jurors for Our Lady the Queen, upon their oath present, that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, unlawfully, and maliciously take up *(take up remove, or displace)* a certain rail *(any rail, sleeper, or other matter or thing)* then and there belonging to a certain railway there, called "*The Great Western Railway*," with intent, etc. *(Conclude as in last precedent. Vary counts and intent.)*

Indictment under sec. 37 *c.*—.....*Berkshire* (to wit). The Jurors for Our Lady the Queen upon their oath present, that on the *first* day of *May*, in the year of our Lord 1852,

at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, unlawfully, and maliciously turn [*turn, move, or divert*] certain points [*any points or other machinery*] then and there belonging to a certain railway there called "*The Great Western Railway*," with intent, etc. *(Conclude as in last precedent. Vary counts and intent.)*

Indictment under sec. 37 d.—.....*Berkshire* (to wit). The Jurors for Our Lady the Queen upon their oath present, that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, unlawfully, and maliciously make *(make or show, hide or remove)* a certain signal *(any signal or light)* upon *(upon or near to)* a certain railway there, called "*The Great Western Railway*," with intent, etc. *(Conclude as in the last precedent. Vary counts and intent.)*

Indictment under sec. 37 e.—.....*Berkshire* (to wit). The Jurors for Our Lady the Queen, upon their oath present, that on the *first* day of *May* in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, unlawfully, and maliciously set fire to *(do or cause to be done any other matter or thing)* a certain carriage, then and there using a certain railway there, called "*The Great Western Railway*," with intent thereby then and there to destroy [*obstruct, upset, overthrow, injure or destroy*] the said carriage [*any engine, carriage, or truck, using such railway*], so then and there using the said railway as aforesaid. *(Vary counts and intent.)*

INJURIES TO WORKS OF ART.

42. Every one who unlawfully and maliciously destroys or damages any book, manuscript, picture, print, statue, bust or vase, or any other article or thing kept for the purposes of art, science or literature, or as an object of curiosity in any museum, gallery, cabinet, library or other depository, which museum, gallery, cabinet, library, or other depository is, either at all times or from time to time, open for the admission of the public or of any considerable number of persons to view the same, either by the permission of the proprietor thereof, or by the payment of money before entering the same, or any picture, statue, monument or other memorial of the dead, painted glass or other monument or work of art in any church, chapel, meeting-house or other place of divine worship, or in any building belonging to Her Majesty or to any county, riding, city, town, village, parish or place, or to any university, or college or hall of any university, or in any street, square, church-yard, burial ground, public garden or ground, or any statue or monument exposed to public view, or any ornament, railing or fence surrounding such statue or monument, or any fountain, lamp, post, or other thing of metal, glass, wood or other material, in any street, square or other public place, is guilty of a misdemeanor, and liable to one year's imprisonment:

2. Nothing herein contained shall affect the right of any person to recover damages for the injury so committed.—32-33 *V.*, *c.* 22, *s.* 43. 24-25 *V.*, *c.* 97. *s.* 39, *Imp.*

INJURIES TO CATTLE AND OTHER ANIMALS.

43. Every one who unlawfully and maliciously kills, maims, wounds, *poison or injures* any cattle, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 45. 24-25 *V.*, *c.* 97, *s.* 40, *Imp.*

44. Every one who unlawfully and maliciously attempts to kill, maim, wound, poison or injure any cattle, or unlawfully and maliciously places poison in such a position as to be easily partaken of by any cattle, is guilty of a misdemeanor, and liable to fine or imprisonment, or both in the discretion of the court.—32-33 *V.*, *c.* 22, *s.* 46.

The words in *italics* in sec. 43 are not in the Imperial Act.

Sec. 44 is not in the Imperial Act.

As to the punishment under sec. 44, see, *post*, c. 181, secs. 24, 26, 31.

Indictment for killing a horse.—..... one horse of the goods and chattels of J. N. feloniously, unlawfully, and maliciously did kill, against the form .....

The particular species of cattle killed, maimed, wounded,

poisoned or injured, must be specified; an allegation that the prisoner maimed certain cattle is not sufficient.—*R.* v. *Chalkley, R. & R.* 258.

No malice against the owner is necessary; *post*, sect. 60. Other acts of administering poison to cattle are admissible in evidence to show the intent with which the drug is administered.—*R.* v. *Mogg*, 4 *C. & P.* 364. The word *wound* is contradistinguished from a permanent injury, such as maiming, and a *wounding* need not be of a permanent nature.—*R.* v. *Haywood*, 2 *East, P. C.* 1076; *R. & R.* 16.

In *R.* v. *Jeans*, 1 *C. & K.* 539, it was held that where part of the tongue of a horse was torn off, there was no offence against the statute, because no instrument was used. But, under the present statute, the same act was held to be a wounding within this section.—*R.* v. *Bullock*, 11 *Cox*, 125. Upon a case reserved, in *R.* v. *Owens*, 1 *Moo. C. C.* 205, it was held that pouring acid into the eye of a mare, and thereby blinding her, is a maiming.—Setting fire to a building with a cow in it, and thereby *burning the cow* to death, is a killing within the statute.—*R.* v. *Haughton*, 5 *C. & P.* 555.

The prisoner by a reckless and cruel act caused the death of a mare. The jury found that he did not intend to kill, maim or wound the mare, but that he knew that what he did would or might kill, maim or wound the mare, and that he nevertheless did the act recklessly, and not caring whether the mare was injured or not.

Held, that there was sufficient malice to support the conviction.—*R.* v. *Welch*, 13 *Cox*, 121.

In an indictment purporting to be under 32-33 V., c. 22, s. 45, for malicious injury to property the word "feloniously" was omitted,

Held, bad, and ordered to be quashed.—*The Queen* v. *Gough*, 3 *O. R.* 402.

KILLING OR MAIMING OTHER ANIMALS.

45. Every one who unlawfully and maliciously kills, maims, wounds, *poisons or injures* any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or kept for any domestic purpose, *or purpose of lawful profit or advantage or science*, shall, on summary conviction, be liable to a penalty not exceeding one hundred dollars, over and above the amount of injury done, or to three months' imprisonment with or without hard labor;

2. Every one who, having been convicted of any such offence, afterwards commits any of the offences in this section mentioned, is guilty of a misdemeanor, and liable to fine or imprisonment, or both, in the discretion of the court.—32-33 *V., c.* 22, *s.* 47. 24-25 *V., c.* 97, *s.* 41, *Imp.*

The words in *italics* are not in the Imperial Act.

As to the proceedings on a subsequent offence, see secs. 139 and 207 of the Procedure Act. As to the punishment under sub. sec 2, see secs. 24, 26 and 31 of c. 181, *post.*

As to a verdict of attempt to commit the offence charged in certain cases, see sec. 183 of the Procedure Act.

Greaves says: "This clause is new, and is a great improvement of the law, as it will protect domestic animals, from malicious injuries. It includes any beast or animal, not being cattle, which is the subject of larceny at common law. It also includes birds which are the subject of larceny at common law; such as all kinds of poultry, and, under certain circumstances, swans and pigeons. So also it includes any bird, beast or other animal ordinarily kept in a state of confinement, though not the subject of larceny, such as parrots and ferrets; and it is to be observed that the words *ordinarily kept in a state of confinement*, are a description of the mode in which the animals are usually

kept, and do not render it necessary to prove that the bird or animal was confined at the time when it was injured. Lastly the clause includes any bird or animal kept for any domestic purpose, which clearly embraces cats."

The words *or purpose of lawful profit* included in our statute cover all animals kept in a circus, menagerie, etc.

INJURIES TO SHIPS.

46. Every one who unlawfully and maliciously sets fire to, casts away or in anywise de-troys any ship or vessel, whether the same is complete or in an unfinished state, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 22, *s.* 48. 24-25 *V., c.* 97, *s.* 42, *Imp.*

47. Every one who unlawfully and maliciously sets fire to or casts away or in anywise destroys any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person who has underwritten or who underwrites any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 22, *s.* 49. 24-25 *V., c.* 97, *s.* 43, *Imp.*

48. Every one who unlawfully and maliciously, by any overt act attempts to set fire to, cast away, or destroy any ship or vessel, under such circumstances that, if the ship or vessel were thereby set fire to, cast away or destroyed, the offender would be guilty of felony, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V., c.* 22, *s.* 50. 24-25 *V., c.* 97, *s.* 44, *Imp.*

Indictment under sec. 46—.....that J. S., on..... feloniously, unlawfully and maliciously did set fire to a certain ship called "the Rattler," the property of J. N., against the form .....

As to setting fire, etc., see notes under sections 2 and 3, *ante*.—A pleasure boat, eighteen feet long was set fire to, and Patteson, J., inclined to think that it was a vessel within the meaning of the act, but the prisoner was acquitted on the merits, and no decided opinion was given. —*R.* v. *Bowyer*, 4 *C. & P.* 559. Upon an indictment for firing a barge, Alderson, J., seemed to doubt if a barge was within the meaning of the statute.—*R.* v. *Smith*, 4 *C. & P.* 569. The burning of a ship of which the defendant was a part owner is within the statute.—*R.* v. *Wallace*, 2 *Moo. C. C.* 200. See, *post*, sect. 61.

Indictment under sect. 47 ..... that J. S., on..... on board a certain ship called "the Rattler," the property of J. N., on a certain voyage upon the high seas, then being upon the high seas, feloniously, unlawfully and maliciously did set fire to the said ship, with intent thereby to prejudice the said J. N., the owner of the said ship, against the form ..... *(The intent may be stated in different ways, in different counts.)*

In *R.* v. *Philp*, 1 *Moo. C. C.* 263, there was no proof of malice against the owners, and the ship was insured for more than its value, but the court thought that the defendant must be taken to contemplate the consequences of his act, and held that, as to this point, the conviction was right.—See *R.* v. *Newill*, 1 *Moo. C. C.* 458. The destruction of a vessel by a part-owner shows an intent to prejudice the other part-owners, though he has insured the whole ship, and promised that the other part-owners should have the benefit thereof.—*Idem.* The underwriters on a policy of goods fraudulently made are within the statute, though no goods be put on board.—*Idem.* If the intent be laid to prejudice the underwriters, then prove the policy, and that the ship sailed on her voyage.—*R.* v. *Gilson*, *R. & R.* 138. It would seem, however, that the general provision of the 46th section of this statute renders unnecessary in any case the allegation or the proof of the intent mentioned in the 47th section. Proof that it was done wilfully is of itself evidence that it was done with intent to prejudice.

A sailor goes on a ship to steal rum. While tapping the casks, a lighted match held by him set the rum on fire, and a conflagration ensued which destroyed the vessel.—*Held*, that a conviction for arson of the ship could not be upheld.—*R.* v. *Faulkner*, 13 *Cox*, 550.

Held, on the trial of the master of a vessel indicted for scuttling her (by Allen, C. J., and Fisher and Duff, J. J.), that s. 64 of the statute of Canada, 32-33 V., c. 29, allowing a witness to be cross-examined as to previous statements made by him in writing or reduced into writing, would not apply to protests made by the prisoner, or to policies of insurance issued to the witness, or to receipts which it did not appear the witness had either written, signed or even seen until they were shown to him in the witness box; but *held*, by Weldon, J., that it was competent, on the cross-examination of the witness, to put into his hands a policy of insurance not in evidence, and ask him if he did not see certain words in it; also, to read from a paper purporting to be a protest made by the prisoner and ask the witness if he did not write the protest and if certain words were not in it. *Held*, also, (by Allen, C. J., and Fisher and Duff, J. J.), that where the indictment in certain counts charged the destruction of the vessel with intent thereby to prejudice the underwriters, and in others simply charged the crime without alleging the intent, and the prisoner was found guilty on all the counts, that even if it was necessary to show that the prisoner had knowledge, as to which they expressed no opinion, the court could, if necessary, alter the verdict to a finding on the counts which did not allege the intent.

Per Weldon, J., that it was not necessary to show the prisoner's knowledge of the insurance, as he must be presumed to have intended the necessary consequence of his act, which was to prejudice the underwriters.

It appeared on the trial that the prisoner, with the greater portion of his crew including the mate, had gone before a naval court and given a false account of the loss of the vessel, also, that the prisoner had persuaded the mate to suppress the log book and swear that it was lost.

Held, Fisher, J., *dubitante*, that the log book was properly received in evidence.

Held, also, that proof of the receipt by the prisoner of drafts for large sums of money, drawn by parties in C., from which the vessel which the prisoner was charged with scuttling sailed, was properly received, and being unexplained by the prisoner they were properly left to the jury as evidence against him.

There is no positive rule of law that the testimony of an accomplice must receive direct corroboration, and the nature and extent of the corroboration required depend a great deal upon the character of the crime charged. Therefore, where the judge directed the jury "that it was not necessary that T. (the accomplice) should be corroborated as to the very act of boring the holes in the vessel; if the other evidence, and the circumstances of the case, satisfied them that he was telling the truth in the account which he gave of the destruction of the vessel that would be sufficient."

Held, a proper direction.

Held, also, that the words in a bill of lading "weight and contents unknown" would not prevent a jury from having the right to draw whatever inference of guilt they pleased against the prisoner, from his knowledge that the cargo was not what the bill of lading represented it to be. —*The Queen* v. *Tower*, 4 *P. & B. (N. B.)* 168.

PLACING GUNPOWDER NEAR A VESSEL WITH INTENT, ETC.

49. Every one who unlawfully and maliciously places or throws in, into, upon, against or near any ship or vessel, any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel, or any machinery, working-tools, goods or chattels, whether or not any explosion takes place, and whether or not any injury is effected, is guilty of felony, and liable to fourteen years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 51. 24-25 *V.*, *c.* 97, *s.* 45, *Imp.*

50. Every one who unlawfully and maliciously damages, otherwise than by fire, gunpowder or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or render the same useless, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 52. 24-25 *V.*, *c.* 97, *s.* 46, *Imp.*

See remarks under sects. 13, 14, 46, 47, 48, *ante.*

FALSE SIGNALS, ETC.

51. Every one who unlawfully masks, alters, removes or extinguishes any light or signal, or unlawfully exhibits any false light or signal, with intent to bring any ship, vessel or boat into danger, or unlawfully and maliciously does any thing tending to the immediate loss or destruction of any ship, vessel or boat, and for which no punishment is hereinbefore provided, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 22, *s.* 53. 33 *V.*, *c.* 18, *s.* 4, *part.* 24-25 *V.*, *c.* 97, *s.* 47, *Imp.*

See sec. 183 of the Procedure Act for a verdict of attempt in certain cases.

It is to be remarked that the first part of the section says "*unlawfully*" only.

Indictment for exhibiting false signals.—The Jurors for Our Lady the Queen upon their oath present, that before and at the time of committing the felony hereinafter mentioned, a certain ship, the property of some person or persons to the jurors aforesaid unknown, was sailing on a certain river called ..... near unto ..... and that J. S. on ..... well knowing the premises, whilst the said ship was so sailing on ..... near unto the said parish as aforesaid, feloniously and unlawfully did exhibit a false light, with intent thereby to bring the said ship into danger, against the form ..... *Archbold.*

Indictment for doing an act tending to the immediate danger of a ship.—..... near unto the parish of..... and that J. S. on ..... well knowing the premises, whilst the said ship was so sailing near the said parish as aforesaid, feloniously, unlawfully and maliciously did ..... *(state the act done,)* the said act so done by the said J. S. as aforesaid then tending to the immediate loss of the said ship, against the form .....—*Archbold.*

CUTTING AWAY, ETC., BUOYS.

52. Every one who, unlawfully and maliciously, cuts away, casts adrift, removes, alters, defaces, sinks or destroys, or unlawfully and maliciously does any act with intent to cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other manner unlawfully and maliciously injures or conceals any lighthouse, light-ship, floating or other light, lantern or signal, or any boat, buoy, buoy-rope, beacon, anchor, perch or mark used or intended for the guidance of seamen, or for the purpose of navigation, is guilty of felony, and liable to seven years' imprisonment.—32-33 *V.*, *c.* 22, *s.* 54. 33 *V.*, *c.* 18, *s.* 4, *part.* 24-25 *V.*, *c.* 97, *s.* 48, *Imp.*

Maliciously means wilfully. *See R.* v. *Faulkner*, 13 *Cox*, *ante*, under sec. 48, and cases there cited; also *R.* v. *Latimer*, 16 *Cox*, 70.

No intent need be charged in the indictment. This section includes the offence and the attempt to commit the offence.

Indictment.— ..... that J. S., on ..... upon the river called ..... feloniously, unlawfully and maliciously did cut away a certain buoy then used for the guidance of seamen and for the purpose of navigation, against the form.....

MAKING FAST TO BUOYS, ETC.

53. Every one who makes fast any vessel or boat to any such buoy, beacon or sea mark, shall, on summary conviction, be liable to a penalty not exceeding ten dollars, and in default of payment, to one month's imprisonment.—32-33 *V., c.* 22, *s.* 55.

54. Every one who unlawfully and maliciously breaks, injures, cuts, loosens, removes or destroys, in whole or in part, any dam, pier, slide, boom or other such works, or any chain or other fastening attached thereto, or any raft, crib of timber or saw-logs, or unlawfully and maliciously impedes or blocks up any channel or passage intended for the transmission of timber, is guilty of a misdemeanor, and liable to a fine or to two years' imprisonment or to both.—32-33 *V., c.* 22, *s.* 56; *C. S. C., c.* 68, *s.* 67.

These clauses are not in the Imperial Act.

Malice against owner is unnecessary, and the clause applies to every person in possession of the property injured, if act done with intent to injure or defraud. But in such a case, it is not necessary to allege that the intent was to injure or defraud any particular person.—Sections 60, 61, *post.*

Indictment.— ..... that A. B. on ..... in ..... unlawfully and maliciously did cut a certain boom then and there lying on the river called ..... the said boom being then and there the property of J. S., of ..... against the form.....

INJURIES TO POLL BOOKS, ETC.

55. Every one who unlawfully *or* maliciously destroys, injures or obliterates, or causes to be wilfully *or* maliciously destroyed, injured or obliterated, or makes or causes to be made any erasure, addition of names or interlineation of names in or upon, or aids, consents or assists in so destroying, injuring or obliterating, or in making any erasure, addition of names or interlineation of names in or upon any writ of election, or any return to a writ of election, or any indenture, poll book, voters' list, certificate, affidavit or report, or any document or paper made, prepared or drawn out according to any law in regard to provincial, municipal or civic elections, is guilty of felony, and liable to a fine in the discretion of the court, or to seven years' imprisonment, or to both.—29-30 *V. (Can.) c.* 51, *s.* 188, *part. R. S. B. C., c.* 157, *ss.* 99 *and* 100, *part.*

This clause applies only to writs or documents for provincial, municipal, or civic elections.

INJURIES TO LAND MARKS.

56. Every one who knowingly and wilfully *pulls down*, defaces, alters or removes any mound, land mark, post or monument lawfully *erected, planted* or placed to mark or determine the boundaries of any Province, county, city, town, township, parish or other municipal division, is guilty of felony, and liable to seven years' imprisonment. —*C. S. C., c.* 77, *s.* 107, *part. C. S. U. C., c.* 93, *s.* 4, *part.*

57. Every one who knowingly and wilfully defaces, alters or removes any mound, land mark, post or monument lawfully placed *by any land surveyor* to mark any limit, boundary or angle of any concession, range, lot or parcel of land, is guilty of a misdemeanor, and liable to a fine not exceeding one hundred dollars, or to three months' imprisonment, or to both ;

2. Nothing herein shall prevent any land surveyor in his operation from taking up posts or other boundary marks when necessary, if he carefully replaces them as they were before.—*C. S. C., c.* 77, *s.* 107, *part. C. S. U. C., c.* 93, *s.* 4, *part.*

The words "*pulls down*" in sect. 56 are omitted from sec. 57. "So are the words *erected or planted.*"

The words "*by any land surveyors*" in sec. 57 are not in sec. 56.

The misdemeanor mentioned in sec. 57 can only be committed in relation to boundaries or land marks which have been *legally* placed by a land surveyor.—*R. v. Austin,* 11 *Q. L. R.* 76.

INJURIES NOT BEFORE PROVIDED FOR EXCEEDING TWENTY DOLLARS.

58. Every one who unlawfully and maliciously commits any damage, injury or spoil to or upon any real or personal property whatsoever, either of a public or a private nature, for which no

punishment is hereinbefore provided, the damage, injury or spoil being to an amount exceeding twenty dollars, is guilty of a misdemeanor, and liable to five years' imprisonment.—32-33 *V., c.* 22, *s.* 59. 24-25 *V., c.* 97, *s.* 51, *Imp.*

If an attempt to commit the offence only is proved, see sect. 183 of the Procedure Act. The English act has an additional enactment giving a greater punishment for offences committed in the night. Under this section, evidence of damage committed at several times, in the aggregate, but not at any one time, exceeding twenty dollars will not sustain an indictment.—*R.* v. *Williams*, 9 *Cox*, 338.

The injury must directly amount to twenty dollars; consequential damage cannot be taken into consideration, to make up that amount.—*R.* v. *Whiteman*, 6 *Cox*, 370; *Dears.* 353. In *R.* v. *Thoman*, 12 *Cox*, 54, the indictment was as follows ..... That Margaret Thoman, on the 30th of January, 1871, in and upon three frocks, six petticoats, one flannel petticoat, one flannel vest, one pinafore, one jacket, of the value of twenty pounds, of the property of ..... unlawfully and maliciously did commit certain damage, injury and spoil to an amount exceeding five pounds, by unlawfully cutting and destroying the same against the form of the statute in such case made and provided. At the trial, the prisoner's counsel objected that the indictment was bad, because the value of the articles damaged was ascribed to them collectively and not individually. But upon a case reserved, the indictment was held good, and Bovill, C. J., said: "We are all of opinion that it was not material to allege the value of the several articles in the indictment, but only that the amount of the damage exceeded five pounds."

Defendant was indicted for unlawfully and maliciously committing damage upon a window, in the house of the prosecutor, against this section. Defendant who had been fighting with other persons in the street after being turned out of a public house, went across the street, and picked up a stone, which he threw at them. The stone missed them, passed over their heads, and broke a window in the house. The jury found that he intended to hit one or more of the persons he had been fighting with, and did not intend to break the window: *Held*, that upon this finding the prisoner was not guilty of the charge within this section; to support a conviction of this nature, there must be a wilful and intentional doing of an unlawful act in relation to the property damaged.—*R.* v. *Pembliton*, 12 *Cox*, 607. See, on this last case, *R.* v. *Welch*, 13 *Cox*, 121; *R.* v. *Faulkner*, 13 *Cox*, 550, and *R.* v. *Latimer*, 16 *Cox*, 70.

The words "real or personal property" mean actual tangible property, not a mere legal right.—*Laws* v. *Eltringham*, 15 *Cox*, 22.

Upon an information laid before a magistrate under sec. 58 of c. 168, the magistrate cannot find prisoner guilty of the offence mentioned in next section. (Sec. 59.) *Ex parte Moffet*, 9 *L. N.* 403.

MALICIOUS INJURIES NOT BEFORE PROVIDED FOR.

59. Every one who unlawfully and maliciously commits any damage, injury or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on summary conviction, be liable to a penalty not exceeding twenty dollars, and such further sum, not exceeding twenty dollars, as appears to the justice to be a reasonable compensation for the damage, injury or spoil so committed, which last mentioned sum of money shall, in the case of private property, be paid to the person aggrieved; and if such sums

of money, together with the costs, if ordered, are not paid, either immediately after the conviction, or within such period as the justice shall, at the time of the conviction, appoint, the justice may cause the offender to be imprisoned for any term not exceeding two months, with or without hard labor:

2. Nothing herein contained shall extend to any case where the person acted under a fair and reasonable supposition that he had a right to do the act complained of, or to any trespass, not being wilful and malicious, committed in hunting or fishing, or in the pursuit of game; but every such trespass shall be punishable in the same manner as if this Act had not been passed:

3. The provisions of this section shall extend to any person who unlawfully and maliciously commits any injury to any tree, sapling, shrub or underwood, for which no punishment is hereinbefore provided.—32-33 *V.*, *c.* 22, *ss.* 60 *and* 61. 24-25 *V.*, *c.* 97, *s.* 52-53, *Imp.*

In the Imperial Act, the words "wilfully or maliciously" stand in lieu of "unlawfully and maliciously"

The application of the penalty, in case the property injured is of a public nature, has been expunged from this clause as it stood in the act of 1869.—Sub sect. 3 was introduced in the Imperial Act in consequence of *R.* v. *Dodson*, 9 *A. & E.* 704, and *Chanter* v. *Greame*, 13 *Q. B.* 216.

W. was summoned before the justices under this clause. He was in the employment of D., and by his order, he forcibly entered a garden belonging to and in the occupation of F., accompanied by thirteen other men, and cut a small ditch, from forty to fifty yards in length, through the soil. F. and his predecessors in title had occupied the garden for thirty-six years, and during the whole time, there had been no ditch upon the site of part of that cut by D. For the defence D. was called, who stated that, fifteen years before, there had been an open ditch in the land, which received the drainage from the highway, and that he gave directions for the ditch to

be cut by W. in the exercise of what he considered to be a public right. The justices found that W. had no fair and reasonable supposition that he had a right to do the act complained of, and accordingly convicted him: *Held*, that by the express words of the section and proviso, the jurisdiction of the justices was not ousted by the mere bonâ fide belief of W. that his act was legal, and that there was evidence on which they might properly find that he did not act under the fair and reasonable supposition required by the statute.—*White* v. *Feast*, *L. R.* 7 *Q. B.* 353.

A conviction by justices under sect. 52, c. 97, 24-25, V., (sect. 59 of our statute,) cannot be brought up by certiorari, on the ground that they had no jurisdiction inasmuch as the defendant had set up a bonâ fide claim of right, but the exemption is impliedly restricted to cases where the justices are reasonably satisfied of the fair and reasonable character of the claim.—*R.* v. *Essex*, *R.* v. *Musset*, 26 *L. T.* 429.

OTHER MATTERS.

60. Every punishment and penalty by this Act imposed on any person maliciously committing any offence, whether the same is punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence is committed from malice conceived against the owner of the property in respect of which it is committed, or otherwise.—32-33 *V.*, *c.* 22, *s.* 66. 24-25 *V.*, *c.* 97, *s.* 58, *Imp.*

61. Every provision of this Act, not hereinbefore so applied, shall apply to every person who with intent to injure or defraud any person, does any of the acts hereinbefore made punishable, although the offender is in possession of the property against or in respect of which such act is done.—32-33 *V.*, *c.* 22, *s.* 67. 24-25 *V.*, *c.* 97, *s.* 59, *Imp.*

Greaves says: "This clause is new and a very important amendment. It extends every clause of the act not

already so extended (see sect. 3) to persons in possession of the property injured, provided they intend to injure or defraud any other person. It therefore brings tenants within the provisions of the act, whenever they injure the demised premises, or anything growing on or annexed to them, with intent to injure their landlords."

By sec. 116, of the Procedure Act, in any indictment under this act, *where it is necessary* to allege an intent to injure or defraud, it is sufficient to allege that the person accused did the act with intent to injure or defraud, as the case may be, without alleging an intent to injure or defraud any particular person.

CHAPTER 173.

AN ACT RESPECTING THREATS, INTIMIDATION AND OTHER OFFENCES.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

THREATS.

1. Every one who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause any property, chattel, money, valuable security or other valuable thing, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 21, *s.* 43. 24-25 *V.*, *c.* 96, *s.* 44, *Imp.*

An indictment on this clause should always contain a count for uttering without stating the person to whom the letter or writing is uttered.—*Greaves, Cons. Acts*, 135.

Indictment for sending a letter, demanding money with menaces.—The Jurors for Our Lady the Queen, upon their oath present, that J. S., on ..... feloniously did send to one J. N. a certain letter, directed to the said J. N. by the name and description of Mr. J. N., of ..... demanding money from the said J. N. with menaces, and without reasonable or probable cause, he the said J. S. then well knowing the contents of the said letter; and which said letter is as follows, that is to say, *(here set out the letter verbatim)* against the form ..... And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. on the day and in the year aforesaid, feloniously did utter a certain writing demanding money from the said J. N. with menaces and without any reasonable or probable cause, he the said J. S. then well knowing the contents of the said writing and which said writing is as

follows, that is to say *(here set out the writing verbatim,)* against the form .....—*Archbold*, 422.

Where the letter contained a request only, but intimated, that, if it were not complied with, the writer would publish a certain libel then in his possession, accusing the prosecutor of murder, this was holden to amount to a demand.—*R.* v. *Robinson*, 2 *Leach*, 749. The demand must be with menaces, and without any reasonable or probable cause, and it will be for the jury to consider whether the letter does expressly or impliedly contain a demand of this description. The words "without any reasonable or probable cause" apply to the demand of money, and not to the accusation threatened by the defendant to be made against the prosecutor; and it is, therefore, immaterial in point of law, whether the accusation be true or not.—*R.* v. *Hamilton*, 1 *C. & K.* 212; *R.* v. *Gardner*, 1 *C. & P.* 479. A letter written to a banker, stating that it was intended by some one to burn his books and cause his bank to stop, and that if 250 pounds were put in a certain place, the writer of the letter would prevent the mischief, but if the money were not put there, it would happen, was held to be a letter demanding money with menaces.—*R.* v. *Smith*, 1 *Den.* 510. The judges seemed to think that this decision did not interfere with *R.* v. *Pickford*, 4 *C. & P.* 227. Nevertheless, it is said, in *Archbold*, 424, that it is difficult to admit that. In *R.* v. *Pickford*, the injury threatened was to be done by a third person. Sect. 6 would now, cover that case; see *post*. It is immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation to be caused or made by the offender, or by any other person. See *R.* v. *Tranchant*, 9 *L. N.* 333.

32-33 V., c. 21, s. 43, makes it a felony to send "any letter demanding of any person with menaces, and without any reasonable or probable cause, any money, etc."

Held, that the words "without reasonable or probable cause" apply to the money demanded, and not to the accusation threatened to be made.—*R.* v. *Mason*, 24 *U. C. C. P.* 58.

2. Every one who, with menaces or by force, demands any property, chattel, money, valuable security or other valuable thing of any person, with intent to steal the same, is guilty of felony, and liable to two years' imprisonment. 32-33 *V.*, *c.* 21, *s.* 44. 24-25 *V.*, *c.* 96, *s.* 45, *Imp.*

Indictment.— ..... feloniously with menaces did demand of J. N. the money of him the said J. N. with intent the said money from the said J. N. feloniously to steal, take and carry away, against ..... *Archbold*, 421.

The prosecutor must prove a demand by the defendant of the money or other thing stated in the indictment "by menaces or force" with intent to steal it. It is not necessary to prove an express demand in words; the statute says "whosoever with menaces or by force demands," and menaces are of two kinds, by words or by gestures; so that, if the words or gestures of the defendant at the time were plainly indicative of what he required, and tantamount in fact to a demand, it should seem to be sufficient proof of the allegation of demand in the indictment.—*R.* v. *Jackson*, 1 *Leach*, 269.—If a person, with menaces, demand money of another, who does not give it him, because he has it not with him, this is a felony within the statute; but if the party demanding the money knows that it is not then in the prosecutor's possession, and only intends to obtain an order for the payment of it, it is otherwise.—*R.* v. *Edwards*, 6 *C. & P.* 515.

The intent to steal must of course be presumed from

circumstances; it is a question entirely for the jury to determine, and which they will, in general, have to presume from the circumstances attending the demand, the expression or estures of the prisoner, when he made it, and the like.—*Archbold.*

In order to bring a case within this section, the demand, if successful, must amount to stealing; and to constitute a menace within this section, it must be of such a nature as to unsettle the mind of the person upon whom it operates, and to take away from his acts that element of voluntary action which alone constitutes consent; it must, therefore, be left to the jury to say whether the conduct of the prisoner is such as to have had that effect on the prosecutor; and in this case, the judge having directed the jury as a matter of law, that the conduct of the prisoner constituted a menace withing the statute, the conviction must be quashed.—*R.* v. *Walton, L. & C.* 288.

In *R.* v. *Robertson, L. & C.* 483; 10 *Cox*, 9, it was holden that a threat by a policeman to imprison a man upon a fictitious charge is a menace within this section, and though the money had in fact been obtained and the prisoner could, in consequence, also have been indicted for stealing the money, yet the conviction, under the present section, was right. On the ruling in *R.* v. *Walton, suprâ*, Greaves remarks: "This decision requires reconsideration, as it obviously proceeds upon the fallacy of supposing it necessary that the menaces should be such that if property were obtained by them, the offence would be larceny. Now the words of the clause warrant no such construction."

The words are "Whosoever shall with menaces or by force, demand any property with intent to steal the same." (*With menaces* not *by* menaces;) any menaces or any force therefore clearly satisfy the terms of the clause, provided there be an intent to steal. It might just as well be said that on an indictment for an assault with intent to rob or for wounding with intent to murder, it was necessary to prove such an assault in the one case, or such wounding in the other, as would be sufficient to effectuate the intent, and yet it has never been doubted that any assault, however slight, or any wound however trivial, was sufficient, provided the intent were proved. In truth, the criminality in these cases depends on the intent. The effect of this decision is to render the clause almost inoperative, for where the menaces have not obtained the money, it is plain the jury will be very reluctant to find that they were sufficient to obtain it. The whole offence consists in the acts and intent of the prisoner; and it is quite beside that to consider what the effect on the prosecutor might be.—3 *Russ.* 203, *note by Greaves.*

3. Every one who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing, accusing or threatening to accuse or cause to be accused any other person of any crime punishable by law with death, or imprisonment for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavor to commit any rape, or of any infamous crime as hereinafter defined, with a view or intent, in any of such cases, to extort or gain, by means of such letter or writing, any property, chattel, money, valuable security or other valuable thing from any person, is guilty of felony, and liable to imprisonment for life:

2. The crime of buggery, committed either with mankind or with beast, and every assault with intent to commit the said crime, and every attempt or endeavor to commit the said crime, and every solicitation persuasion, promise or threat offered or made to any person whereby to move or induce such person to commit or permit the said crime, shall be deemed to be an infamous crime within the meaning of this Act:

3. Every species of parting with any such letter to the end that it

may come, or whereby it comes into the hands of the person for whom it is intended, shall be deemed a sending of such letter.—32-33 *V.*, *c.* 21, *s.* 45. 24-25 *V.*, *c.* 96, *s.* 46, *Imp.*

Sub. sect. 3 is not in the Imperial Act.

Indictment.—The Jurors for Our Lady the Queen, upon their oath present, that J. S., on ..... feloniously did send to one J. N., a certain letter, directed to the said J. N., by the name and description of Mr. J. N., threatening to accuse him the said J. N., of having attempted and endeavored to commit the abominable crime of buggery with him the said J. S., with a view and intent thereby then to extort and gain money from the said J. N., he the said J. S., then well knowing the contents of said letter, and which said letter is as follows, to wit *(here set out the letter verbatim)* against the form..... And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., on the day and in the year aforesaid feloniously did utter a certain writing threatening to accuse him the said J. N., of having attempted and endeavored to commit the abominable crime of buggery with him the said J. S., with a view and intent thereby then to extort and gain money from the said J. N., he the said J. S., then well knowing the contents of the said letter, and which said letter is as follows, to wit *(here set out the letter verbatim)* against the form.....—*Archbold.*

An indictment for sending a letter threatening to accuse a man of an infamous crime, need not specify such crime, for the specific crime the defendant threatened to charge might intentionally by him be left in doubt.—*R.* v. *Tucker*, 1 *Moo. C. C.* 134. The threat may be to accuse another person than the one to whom the letter was sent. —*Archbold, loc. cit.* It is immaterial whether the prosecutor be innocent or guilty of the offence threatened to be imputed to him.—*R.* v. *Gardner*, 1 *C. & P*, 479; *R.* v. *Richards*, 11 *Cox*, 43.

Where it was doubtful from the letter what charge was intended, parol evidence was admitted to explain it, and the prosecutor proved that having asked the prisoner what he meant by certain expressions in the letter, the prisoner said that he meant that the prosecutor had taken indecent liberties with his person; the judges held the conviction to be right.—*R.* v. *Tucker*, 1 *Moo. C. C.* 134.

The court will, after the bill is found, upon the application of the prisoner, order the letter to be deposited with an officer, in order that the prisoner's witnesses may inspect it.—*R.* v. *Harris*, 6 *C. & P.* 105.

In *R.* v. *Ward*, 10 *Cox*, 42, on an indictment containing three counts for sending three separate letters, evidence of the sending of one only was declared admissible.

4. Every one who accuses, or threatens to accuse, either the person to whom such accusation or threat is made or any other person, of any of the infamous or other crimes lastly hereinbefore mentioned, with the view or intent, in any of the cases last aforesaid, to extort or gain from such person so accused or threatened to be accused, or from any other person, any property, chattel, money, valuable security or other valuable thing, is guilty of felony, and liable to imprisonment for life.—32-33 *V.*, *c.* 21, *s.* 46. 24-25 *V.*, *c.* 96, *s.* 47, *Imp.*

By sect. 6, *post*, it is enacted that "it shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation, to be caused or made by the offender or by any other person."

The words "crimes lastly before mentioned" in sect. 4, mean all those mentioned in sect. 3.—*Archbold.*

Indictment.—.....feloniously did threaten one J. N., to accuse him the said J. N., of having attempted and endeavored to commit the abominable crime of sodomy

with the said J. S., with a view and intent thereby then to extort and gain money from the said J. N., against the form.....—*Archbold.*

See the remarks under sections 1, 2, 3, *ante.* It must be a threat to accuse, or an accusation; if J. N. be indicted or in custody of an offence, and the defendant threatened to procure witnesses to prove the charge, this will not be a threat to accuse within the meaning of the statute.—*R.* v. *Gill, Archbold,* 425. But it need not be a threat to accuse before a judicial tribunal; a threat to charge before any third person is sufficient.—*R.* v. *Robinson,* 2 *M. & Rob.* 14. It is immaterial whether the prosecutor be innocent or guilty of the offence charged, and therefore, although the prosecutor may be cross-examined as to his guilt of the offence imputed to him, with a view to shake his credit, yet no evidence will be allowed to be given, even in cross-examination by another witness, to prove that the prosecutor was guilty of such offence.—*R.* v. *Gardner,* 1 *C. & P.* 479; *R.* v. *Cracknell,* 10 *Cox,* 408. Whether the crime of which the prosecutor was accused by the prisoner was actually committed is not material in this, that the prisoner is equally guilty if he intended by such accusation to extort money; but it is material in considering the question, whether, under the circumstances of the case, the intention of the prisoner was to extort money or merely to compound a felony.—*R.* v. *Richards,* 11 *Cox,* 43. In *Archbold,* 425, this last decision seems not to be approved of.—A person threatening A's father that he would accuse A., of having committed an abominable offence upon a mare for the purpose of putting off the mare, and forcing the father, under terror of the threatened charge to buy and pay for her at the prisoner's price, is guilty of threatening to accuse within

this section.—*R.* v. *Redman,* 10 *Cox,* 159. On the trial of an indictment for threatening to accuse a person of an abominable crime, with intent to extort money, and by intimidating the party by the threat, in fact obtaining the money, the jury need not confine themselves to the consideration of the expressions used before the money was given, but may, if those expressions are equivocal, connect with them what was afterwards said by the prisoner when he was taken into custody.—*R.* v. *Kain,* 8 *C. & P.* 187.

5. Every one who, with intent to defraud or injure any other person, by any unlawful violence to or restraint of or threat of violence to or restraint of the person of another, or by accusing or threatening to accuse any person of any treason, felony or infamous crime, as hereinbefore defined, compels or induces any person to execute, make, accept, indorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix his name, or the name of any other person or of any company, firm or co-partnership, or the seal of any body corporate, company or society, upon or to any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of felony, and liable to imprisonment for life.—32-33 *V., c.* 21, *s.* 47. 24-25 *V., c.* 96, *s.* 48, *Imp.*

On this clause, Greaves says: "This clause is new. It will meet all such cases as *R.* v. *Phipoe,* 2 *Leach,* 673, and *R.* v. *Edwards,* 6 *C. & P.* 521, where persons by violence to the person or by threats of accusation of crimes, induce others to execute deeds, bills of exchange or other securities.

The defendants, husband and wife, were indicted under this clause, for having by threats of violence and restraint induced the prosecutor to write and affix his name to the following document: "London, July 19th, 1875. I hereby agree to pay you £100 on the 27th inst, to prevent any action against me."

Held, that this document was not a promissory note, but was an agreement to pay money for a valid consideration which could be sued upon and was therefore a valuable security. To constitute a valuable security within the meaning of the statute an instrument need not be negotiable. A wife who takes an independent part in the commission of a crime when her husband is not present is not protected by her coverture.—*R.* v. *John*, 13 *Cox*, 100.

See that case as to form of indictment.

This clause, by the consolidation of the statutes, does not now form part of the *Larceny Act*, under which the words "*valuable security*" are defined.

6. It shall be immaterial whether the menaces or threats hereinbefore mentioned are of violence, injury or accusation, to be caused, or made by the offender or by any other person.—32-33 *V.*, *c.* 21, *s.* 48. 24-25 *V.*, *c.* 96, *s.* 49, *Imp.*

This clause is new, says Greaves; it is intended to meet cases where a letter may be sent by one person and may contain menaces of injury by another, and to remove the doubts occasioned by *R.* v. *Pickford*, 4 *C. & P.* 227. In *R.* v. *Smith*, 1 *Den.* 510, the threat by a person writing a letter of an injury to be made by a third person was held within the statute, before this clause. Of course, now, this is clear law, whatever doubts may have existed heretofore.

7. Every one who maliciously sends, delivers or utters, or directly or indirectely causes to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, is guilty of felony, and liable to ten years' imprisonment.—32-33 *V.*, c. 20, *s.* 15. 24-25 *V.*, *c.* 100, *s.* 16, *Imp.*

Indictment.— ..... feloniously and maliciously did send *(send, deliver, utter, or directly or indirectly cause to be received)* to one J. N. a certain letter *(letter or writing)* directed to the said J. N., by the name and description of Mr. J. N. threatening to kill and murder the said J. N., he the said ..... *(defendant)* then well knowing the contents of the said letter, which said letter is as follows, that is to say ..... Against the form ..... And the jurors aforesaid ..... that the said ..... on ..... feloniously and maliciously did utter a certain writing ..... *(as in the first count, substituting writing for letter.)*— *Archbold*, 853.

In *R.* v. *Hunter*, 2 *Leach*, 631, the court said: "In an indictment for sending a threatening letter, the letter must be set out in order that the court may judge from the face of the indictment whether it is or is not a threatening letter within the meaning of the statute on which the indictment is founded."

The same ruling had been held in *R.* v. *Lloyd*, 2 *East*, *P. C.* 1122.

Greaves, Crim. L. Cons. Acts, 50, says on this clause: "The words *directly or indirectly causes to be received*, are taken from the 9 Geo. 4, c. 55, s. 8, and introduced here in order to prevent any difficulty which might arise as to a case falling within the words *send, deliver or utter*. The words *to any other person* in the 10-11 V., c. 66, s. 1, were advisedly omitted, in order that ordering, sending, delivering, uttering, or causing to be received may be included. If, therefore, a person were to send a letter or writing without any address by a person with direction to drop it in the garden of a house in which several persons lived, or if a person were to drop such a letter or writing anywhere, these cases would be within this clause. In truth, this clause makes the offence to consist in sending, etc., any letter or writing which contains a threat to kill or murder

any person whatsoever, and it is wholly immaterial whether it be sent, etc., to the person threatened or to any other person. The cases, therefore, of *R.* v. *Paddle, R. & R.* 484; *R.* v. *Burridge*, 2 *M. & Rob.* 296; *R.* v. *Jones*, 2 *C. & K.* 398; 1 *Den.* 218; *and R.* v. *Grimwade*, 1 *Den.* 30, are not to be considered as authorities on this clause, so far as they decide that the letter must be sent, etc., to the party threatened. In every indictment on this and the similar clauses in the other acts, a count should be inserted alleging that the defendant uttered the writing without stating any person to whom it was uttered."

Where the threat charged is to kill or murder, it is for the jury to say whether the letter amounts to a threat to kill or murder.—*R.* v. *Girdwood*, 1 *Leach*, 142; *R.* v. *Tyler*, 1 *Moo. C. C.* 428.

The bare delivery of the letter, though sealed, is evidence of a knowledge of its contents by the prisoner, in certain cases.—*R.* v. *Girdwood*, 1 *Leach*, 142.

And in the same case, it was held that the offender may be tried in the county where the prosecutor received the letter, though he may also be tried in the county where the sending took place.

In *R.* v. *Boucher*, 4 *C. & P.* 562, the following letter was held to contain a threat to murder:—"You are a rogue, thief and vagabond, and if you had your deserts, you should not live the week out; I shall be with you shortly, and then you shall nap it, my banker. Have a care old chap, or you shall disgorge some of your illgotten gains, watches and cash, that you have robbed the widows and fatherless of. Don't make light of this, or I'll make light of you and yours. Signed, *Cutthroat.*"

Where an indictment contained three counts, each charging the sending of a different threatening letter, Byles, J., held that the prosecutor must elect on which count he would proceed, though any letter leading up to or explaining the letter on which the trial proceeded would be admissible.—*R.* v. *Ward*, 10 *Cox*, 42.

8. Every one who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay or straw or other agricultural produce, or any grain, hay or straw or other agricultural produce, in or under any building, or any ship or vessel, or to kill, maim, wound, *poison or injure* any cattle, is guilty of felony, and liable to ten years' imprisonment.—32-33 *V., c.* 22, *s.* 58. 24-25 *V., c.* 97, *s.* 50, *Imp.*

The words "poison or injure" are not in the Imperial Act.

A threat to burn standing corn is not within the statute. —*R.* v. *Hill*, 5 *Cox*, 233.

It was held that a letter the necessary construction of which was not a threat to burn was not within the statute. —*R.* v. *Jepson*, 2 *East*, 1115, note *a.*

See, *ante*, for form of indictment, under preceding section.

9. Every one who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, *or in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person, with a view to hinder him from working or being employed at such trade, business or manufacture,* is guilty of a misdemeanor, and liable to imprisonment for any term less than two years.—32-33 *V., c.* 20, *s.* 42. 24-25 *V., c.* 100, *s.* 41, *Imp.*, repealed by 34-35 *V., c.* 32, *Imp.* which is repealed by 38-39 *V., c.* 86, *Imp.*

The words in *italics* are not in the English act. They cover any violence or threat of violence with a view to hinder any person from working or being employed at a trade, business or manufacture, in pursuance of a com-

bination or conspiracy respecting such trade, business or manufacture.

Indictment for an assault in pursuance of a conspiracy to raise wages.—The Jurors for Our Lady the Queen upon their oath present, that J. S., J. W., and E. W., on ..... did amongst themselves conspire, combine, confederate, and agree together to raise the rate of wages then usually paid to workmen and laborers in the art, mystery and business of cotton spinners; and that the said ..... *(defendants)* in pursuance of the said conspiracy, on the day and year aforesaid, in and upon one J. N., unlawfully did make an assault, and him the said J. N., did then beat, wound and ill-treat, and other wrongs to the said J. N., did, to the great damage of the said J, N., against the form ..... *(Add a count stating that the defendants assaulted J. N., "in pursuance of a certain conspiracy before then entered into by the said ..... (defendants) to raise the rate of wages of workmen and laborers in the art, mystery and business of cotton-spinners;" also a count for a common assault.)*—*Archbold.*

For a number of workmen to combine to go in a body to a master and say that they will leave the works, if he does not discharge two fellow workmen in his employ, is an unlawful combination by threats to force the prosecutor to limit the description of his workmen.—*Walsby* v. *Auley*, 3 *E. & E.* 516. And a combination to endeavor to force workmen to depart from their work by such a threat as that they would be considered as blacks, and that other workmen would strike against them all over London, is unlawful.—*In re Perham*, 5 *H. & N.* 30. So also is a combination with a similar object to threaten a workman by saying to him that he must either leave his master's employ, or lose the benefit of belonging to a particular club and have his name sent round all over the country.—*O'Neil* v. *Longman*, 4 *B. & S.* 376. An indictment or commitment alleging the offence to be a conspiracy to force workmen to depart from their work by threats need not set out the threats.—*In re Perham, supra.*

See *R.* v. *Rowlands*, 2 *Den.* 364.—Also, *Roscoe*, 390.

10. Every one who beats or uses any violence or threat of violence to any person, with intent to deter or hinder him from buying, selling or otherwise disposing of any wheat or other grain, flour, meal, malt or potatoes or other produce or goods, in any market or other place, or beats or uses any such violence or threat to any person having the charge or care of any wheat or other grain, flour, meal, malt or potatoes, whilst on the way to or from any city, market, town or other place, with intent to stop the conveyance of the same, shall, on summary conviction before two justices of the peace, be liable to imprisonment, with hard labor, for any term not exceeding three months. 32-33 *V., c.* 20, *s.* 40. 24-25 *V., c.* 100, *s.* 39 *Imp.*

"**11.** Every person who unlawfully and by force or threats of violence, hinders or prevents or attempts to hinder or prevent any seaman, stevedore, ship carpenter, ship laborer or other person employed to work at or on board any ship or vessel, or to do any work connected with the loading or unloading thereof, from working at or exercising any lawful trade, business, calling or occupation in or for which he is so employed ; or beats or uses any violence to, or makes any threat of violence against any such person, with intent to hinder or prevent him from working at or exercising the same, or on account of his having worked at or exercised the same, shall, on summary conviction before two justices of the peace, be liable to imprisonment, with hard labor, for any term not exceeding three months."—as amended by 50-51 *V., c.* 47. 24-25 *V., c.* 100, *s.* 40, *Imp.*

12. Every one who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain,

(*a.*) Uses violence to such other person, or his wife or children, or injures his property,

(*b.*) Intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property,

(*c.*) Persistently follows such other person about from place to place,

(*d.*) Hides any tools, clothes or other property owned or used by such other person, or deprives him or hinders him in the use thereof,

(*e.*) Follows such other person, with one or more other persons, in a disorderly manner, in or through any street or road, or,

(*f.*) Besets or watches the house or other place where such other person resides or works, or carries on business or happens to be,

Shall, on summary conviction before two justices of the peace, or on indictment, be liable to a fine not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months.

2. Attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information shall not be deemed a watching or besetting within the meaning of this section;

3. Any person accused of any such offence may, on appearing before the justices, declare that he objects to being tried for such offence by such justices; and thereupon such justices shall not proceed with such trial, but may deal with the case in all respects as if the accused was charged with an indictable offence and not with an offence punishable on summary conviction, and the accused may be prosecuted on indictment accordingly;

4. It shall be sufficient to describe any such offence in the words of this section; and any exception, proviso, excuse or qualification, whether it does or does not accompany the description of the offence, may be proved by the defendant, but need not be specified in the information or complaint, and if so specified and negatived, no proof in relation to the matter so specified and negatived shall be required on the part of the informant or prosecutor;

5. No person who is a master, or the father, son or brother of a master in the particular manufacture, trade or business, in or in connection with which any offence under this section is charged to have been committed, shall act as a magistrate or justice, in any case of complaint or information under this section, or as a member of any court for hearing any appeal in any such case.—35 *V.*, *c.* 31, *s.* 2, *part*, *and s.* 4. 39 *V.*, *c.* 37, *ss.* 2 *and* 3. 38-39 *V.*, *c.* 86, *s.* 9, *part*, *Imp.*

13. In this section the expression "trade combination" means any combination between masters or workmen or other persons, for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman, in or in respect of his business or employment, or contract of employment or service; and the expression "act" includes a default, breach or omission;

2. No prosecution shall be maintainable against any person for conspiracy to do any act, or to cause any act to be done for the purposes of a trade combination, unless such act is an offence punishable by statute.—39 *V.*, *c.* 37, *s.* 4.

14. Every person who, before or at the time of the public sale of any Indian lands, or public lands of Canada, or of any Province of Canada, by intimidation, combination or unfair management, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale, is guilty of a misdemeanor, and liable to a fine not exceeding four hundred dollars or to two years' imprisonment, or to both.—23 *V.* (*Can.*), *c.* 2, *s.* 33. 43 *V.*, *c.* 28, *s.* 55.

CRIMINAL BREACHES OF CONTRACT.

15. Every one who,—

(*a.*) Wilfully and maliciously breaks any contract made by him, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury,

(*b.*) Being under any contract made by him with any municipal corporation or authority, or with any company bound, agreeing or assuming to supply any city or any other place, or any part thereof, with gas or water, wilfully and maliciously breaks such contract, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of gas or water, or,

(*c.*) Being under any contract made by him with a railway company, bound, agreeing or assuming to carry Her Majesty's mails, or to carry passengers or freight; or with Her Majesty, or any one on behalf of Her Majesty, in connection with a Government railway on which Her Majesty's mails, or passengers or freight are carried, wilfully and maliciously breaks such contract, knowing or having

reason to believe that the probable consequences of his so doing, either alone or in combination with others, will be to delay or prevent the running of any locomotive engine, or tender, or freight or passenger train or car, on the railway,

Shall, on summary conviction before two justices of the peace, or on indictment, be liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, with or without hard labor.—40 *V.*, *c.* 35, *s.* 2. 38-39 *V.*, *c.* 86, *ss.* 4 *and* 5, *Imp.*

16. Every municipal corporation or authority or company which, being bound, agreeing or assuming to supply any city or any other place, or any part thereof, with gas or water, wilfully and maliciously breaks any contract made by such municipal corporation, authority, or company, knowing or having reason to believe that the probable consequences of its so doing will be to deprive the inhabitants of that city or place or part thereof, wholly, or to a great extent, of their supply of gas or water, is liable to a penalty not exceeding one hundred dollars.—40 *V.*, *c.* 35, *s.* 3, *part.*

17. Every railway company which, being bound, agreeing or assuming to carry Her Majesty's mails, or to carry passengers or freight, wilfully and maliciously breaks any contract made by such railway company, knowing or having reason to believe, that the probable consequences of its so doing will be to delay or prevent the running of any locomotive engine or tender, or freight or passenger train or car, on the railway, is liable to a penalty not exceeding one hundred dollars.—40 *V.*, *c.* 35, *s.* 3 *part.*

18. Every punishment under the three sections next preceding imposed on any person maliciously committing any offence, shall equally apply and be enforced, whether the offence is committed from malice conceived against the person, corporation, authority or company with which the contract is made or otherwise.—40 *V.*, *c.* 35, *s.* 4.

19. Every such municipal corporation, authority or company, shall cause to be posted up at the gas works, or water-works, or railway stations, as the case may be, belonging to such corporation, authority or company, a printed copy of this section and the four sections next preceding, in some conspicuous place, where the same may be conveniently read by the public; and as often as such copy becomes defaced, obliterated or destroyed, shall cause it to be renewed with all reasonable despatch;

2. Every such municipal corporation, authority or company which makes default in complying with the provisions of this section in relation to such copy as aforesaid, shall be liable to a penalty not exceeding twenty dollars for every day during which such default continues; and every person unlawfully injuring, defacing or covering up any such copy so posted up, shall be liable, on summary conviction, to a penalty not exceeding ten dollars.—40 *V.*, *c.* 35, *s.* 7. 38-39 *V.*, *c.* 86, *s.* 4, *Imp.*

FRAUDS WITH RESPECT TO CONTRACTS AND BUSINESS WITH THE GOVERNMENT.

20. Every one 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, and—

Every officer or person in the employment of such government, who accepts, or agrees to accept, any such offer, proposal, gift, loan, promise, agreement, compensation or consideration,

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.—46 *V.*, *c.* 32, *s.* 1.

21. Every one 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, and

Every person so tendering and every officer or person in the employment of the said government who accepts or agrees to accept any such gift, loan, offer, promise, agreement, consideration or compensation whatsoever,

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.—46 *V.*, *c.* 32, *s.* 2.

22. Every one 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, 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; and every one who makes such offer shall be liable to the same penalty.—46 *V.*, *c.* 32, *s.* 3.

23. Every person convicted of any offence under the provisions of the three sections next preceding shall be incapable of contracting with or holding any contract under any of the said governments.—46 *V.*, *c.* 32, *s.* 4.

24. No prosecution under the provisions of the four sections next preceding shall be commenced except within two years from the commission of the offence.—46 *V.*, *c.* 32, *s.* 5.

WILFUL VIOLATION OF STATUTES.

25. Every wilful violation of any Act of the Parliament of Canada, or of the Legislature of any Province of Canada, which is not made an offence of some other kind, shall be a misdemeanor, and punishable accordingly;

2. Whenever any wilful violation of any Act is made an offence of any particular kind or name, the person guilty of such violation shall, on conviction thereof, be punishable in the manner in which such offence is, by law, punishable.—31 *V.*, *c.* 1, *s.* 7, *paragraphs* 20 *and* 21. 31 *V.*, *c.* 71, *s.* 3.

See *R.* v. *Walker*, 13 *Cox*, 94.

CONSPIRACIES—FRAUDS.

26. Every one who is convicted of fraud, or of cheating, or of conspiracy, shall, in any case in which no special punishment is

provided by any statute, be liable to seven years' imprisonment.—32-33 *V.*, *c.* 29, *s.* 86.

The Imperial Act, 14-15 V., c. 100, sec. 29 *(Lord Campbell's Act,)* also provides for the punishment of cheats, frauds and conspiracies, not otherwise specially provided for.

In *R.* v. *Roy*, 11 *L. C. J.* 89, Mr. Justice Drummond said: "The only cheats or frauds punishable at common law are the fraudulent obtaining of the property of another by any deceitful and illegal practice, or token, *which affects or may affect the public, or such frauds as are levelled against the public justice of the realm.*"

It is not every species of fraud or dishonesty in transactions between individuals which is the subject matter of a criminal charge at common law.—2 *East, P. C.* 816.

Fraud, to be the object of criminal prosecution, must be of that kind which in its nature is calculated to defraud numbers, as false weights or measures, false tokens, or where there is a conspiracy; per Lord Mansfield.—*R.* v. *Wheatly*, 2 *Burr.* 1125.

So cheats, by means of a bare lie, or false affirmation in a private transaction, as if a man selling a sack of corn falsely affirms it to be a bushel, where it is greatly deficient, has been holden not to be indictable.—*R.* v. *Pinkney*, 2 *East, P. C.* 818.

So, in *R.* v. *Channell*, 2 *East, P. C.* 818, it was held that a miller charged with illegally taking and keeping corn could not be criminally prosecuted.

And in *R.* v. *Lara*, cited in 2 *East, P. C.* 819, it was held that selling sixteen gallons of liquor for and as eighteen gallons, and getting paid for the eighteen gallons, was an unfair dealing and an imposition, but not an indictable offence.

The result of the cases appears to be, that if a man sell

by *false weights*, though only to one person, it is an indictable offence, but if, without false weights, he sell, even to many persons, a *less quantity* than he pretends to do, it is not indictable.—2 *Russ.* 610; *R.* v. *Eagleton, Dears.* 376, 515.

If a man, in the course of his trade, openly and publicly carried on, were to put a false mark or token upon an article, so as to pass it off as a genuine one, when in fact it was only a spurious one, and the article was sold and money obtained by means of that false token or mark, that would be a cheat at common law, but the indictment, in such a case, must show clearly that it was by means of such false token that the defendant obtained the money; by Chief Justice Cockburn, in *R.* v. *Closs, Dears. & B.* 460.

Offences of this kind would now generally fall under the "*Trade Marks Offences Act.*"

Frauds and cheats by forgeries or false pretences are also regulated by statute.

All frauds affecting the crown or the public at large are indictable, though arising out of a particular transaction or contract with a private party. So the giving to any person unwholesome victuals, not fit for man to eat, *lucri causâ*, or from malice and deceit is an indictable misdemeanor.—2 *East, P. C.* 821, 822. And if a baker sell bread containing alum in a shape which renders it noxious, although he gave directions to his servants to mix it up in a manner which would have rendered it harmless, he commits an indictable offence; he who deals in a perilous article must be wary how he deals; otherwise, if he observe not proper caution, he will be responsible. The intent to injure in such cases is presumed, upon the universal principle that when a man does an act of which the probable consequence may

be highly injurious, the intention is an inference of law resulting from doing the act.—*R.* v. *Dixon,* 3 *M. & S.* 11.

If a person maim himself in order to have a more specious pretence for asking charity, or to prevent his being enlisted as a soldier, he may be indicted, and on conviction, punished under sect. 26, *ante.*—1 *Hawkins,* 108.

Cheating at games, cards, or in betting are provided for by sect. 80 of the *Larceny Act, p.* 442, *ante.*

In indictments for a cheat or fraud at common law, it is not sufficient to allege generally that the cheat or fraud was affected by means of certain false tokens or false pretences, but it is necessary to set forth what the false tokens or pretences were, so that the Court may see if the false tokens or pretences are such within the law. 2 *East, P. C.* 837. But the indictment will be sufficient if upon the whole it appears that the money has been obtained by means of the pretence set forth, and that such pretence was false.—2 *East, P. C.* 838.

It would seem that sec. 250 of the Procedure Act does not apply to cheats and frauds at common law, and that, therefore, the court has no power of awarding restitution of the property fraudulently obtained, upon convictions on indictments other than those brought under the Larceny Act.—2 *East, P. C.* 839.

Upon an indictment for any misdemeanor, if it appears to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, the jury may convict of the attempt; sec. 183, Procedure Act.

By sect. 184 of the Procedure Act, if upon the trial of any person for any misdemeanor, it appears that the facts given in evidence, *while they include such misdemeanor,* amount in law to a felony, such person shall not, by reason

thereof, be entitled to be acquitted of such misdemeanor, unless the court thinks fit to discharge the jury, and to direct such person to be indicted for felony.

The act now under consideration also provides for the punishment of conspiracy, when not otherwise specially provided for by any statute.

Conspiracies to murder are provided for by sec. 3 of c. 162, p. 141, *ante*, concerning offences against the person. Assaults arising from conspiracies are regulated by sec. 9, c. 173.

Conspiracy is a combination of two or more persons to accomplish some unlawful purpose, or a lawful purpose by unlawful means. This is the definition of conspiracy as given by Lord Denman in *R.* v. *Seward*, 1 *A. & E.* 706; and though questioned by the learned judge himself in *R.* v. *Peck*, 9 *A. & E.* 686, as an antithetical definition, and in *R.* v. *King*, 7 *Q. B.* 782, as not sufficiently comprehensive, it seems to be so far adopted as the most correct definition of this offence.—*R.* v. *Jones*, 4 *B. & A.* 345; 3 *Russ.* 116. *Bishop*, 2, *Cr. L.* 171, has in a clear and concise manner said "Conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end." *See also R.* v. *Bunn*, 12 *Cox*, 316.

But the word "unlawful" used in these definitions of conspiracy, does not mean "indictable" or "criminal." The combining to injure another by fraud, or to do a civil wrong or injury to another is an indictable conspiracy. So in a case where the prisoner and L. were in partnership, and there being notice of dissolution, prisoner conspired with W. & P. in order to cheat L. on a division of assets at the dissolution, by making it appear by entries in the books that P. was a creditor of the firm, and by reason thereof, partnership property was to be abstracted for the alleged object of satisfying P., it was held by the Court of Crown Cases Reserved that this was an indictable conspiracy.—*R.* v. *Warburton*, 11 *Cox*, 584. *See R.* v. *Aspinall*, 13 *Cox*, 231 and 563; *R.* v. *Orman*, 14 *Cox*, 381,

Mr. Justice Drummond, in *R.* v. *Roy*, 11 *L. C. J.* 89, has given the following definition of conspiracy: "A conspiracy is an agreement by two persons (not being husband and wife), or more, to do or cause to be done, an act, prohibited by penal law, or to prevent the doing of an act ordered under legal sanction by any means whatsoever, or to do or cause to be done an act whether lawful or not by means prohibited by penal law."—*R.* v. *Boulton*, 12 *Cox*, 87; *R.* v. *Parnell*, 14 *Cox*, 508; *R.* v. *Taylor*, 15 *Cox*, 625, 268.

No indictment for conspiracy can be preferred unless one or other of the preliminary steps required by sec. 140 of the Procedure Act has been taken. See 3 *Russ.* 116; *Archbold*, 936; *R.* v. *Levine*, 10 *Cox*, 374; *R.* v. *Lewis*, 11 *Cox*, 404; *R.* v. *Boulton*, 12 *Cox*, 87; 2 *Bishop*, *Cr. L.* 169.

On an indictment for conspiracy to defraud by obtaining goods on false pretences, the false pretences need not to set up.—*Thayer* v. *R.*, 5 *L. N.* 162.

An indictment for conspiracy with intent to defraud,—declared insufficient.—*R.* v. *Sternberg*, 8 *L. N.* 122.

What are the necessary allegation in an indictment for conspiracy.—*R.* v. *Downie*, 13 *R. L.* 429.—See also *Defoy* v *R.*, *Ramsay's App. Cas.* 193.

Acts done to coerce others to quit their employment in pursuance of a conspiracy are indictable.—*R.* v. *Hibbert*, 13 *Cox*, 82; *R.* v. *Bauld*, 13 *Cox*, 282.

Where two persons are indicted for conspiring together, and they are tried together, both must be acquitted or both convicted.—*R.* v. *Manning*, 12 *Q. B. D.* 241.

27. Every one who destroys, alters, mutilates or falsifies any of his books, papers, writings or securities, or makes, or is privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or any one or more of them, is guilty of a misdemeanor, and liable to six months' imprisonment.—*C. S. U. C.*, *c.* 26, *s.* 19.

28. Every one who makes, or causes to be made, any gift, conveyance, assignment, sale, transfer or delivery of his lands, hereditaments, goods or chattels, or who removes, conceals or disposes of any of his goods, chattels, property or effects of any description, with intent to defraud his creditors or any of them, and every one who receives any such property, real or personal, with such intent, is guilty of a misdemeanor, and liable to a fine not exceeding eight hundred dollars, and to one year's imprisonment.—*C. S. U. C.*, *c.* 26, *s.* 20.

MISCONDUCT OF OFFICERS INTRUSTED WITH EXECUTION OF WRITS.

29. Every one 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, is guilty of a misdemeanor, and liable to a fine and imprisonment, in the discretion of the court.—27-28 *V.*, (*Can.*) *c.* 28, *s.* 31, *part.*

EMBRACERY.

30. Every one who is guilty of the offence of embracery, and every juror who wilfully and corruptly consents thereto, is liable, on indictment, to fine and imprisonment.—*C. S. U. C.*, *c.* 31, *s.* 166.

QUI TAM ACTIONS—QUEBEC.

31. Every private prosecutor in the Province of Quebec who, being a plaintiff in a *qui tam* action, discontinues or suspends such action without the permission or direction of the Crown, is guilty of a misdemeanor.—27-28 *V.* (*Can.*), *c.* 43, *s.* 2, *part.*

It is essential to the existence of this offence of embracery that there should be a judicial proceeding pending at the time the offence is alleged to have been committed; and the existence of such proceeding must be alleged in the indictment.—*R.* v. *Leblanc*, 8 *L. N.* 114.

What is embracery.—*R.* v. *Cornellier*, 29 *L. C. J.* 69.

CHAPTER 174.

AN ACT RESPECTING PROCEDURE IN CRIMINAL CASES.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

SHORT TITLE.

1. This Act may be cited as "*The Criminal Procedure Act.*"

INTERPRETATION.

2. In this and in any other Act of Parliament containing any provision relating to criminal law, unless the context otherwise requires,—

(*a.*) The expression "any Act," or, "any other Act," includes any Act passed or to be passed by the Parliament of Canada, or any Act passed by the legislature of the late Province of Canada, or passed or to be passed by the legislature of any Province of Canada, or passed by the legislature of any Province included in Canada, before it was included therein ;

(*b.*) The expression "justice" means a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, and also any person having the power or authority of two or more justices of the peace, and one justice may act, unless otherwise specially provided ;

(*c.*) The expression "indictment" includes information, inquisition and presentment as well as indictment, and also any plea, replication or other pleading, and any record ;

(*d.*) The expression "finding of the indictment" includes also the taking of an inquisition, the exhibiting an information and the making of a presentment ;

(*e.*) The expression "property" includes goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed ;

(*f.*) The expression "district, county or place" includes any division of any Province of Canada, for purposes relative to the administration of justice in criminal cases ;

(*g.*) The expression "territorial division" means county, union of counties, township, city, town, parish or other judicial division or place to which the context applies ;

(*h.*) The expression "the court for crown cases reserved" means and includes,—

(1.) In the Province of Ontario, any division of the High Court of Justice for Ontario ;

(2.) In the Province of Quebec, the Court of Queen's Bench, on the appeal side thereof ;

(3.) In the Provinces of Nova Scotia, New Brunswick and British Columbia, the Supreme Court in and for each of the said Provinces, respectively ;

(4.) In the Province of Prince Edward Island, the Supreme Court of Judicature for that Province ;

(5.) In the Province of Manitoba, Her Majesty's Court of Queen's Bench for Manitoba ; and—

(6.) In the Northwest Territories, the Supreme Court of the Northwest Territories.—32-33 *V.*, *c.* 29, *s.* 1, *part and c.* 30, *s.* 65. 46 *V.*, *c.* 10, *s.* 5, *part.* 49 *V.*, *c.* 25, *s.* 14. *C.S.L.C.*, *c.* 77, *s.* 57, *part.* *R.S.N.S.* (3*rd S.*) *c.* 171, *s.* 99, *part.* 1 *R.S.N.B.*, *c.* 159, *s.* 22, *part.*

JURISDICTION.

3. Every superior court of criminal jurisdiction shall have power to try any treason, felony or other indictable offence.—34 *V.*, *c.* 14, *s.* 2. 37 *V.*, *c.* 42, *s.* 5. 40 *V.*, *c.* 4, *s.* 4, *part.*

4. No court of general or quarter sessions or recorder's court, nor any court but a superior court having criminal jurisdiction, shall have power to try any treason, or any felony punishable with death or any libel.—32-33 *V.*, *c.* 29, *s.* 12.

In Canada, the courts of general or quarter sessions have jurisdiction in all cases except treason, murder, rape, libel, offences under sects. 21, 22 and 23 of c. 162, (sec. 5 Procedure Act,) offences under sects. 60 to 76,

both inclusive, of c. 164 (sec. 6 Procedure Act,) perjury, subornation of perjury, and forgery, by common law; counterfeiting coin (probably) which was treason by different statutes (1 *East, P. C.* 158; 2 *Hale*, 44, 45; 25 Edw. III, *c.* 7, *s.* 7.), bribery, under influence, personation or other corrupt practices in elections for Parliament (sect. 116, c. 8, Rev. Stat.) offences against sects. 6, 7 and 8 of c. 146.

The following passage from *Archbold's Quarter Sessions*, p. 5, on the jurisdiction of the courts of quarter sessions, explains fully what our law is on the subject, independently of statutory enactments.

"Some doubts were formerly entertained as to the construction that ought to be give to the words '*Felonies*' and '*Trespasses*' in the above commission; some held that they included only such felonies and misdemeanors against the peace, of which cognizance was given to justices of the peace by the express words of a statute or statutes; others held that as the commission was created by statute, namely, in pursuance of stat. 34 Ed. III., c. 1, these words must be deemed to include only such offences as were felonies and trespasses at the time of the passing of the act, and that if justices have jurisdiction of any offence created since, it must be give to them by the express words of the statute creating the offence. But these constructions seem very unsatisfactory; if, according to the first of them, we are to hold that the courts of quarter sessions are to exercise jurisdiction only in those cases where cognizance of an offence is specially given them by some statute, the court will have cognizance of very few offences indeed, and no jurisdiction in most of the cases in which we see them continually exercise it; and if, according to the second construction, we confine their authority under the commission

to offences which were felonies and trespasses at the time of passing the statute 34 Ed. III., c. 1, then we shall have the absurdity of a commission being granted in the nineteenth century to justices giving them authority to hear and determine such offences only as were felonies and trespasses in the year 1360. There is nothing in the act itself or the commission, which at all obliges us to give them so narrow a construction; and in modern times the general opinion of the profession, sanctioned by cases which shall presently be mentioned, is, that with the exception of perjury at common law and forgery, the court of quarter sessions has jurisdiction by virtue of the commission of all felonies whatsoever, murder included, though not specially named, and of all indictable misdemeanors, whether created before or after the date of the commission. In fact, the only restriction upon their jurisdiction up to the time of the passing of the 5-6 V., c. 38 (30th June, 1842), hereafter mentioned, appears to have been the proviso contained in the commission of the peace; but if they thought fit, even in capital cases, to proceed to judgment, such judgment would have been valid until reversed for real error in the judgment, or for substantial defect appearing on the face of the record. As to the word 'trespasses,' the word used, when the commissions were in Latin, was '*transgressiones*,' which was a word of very general meaning, including all the inferior offences under felony, and also those injuries for which the modern action of trespass now lies; it was usually rendered into law French, by the word 'trespass,' and that is the word used in the original French of the above statute of Ed. III., and it is there rendered into English by the word 'trespasses.' In perjury at common law, it is indeed settled, that an indictment will not lie for it in a court of quarter sessions; but perjury under the statute 5 Eliz.,

c. 9, is within the jurisdiction of the sessions, by the express words of the act. Forgery at common law also is not cognizable by the sessions; nor is forgery by statute, as we shall see presently, when we come to consider the jurisdiction of the sessions by statute. Where an indictment for soliciting a servant to steal the goods of his master was removed into the Court of King's Bench by writ of error, it was argued that the facts charged in the indictment did not amount to an offence at common law, or if they did, still it was not an offence indictable at sessions, as it was no breach of the peace. As to the first point, the court held clearly that the facts stated did amount to an indictable offence; as to the second point, Lord Kenyon, C. J., said: "I am also clearly of opinion that it is indictable at the quarter sessions, as falling in with that class of offences, which being violations of the law of the land, have a tendency, as it is said, to a breach of the peace, and are, therefore, cognizable by that jurisdiction; to this rule there are, indeed, two exceptions, namely, forgery and perjury; why exceptions, I know not, but having been expressly so adjudged, I will not break through the rules of law; no other exceptions, however, have been allowed, and therefore this falls within the general rule." The other judges being of the same opinion, the judgment was accordingly affirmed. So where an indictment for a conspiracy to charge a man with taking hair out of a bag belonging to one A. R. was preferred and found at sessions, and the parties convicted upon it; and it was afterwards removed into the Court of King's Bench by certiorari, and a motion was then made in arrest of judgment, on the ground that the sessions had no jurisdiction of conspiracy, any more than of perjury and forgery, it not being specified in their commission, nor jurisdiction of it given to them by any special

statute; the court, however, held that the sessions had jurisdiction.

Lord Mansfield, C. J., said that as no case had been cited to show whether the sessions had or had not jurisdiction, the question must be decided upon general principles; that as to the cases of perjury and forgery, mentioned in argument, they stood upon their own special grounds, and it had been determined that justices had no jurisdiction of them; but as to conspiracy, "it is a trespass, and trespasses are indictable at sessions; though not committed *vi et armis*, they tend to a breach of the peace, as much as cheats, which are established to be within the jurisdiction of sessions." Where, however, a statute creates a new offence, and directs it to be prosecuted before a court of oyer and terminer, or gaol delivery, without mentioning the general or quarter sessions, that is deemed to be an implied exclusion of the jurisdiction of the sessions with respect to that particular offence. But where an indictment for lighting fires on the coast, contrary to 47 Geo. III., sec. 2, c. 66, was preferred at the sessions, removed by certiorari and tried at the assizes; and it was objected for the defendant that the sessions had no jurisdiction, as the statute required that the offenders should be carried before a justice of the peace, and by him committed to the county gaol, "there to remain until the next court of oyer and terminer, great session or gaol delivery," which amounted to an implied enactment that indictment should be prefered in those courts only; the court held that, as the offence was a misdemeanor only, and the defendant might be prosecuted for it without his being apprehended or in custody, the clause in the act referred to did not prevent the indictment from being preferred at the sessions; they held the indictment, therefore, to have been properly originated, and passed sentence on the defendant.

In England, now, there is a statute which takes away from the jurisdiction of the courts of sessions of the peace a large number of offences, which these courts could before try and determine. It is the 5-6 V., c. 58.

5. Neither the justices of the peace acting in and for any district, county, division, city or place, nor any judge of the sessions of the peace, nor the recorder of any city, shall, at any session of the peace, or at any adjournment thereof, try any person for any offence under sections twenty-one, twenty-two and twenty-three of the "*Act respecting offences against the person.*—32-33 *V., c.* 20, *s.* 48.

6. No court of general or quarter sessions of the peace shall have power to try any offence under any of the provisions of sections sixty to seventy-six, both inclusive, of "*The Larceny Act.*"—32-33 *V., c.* 21, *s.* 92.

7. The judge of the sessions of the peace for the city of Quebec, the judge of the sessions of the peace for the city of Montreal, and every police magistrate, district magistrate or stipendiary magistrate appointed for any territorial division, and every magistrate authorized by the law of the Province in which he acts, to perform acts usually required to be done by two or more justices of the peace, may do alone whatever is authorized by this Act to be done by any two or more justices of the peace, and the several forms in this Act contained may be varied so far as necessary to render them applicable to such case.—32-33 *V., c.* 30, *s.* 59, *and c.* 36, *s.* 8.

PLACE OF COMMISSION AND TRIAL OF OFFENCES.

8. When any offence punishable under the laws of Canada has been committed within the jurisdiction of the Admiralty of England, the same may be dealt with, inquired of and tried and determined in the same manner as any offence committed within the jurisdiction of any court before which the offender is brought for trial.—32-33 *V., c.* 29, *s.* 136.

9. When any person, being feloniously stricken, poisoned, or otherwise hurt, upon the sea, or at any place out of Canada, dies of such stroke, poisoning or hurt, in Canada, or, being feloniously stricken, poisoned or otherwise hurt at any place in Canada, dies of such stroke, poisoning or hurt, upon the sea, or at any place out of Canada, every offence committed in respect of any such case, whether the same amounts to murder or manslaughter, or of being accessory to murder

or manslaughter, may be dealt with, inquired of, tried, determined and punished in the district, county or place in Canada in which such death, stroke, poisoning or hurt happens, in the same manner, in all respects, as if such offence had been wholly committed in that district, county or place.—32-33 *V., c.* 20, *s.* 9. 24-25 *V., c.* 100, *s.* 10, *Imp.*

The 12-13 V., c. 96, s. 1, Imp., enacts that all offences committed upon the sea, or within the jurisdiction of the Admiralty shall, in any colony where the prisoner is charged with the offence or brought there for trial, be dealt with as if the offence had been committed upon any water situate within the limits of the colony and within the limits of the local jurisdiction of the courts of criminal jurisdiction of such colony.

And s. 2 of the same act enacts that: where any person, shall die in any colony of any stroke, poisoning or hurt, such person having been feloniously striken, poisoned or hurt upon the sea or within the limits of the admiralty, or at any place out of the colony, every offence committed in respect of any such case may be dealt with, inquired of tried, determined and punished in such colony in the same manner in all respects as if such offence had been wholly committed in that colony, and if any person in any colony, shall be charged with any such offence as aforesaid in respect of the death of any person who having been feloniously stricken, poisoned or hurt, shall have died of such stroke, poisoning or hurt upon the sea, or any where within the limits of the Admiralty, such offence shall be held for the purposes of the act to have been wholly committed upon the sea.

The 17-18 V., c. 104, s. 267, Imp., enacts that all offences against property or person committed in, or at any place, either ashore or afloat, out of Her Majesty's dominions by any master, seaman, or apprentice who at the time

when the offence is committed is or within three months previously has been employed in any British ship are deemed to be offences of the same nature respectively, and are liable to the same punishments respectively, and may be inquired of, heard, tried, and determined and adjudged in the same manner, and by the same courts in the same places, as if such offences had been committed within the jurisdiction of the Admiralty of England.

The 18-19 V., c. 91, s. 21, Imp., enacts that if any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or harbor, or, if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in Her Majesty's dominions which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits. Then it is enacted that nothing contained in that section shall affect the 12-13 V., c. 96, (*ubi supra*).

By the Imperial *Merchant Shipping Amendment Act*, 30-31 V., c. 124, sect. 11, it is enacted that:

"If any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any court of justice in Her Majesty's Dominions, which would have had cognizance of such crime or offence if committed on board a British ship within the limits of the ordinary jurisdiction of such court shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid."

See *R.* v. *Armstrong*, 13 *Cox*, 184.

By 23-24 V., c. 122, Imp., legislatures in Her Majesty's possessions abroad are empowered to pass an enactment as the one contained in sect. 9 of the Procedure Act, *ante*.

By 28-29 V., c. 63, Imp., any colonial law repugnant to an Act of the Imperial Parliament is, to the extent of such repugnancy, void.

And by the *Courts (Colonial) Jurisdiction Act*, 1874, —37 V., c. 27, Imp.—it is enacted that:

"Whereas by certain Acts of Parliament jurisdiction is conferred on courts in Her Majesty's colonies to try persons charged with certain crimes or offences, and doubts have arisen as to the proper sentence to be imposed upon conviction of such persons ..... When, by virtue of any act of Parliament now or hereafter to be passed, a person is tried in a court of any colony for any crime or offence committed upon the high seas, or elsewhere out of the territorial limits of such colony and of the local jurisdiction of such court, or, if committed within such local jurisdiction, made punishable by that act, such person shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of such colony and of the local jurisdiction of the court, and to no other, anything in any act to the contrary notwithstanding: Provided always that if the crime or offence is a crime or offence not punishable by the laws of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as shall seem to the court most nearly to correspond to the punishment to which such person would have been liable in case such crime or offence had been tried in England."

The words "dealt with" apply to justices of the

peace; "inquired of" to the grand jury; "tried" to the petit jury and "determined and punished" to the court: by Lord Wensleydale in *R.* v. *Ruck, note Y.*, 1 *Russ.* 757.

In *R.* v. *Lewis, Dears. & B.* 182, a wound was inflicted by an alien on an alien in a foreign vessel, bound to England, of which wound the alien died in England, immedialety after landing. The offender was tried and convicted of manslaughter, but upon a case reserved, the court of criminal appeal held that the clause similar to the above section 9 of our statute did not apply to such a case, and quashed the conviction. The judges said that this section was not to be construed as making a homicide cognizable in England by reason only of the death occurring there, unless it would have been so cognizable in case the death had ensued at the place where the blow was given. In this case, the injury which caused the death was inflicted by one foreigner upon another on board a foreign vessel upon the high seas, and, consequently, if death had then and there followed, no offence cognizable by the law of this country had taken place; see 1 *Bishop's Cr. L.* 112; 1 *Cr. Proc.* 51, 53.

A prisoner is "found," within the meaning of s. 21, of 18-19 V., c. 91, *ubi supra*, wherever he is actually present, and the court, where he is present, under that act, has jurisdiction to try him, even if he has been brought there by force as a prisoner.—*R.* v. *Lopez*; *R.* v. *Sattler, Dears. & B.* 525.

On jurisdiction as to offences committed within the limits of the Admiralty, see *Archbold*, 29; 1 *Russ.* 762; 1 *Burn*, 42.

A German vessel carrying the German flag, on a voyage from Hamburg to the West Indies, commanded

by the prisoner, a German, and having a crew nearly all Germans, and a French pilot, whilst on her voyage in the British Channel, at a point within 2½ miles from Dover Beach, ran into and sank an English ship, and thereby occasioned the death of an English subject on board of her. The facts were such as to render the prisoner (if he had been an English subject) liable for manslaughter by the law of England.

Held (per Cockburn, C. J., Kelly, C. B., Bramwell, J. A., Lush, J., Pollock, B., Field, J., and Sir R. Phillimore,) that there was no jurisdiction in the courts of this country to try the prisoner, a foreigner passing the English coast, on the high seas in a foreign vessel, though the occurence took place within three miles of the coast. *Held* (per Cockburn, C. J., Bramwell, J. A., Brett, J. A., Lush, J., Pollock, B., Field, J., and Sir R. Phillimore,) that the offence was not committed on board a British ship, though the person whose death was caused was in a British ship at the time of the collision and sinking of her.

Held, (per Lord Coleridge, C. J., Brett, J. A., Amphlett, J. A., Grove, J., Denman, J., and Lindley, J.,) that the courts of this country had jurisdiction, the offence being committed within three miles of the English coast.

Held (per Lord Coleridge, C. J., and Denman, J.,) that the offence was committed on board the British vessel.—*R.* v. *Keyn*, 13 *Cox*, 403. See *R.* v. *Carr*, 15 *Cox*, 129. —*R.* v. *Anderson*, 11 *Cox*, 198.

Now, by 41-42 V., c. 73, (Imp.), this decision in *R.* v. *Keyn, ubi supra*, is not to be followed. This Act applies to Canada.

The large inland lakes of Ontario are within the jurisdiction of the Admiralty.—*R.* v. *Sharp*, 5 *P. R. (Ont.)* 135.

Where a person dies in this Province from ill-treatment received on board a British ship at sea, the trial for manslaughter against the person who ill-treated him must take place in the district where the man died, not where he was apprehended.—*R.* v. *Moore*, 2 *Q. B. R.* 52.

On an indictment for an offence committed on board a British ship upon the high seas, it is not necessary in order to prove the nationality of the ship to produce its register, but the fact that she sailed under the British flag is sufficient.—*R.* v. *Moore*, 2 *Q. B. R.* 52. *See R.* v. *Von Seberg*, 11 *Cox*, 520, *and R.* v. *Bjornsen*, 10 *Cox*, 74.

In an indictment for a larceny committed on board a British vessel, it is sufficient to say *upon the sea*, without saying, *upon the high seas.*—*R.* v. *Sprungli*, 4 *Q. L. R* 110.

10. When any felony or misdemeanor is committed on the boundary of two or more districts, counties or places, or within the distance of one mile of any such boundary, or in any place with respect to which it is uncertain within which of two or more districts, counties or places it is situate, or when any felony or misdemeanor is begun in one district, county or place, and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished, in any one of the said districts, counties or places, in the same manner as if it had been actually and wholly committed therein.—32-33 *V.*, *c.* 29, *s.* 8.

This clause is taken from the 7 Geo. 4, c. 64, sec. 12 of the Imperial Acts.

The distance of one mile mentioned in the above clause is to be measured in a direct line from the border, and not by the nearest road; *R.* v. *Wood*, 5 *Jur.* 225.

This clause does not enable the prosecutor to *lay* the offence in one county and *try* it in the other, but only to lay *and* try it in either; *R.* v. *Mitchell*, 2 *Q. B.* 636. See also on this clause; *R.* v. *Jones*, 1 *Den.* 551; *R.* v. *Leech*, *Dears.* 642.

Murder, like all other offences, must regularly, according to the common law, be inquired of in the county in which it was committed. It appears, however, to have been a matter of doubt at the common law, whether when a man died in one county of a stroke received in another, the offence could be considered as having been completely committed in either county; but by the 2-3 Edw. 6, c. 24, sec. 2, it was enacted that the trial should be in the county where the death happened.

Under the said section 10 of the Procedure Act, where the blow is given in one county, and the death takes place in another, the trial may be in either of these counties.—1 *Russ.* 753. This clause applies to coroners, when a felony has been committed, but not when the death is the result of an accident.—*R.* v. *Great Western Railway Company*, 3 *Q. B.* 333 and *note by Greaves*, 1 *Russ.* 754; *R.* v. *Grand Junction R. Co.* 11 *A. & E.* 128.

11. When any felony or misdemeanor is committed on any person or on or in respect of any property, in or upon any coach, wagon, cart or other carriage whatsoever, employed in any journey, or is committed on any person, or on or in respect of any property on board any vessel, boat or raft whatsoever, employed in any voyage or journey upon any navigable river, canal or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished, in any district, county or place, through any part whereof such coach, wagon, cart, carriage or vessel, boat or raft, passed in the course of the journey or voyage during which such felony or misdemeanor was committed, in the same manner as if it had been actually committed in such district, county or place,—32-33 *V.*, *c.* 29, *s.* 9.

12. Whenever the side, centre, bank or other part of any highway or of any river, canal or navigation, constitutes the boundary of any two districts, counties or places, any felony or misdemeanor mentioned in the two sections next preceding may be dealt with, inquired of, tried, determined and punished in either of such districts, counties or places, through or adjoining to, or by the boundary of any part

whereof such coach, wagon, cart, carriage or vessel, boat or raft, passed in the course of the journey or voyage during which such felony or misdemeanor was committed, in the same manner as if it had been actually committed in such district, county or place.—32-33 *V., c.* 29, *s.* 10.

These two clauses are taken from the 7 Geo. 4, c. 64, sec. 13, of the Imperial Statutes.

This enactment is not confined in its operation to the carriages of common carriers or to public conveyances, but if property is stolen from any carriage employed on any journey, the offender may, by virtue of the above section, be tried in any county through any part whereof such carriage shall have passed in the course of the journey during which such offence shall have been committed.—*R.* v. *Sharpe*, *Dears.* 415.

As to the effect of the words "in or upon" in this section, see *R.* v. *Sharpe*, 2 *Lewin*, 233.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A., or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted under the above section, the case must go to the jury, who are to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards.—*R.* v. *Pierce*, 6 *Cox*, 117.

13. If, upon the dissolution of a union of counties, any information, indictment or other criminal proceeding, in which the venue is laid in a county of the union is pending, the court in which such information, indictment or proceeding is pending, or any judge who has authority to make orders therein, may, by consent of parties, or on hearing the parties upon affidavit, order the venue to be changed to the new county, and all records and papers to be transmitted to the proper officers of such county, and in the case of any such indictment found at any court of criminal jurisdiction, any judge of a superior court may make the order;

2. If no such change is directed, all such informations, indictments and other proceedings shall be carried on and tried in the senior county;

3. Any person charged with an indictable offence who, at the time of the disuniting of a junior from a senior county, is imprisoned on the charge in the gaol of the senior county, or is under bail or recognizance to appear for trial at any court in the senior county, and against whom no indictment has been found before the disunion takes place, shall be indicted, tried and sentenced in the senior county, unless a judge of a superior court orders the proceedings to be conducted in the junior county, in which event the prisoner or recognizance, as the case may be, shall be removed to the latter county, and the proceedings shall be had therein; and when, in any such case, the offence is charged to have been committed in a county other than that in which such proceedings are had, the venue may be laid in the proper county describing it as "formerly one of the united counties of ....."—29-30 *V.* (*Can.*), *c.* 51, *ss.* 52, 53 *and* 55.

14. All crimes and offences committed in any of the unorganized tracts of country in the Province of Ontario, including lakes, rivers, and other waters therein, not embraced within the limits of any organized county, or within any provisional judicial district, may be laid and charged to have been committed and may be inquired of tried and punished within any county of such Province; and such crime or offence shall be within the jurisdiction of any court having jurisdiction over crimes or offences of the like nature committed within the limits of such county, before which court such crime or offence may be prosecuted; and such court shall proceed therein to trial, judgment and execution or other punishment for such crime or offence, in the same manner as if such crime or offence had been committed within the county where such trial is had;

2. When any provisional judicial district or new county is formed and established in any of such unorganized tracts, all crimes and offences committed within the limits of such provisional judicial district or new county, shall be inquired of, tried and punished within the same, in like manner as such crimes or offences would have been inquired of, tried and punished if this section had not been passed;

3. Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the Province of Ontario; and the constable or other officer having charge of such person and intrusted with his conveyance to any such common

gaol, may pass through any county in such Province with such person in his custody; and the keeper of the common gaol of any county in such Province in which it is found necessary to lodge for safe keeping any such person so being conveyed through such county in custody, shall receive such person and safely keep and detain him in such common gaol for such period as is reasonable or necessary; and the keeper of any common gaol in such Province, to which any such person is committed as aforesaid, shall receive such person and safely keep and detain him in such common gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken.—*C. S. U. C.*, *c.* 128, *ss.* 100, 101 *and* 105.

15. Whenever any offence is committed in the district of Gaspé, the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence was committed, or may in law be deemed to have been committed, and if tried before the Court of Queen's Bench, he shall be so tried at the sitting of such court held in the county to the gaol of which he has been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried.—*C. S. L. C.*, *c.* 80, *s.* 6.

16. Every person accused of perjury, bigamy or any offence under the provisions of sections fifty-three, fifty-four and fifty-five of "*The Larceny Act*," may be dealt with, indicted, tried and punished in the district, county or place in which the offence is committed, or in which he is apprehended or is in custody.—32-33 *V.*, *c.* 20, *s.* 58, *part, and c.* 21, *s.* 72, *part, and c.* 23, *s.* 8. 33 *V.*, *c.* 26, *s.* 1, *part.* 24-25 *V.*, *c.* 96, *s.* 70; *c.* 100, *s.* 57, *Imp.*

Lynch was indicted in the district of Beauharnois for perjury committed in the district of Montreal; there was no averment in the indictment that the defendant had been apprehended, or in custody, or that he was in custody at the time of the finding of the indictment. The defendant neither demurred nor moved to quash, but after verdict moved in arrest of judgment on the ground that there was no averment in the indictment of his having been apprehended or in custody. The sitting judge dismissed the motion in arrest of judgment, but reserved the point so raised.

Held, That the indictment was defective, that the defect was one which could not be amended and, consequently, was not cured by verdict, and that the judgment must be arrested and the defendant discharged.—*R.* v. *Lynch*, 20 *L. C. J.* 187; 7 *R. L.* 553.—See note under sec. 18, *post*, and *R.* v. *Smith*, 1 *F. & F.* 36. Also note *c.* to 1 *Russ.* 274.

17. The offence of any person who is an accessory, either before or after the fact, to any felony, may be dealt with, inquired of, tried, determined and punished by any court which has jurisdiction to try the principal felony, or any felonies committed in any district, county or place in which the act, by reason whereof such person became such accessory, has been committed: Provided, that no person once duly tried, either as an accessory before or after the fact, or for a substantive felony, shall be liable to be afterwards prosecuted for the same offence.—31 *V.*, *c.* 72, *s.* 8. 32-33 *V.*, *c.* 17, *s.* 2. 24-25 *V.*, *c.* 94, *s.* 7, *Imp.*

There is a material difference between this clause and the corresponding clause of the Imperial Act. See Greaves, note, to sec. 7 of the Imperial Act, *page* 25 *of Greaves, Cons. Acts.*

18. Every one who commits any offence against the "*Act respecting Forgery*," or commits any offence of forging or altering any matter whatsoever, or of offering, uttering, disposing of or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case is indictable at common law, or by virtue of any act, may be dealt with, indicted, tried and punished in any district, county or place in which he is apprehended or is in custody; in the same manner in all respects as if the offence had been actually committed in that district, county or place; and every accessory before or after the fact to any such offence, if the same is felony, and every person aiding, abetting or counselling the commission of any such offence, if the same is a misdemeanor, may be dealt with, indicted, tried and punished, in any district, county or place in which he is apprehended or is in custody, in the same manner in all respects as if his offence, and the offence of his principal, had been actually committed in such district, county or place.—32-33 *V.*, *c.* 19, *s.* 48. 24-25 *V.*, *c.* 98, *s.* 41, *Imp.*

It was held, under the corresponding section of the

English act, that where the prisoner is tried in the county where he is in custody, the forgery may be alleged to have been committed in that county, and there need not be any averment that the prisoner is in custody there.—*R.* v. *James*, 7 *C. & P.* 553. And in the case of *R.* v. *Smythies*, 1 *Den.* 498, it was held that, although the defendant is not shewn to have been in custody in the county where the bill is found, until the moment before his trial, when he surrenders in discharge of his bail, that is sufficient to make him triable there, and the judges said that the same ruling had been given in *R.* v. *Whiley*, 2 *Moo. C. C.* 186, though the report is to the contrary.

This last case is rightly reported in 1 *C. & K.* 150. See remarks under sec. 16, *ante*.

19. Every one accused of any offence against the provisions of section forty-six of the "*Act respecting Offences against the Person*" may be tried either in the district, county or place in which the same was committed, or in any district, county or place into or through which the person kidnapped or confined was carried or taken while under such confinement; but no person who has been once duly tried for any such offence shall be liable to be again indicted or tried for the same offence.—32-33 *V., c.* 20, *s.* 71.

See note under preceding section.

20. Every one who receives any chattel, money, valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted or disposed of, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried and punished in any county, district or place in which he has or has had any such property in his possession, or in any county, district or place in which the person guilty of the principal felony or misdemeanor may, by law, be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county, district or place where he actually received such property. 32-33 *V., c,* 21, *s.* 105.—24-25 *V., c.* 96, *s.* 96, *Imp.*

See remarks under secs. 82, 83 and 84 of the *Larceny Act*.

A prisoner was tried at Amherst upon an indictment containing two counts, one for robbery and the other for receiving stolen goods. Both offences were proved to have been committed at Truro, and the jury found a general verdict of guilty on both counts.

Held, that the prisoner should have been proceeded against only on the count for receiving, and that, although he might have been guilty of both offences, as the robbery was committed in another county than that in which he was tried, he must be discharged.—*The Queen* v. *Russell*, 3 *R. & C.* (*N. S.*) 254.

21. Every one who brings into Canada, or has in his possession therein, any property stolen, embezzled, converted or obtained by fraud or false pretences in any other country, in such manner that the stealing, embezzling, converting or obtaining it in like manner in Canada, would, by the laws of Canada, be a felony or misdemeanor, may be tried and convicted in any district, county or place in Canada into or in which he brings such property, or has it in possession.—32-33 *V., c.* 21, *s.* 112, *part*.

Sec. 88 of the *Larceny Act* (see, *ante*,) enacts that every one who brings into Canada any property so stolen, etc., in any other country is guilty of an offence of the same nature as if the stealing, etc., had taken place in Canada.

This clause is not to be found in the Imperial Acts. And in England, thefts committed out of the kingdom, and even in the Channel Islands are not indictable, though the stolen property is brought into England. The cases are clear on the question.

If a larceny be committed out of the kingdom, though within the crown's dominion, bringing the stolen money into this kingdom will not make it larceny here.—*R.* v. *Prowes*, 1 *Moo. C. C.* 349. And, if a larceny be committed in France, the party cannot be tried in England, though he brings the goods thereto.—*R.* v. *Madge*, 9 *C. & P.* 29.

The prisoner had stolen goods in Guernsey and brought them to England, where he was taken and committed for trial: *Held*, that Guernsey not being a part of the United Kingdom, the prisoner could not be convicted of larceny for having them in possession here, nor of receiving in England the goods so stolen in Guernsey.—*R.* v. *Debruiel*, 11 *Cox*, 207.

This sec. 88 of our *Larceny Act* is open to grave objections. Had Parliament the power to pass it? Is it not extra-territorial legislation? Of course, a conviction or an acquittal in the foreign country whence the goods have been brought would be no bar here to another prosecution. The rule that no man shall be put twice in jeopardy for the same offence "cannot span country and country in such a way as to cause a jeopardy in one country to free the party from trial in another."—1 *Bishop, Cr. L.* 983. See *Wheaton, International Law*, 184.

And *vice versâ*, a conviction or an acquittal in Canada would be no bar to a trial in the country where the offence was committed, upon the return thereto of the offender. So that a party from France, for instance, who has been tried and acquitted there may, on his arrival here with the property, be arrested, tried and convicted of larceny upon the same facts because, by the law of Canada, his act constitutes larceny, though, in France, it did not. So that, according to this interpretation of the clause, though this party committed no crime at the time, yet, the mere fact of his coming to Canada with the property will retroact on his act so as to make it a crime! And conversely, a Frenchman may be arrested, tried and convicted here for an act which, in France, was not a criminal offence; and, upon his return to France, put upon his trial and found never to have been guilty. The clause has no restriction. It

extends to foreigners as well as to British subjects, and it enacts virtually that an act done in a foreign country is a crime in Canada

Now in *R.* v. *Lewis, Dears. & B.* 182, under the clause of the Imperial Act corresponding to sec. 9 of our Procedure Act, it was held that this clause gives no jurisdiction to the English courts over offences committed by foreigners on foreign ships on the high seas. "How can we say," said Coleridge, J., "whether one foreigner wounding another on the high seas commits a felony? See, also, *R.* v. *Serva*, 1 *Den.* 104.

The law as to territorial limits of the jurisdiction of any country is well settled. The laws of no nation can extend beyond its territory, except as to its own subjects, and can have no force to control the rights of any other nation within its own jurisdiction. *The Apollon*, 9 *Wheat.* 370. "Now, no preposition of law can be more incontestable or more universally admitted, than that, according to the general law of nations, a foreigner cannot be held criminally responsible to the law of a nation not his own, for acts done beyond the limits of its territory." Per Cockburn, C. J.—*R.* v. *Keyn*, 13 *Cox*, 403.

This clause of our statute, it is true, does not in express terms profess to deal with crimes committed in foreign countries, but makes it a crime, in Canada, to bring into Canada property acquired by a crime in another country. *R.* v. *Hennessey*, *post*. But it requires obviously the trial by our courts of acts done abroad, even by foreigners, and, as previously remarked, authorizes our courts to stamp as a crime or declare it *to have been* a crime an act done in a foreign country and which at the time it was done may not have been a crime by the laws of that country. The contention that the bringing into

Canada of the property stolen is the offence to be tried here does not meet the objection. The first inquiry has to be whether the property was stolen or not, whether there was a crime or not in the foreign country.

The prisoner being the agent of the American Express Co. in the State of Illinois, received a sum of money which had been collected by them for a customer, and put it into their safe, but made no entry in their books of its receipt, as it was his duty to do, and afterwards absconded with it to this Province, where he was arrested: *Held*, that, according to Canadian and English law, he was guilty of larceny and was properly convicted here under the above section.—*R.* v. *Hennessey*, 35 *U. C. Q. B.* 603.

In this case, it must be noticed, the prisoner was not found guilty of bringing into Canada stolen property in the words of the act, but he was found guilty of larceny. The act does say that the bringing such a property into Canada is an offence of *the same nature* as if the stealing had taken place in Canada, But does that mean that he is guilty of the *same* offence? Does it not merely mean that the nature of the offence of bringing such property into Canada will be either felony or misdemeanor, according to what the act done in the foreign country would itself have been if done in Canada?

No objection appears to have been made to the judge's charge in that case, and this objection to the verdict was not taken or noticed.

The whole case itself does not seem to have been fully argued, and perhaps would bear reconsideration. It certainly does appear by the case as reported that Hennessey was, in Canada, found guilty of a larceny committed in the United States

22. If any person has in his possession in any one part of Canada,

any chattel, money, valuable security or other property whatsoever, which he has stolen or otherwise feloniously *or unlawfully taken or obtained by any offence against* "*The Larceny Act*," in any other part of Canada, he may be dealt with, indicted, tried and punished for larceny or theft in that part of Canada where he so has such property, in the same manner as if he had actually stolen, or taken *or obtained it* in that part; and if any person in any one part of Canada receives or has any chattel, money, valuable security or other property whatsoever, which has been stolen or otherwise feloniously or *unlawfully* taken *or obtained* in any other part of Canada, such person knowing such property to have been stolen or otherwise feloniously or *unlawfully* taken *or obtained*, may be dealt with, indicted, tried and punished for such offence in that part of Canada where he so receives or has such property, in the same manner as if it had been originally stolen or taken *or obtained* in that part.—32-33 *V., c.* 21, *s.* 121. 24-25 *V., c.* 96, *s.* 114, *Imp.*

The words in *italics* are not in the English act.

A watch was stolen in Liverpool and sent with other things by railway to a receiver in Middlesex. *Held*, that the thief was triable in Middlesex, although there was no evidence that he had left Liverpool.—*R.* v. *Rogers*, 11 *Cox*, 38.

23. If any person tenders, utters, or puts off any false or counterfeit coin in any one Province of Canada, or in any one district, county or jurisdiction, therein, and also tenders, utters or puts off any other false or counterfeit coin, in any other Province, district, county or jurisdiction, either on the day of such first mentioned tendering, uttering or putting off, or within the space of ten days next ensuing, or if two or more persons, acting in concert in different Provinces, or in different districts, counties or jurisdictions therein, commit any offence against the "*Act respecting Offences relating to the Coin*," every such offender may be dealt with, indicted, tried and punished, and the offence laid and charged to have been committed, in any one of the said provinces, or districts, counties or jurisdictions, in the same manner in all respects, as if the offence had been actually and wholly committed within one province, district, county or jurisdiction. —32-33 *V., c.* 18, *s.* 29. 24-25 *V., c.* 99, *ss.* 10 *and* 28, *Imp.*

Greaves says on this clause: "The first part is intro-

duced to remove a doubt which had arisen, whether a person tendering, etc., coin in one jurisdiction and afterwards tendering, etc., coin in another jurisdiction, within sect. 10 (of the Imperial Coin Act,) could be tried in either. As the offence created by that section is only a misdemeanor, probably there was no substantial ground for that doubt, but it was thought better to set the matter at rest."

APPREHENSION OF OFFENDERS.

24. Any person found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended without a warrant by any constable or peace officer, or by the owner of the property on or with respect to which the offence is being committed, or by his servant or any other person authorized by such owner, and shall be forthwith taken before some neighboring justice of the peace, to be dealt with according to law.—32-33 *V.*, *c.* 22, *s.* 69, *and c.* 29, *s.* 2. 24-25 *V.*, *c.* 97, *s.* 61, *Imp.*

25. Any person found committing any offence punishable either upon indictment or upon summary conviction, by virtue of "*The Larceny Act*" or the "*Act respecting the protection of the Property of Seamen in the Navy*," may be immediately apprehended without a warrant by any person, and forthwith taken, together with the property, if any, on or with respect to which the offence is committed, before some neighboring justice of the peace to be dealt with according to law.—32-33 *V.*, c. 21, *s.* 117, *part.* 33 *V.*, *c.* 31, *s.* 5, *part.* 24-25 *V.*, *c.* 96, *s.* 103, *Imp.*

26. If any person to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed on or with respect to such property, he may, and, if in his power, he shall apprehend and forthwith carry before a justice of the peace, the person offering the same, together with such property, to be dealt with according to law.—32-33 *V.*, *c.* 21, *s.* 117, *part, and c.* 29, *s.* 3. 33 *V.*, *c.* 31, *s.* 5, *part.* 24-25 *V.*, *c.* 96, *s.* 103, *Imp.*

27. Any person may apprehend any other person found committing any indictable offence in the night, and shall convey or deliver him to some constable or other person, so that he may be taken, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.—32-33 *V.*, *c.* 29, *s.* 4. 14-15 *V.*, *c.* 19, *s.* 11, *Imp.*

28. Any constable or peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard or other place, during the night, and whom he has good cause to suspect of having committed, or being about to commit, any felony, and may detain such person until he can be brought before a justice of the peace, to be dealt with according to law:

2. No person who has been so apprehended shall be detained after noon of the following day without being brought before a justice of the peace.—32-33 *V.*, *c.* 29, *ss.* 5 *and* 6. 24-25 *V.*, *c.* 96, *s.* 104, *c.* 97, *s.* 57, *c.* 100, *s.* 66, *Imp.*

29. Any person may apprehend any other person who is found committing any indictable offence, against the "*Act respecting Offences relating to the Coin*," and convey and deliver him to a peace officer, constable or officer of police, so that he may be conveyed, as soon as reasonably may be, before a justice of the peace, to be dealt with according to law.—32-33 *V.*, *c.* 18, *s.* 33. 24-25 *V.*, *c.* 96, *s.* 31. *Imp.*

Prisoner arrested and detained upon a telegram from persons in France and England. *Konigs, in re*, 6 *R. L.* 213. See *R.* v. *McHolme*, 8 *P. R.* (*Ont.*) 452.

At common law, if a constable or peace officer sees any person committing a felony, he not only *may*, but he *must* and is *bound* to apprehend the offender. And not only a constable or peace officer, but "*all persons* who are present when a felony is committed, or a dangerous wound given, are *bound* to apprehend the offender, on pain of being fined and imprisoned for their neglect, unless they were under age at the time; (2 *Hawkins*, 115); and it is *the duty* of *all* persons to arrest without warrant any person *attempting* to commit a felony; (*R.* v. *Hunt*, 1 *Moo. C. C.* 93; R. v. *Howarth*, 1 *Moo. C. C.* 207). So any person may arrest another for the purpose of putting a stop to a breach of the peace, committed in his presence (2 *Hawkins, P. C.* 115; 1 *Burn*, 295, 299.) A peace

officer may arrest any person without warrant, on a reasonable *suspicion of felony*, though that doctrine does not extend to misdemeanors. And even a private person has that right. But there is a distinction between a private person and a constable as to the power to arrest any one upon suspicion of having committed a felony, which is thus stated by Lord Tenterden, C. J., in *Beckwith* v. *Philby*, 6 *B. & C.* 35:

"In order to justify a private person in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has been actually committed; See *Ashley* v. *Dundas*, 5 *O. S. (Ont).* 749; whereas a constable, having reasonable grounds to suspect that a felony has been committed, is authorized to detain the party suspected until inquiry can be made by the proper authorities. See *McKenzie* v. *Gibson*, 8 *U. C. Q. B.* 100. This distinction is perfectly settled. The rule as to private persons was so stated by Genney, in the Year Book, 9 Edw. 4, already mentioned, and has been fully settled ever since the case of *Ledwith* v. *Catchpole (Cald.* 291, *A. D.* 1783); *Greaves*, on arrest without warrant." See *Murphy* v. *Eills*, 2 *Han. (N. B.)* 347.

Any private person may also arrest a person found committing a misdemeanor. This doctrine having been denied, in England, by a correspondent of the *Times*, Mr. Greaves, Q. C., the learned framer of the English Criminal Law Consolidation Acts, published, on the question, an article, *(Appendix to Greaves' Crim. Acts)* too long for insertion here, but from which the following extracts give fully the author's views on the question:—

"On these authorities it seems to be perfectly clear that any private person may lawfully apprehend any person whom he may catch in the attempt to commit any felony,

and take him before a justice to be dealt with according to law."

"I have now adduced abundantly sufficient authorities to prove that the general assertion in the paper (in the *Times*), that 'a private individual is not justified in arresting without a warrant a person found committing a misdemeanor, cannot be supported. On the contrary, those authorities very strongly tend to show that any private individual may arrest any person whom he catches committing any misdemeanor. It is quite true that I have been unable to find any express authority which goes to that extent; but it must be remembered that where the question turns on some common law rule, there never can have been any authority to lay down any general rule; each case must necessarily be a single instance of a particular class; and, as in larceny, notwithstanding the vast number of cases which have been decided, no complete definition of the offence has ever yet been given by any binding authority, so in the present case we must not be surprised if we find no general rule established."

"But when we find that all misdemeanors are of the same class; that it is impossible to distinguish in any satisfactory way between one and another, and that in the only case *(Fox* v. *Gaunt)* where such a distinction was attempted, the court at once repudiated it; and when, on the question whether a party indicted for a misdemeanor was entitled to be discharged on *habeas corpus*, Lord Tenterden, C. J., said, in delivering the judgment of the court, 'I do not know how for this purpose, to distinguish between one class of crimes and another. It has been urged that the same principle will warrant an arrest in the case of a common assault. That certainly will follow: *Ex parte Scott*, 9 *B. & C.* 446. And when, above all, the same broad prin-

ciple that it is for the common good that all offenders should be arrested, applies to every misdemeanor, and that principle has been the foundation of the decisions from the earliest times, and was the ground on which *Timothy* v. *Simpson* was decided; the only reasonable conclusion seems to be that the power to arrest applies to all misdemeanors alike, wherever the defendant is caught in the act."

It has been held that where a statute gives a power to arrest a person *found committing an offence*, he must be taken in the act, or in such continuous pursuit that from the finding until the apprehension, the circumstances constitute one transaction.—*Hanway* v. *Boultbee*, 4 *C. & P.* 350; *R.* v. *Curran*, 3 *C. & P.* 397; *R.* v. *Howart*, 1 *Moo. C. C.* 207; *Roberts* v. *Orchard*, 2 *H. & C.* 769; and therefore, if he was found in the next field with property in his possession suspected to be stolen out of the adjoining one, it is not sufficient; *R.* v. *Curran*, 3 *C. & P.* 397; but if seen committing the offence it is enough, if the apprehension is on quick pursuit. *Hanway* v. *Boultbee*, 4 *C. & P.* 350. The person must be immediately apprehended; therefore, probably, the next day would not be soon enough, though the lapse of time necessary to send for assistance would be allowable; *Morris* v. *Wise*, 2 *F. & F.* 51; but an interval of three hours between the commission of the offence and the discovery and commencement of pursuit is too long to justify an arrest without warrant under these statutes.—*Dowing* v. *Cassel*, 36 *L. J. M. C.* 97.

The person must be forthwith taken before a neighboring justice, and, therefore, it is not complying with the statute to take him to the prosecutor's house first, though only half a mile out of the way; *Morris* v. *Wise*, 2 *F. &*

F. 51; unless, indeed, it were in the night time, and then he might probably be kept in such a place until the morning.—*R.* v. *Hunt*, 1 *Moo. C. C.* 93.

But no person can, in general, be apprehended without warrant for a mere misdemeanor not attended with a breach of the peace, as perjury or libel; *King* v. *Poe*, 30 *J. P.* 178; and a private individual cannot arrest another, without warrant, on the ground of suspicion of his having been guilty of a misdemeanor; nor can, in this case, constables and peace officers.—*Matthews* v. *Biddulph*, 4 *Scott, N. R.* 54; *Fox* v. *Gaunt*, 3 *B. & A.* 798; *Griffin* v. *Coleman*, 4 *H. & N.* 265. Neither can any person, not even a constable, arrest a person without a warrant on a charge of misdemeanor; *R.* v. *Curvan*, 1 *Moo. C. C.* 132; *R.* v. *Phelps*, *C. & M.* 180; *R.* v. *Chapman*, 12 *Cox*, 4; *Codd* v. *Cabe*, 13 *Cox*, 202; except when such person is *found* committing the offence by the person making the arrest, in the cases, as, *ante*, where the statute specially authorizes him to do so. And though *any* person can make an arrest to prevent a breach of the peace, or put down a riot or an affray, yet, after the offence is over, even a constable cannot apprehend any person guilty of it, unless there is danger of its renewal.—*Price* v. *Seeley*, 10 *C. & F.* 28; *Baynes* v. *Brewster*, 2 *Q. B.* 375; *Derecourt* v. *Corbishley*, 5 *E. & E.* 188; *Timothy* v. *Simpson*, 1 *C. M. & R.* 757; *R.* v. *Walker*, *Dears.* 358. In *R.* v. *Light*, *Dears. & B.* 332, it appeared that the constable, while standing outside the defendant's house, saw him take up a shovel and hold it in a threatening attitude over his wife's head, and heard him at the same time say. "If it was not for the policeman outside I would split your head open;" that in about twenty minutes afterwards the defendant left his house, after saying that he would leave

his wife altogether, and was taken into custody by the constable, who had no warrant, when he had proceeded a short distance in the direction of his father's residence; the prisoner resisted and assaulted the constable, for which he was tried and found guilty, and, upon a case reserved, the judges held that the conviction was right, and that the constable had the right to apprehend the defendant. "A constable, as conservator of the peace," said Williams, J., "has authority, equally with all the rest of Her Majesty's subjects, to apprehend a man where there is reasonable ground to believe that a breach of the peace will be committed; and it is quite settled that where he has witnessed an assault he may apprehend as soon after as he conveniently can. He had a right to apprehend the prisoner and detain him until he was taken before justices, to be dealt with according to law. He had a right to take him, not only to prevent a further breach of the peace, but also that he might be dealt with according to law in respect of the assault which he had so recently seen him commit."

Arrest, without warrant, for contempt of court.—Judges of courts of record have power to commit to the custody of their officer, *sedente curiâ*, by oral command, without any warrant made at the time.—*Kemp* v. *Neville*, 10 *C. B. N. S.* 523. This proceeds upon the ground that there is in contemplation of law a record of such commitment, which record may be drawn up when necessary; *Watson* v. *Bodell*, 14 *M. & W.* 37; 1 *Burn*, 293; for the like reason no warrant is required for the execution of sentence of death.—2 *Hale*, 408. If a contempt be committed in the face of a court, as by rude and contumelious behavior, by obstinacy, perverseness, or prevarication, by breach of the peace or any wilful disturbance whatever, the judge may order the offender to

be instantly, without any warrant, apprehended and imprisoned, at his, the judge's, discretion, without any further proof or examination; 2 *Hawkins*, 221; *Cropper* v. *Horton*, 8 *D. & R.* 166; *R.* v. *James*, 1 *D. & R.* 559; 5 B. & A. 894; but the commitment must be for a time certain, and if by a justice of the peace, for a contempt of himself in his office, it must be by warrant in writing; *Mayhew* v. *Locke*, 2 *Marsh*, 377; 7 *Taun.* 63; and the jurisdiction with regard to contempt, which belongs to *inferior courts*, and in particular to the county court, is confined to contempts committed in the court itself.—*Ex parte Joliffe*, 42 *L. J. Q. B.* 121. This last case rests principally on the 9-10 V., c. 96 (Imp.), which gives to county courts power to commit for contempt committed in face of the court, but is silent as to contempt committed out of court; see 4 *Stephens' Com.* 341.—*R.* v. *Lefroy*, *L. R.* 8 *Q. B.* 134.

Time, place and manner of arrest.—A person charged on a criminal account may be apprehended at any time in the day or night. The 29 Car. 2, c. 7, sec. 6, prohibited arrests on Sundays, except in cases of treasons, felonies and breaches of the peace, but now, an arrest in any indictable offence may be executed on a Sunday. See 4 *Stephens' Com.* 347; 1 *Chitty*, 16; *Rawlins* v. *Ellis*, 10 *Jur.* 1039. No place affords protection to offenders against the criminal law, and they may be arrested any where, and wherever they may be.—*Bacon's Abr. Verb. Trespass.*

As to the manner of arresting without warrant by a private person, he is bound, previously to the arrest, to notify to the party the cause for which he arrests, and to require him to submit; but such notification is not necessary where the party is in the actual commission of the

offence, or where fresh pursuit is made after any such offender, who, being disturbed, makes his escape; so a constable arresting, without warrant, is bound to notify his authority for such arrest, unless the offender be otherwise acquainted with it, except, as in the case of private individuals, where the offender is arrested in the actual commission of the offence, or on fresh pursuit.—*R.* v. *Howarth*, 1 *Moo. C. C.* 207.

If a felony be committed, or a felon fly from justice, or a dangerous wound be given, it is the duty of every man to use his best endeavors for preventing an escape, and if, in the pursuit, the felon be killed *where he cannot be otherwise overtaken*, the homicide is justifiable. This rule is not confined to those who are present so as to have ocular proof of the fact, or to those who first come to the knowledge of it, for if in these cases fresh pursuit be made, the persons who join in aid of those who began the pursuit are under the same protection of the law. But if he may be taken in any case without such severity, it is, at least, manslaughter in him who kills, and the jury ought to enquire whether it were done of necessity or not; 1 *East, P. C.* 298; but this is not extended to cases of misdemeanor or arrests in civil proceedings, though in a case of riot or affray, if a person interposing to part the combatants, giving notice to them of his friendly intention, should be assaulted by them or either of them and in the struggle should happen to kill, this will be justifiable homicide. —*Fost.* 272. However, supposing a felony to have been actually committed, but not by the person suspected and pursued, the law does not afford the same indemnity to such as of their own accord, or upon mistaken information that a felony had been committed, engage in the pursuit, how probable soever the suspicion may be; but constables

acting on reasonable suspicion of felony are justified in proceeding to such extremities when a private person may not be; but the constable must know, or at least have reasonable ground for suspecting, that a felony has been committed; for a constable was convicted of shooting at a man, with intent to do him some grievous bodily harm, whom he saw carrying wood out of a copse which he had been employed to watch, and who, by running away, would have escaped if he had not fired, for unless the man had been previously summarily convicted for the same offence he had not committed a felony, and, though he had been so previously convicted, the constable was not aware of it. And the conviction was affirmed by the court of crown cases reserved. "We all think the conviction right," said Pollock, C. B., "the prisoner was not justified in firing at Waters, because the fact that Waters was committing a felony was not known to the prisoner at the time."—*R.* v. *Dadson*, 2 *Den.* 35.

What is an "immediate arrest" under secs. 24 and 25 is a question for the jury.—*Griffith* v. *Taylor*, 2 *C. P. D.* 194.

On the clause corresponding to sec. 26, *ante*, Greaves says:

"As to what constitutes a reasonable cause, in such cases, depends very much on the particular facts and circumstances in each instance; the general rule being that the grounds must be such that any reasonable person, acting without passion or prejudice, would fairly have suspected the party arrested of being the person who committed the offence, though the words of the statute seem to authorize the apprehension of the person offering, whether *he* be suspected or not.—*Allen* v. *Wright*, 8 *C. & P.* 522. A bare

surmise or suspicion is plainly insufficient. *Leete* v. *Hart*, 37 *L. J. C. P.* 157; *Davis* v. *Russell*, 5 *Bing.* 354."

If the conduct of the person arresting is impugned in an action of false imprisonment, a question arises as to whom does it belong to decide whether the defendant had reasonable cause of suspecting the plaintiff. The authorities conflict upon the point. In *Davis* v. *Russell*, 5 *Bing.* 354, and in *Stonehouse* v. *Elliott*, 6 *T. R.* 315, the Court of Common Pleas held it to be the judge's province to decide whether the facts alleged constituted such reasonable cause, and for the jury to say whether the facts stated really existed, and the defendant acted upon their existence. But in *Wedge* v. *Berkley*, 6 *A. & E.* 663, the court of Queen's Bench considered the question of reasonable and probable cause, a question purely for the jury. In the later case, however, of *Broughton* v. *Jackson*, 18 *Q. B.* 378, it was treated as a question of law; and in the case of *Hailes* v. *Marks*, 7 *H. & N.* 56; see also *Hogg* v. *Ward*, 3 *H. & N.* 417; the court of exchequer held the question of reasonable cause to be purely one of law for the judge. It is to be observed, however, that *Bramwell*, B., grounds his decision upon the case of *Panton* v. *Williams*, 2 *Q. B.* 169, without adverting to the fact that that was an action for malicious prosecution. It is submitted, however, that there is a clear distinction between the two cases, for whilst only judges or lawyers are competent to form an opinion upon what facts an action or an indictment would lie, and are thus the only persons competent to decide whether there was reasonable cause for instituting a prosecution, yet laymen are quite as competent as lawyers to say what affords a reasonable ground of suspicion against a particular person of having committed a crime. And thus it may well seem that in the one form of action the judge may direct the jury as to the reasonableness of the cause for a prosecution, leaving the jury to ascertain the truth of the facts alleged; and in the other the jury may have the question of reasonable cause of suspicion entirely left to them. The varying circumstances of each case make it impossible to lay down any standard or fixed rule as to what is a reasonable ground of suspicion.—*Hogg* v. *Ward, ubi sup*; *Broughton* v. *Jackson, ubi sup.*

In *Lister* v. *Perryman, L. R.* 4, *H. L.* 521, it was held that it is a rule of law that the jury must find the facts on which the question of reasonable and probable cause depends, but that the judge must then determine whether the facts found do constitute reasonable and probable cause, and that no definite rule can be laid down for the exercise of the judge's judgment. In an action for a malicious prosecution, although the question of reasonable and probable cause is an inference to be drawn by the judge from facts undisputed or found, yet the test is, not what impression the circumstances would make on the mind of a lawyer, but whether the circumstances warranted a discreet man in instituting and following up the proceedings. *Kelly* v. *Midland Great Western Railway of Ireland Company*, 7 *Ir. R., C. L.* 8.

As framed, this clause is open to this absurdity, that if any person offers to sell any property which is reasonably suspected to have been obtained by any offence, to another person, such person not only may, but is required to apprehend the person offering the property; but if a person has any quantity of property which is suspected to have been stolen, etc., in his possession, but does not offer it to any one, he cannot be apprehended under this clause; so that the right to apprehend under it depends on whether or not the offender offers the property to any person. It

is true that, by the common law, any peace officer may lawfully apprehend a person in such a case, if there be reasonable suspicion of a felony having been committed, but a private person must not only have reasonable suspicion of a felony having been committed, but must also be able to prove that one has actually been committed, in order to justify him in apprehending any person in such a case; *Beckwith* v. *Philby*, 6 *B. & C.* 35; and if the case were only a misdemeanor, no person is authorized by the common law to apprehend after the misdemeanor has been committed unless with a warrant. *Fox* v. *Gaunt*, 3 *B. & A.* 798. The consequence is that, for instance, any one who has obtained a drove of oxen by false pretences, may go quietly on his way, and no one not even a peace officer, can apprehend him without a warrant; but if a man offer a partridge, supposed to have been killed in the close season, he not only may but is required to be apprehended by that person, and, if the words of the clause are strictly interpreted, whether the person so offering the article is himself even suspected of guilt. See *Greaves' Cons. Acts*, 188.

On clause 27 Greaves says:

"As the law existed before this statute passed, there were sundry cases, in which persons committing indictable offences by night could only lawfully be apprehended by certain specified individuals, amongst whom peace officers and constables were sometimes omitted. The consequence was, as might naturally be expected, that resistance was frequently made by offenders, and grievous, if not mortal injuries inflicted upon persons endeavoring to apprehend such offenders; indeed many melancholy instances have occurred where death has been occasioned in nightly fray, and the party causing such death, though found committing an offence, for which he might have been lawfully apprehended by some one, has escaped the punishment he deserved for killing a person, who honestly believed he had not only a right, but was in duty bound to apprehend him, because it turned out, upon investigation on the trial, that such person was not lawfully entitled so to apprehend, through some cause or other, of which the party killing had no knowledge at the time. This clause, with a view to remedying all such cases, authorizes any person, be he who he may, to apprehend any person found committing any felony or indictable misdemeanor in the night; and it is conceived that it will prove highly beneficial, as nothing can more strongly tend to the repression of offences than the certain knowledge that, if the party is found committing them by any one, such person may at once apprehend him."

What is *night* under this clause? The Larceny Act defines it, but only for the purposes of that act. Night, therefore, in this section, is not defined at all, and the time in which it begins and ends, in each case with reference to this section, is regulated by the common law.

At common law, night is the time between sunset and sunrise. *Wharton, Law Lexicon, Verb. Night;* 3 *Chitty*, 1104.

Under sec. 29 of our statute, Greaves remarks: "this clause is new, and clearly unnecessary, as far as it relates to any felony or indictable misdemeanor, for there is no doubt whatever that any person in the act of committing any such offence is liable by the common law to be apprehended by any person, but it was introduced at the instigation of the solicitors of the Treasury, as it has been found that there was great unwillingness to apprehend in such cases, in consequence of doubts that prevailed among the public as to the right to do so."

ENFORCING APPEARANCE OF ACCUSED.

30. Whenever a charge or complaint (A) is made before any justice of the peace for any territorial division in Canada, that any person has committed, or is suspected to have committed any treason or felony, or any indictable misdemeanor or offence within the limits of the jurisdiction of such justice, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice, is or resides or is suspected to be or reside within the limits of the jurisdiction of such justice, then, and in every such case, if the person so charged or complained against is not in custody, such justice may issue his warrant (B) to apprehend such person, and to cause him to be brought before him or any other justice for the same territorial division.—32-33 *V.*, *c.* 30, *s.* 1.

31. The justice to whom the charge or complaint is preferred instead of issuing, in the first instance, his warrant to apprehend the person charged or complained against, may, if he thinks fit, issue his summons (C) directed to such person, requiring him to appear before him at the time and place therein mentioned, or before such other justice of the same territorial division as shall then be there, and if after being served with the summons in manner hereinafter mentioned, he fails to appear at such time and place, in obedience to such summons, the justice or any other justice for the same territorial division may issue his warrant (D) to apprehend the person so charged or complained against, and cause such person to be brought before him, or before some other justice for the same territorial division, to answer to the charge or complaint, and to be further dealt with according to law; but any justice may, if he sees fit, issue the warrant hereinbefore first mentioned, at any time before or after the time mentioned in the summons for the appearance of the accused person —32-33 *V.*, *c.* 30, *s.* 2.

32. Whenever any indictable offence is committed on the high seas, or in any creek, harbor, haven or other place, in which the Admiralty of England have or claim to have jurisdiction, and whenever any offence is committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in Canada, any justice for any territorial division in which any person charged with having committed, or suspected of having committed any such offence, is or is suspected to be, may issue his warrant (D 2) to apprehend such person, to be dealt with as therein and hereby directed.—32-33 *V.*, *c.* 30, *s.* 3.

33. If an indictment is found by the grand jury in any court of criminal jurisdiction, against any person then at large, and whether such person has been bound by any recognizance to appear to answer to any such charge or not, and if such person has not appeared and pleaded to the indictment, the person who acts as clerk of the Crown or chief clerk of such court shall, at any time, at the end of the term or sittings of the court at which the indictment has been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of twenty cents, grant to such prosecutor or person a certificate (E) of such indictment having been found; and upon production of such certificate to any justice for the territorial division in which the offence is alleged in the indictment to have been committed, or in which the person indicted resides, or is supposed or suspected to reside or to be, such justice shall issue his warrant (F) to apprehend the person so indicted, and to cause him to be brought before him or any other justice for the same territorial division, to be dealt with according to law.—32-33 *V.*, *c.* 3 ½, *s.* 4.

34. If the person is thereupon apprehended and brought before any such justice, such justice, upon its being proved upon oath or affirmation before him that the person so apprehended is the person charged and named in the indictment, shall, without further inquiry or examination, commit (G) him for trial or admit him to bail as hereinafter mentioned.—32-33 *V.*, *c.* 30, *s.* 5.

35. If the person so indicted is confined in any gaol or prison for any other offence than that charged in the indictment at the time of such application and production of such certificate to the justice, such justice, upon its being proved before him, upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, shall issue his warrant (H) directed to the gaoler or keeper of the gaol or prison in which the person so indicted is then confined, commanding him to detain such person in his custody until he is removed therefrom by writ of *habeas corpus*, or by order of the proper court, for the purpose of being tried upon the said indictment, or until he is otherwise removed or discharged out of his custody by due course of law.—32-33 *V.*, *c.* 30, *s.* 6.

36. Nothing hereinbefore contained shall prevent the issuing or execution of bench warrants, whenever any court of competent jurisdiction thinks proper to order the issuing of any such warrant.—32-33 *V.*, *c.* 30, *s.* 7.

37. Any justice may grant or issue any warrant as aforesaid, or any search warrant, on a Sunday or other statutory holiday, as well as on any other day —32-33 *V.*, *c.* 30, *s.* 8.

38. Whenever a charge or complaint for any indictable offence is made before any justice, if it is intended to issue a warrant in the first instance against the person charged, an information and complaint thereof (A) in writing, on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such justice.—32-33 *V.*, *c.* 30, *s.* 9.

39. When it is intended to issue a summons instead of a warrant in the first instance, the information and complaint shall also be in writing, and be sworn to or affirmed in manner aforesaid, except whenever, by some act or law, it is specially provided that the information and complaint may be by parol merely, and without any oath or affirmation to support or substantiate the same.—32-33 *V.*, *c.* 30, *s.* 10.

40. The justice receiving any information and complaint as aforesaid, if he thinks fit, may issue his summons or warrant as hereinbefore directed, to cause the person charged to be and appear as thereby directed; and every summons (C) shall be directed to the person so charged by the information and shall state shortly the matter of such information, and shall require the person to whom it is directed to be and appear at a certain time and place therein mentioned, before the justice who issues the summons, or before such other justice for the same territorial division as shall then be there, to answer to the charge and to be further dealt with according to law. —32-33 *V.*, *c.* 30 *s.* 13.

41. Every such summons shall be served by a constable or other peace officer, upon the person to whom it is directed, by delivering the same to such person, or if he cannot conveniently be so served, then by leaving the same for him with some person at his last or usual place of abode.—32-33 *V.*, *c.* 30, *s.* 14.

42. The constable or other peace officer who serves the same, shall attend at the time and place, and before the justice in the summons mentioned, to depose, if necessary, to the service of the summons.—32-32 *V.*, *c.* 30, *s.* 15.

43. If the person served does not appear before the justice at the time and place mentioned in the summons, in obedience to the same, the justice may issue his warrant (D) for apprehending the person so summoned, and bringing him before such justice, or before some other justice for the same territorial division, to answer the charge in the information and complaint mentioned, and to be further dealt with according to law.—32-33 *V.*, *c.* 30, *s.* 16.

44. Every warrant (B) issued by any justice to apprehend any person charged with any indictable offence shall be under the hand and seal of the justice issuing the same, and may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed, or to any such constable and all other constables or peace officers in the territorial division within which the justice issuing the same has jurisdiction, or generally to all the constables or peace officers within such last mentioned territorial division; and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender; and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice issuing the warrant, or before some other justice for the same territorial division, to answer the charge contained in the information and to be further dealt with according to law.—32-33 *V.*, *c.* 30, *s.* 17.

45. If, in any warrant or other instrument or document issued in any Province of Canada, at any time, by any justice, it is stated that the same is given under the hand and seal of any justice signing it, such seal shall be presumed to have been affixed by him, and its absence shall not invalidate the instrument, or such justice may, any time thereafter, affix such seal, with the same effect as if it had been affixed when such instrument was signed.—32-33 *V.*, *c.* 36, *s.* 4, *part.*

46. It shall not be necessary to make the warrant returnable at any particular time, but the same shall remain in force until executed.—32-33 *V.*, *c.* 30, *s.* 18.

47. Such warrant may be executed by apprehending the offender at any place in the territorial division within which the justice issuing the same has jurisdiction, or in case of fresh pursuit, at any place in the next adjoining territorial division, and within seven miles of the border of the first mentioned territorial division without having the warrant backed as hereinafter mentioned.—32-33 *V.*, *c.* 30, *s.* 19.

48. If any warrant is directed to all constables or other peace officers in the territorial division within which the justice has jurisdiction, any constable or other peace officer for any place within such territorial division may execute the warrant at any place within the jurisdiction for which the justice acted when he granted such warrant, in like manner as if the warrant had been directed specially to such constable by name, and notwithstanding the place within which such warrant is executed is not within the place for which he is constable or peace officer.—32-33 *V.*, *c.* 30, *s.* 20.

49. If the person against whom any warrant has been issued cannot be found within the jurisdiction of the justice by whom the same was issued, or if he escapes into, or is supposed or is suspected to be, in any place within Canada, out of the jurisdiction of the justice issuing the warrant, any justice within the jurisdiction of whom the person so escapes, or in which he is or is suspected to be, upon proof alone being made on oath or affirmation of the handwriting of the justice who issued the same, without any security being given, shall make an indorsement (I) on the warrant, signed with his name, authorizing the execution of the warrant within the jurisdiction of the justice making the indorsement; and such indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the territorial division where the warrant has been so indorsed, to execute the same in such other territorial division, and to carry the person against whom the warrant issued, when apprehended, before the justice who first issued the warrant, or before some other justice for the same territorial division, or before some justice of the territorial division in which the offence mentioned in the warrant appears therein to have been committed.—32-33 *V.*, *c.* 30, *s.* 23.

50. If the prosecutor or any of the witnesses for the prosecution are then in the territorial division where such person has been apprehended, the constable or other person or persons who have apprehended him may, if so directed by the justice backing the warrant, take him before the justice who backed the warrant, or before some other justice for the same territorial division or place; and the said justice may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect in the manner hereinafter directed, with respect to persons charged before a justice with an offence alleged to have been committed in another territorial division than that in which such persons have been apprehended.—32-33 *V.*, *c.* 30, *s.* 24.

SEARCH WARRANTS AND SEARCHES.

See an article on search warrants in the Appendix to Greaves' Cons. Acts.

51. If a credible witness proves, upon oath (K) before a justice, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any larceny or felony has been committed, is in any dwelling-house, out-house, garden, yard, croft or other

place or places, the justice may grant a warrant (K 2), to search such dwelling-house, garden, yard, croft or other place or places for such property, and if the same, or any part thereof, is then found, to bring the same and the person or persons in whose possession such house or other place then is, before the justice granting the warrant, or some other justice for the same territorial division.—32-33 *V.*, *c.* 30, *s.* 12.

52. If any credible witness proves, upon oath before any justice, a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any offence, punishable either upon indictment or upon summary conviction, by virtue of "*The Larceny Act*," or the "*Act respecting the protection of the Property of Seamen in the Navy*," has been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods.—32-33 *V.*, *c.* 21, *s.* 117, *part.* 33 *V.*, *c.* 31, *s.* 5, *part.*

53. On complaint in writing made to any justice of the county, district or place, by any person interested in any mining claim, that mined gold or gold-bearing quartz, or mined or unmanufactured silver or silver ore, is unlawfully deposited in any place, or held by any person contrary to law, a general search warrant may be issued by such justice, as in the case of stolen goods, including any number of places or persons named in such complaint, and if, upon such search any such gold or gold-bearing quartz, or silver or silver ore is found to be unlawfully deposited or held, the justice shall make such order for the restoration thereof to the lawful owner as he considers right:

2. The decision of such justice shall be subject to appeal, as in ordinary cases on summary conviction; but before such appeal shall be allowed, the appellant shall enter into a recognizance in the manner provided by law in cases of appeal from summary convictions, to the value of the gold or other property in question, that he will prosecute his appeal at the next sittings of any court having jurisdiction in that behalf, and will pay the costs of the appeal in case of a decision against him, and, if the defendant appeals, that he will pay such fine, as the court may impose, with costs.—32-33 *V.*, *c.* 21, *ss.* 33 *and* 34.

54. If any constable or peace officer has reasonable cause to suspect that any timber, mast, spar, saw-log or other description of lumber, belonging to any lumberman or owner of lumber, and bearing the registered trade mark of such lumberman or owner of lumber, is kept or detained in any saw-mill, mill-yard, boom or raft, without the knowledge or consent of the owner, such constable or peace officer may

enter into or upon the same, and search or examine, for the purpose of ascertaining whether such timber, mast, spar, saw-log or other description of lumber is detained therein without such knowledge and consent.—38 *V.*, *c.* 40, *s.* 1, *part*.

55. If it is made to appear, by information on oath or affirmation before a justice, that there is reasonable cause to believe that any person has in his custody or possession, without lawful authority or excuse, any Dominion or Provincial note, or any note or bill of any bank or body corporate, company or person carrying on the business of bankers, or any frame, mould, or implement for making paper in imitation of the paper used for such notes or bills, or any such paper, or any plate, wood, stone or other material, having thereon any words forms, devices or characters capable of producing or intended to produce the impression of any such note or bill or any part thereof, or any tool, implement or material used or employed, or intended to be used or employed, in or about any of the operations aforesaid, or any forged security, document or instrument whatsoever, or any machinery, frame, mould, plate, die, seal, paper or other matter or thing used or employed, or intended to be used or employed, in the forgery of any security, document or instrument whatsoever, such justice may, if he thinks fit, grant a warrant to search for the same; and if the same is found upon such search, it shall be lawful to seize and carry the same before some justice of the district, county or place, to be by him disposed of according to law; and all such matters and things so seized as aforesaid shall, by order of the court by which any such offender is tried, or if there is no such trial, then by order of some justice of the peace, be defaced and destroyed, or otherwise disposed of as such court or justice directs.—32-33 *V.*, *c.* 19, *s.* 53.

56. If any person finds or discovers, in any place whatsoever, or in the custody or possession of any person having the same without lawful authority or excuse, any false or counterfeit coin resembling or apparently intended to resemble or pass for any current gold, silver or copper coin, or any coin of any foreign prince, state or country, or any instrument, tool or engine whatsoever, adapted and intended for the counterfeiting of any such coin, or any filings or clippings, or any gold or silver bullion, or any gold or silver, in dust, solution or otherwise, which has been produced or obtained by diminishing or lightening any current gold or silver coin, the person so finding or discovering shall seize and carry the same forthwith before a justice:

2. If it is proved, on the oath of a credible witness, before any justice, that there is reasonable cause to suspect that any person has been concerned in counterfeiting current gold, silver or copper coin, or any foreign or other coin mentioned in the "*Act respecting Offences relating to the Coin*," or has in his custody or possession any such false or counterfeit coin, or any instrument, tool or engine whatsoever, adapted and intended for the making or counterfeiting of any such coin, or any other machine used or intended to be used for making or counterfeiting any such coin, or any such filings, clippings or bullion, or any such gold or silver, in dust, solution or otherwise, as aforesaid, any justice may, by warrant under his hand, cause any place whatsoever belonging to or in the occupation or under the control of such suspected person to be searched, either in the day or in the night, and if any such false or counterfeit coin, or any such instrument, tool or engine, or any such machine, or any such filings, clippings or bullion, or any such gold or silver, in dust, solution or otherwise, as aforesaid, is found in any place so searched, to cause the same to be seized and carried forthwith before a justice:

3. Whenever any such false or counterfeit coin, or any such instrument, tool or engine, or any such machine, or any such filings, clippings or bullion, or any such gold or silver, in dust, solution or otherwise, as aforesaid, is in any case seized and carried before a justice, he shall, if necessary, cause the same to be secured, for the purpose of being produced in evidence against any person prosecuted for an offence against such act; and all such false and counterfeit coin, and all instruments, tools and engines adapted and intended for the making or counterfeiting of coin, and all such machines, and all such filings, clippings and bullion, and all such gold and silver, in dust, solution or otherwise, as aforesaid, after they have been produced in evidence, or when they have been seized and are not required to be produced in evidence, shall forthwith be defaced, by the order of the court, or otherwise disposed of as the court directs.—32-33 *V.*, *c.* 18, *s.* 27.

PROCEEDINGS ON APPEARANCE.

57. The room or building in which the justice takes the examination and statement shall not be deemed an open court; and the justice, in his discretion, may order that no person shall have access to or be or remain in such room or building without his consent or permission, if it appears to him that the ends of justice will be best answered by so doing.—32-33 *V.*, *c.* 30, *s.* 35.

58. No objection shall be taken or allowed to any information, complaint, summons or warrant, for any defect therein in substance

or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the justice who takes the examination of the witnesses in that behalf.—32-33 *V.*, *c.* 30, *ss.* 11 *and* 21.

59. If it appears to the justice that the person charged has been deceived or misled by any such variance in any summons or warrant, such justice, at the request of the person charged, may adjourn the hearing of the case to some future day, and in the meantime may remand such person, or admit him to bail, as hereinafter mentioned. —32-33 *V.*, *c.* 30, *s.* 22.

60. If it is made to appear to any justice, by the oath or affirmation of any credible person, that any person within Canada is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice shall issue his summons (L) to such person, requiring him to be and appear before him at a time and place therein mentioned, or before such other justice for the same territorial division as shall then be there, to testify what he knows concerning the charge made against the accused person.—32-33 *V.*, *c.* 30, *s.* 25.

61. If any person so summoned neglects or refuses to appear at the time and place appointed by the summons, and no just excuse is offered for such neglect or refusal (after proof upon oath or affirmation of the summons having been served upon such person, personally or by being left with some person for him at his last or usual place of abode), the justice before whom such person should have appeared may issue a warrant (L 2) to bring such person, at a time and place therein mentioned, before the justice who issued the summons, or before such other justice for the same territorial division as shall then be there, to testify as aforesaid, and, if necessary, the said warrant may be backed as hereinbefore mentioned, so that it may be executed out of the jurisdiction of the justice who issued the same.—32-33 *V.*, *c.* 30, *s.* 26.

62. If the justice is satisfied, by evidence upon oath or affirmation, that it is probable the person will not attend to give evidence unless compelled so to do, then, instead of issuing such summons, the justice may issue his warrant (L 3) in the first instance, and the warrant, if necessary, may be backed as aforesaid.—32-33 *V.*, *c.* 30, *s.* 27.

63. If, on the appearance of the person so summoned, either in obedience to the summons or by virtue of the warrant, he refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or having taken such oath or affirmation, refuses to answer the questions then put to him concerning the premises, without giving any just excuse for such refusal, any justice then present and there having jurisdiction may, by warrant (L 4) commit the person so refusing to the common gaol or other place of confinement, for the territorial division where the person so refusing then is, there to remain and be imprisoned for any term not exceeding ten days, unless he in the meantime consents to be examined and to answer concerning the premises.—32-33 *V.*, *c.* 30, *s.* 28.

64. If, from the absence of witnesses or from any other reasonable cause, it becomes necessary or advisable to defer the examination or further examination of the witnesses for any time, the justice before whom the accused appears or has been brought may, by his warrant (M,) from time to time, remand the person accused to the common gaol in the territorial division for which such justice is then acting, for such time as he deems reasonable, not exceeding eight clear days at any one time.—32-33 *V.*, *c.* 30, *s.* 41.

65. If the remand is for a time not exceeding three clear days, the justice may verbally order the constable or other person in whose custody the accused person then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody, and to bring him before the same or such other justice as shall be there acting, at the time appointed for continuing the examination.—32-33 *V.*, *c.* 30, *s.* 42.

66. Any such justice may order the accused person to be brought before him, or before any other justice for the same territorial division at any time before the expiration of the time for which such person has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order.—32-33 *V.*, *c.* 30, *s.* 43.

67. Instead of detaining the accused person in custody during the period for which he has been so remanded, any one justice, before whom such person has appeared or been brought, may discharge him, upon his entering into a recognizance (M 2, 3), with or without sureties, in the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination. —32-33 *V.*, *c.* 30, *s.* 44.

68. If the accused person does not afterwards appear at the time

and place mentioned in the recognizance, the said justice, or any other justice who is then and there present, having certified (M 4) upon the back of the recognizance the non-appearance of such accused person, may transmit the recognizance to the clerk of the court where the accused person is to be tried, or other proper officer appointed by law, to be proceeded upon in like manner as other recognizances; and such certificate shall be *primâ facie* evidence of the non-appearance of the accused person.—32-33 *V.*, *c.* 30, *s.* 45.

69. Whenever any person appears or is brought before any justice charged with any indictable offence, whether committed in Canada, or upon the high seas, or on land beyond the sea, and whether such person appears voluntarily upon summons or has been apprehended, with or without warrant, or is in custody for the same or any other offence, such justice, before he commits such accused person to prison for trial or before he admits him to bail, shall, in the presence of the accused person (who shall be at liberty to put questions to any witness produced against him), take the statements (N) on oath or affirmation of those who know the facts and circumstances of the case, and shall reduce the same to writing; and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall be signed also by the justice taking the same; and the justice shall, before any witness is examined, administer to such witness the usual oath or affirmation.—32-33 *V.*, *c.* 30, *ss.* 29 *and* 30, *part.*

70. After the examinations of all the witnesses for the prosecution have been completed, the justice or one of the justices, by or before whom the examinations have been completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do "you wish to say anything in answer to the charge? You are not "you wish to say anything in answer to the charge? You are not "obliged to say anything unless you desire to do so, but whatever you "say will be taken down in writing, and may be given in evidence "against you at your trial;" and whatever the prisoner then says in answer thereto shall be taken down in writing (O) and read over to him, and shall be signed by the justice, and kept with the depositions of the witnesses, and shall be transmitted with them, as hereinafter mentioned.—32-33 *V.*, *c*, 30, *s.* 31.

71. The justice shall, before the accused makes any statement, state to him and give him clearly to understand that he has nothing to hope from any promise of favor, and nothing to fear from any

threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial notwithstanding such promise or threat.—32-33 *V.*, *c.* 30, *s.* 32.

72. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement, made at any time by the person accused or charged, which by law would be admissible as evidence against him,—32-33 *V.*, *c.* 30, *s.* 33.

73. When all the evidence offered upon the part of the prosecution against the accused has been heard, if the justice is of opinion that it is not sufficient to put the accused upon his trial for any indictable offence, such justice shall forthwith order the accused, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such justice the evidence is sufficient to put the accused upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce him to commit the accused for trial without bail, or if the offence with which the person is accused is a misdemeanor, then the justice shall admit the accused to bail, as hereinafter provided; but if the offence is a felony, and the evidence given is such as to raise a strong presumption of guilt, then the justice shall, by his warrant (P), commit the accused to the common gaol for the territorial division to which, by law, he may be committed, or in the case of an indictable offence committed on the high seas or on land beyond the sea, to the common gaol of the territorial division within which such justice has jurisdiction, to be there safely kept until delivered in due course of law; Provided, that in cases of misdemeanor the justice who has committed the accused for trial may, at any time before the first day of the sitting of the court at which the accused is to be tried, admit him to bail in manner aforesaid, or may certify on the back of the warrant of committal the amount of bail to be required, in which case any justice for the same territorial division may admit such person to bail in such amount, at any time before such first day of the sitting of the court aforesaid.—32-33 *V.*, *c.* 30, *s.* 56.

74. At any time after all the examinations have been completed, and before the first sitting of the court at which any person so committed to prison or admitted to bail is to be tried, such person may require and shall be entitled to have from the officer or person having the custody of the same, copies of the depositions on which he has been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of five cents for each folio of one hundred words.—32-33 *V.*, *c.* 30, *s.* 58.

RECOGNIZANCES TO PROSECUTE OR GIVE EVIDENCE.

75. Any justice before whom any witness is examined, may bind, by recognizance (Q), the prosecutor and every such witness (except married women and infants, who shall find security for their appearance, if the justice sees fit) to appear at the next court of competent criminal jurisdiction at which the accused is to be tried, then and there to prosecute, or prosecute and give evidence, or to give evidence as the case may be, against the person accused, which recognizance shall particularly specify the place of residence and the addition or occupation of each person entering into the same.—32-33 *V.*, *c.* 30, *s.* 36.

76. The recognizance, being duly acknowledged by the person entering into the same, shall be subscribed by the justice before whom the same is acknowledged, and a notice (Q 2) thereof, signed by the said justice, shall, at the same time, be given to the person bound thereby.—32-33 *V.*, *c.* 30, *s.* 37.

77. The several recognizances so taken, together with the written information, if any, the deposition, the statement of the accused, and the recognizance of bail, if any, shall be delivered by the justice, or he shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the court on the first day of the sitting thereof, or at such other time as the judge, justice or person who is to preside at such court, or at the trial, orders and appoints.—32-33 *V.*, *c.* 30, *s.* 38.

78. If any witness refuses to enter into recognizance, the justice, by his warrant (R), may commit him to the common gaol for the territorial division in which the person accused is to be tried, there to be imprisoned and safely kept until after the trial of such accused person, unless in the meantime such witness duly enters into a recognizance before a justice for the territorial division in which such gaol is situate.—32-33 *V.*, *c.* 30, *s.* 39.

79. If afterwards, for want of sufficient evidence in that behalf, or other cause, the justice before whom the accused person has been brought does not commit him or hold him to bail for the offence charged, such justice, or any other justice for the same territorial division, by his order (R 2) in that behalf, may order and direct the keeper of the gaol where the witness is in custody to discharge him from the same and such keeper shall thereupon forthwith discharge him accordingly.—32-33 *V.*, *c.* 30 *s.* 40.

80. If any charge or complaint is made before any justice that any person has committed, within the jurisdiction of such justice, any of the offences following, that is to say: perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, forcible entry or detainer, nuisance, keeping a gambling house, keeping a disorderly house, or any indecent assault, and such justice refuses to commit or to bail the person charged with such offence, to be tried for the same, then, if the prosecutor desires to prefer an indictment respecting the said offence, the said justice shall take the recognizance of such prosecutor, to prosecute the said charge or complaint, and transmit the recognizance, information and depositions, if any, to the proper officer, in the same manner as such justice would have done in case he had committed the person charged to be tried for such offence.—32-23 *V.*, *c.* 29, *s.* 29. 40 *V.*, *c.* 26, *s.* 2. 22-23 *V.*, *c.* 17, *s.* 2, *Imp.*

See *post*, remarks under sec. 140.

BAIL.

81. When any person appears before any justice charged with a felony, or suspicion of felony, other than treason or felony punishable with death, or felony under the "*Act respecting Treason and other Offences against the Queen's authority*," and the evidence adduced is, in the opinion of such justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the justice, jointly with some other justice, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the two justices, will be sufficient to insure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two justices shall take the recognizances (S and S 2) of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave; and when the offence committed or suspected to have been committed is a misdemeanor, any one justice before whom the accused appears may admit to bail, in manner aforesaid, and such justice may, in his discretion, require such bail to justify upon oath as to their sufficiency, which oath the said justice may administer, and in default of such person procuring sufficient bail, such justice may commit him to prison, there to be kept until delivered according to law.—32-33 *V.*, *c.* 30, *s.* 52.

82. In all cases of felony or suspicion of felony, other than treason or felony punishable with death, or felony under the "*Act respecting Treason and other Offences against the Queen's authority*," and in all cases of misdemeanor, where the accused has been finally committed as herein provided, any judge of any superior or county court, having jurisdiction in the district or county within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a warrant of deliverance (S 3) as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of the accused to bail.—32-33 *V.*, *c.* 30, *s.* 53.

83. No judge of a county court or justices shall admit any person to bail accused of treason or felony punishable with death, or felony under the "*Act respecting Treason and other Offences against the Queen's authority*," nor shall any such person be admitted to bail, except by order of a superior court of criminal jurisdiction for the Province in which the accused stands committed, or of one of the judges thereof, or in the Province of Quebec, by order of a judge of the Court of Queen's Bench or Superior Court; and nothing herein contained shall prevent such courts or judges admitting any person accused of felony or misdemeanor to bail when they think it right so to do.—32-33 *V.*, *c.* 30, *s.* 54.

84. Whenever any justice or justices admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance (S 3) under his or their hands and seals, requiring the said keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same.—32-33 *V.*, *c.* 30, *s.* 55.

DELIVERY OF ACCUSED TO PRISON.

85. The constable or any of the constables, or other person to whom any warrant of commitment authorized by this or any other act or law is directed, shall convey the accused person therein named or described to the goal or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody, a receipt (T) for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.—32-33 *V.*, *c.* 30, *s.* 57.

PROCEEDINGS WHERE OFFENDER IS APPREHENDED IN A DISTRICT IN WHICH THE OFFENCE WAS NOT COMMITTED.

86. Whenever a person appears or is brought before a justice in the territorial division, wherein such justice has jurisdiction, charged with an offence alleged to have been committed within any territorial division in Canada wherein such justice has not jurisdiction, such justice shall examine such witnesses and receive such evidence in proof of the charge as may be produced before him within his jurisdiction; and if, in his opinion, such testimony and evidence are sufficient proof of the charge made against the accused, the justice shall thereupon commit him to the common gaol for the territorial division where the offence is alleged to have been committed, or shall admit him to bail as hereinbefore mentioned, and shall bind over the prosecutor (if he has appeared before him) and the witnesses, by recognizance as hereinbefore mentioned.—32-33 *V.*, *c.* 30, *s.* 46.

87. If the testimony and evidence are not, in the opinion of the justice, sufficient to put the accused upon his trial for the offence with which he is charged, the justice shall, by recognizance bind over the witness or witnesses whom he has examined to give evidence as hereinbefore mentioned; and such justice shall, by warrant (U), order the accused to be taken before any justice in and for the territorial division where the offence is alleged to have been committed, and shall, at the same time, deliver up the information and complaint, and also the depositions and recognizances so taken by him to the constable who has the execution of the last mentioned warrant, to be by him delivered to the justice before whom he takes the accused, in obedience to the warrant; and the depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the last mentioned justice, and shall, together with the depositions and recognizances taken by the last mentioned justice in the matter of the charge against the accused be transmitted to the clerk of the court or other proper officer where the accused ought to be tried, in the manner and at the time herein mentioned, if the accused is committed for trial upon the charge, or is admitted to bail.—32-33 *V.*, *c.* 30, *s.* 47.

88. If the accused is taken before the justice last aforesaid, by virtue of the said last mentioned warrant, the constable or other per-

son or persons to whom the said warrant is directed, and who has conveyed the accused before such last mentioned justice, shall, upon producing the accused before such justice and delivering him into the custody of such person as the said justice directs or names in that behalf, be entitled to be paid his costs, and expenses of conveying the accused before such justice.—32-33 *V.*, *c.* 30, *s.* 48.

89. Upon the constable delivering to the justice the warrant, information, if any, depositions and recognizances, and proving on oath or affirmation, the handwriting of the justice who has subscribed the same, such justice, before whom the accused is produced, shall thereupon furnish such constable with a receipt or certificate (U 2) of his having received from him the body of the accused, together with the warrant, information, if any, depositions and recognizances, and of his having proved to him, upon oath or affirmation, the handwriting of the justice who issued the warrant.—32-33 *V.*, *c.* 30, *s.* 49.

90. The said constable, on producing such receipt or certificate to the proper officer for paying such charges, shall be entitled to be paid all his reasonable charges, costs and expenses of conveying the accused into such other territorial division, and returning from the same.—32-33 *V.*, *c.* 30, *s.* 50.

91. If such justice does not commit the accused for trial, or hold him to bail, the recognizances taken before the first mentioned justice shall be void.—32-33 *V.*, *c.* 30, *s.* 51.

DUTIES OF CORONERS AND JUSTICES.

92. Every coroner, upon any inquisition taken before him, whereby any person is indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the accused, if he can be apprehended, reduce to writing the evidence given to the jury before him, or as much thereof as is material, giving the accused full opportunity of cross-examination; and the coroner shall have authority to bind by recognizance all such persons as know or declare anything material touching the manslaughter or murder, or the offence of being accessory to murder, to appear at the next court of oyer and terminer, or gaol delivery, or other court or term or sitting of a court at which the trial is to be, then and there to prosecute or give evidence against the person charged; and every such coroner shall certify and subscribe the evidence and all the recognizances, and also the inquisition taken before him, and shall deliver the same to the proper officer of the court at the time and in the manner specified in the seventy-seventh section of this Act.—32-33 *V.*, *c.* 30, *s.* 60.

93. When any person has been committed for trial by any justice coroner, the prisoner, his counsel, attorney or agent may notify the committing justice or coroner, that he will, as soon as counsel can be heard, move before a superior court of the Province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under the eighty-second section of this act, for an order to the justice or coroner for the territorial division where such prisoner is confined, to admit such prisoner to bail,—whereupon such committing justice or coroner shall, as soon as may be, transmit to the office of the clerk of the crown, or the chief clerk of the court, or the clerk of the county court or other proper officer, as the case may be, close under his hand and seal, a certified copy of all informations, examinations and other evidences, touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of commitment and inquest, if any such there is; and the packet containing the same shall be handed to the person applying therefor, for transmission, and it shall be certified on the outside thereof to contain the information concerning the case in question.—32-33 *V.*, *c.* 30, *s.* 61.

94. Upon such application to any such court or judge, as in the next preceding section mentioned, the same order concerning the prisoner being bailed or continued in custody shall be made as if the prisoner was brought up upon a *habeas corpus*.—32-33 *V.*, *c.* 30, *s.* 62.

95. If any justice or coroner neglects or offends in anything contrary to the true intent and meaning of any of the provisions of the three sections next preceding, the court to whose officer any such examination, information, evidence, bailment, recognizance or inquisition ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, impose such fine upon every such justice or coroner as the court thinks fit.—32-33 *V.*, *c.* 30, *s.* 63.

96. The provisions of this act relating to justices and coroners, shall apply to the justices and coroners not only of districts and counties at large, but also of all other territorial divisions and jurisdictions.—32-33 *V.*, *c.* 30, *s.* 64.

REMOVAL OF PRISONERS.

97. The Governor in Council or the Lieutenant Governor in Council of any Province may, if, from the insecurity or unfitness of any gaol of any county or district for the safe custody of prisoners, or for any other cause, he deems it expedient so to do, order any person charged with treason or felony confined in such gaol or for whose

arrest a warrant has been issued, to be removed to any other gaol of any other county or district in the same Province, to be named in such order, there to be detained until discharged in due course of law, or removed for the purpose of trial to the gaol of the county or district in which the trial is to take place; and a copy of such order, certified by the clerk of the Queen's Privy Council for Canada, or the clerk of the Executive Council, or by any person acting as such clerk of the Privy Council or Executive Council, shall be sufficient authority to the sheriffs and gaolers of the counties or districts respectively named in such order, to deliver over and to receive the body of any person named in such order.—31 *V.*, *c.* 74, *s.* 1. 47 *V.*, *c.* 44, *ss.* 1 *and* 2, *parts.*

98. The Governor in Council or a Lieutenant Governor in Council may, in any such order, direct the sheriff in whose custody the person to be removed then is, to convey the said person to the gaol of the county or district in which he is to be confined, and the sheriff or gaoler of such county or district to receive the said person, and to detain him until he is discharged in due course of law, or is removed for the purpose of trial to any other county or district.—31 *V.*, *c.* 74, *s.* 2. 47 *V.*, *c.* 44, *ss.* 1 *and* 2, *parts.*

99. If a true bill for treason or felony, is afterwards returned by any grand jury of the county or district from which any such person is removed, against any such person, the court into which such true bill is returned, may make an order for the removal of such person, from the gaol in which he is then confined, to the gaol of the county or district in which such court is sitting, for the purpose of his being tried in such county or district.—31 *V.*, *c.* 74, *s.* 3, 47 *V.*, *c.* 44, *s.* 2, *part.*

100. The Governor in Council or a Lieutenant Governor in Council may make an order as hereinbefore provided in respect of any person under sentence of imprisonment or under sentence or death, and, in the latter case, the sheriff to whose gaol the prisoner is removed shall obey any direction given by the said order or by any subsequent order in council, for the return of such prisoner to the custody of the sheriff by whom the sentence is to be executed.—47 *V.*, *c.* 44, *s.* 3.

101. When an indictment is found against any person and such person is confined in any penitentiary or gaol within the jurisdiction of such court, under warrant of commitment or under sentence for some other offence, the court may, by order in writing, direct the warden of the penitentiary or the keeper of such gaol, to bring up such person to be arraigned on such indictment, without a writ of *habeas corpus*, and the warden or keeper shall obey such order.—32-33 *V.*, *c.* 29, *s.* 14.

CHANGE OF VENUE.

102. Whenever it appears to the satisfaction of the court or judge hereinafter mentioned, that it is expedient to the ends of justice that the trial of any person charged with felony or misdemeanor should be held in some district, county or place other than that in which the offence is supposed to have been committed, or would otherwise be triable, the court before which such person is or is liable to be indicted may, at any term or sitting thereof, and any judge who might hold or sit in such court may, at any other time, either before or after the presentation of a bill of indictment, order that the trial shall be proceeded with in some other district, county or place within the same Province, named by the court or judge in such order; but such order shall be made upon such conditions as to the payment of any additional expense thereby caused to the accused, as the court or judge thinks proper to prescribe:

2. Forthwith upon the order of removal being made by the court or judge, the indictment, if any has been found against the prisoner, and all inquisitions, informations, depositions, recognizances and other documents whatsoever, relating to the prosecution against him, shall be transmitted by the officer having the custody thereof to the proper officer of the court at the place where the trial is to be had, and all proceedings in the case shall be had, or, if previously commenced, shall be continued in such district, county or place, as if the case had arisen or the offence had been committed therein:

3. The order of the court, or of the judge, made under this section, shall be a sufficient warrant, justification and authority, to all sheriffs, gaolers and peace officers, for the removal, disposal and reception of the prisoner, in conformity with the terms of such order; and the sheriff may appoint and empower any constable to convey the prisoner to the gaol in the district, county or place in which the trial is ordered to be had:

4. Every recognizance entered into for the prosecution of any person, and every recognizance, as well of any witness to give evidence, as of any person for any offence, shall, in case any such order, as provided by this section, is made, be obligatory on each of the persons bound by such recognizance as to all things therein mentioned with reference to the said trial, at the place where such trial is so ordered to be had,

in like manner as if such recognizance had been originally entered into for the doing of such things at such last mentioned place; provided that notice in writing shall be given either personally or by leaving the same at the place of residence of the persons bound by such recognizance, as therein described, to appear before the court, at the place where such trial is ordered to be had.—32-33 *V., c.* 29, s. 11.

By this section the court or judge has a discretionary power of a wide extent: "*Whenever it appears to the satisfaction of the court or judge,*" says the statute, and when the court or judge declares that it so appears, the matter *quoad hoc* is at an end, the venue is changed and the trial must take place in the district, county or place designated in the order.

The words of the statute require that the court or judge be satisfied that the change of venue *is expedient to the ends of justice.* Mr. Justice Sanborn, *In ex parte Brydges,* 18 *L. C. J.* 141, said that "the common law discourages change of venue, and it is only to be granted with caution and upon strong grounds."

The following cases decided in England may be usefully noticed here;

Where there was a prospect of a fair trial the court refused to change the venue, though the witnesses resided in another county.—*R.* v. *Dunn,* 11 *Jur.* 287.

The court will not permit the venue in an indictment to be changed for any other cause than the inability to obtain a fair trial in the original jurisdiction.—*R.* v. *Patent Eureka and Sanitary Manure Company,* 13 *L. T., N. S.* 365.

The court has no power to change the venue in a criminal case, nor will they order a suggestion to be entered on the roll to change the place of trial in an information for libel, on the ground of inconvenience and difficulty in securing the attendance of the defendant's witnessses.—*R.* v. *Cavendish,* 2 *Cox,* 176.

The court will remove an indictment for a misdemeanor from one county to another, if there is reasonable cause to apprehend or suspect that justice will not be impartially administered in the former county.—*R.* v. *Hunt,* 3 *B. & A.* 444; 2 *Chit.* 130.

The court has a discretionary power of ordering a suggestion to be entered on the record of an indictment for felony, removed thither by certiorari, for the purpose of awarding the jury process into a foreign county; but this power will not be exercised unless it is absolutely necessary for the purpose of securing an impartial trial.—*R.* v. *Holden,* 5 *B. & A.* 347.

In the case of *R.* v. *Harris et al.,* 3 *Burr.,* 1330, the private prosecutors, in their affidavit on an application made by them for a change of the venue, went no further than to swear generally "that they *verily believed* that there could not be a fair and impartial trial had by a jury of the City of Gloucester," without giving any particular reasons or grounds for entertaining such a belief. The case to be tried was an information against the defendants, as aldermen of Gloucester, for a misdemeanor in refusing to admit several persons to their freedom of the city, who demanded their admission, and were entitled to it, and, in consequence, to vote at the then approaching election of members of Parliament for that city, and whom the defendants did admit after the election was over; but would not admit them till after the election, and thereby deprived them of their right of voting at it. The prosecutors had moved for this rule, on a supposition "that the citizens of the city could not but be under an influence or prejudice in this matter." The application was refused.

"There must be a clear and solid foundation for it," said Lord Mansfield; "now, in the present case, this gene-

ral swearing to apprehension and belief only is not a sufficient ground for entering such a suggestion, especially as it is sworn on the other side that there is a list returned up, consisting of above six hundred persons duly qualified to serve. Surely a person may espouse the interest of one or another candidate at an election, without thinking himself obliged to justify, or being even inclined to defend, the improper behavior of the friends or agents of such candidate."

"The place of trial," said Mr. Justice Denison, "ought not to be altered from that which is settled and established by the common law, unless there shall appear a clear and plain reason for it, which cannot be said to be the present case."

"Here is no fact suggested," said Mr. Justice Foster, "to warrant the conclusion that there cannot be a fair and impartial trial had by a jury of the City of Gloucester. It is a conclusion without premises. The reason given, or rather the *supposition*, would hold as well, in all cases of riots at elections. This is no question relating to the interest of the voters; it is only whether the defendants, the persons particularly charged with this misdemeanor, have personally acted corruptly or not."

"There was no rule better established," said Mr. Justice Wilmot, "than that all causes shall be tried in the county, and by the neighborhood of the place where the fact is committed; and, therefore, that rule ought never to be infringed, unless it plainly appears that a fair and impartial trial cannot be had in that county; ..... It does not follow that because a man voted on one side or on the other he would therefore perjure himself to favor that party when sworn upon a jury. God forbid! The freemen of this corporation are not at all interested in the personal

conduct of these men upon this occasion; the same reasoning would just as well include all cases of election riots."

It may be remarked on this case: (1.) That the application for a change of the venue was made by the prosecution; there is no doubt that much stronger reasons must then be given than if the application is made by the defendant: (2.) That the case dates from 1762, and that in some of the more recent cases on this point, the court seems to have granted such an application, *on the part of the defendant*, with less reluctance. This is easily explained; it must have been an unheard of thing, at first, to change the venue, at common law, at the time where the jurors themselves were the witnesses, and the only witnesses; where they were selected for each case because they were supposed to know the facts. Where no other witnesses, no evidence whatever was offered to them, it may well be presumed that a change in the venue was not allowable under any circumstances. The rule must then invariably, inflexibly, have been that the venue should always be laid in the county where the offence was committed. The strictness of the rule can have been relaxed only by degrees, and even when, for a long period, the strongest reason in support of it had ceased to exist, by the changes which have given us the present system of jury trial, it is not surprising to find the judges still adhering to it as much as possible. But, insensibly, a change is perceptible in the decisions, and now, under our statute, there is no doubt that every time, for any reason whatever, *it is expedient to the ends of justice* that a change in the venue, upon any criminal charge, should take place, it should be granted whether applied for by the prosecution or by the defence.

Another decision, in England, on the question may be noticed here:

The court removed an indictment from the Central Criminal Court, and changed the venue from London to Westminster, where it was a prosecution instituted by the Corporation of London for a conspiracy in procuring false votes to be given at an election to the office of bridgemaster.—*R.* v. *Simpson*, 5 *Jur.* 462.

A case in the Province of Quebec, gave rise to a full discussion on this section of the Procedure Act.—*R.* v. *Brydges*, 18 *L. C. J.* 141.

In this case, a coroner's jury in the district of Quebec returned a verdict of manslaughter against the defendant, a resident of Montreal. The coroner issued his warrant, upon which the defendant was arrested; he gave bail, and then, in Montreal, before Mr. Justice Badgley, a judge of the Court of Queen's Bench, made application in chambers for a change in the venue; the only affidavit, in support of the application, was the defendant's, who swore that he could not have a fair trial in the district of Quebec. The crown was served with a notice of the application, and resisted it; Mr. Justice Badgley, however, granted it, and ordered that the trial should take place in Montreal, deciding (1) that, under the statute, a judge of the Court of Queen's Bench, in chambers in Montreal, may order the change of the venue from Quebec to Montreal, of the trial of a person charged with the commission of an offence in the Quebec district, and (2) that this order may be given immediately after the arrest of the prisoner.

On this last point, there is no room for doubt. By the statute, as soon as a person is *charged* with an offence, the application can be made, and there is no doubt, that in *Brydges'* case, such an application could even have been made before the issuing of the warrant of arrest against him. The finding by the coroner's inquisition of manslaughter against him was the *charge*. From the moment this finding was delivered by the jury, Brydges *stood charged* with manslaughter. In fact, this finding was equivalent to a true bill by a grand jury, and upon it, he had, if remaining intact, to stand his trial, whether or not a bill was later submitted to the grand jury, whether the grand jury found "a true bill," or a "no bill" in the case. See *R.* v. *Maynard*, *R. & R.* 240; *R.* v. *Cole*, 2 *Leach*, 1095; and the authorities cited in *R.* v. *Tremblay*, 18 *L. C. J.* 158.

Upon the other point decided, in this case, by Mr. Justice Badgley, as to the jurisdiction he had to grant the order required, there seemed at first to be more doubt. But the question was set at rest, by the judgment afterwards given in the case by Ramsay and Sanborn, J. J., who entirely concurred with Mr. Justice Badgley in his ruling on the question, as follows:

Ramsay, J.—"Before entering on the merits of these rules it becomes necessary to deal with a question of jurisdiction which has been raised on the part of the crown. It is urged that this case is not properly before us, and that if it is, that the law under which it is brought before the court, sitting in this district, is of so inconvenient and dangerous a character that it should be altered. With the inconvenience of the law we have nothing to do; neither ought we to express any opinion as to whether the grounds on which the learned judge who gave the order to change the venue were slight or not, provided he had jurisdiction. The whole question rests on the interpretation of section 11 of the Criminal Procedure Act of 1869. That section is in these words: (His Lordship read the section.)

"We have only to ask whether, at the time this order was given, Judge Badgley was a judge who might hold

or sit in the Court of Queen's Bench. If so, he had jurisdiction.

"But we are told that the statute evidently intended that the judge giving the order should be actually sitting in the district in which the offence is alleged to have taken place. There is no trace of any such intention in the statute and there is no rule of interpretation of statutes so well established as this, that where the words of a statute are clear and sufficient they must be taken as they stand. If courts take upon themselves, under the pretext of interpreting the law, to diminish or extend the clearly expressed scope of a statute, they are usurping the powers of the legislature, and assuming a responsibility which in no way devolves on them. In the particular case before us it does not appear clear to my mind that it was the intention of the legislature to limit the power to change the venue to a judge sitting in the district where the offence was said to be committed. In the first place, our statute goes far beyond the old law, which, I believe, is still unchanged in England. Not only is the power given here to a judge in chambers to change the venue, but he may do so before the bill of indictment is either laid or found. The object was to protect a man from being even put to trial by a prejudiced grand jury, and this could only be effectually done by giving the power to any judge who could hold or sit in the court to change the venue, for it will be observed that in 1869, when the act was passed, there were many districts in this Province in which there was no resident judge, and in Ontario the judges of the superior courts all live in Toronto, and, so far as I know, in each of the other Provinces, they live in the capital town. Unless, then, there was to be a particular provision for the Province of Quebec the law had to be drawn

as we find it. Besides this the Court of Queen's Bench is not for the district, but for the whole Province. The object of dividing the Province into districts is for convenience in bringing suits, but the jurisdiction of the court is general. This has never been doubted, and it has been the practice both in England and this country to bail in the place where the prisoner is arrested. In the case of *Blossom*, where the taking of bail was vigorously resisted by the crown, this court, sitting at Quebec, bailed the prisoner who was in jail here. This is going a great deal farther, but the power of the court to bail was not, and, I think, could not be questioned. We are told that great inconvenience might arise if this statute be not restrained. This is really no valid objection to the law. There are no facultative acts which may not be abused one way or another. A discretionary power involves the possibility of its indiscreet exercise, but that is not ground for us to annul the law creating it. In this case the inconveniences referred to are not specially apparent—the prisoner arrested in Montreal was bailed there, and made his application to have the venue changed to the district where he resided and where he actually was. The order made by Mr. Justice Badgley could hardly then be used as a precedent for an abusive use of the statute. It must be understood in saying this I do not refer to the sufficiency or insufficiency of the affidavit on which the order was given, which is not in any way before us, but solely to the circumstance of the accused being actually before the judge here. As the point is a new one, and as questions of jurisdiction are always delicate, we would willingly have reserved it for the decision of all the judges; but the act allowing us to reserve cases is unfortunately as much too narrow as the statute before us appears to Mr. Ritchie to

be too wide in its phraseology. We can only reserve after conviction, and irregular reservations for the opinion of the judges have no practically good results. We must, therefore, give the judgment to the best of our ability, and I must say for my own part that I cannot see any difficulty in the matter. The words of the statute are perfectly unambiguous, and there is no reason to say that they lead to any absurd conclusion."

Sanborn, J.—"First, as to the jurisdiction. It is objected that the venue was improperly changed, and that this inquisitson ought to be before the court at Quebec. If we are not 'legally' possessed of the inquisition, of course we cannot entertain these motions to quash. This has been fully and exhaustively treated by the President of the court. It is merely for us to enquire: Had Mr. Justice Badgley the power to order the trial to take place here instead of in the district of Quebec; where the accident occurred? The 11 section of the Criminal Procedure Act undoubtedly gives that power. He was a judge, entitled to sit at the court *where the party was sent for trial.* The jurisdiction of any of the judges of the Queen's Bench is not local for any district, but extends to all parts of the Province."

The words "he was a judge, entitled to sit at the court *where the party was sent for trial,*" in Mr. Justice Sanborn's remarks appear not supported by the statute. It is the court at which the party charged with a crime was at first liable to be indicted, or any judge who might hold or sit in *that court,* who have jurisdiction in the matter, *not the court where the party is sent for trial nor a judge who can hold and sit in such last mentioned court.* Of course, in *Brydges'* case this distinction could not be made, as Mr. Justice Badgley, who gave the order to change the

venue, could sit in the court at Quebec as well as in Montreal, and in Montreal as well as in Quebec. But suppose that such an application is made to a judge who can hold or sit in a court of quarter sessions, at which the party charged is *or is* liable to be indicted; and there are not many cases where a party accused is *not liable* to be indicted before the court of quarter sessions; the statute gives jurisdiction only to the court of quarter sessions of and for the locality where the trial should take place, in the ordinary course of law, or to a judge thereof, and not to a court or judge of another locality; and the judge of the quarter sessions for Montreal, for instance, could not, in a case from the district of Quebec, order the trial to take place in Montreal, though he would be a judge entitled to sit at the court *where the party was sent for trial.*

See in *re Sproule,* 12 *S. C. R.* 140, questions as to change of venue.

Change of venue allowed upon prisoner's solicitor's affidavit that from conversations he had had with the jurors, he was convinced of a strong prejudice against the prisoner. *R.* v. *McEneaney,* 14 *Cox,* 87.—See *R.* v. *Walter,* 14 *Cox,* 579.

Held, that 32–33 V., c. 29, s. 11, does not authorise any order for the change of the place of trial of a prisoner in any case where such change would not have been granted under the former practice, the statute only affecting procedure.—*R.* v. *McLeod,* 5 *P. R. (Ont.)* 181.

The power so granted is purely discretionary, but, where application in made on the part of the accused, it will be a sufficient ground that persons might be called on the jury whose opinions might be tainted with prejudice, and whom the prisoner could not challenge.—*R.* v. *Russell, Ramsay's App. Cas.* 199.—See *Ex parte Corwin,* 24 *L. C. J.* 104, 2 *L. N.* 364.

INDICTMENTS.

103. It shall not be be necessary that any indictment or any record or document relative to any criminal case be written on parchment. —32-33 *V., c.* 29, *s.* 13.

By the interpretation clause, *sec.* 2, *ante*, the word *indictment* includes *information, presentment*, and *inquisition*, as well as pleas, etc.

By the 4 Geo. 2, c. 26, and 6 Geo. 2, c. 14, "all indictments, informations, inquisitions and presentments shall be in English, and be written in a common legible hand, and not court hand, on pain of £50 to him that shall sue in three months."

They should be engrossed on plain parchment without a stamp. No part of the indictment must contain any abbreviation, or express any number or date by figures, but these as well as every other term used, must be expressed in words at length, except where a fac-simile of an instrument is set out.—3 *Burn* 35; 1 *Chitty*, 175.

Formerly, like all other proceedings, they were in Latin, and though Lord Hale, Vol. I. p. 168, thinks this language more appropriate, as not exposed to so many changes and alterations, in modern times, "it was thought to be of very greater use and importance," says his annotator *Emlyn*, "that they should be in a language capable of being known and understood by the parties concerned, whose lives and liberties were to be affected thereby."

Before confederation in Ontario and Quebec, the indictment in cases of high treason only had to be written on parchment.—*C. S. C., c.* 99, *s.* 20.

By section 133 of the *British North America Act*, the French language may be used in any of the courts of Quebec, and in any court established under that act.

104. It shall not be necessary to state any venue in the body of any indictment; and the district, county or place named in the margin thereof, shall be the venue for all the facts stated in the body of the indictment; but if local description is required, such local description shall be given in the body thereof.—32-33 *V., c.* 29, *s.* 15.

This section is taken from sec. 23, 14-15 V., c. 100, of the Imperial statutes, upon which Greaves says: "This section was framed with the intention of placing the statement of venue upon the same footing in criminal cases upon which it was placed in civil proceedings by Reg. Gen., H. T., 4 Wm. IV. By this section, in all cases, except where some local description is necessary, no place need be stated in the body of the indictment; thus in larceny, robbery, forgery, false pretences, etc., no venue need be stated in the body of the indictment. In such cases, before the passing of this act, although it was considered necessary to state some parish or place, it was quite immaterial whether the offence was committed there or at any other parish in the county. On the other hand, in burglary, sacrilege, stealing in a dwelling house, etc., the place where the offence was committed must be stated in the indictment. It was necessary so to state it before the act, and to prove the statement as alleged, and so it is still, subject ever to the power of amendment given by the first section." (Sec. 143 post.)

"The *venue*, that is, the county in which the indictment is preferred, is stated in the margin thus "*Middlesex*," or "*Middlesex*, to-wit," but the latter method is the most usual. In the body of the indictment a special venue used to be laid, that is, the facts were in general stated to have arisen in the county in which the indictment was preferred." 3 *Burn*, 21.

"The place (or *special venue*, as it is technically termed) must be such as in strictness the jury who are to try the cause should come from. At common law, the jury, in strictness, should have come from the town, hamlet, or

parish, or from the manor, castle, or forest, or other known place out of a town, where the offence was committed, and for this reason, besides the county, or the city, borough, or other part of the county to which the jurisdiction of the court is limited, it was formerly necessary to allege that every material act mentioned in the indictment was committed in such a place ..... But now by stat. 14-15, V., c. 100 s. 23," it shall not be necessary to state any venue in the body of any indictment, but the county, city, or other jurisdiction named in the margin thereof, shall be taken to be venue for all the facts stated in the body of such indictment. Provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment." —*Archbold*, 49.

The cases in which a local description is still necessary in the body of the indictment, are:

Burglary; 2 *Russ*, 47.—House-breaking; *R.* v. *Bullock*, 1 *Moo. C. C.* 324, note *a*. Stealing in a dwelling-house under sections 45 and 46 of the Larceny Act; *R.* v. *Napper*, 1 *Moo. C. C.* 44. Being found by night armed, with intent to break into a dwelling-house, under sec. 43 of the Larceny Act, and all the offences under sec. 35 to 43 of the Larceny Act; *R.* v. *Jarrald*, *L. & C.* 301. Riotously demolishing churches, houses, machinery, etc., or injuring them, under sections 9–10 of c. 147; *R.* v. *Richards*, 1 *M. & Rob.* 177. Maliciously firing a dwelling-house, perhaps an out-house, and probably all offences under sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 13 and 14 of the act as to malicious injuries to property, but not the offences under secs. 18, 19, 20, 21, of the same act; *R.* v. *Woodward*, 1 *Moo. C. C.* 323. Forcible entry; *Archbold*, 50. Nuisances to highways; *R.* v. *Steventon*, 1 *C. & K.* 55.

Malicious injuries to sea-banks, milldams, or other local property; *Taylor Ev.*, 1 *Vol.*, *par.* 227. Not repairing a highway; in which even a more accurate description is necessary, as the situation of the road within the parish, etc. Indecent exposure in a public place; *R.* v. *Harris*, 11 *Cox*, 659.

But in most cases of want of local description where necessary or of variance between the proof and the allegations in the indictment respecting the place, local description, etc., the courts would now allow an amendment.

It may well be said, with *Taylor, Ev., Vol.* 1, *par* 228.

"It would be extremely difficult to advance any sensible argument in favor of this distinction, which the law recognizes between local and transitory offences. On an indictment, indeed, against a parish for not repairing a highway, it may be convenient to allege, as it will be necessary to prove, that the spot out of repair is within the parish charged, ... but why a burglar should be entitled to more accurate information respecting the house he is charged with having entered, than the highway robber can claim as to the spot where his offence is stated to have been committed, it is impossible to say; either full information should be given in all cases or in none."

In offences not of local nature, it is clearly not now necessary to allege in the body of the indictment where the offence was committed, and it is the practice now, in England, not to do it. An indictment for larceny, for instance, runs thus:

Suffolk, to wit: The Jurors for Our Lady the Queen upon their oath present, that J. S., on the first day of June, in the year of our Lord one thousand eight hundred

and sixty, three pairs of shoes of the goods and chattels of J. N., feloniously did steal, take and carry away, against the peace of Our Lady the Queen, her crown and dignity: *Archbold*, 313. In 11 *Cox*, 101, 526, 593, *and* 12 *Cox*, 23, 393 *and* 456, may be seen indictments, so without a *special venue.*

The laying of the information and subsequent proceedings are the commencement of the prosecution. So, if a statute enacts that an offence must be prosecuted wthin a certain time, the information must be within that time, but not necessarily, the indictment.—*R.* v. *Austin*, 1 *C. & K.* 621; *R.* v. *Kerr*, 26 *U. C. C. P.* 214, and cases there cited.

105. The abolition of the benefit of clergy shall not prevent the joinder in any indictment of any counts which might have been joined but for such abolition.—32-33 *V.*, c. 29, *s.* 16.

This is the 7 & 8 Geo. IV., c. 28, s. 6, of the Imperial Statutes.

Lord Hale calls the benefit of clergy, "a kind of relaxation of the severity of the judgment of the law," and adds that " by the ancient privilege of the clergy and by the confirmation and special concession of the statute of 25 Edw. III., c. 4 (A. D. 1351), the benefit of clergy was to be allowed in all treasons and felonies touching other persons than the King himself and his royal Majesty".—1 *Hale*, 517.

The two following extracts will give, succinctly, what was the law of " benefit of clergy : "

" *Benefit of clergy (privilegium clericale)*, an arrest of judgment in criminal cases. The origin of it was this: Princes and States, anciently converted to christianity, granted to the clergy very bountiful privileges and exemptions, and particularly an immunity of their persons in criminal proceedings before secular judges. The clergy afterwards increasing their wealth, number and power, claimed this benefit as an indefeasible right, which had been merely matter of royal favor, founding their principal argument upon this text of scripture, ' Touch not mine anointed, and do my prophets no harm. ' They obtained great enlargements of this privilege, extending it not only to persons in holy orders, but also to all who had any kind of subordinate ministration in the church, and even to laymen if they could read, applying it to civil as well as criminal causes. In criminal proceedings the prisoner was first arraigned, and then he might have claimed his benefit of clergy, by way of declinatory plea, or after conviction, by way of arrest of judgment. He was then, if a layman, burnt with a hot iron in the brawn of his left thumb, in order to show that he had been admitted to this privilege, which was not allowed twice to a layman. If a clerk he was handed over to the ecclesiastical court, and after the solemn farce of a mock trial, he was usually acquitted, and was made a new and an innocent man. These exemptions at length grew so burthensome and scandalous, that the legislature, from time to time, interfered, until the 7–8 Geo. IV., c. 58, s. 6, abolished benefit of clergy : " *Wharton, Law Lexicon. verb. " benefit of clergy. "*

" This has now become a title of curiosity only, the stat. 7–8 Geo. IV., c. 28, having enacted by sec. 6, that benefit of clergy with respect to persons convicted of felony shall be abolished ; and by sec. 7, that no person convicted of felony shall suffer death, unless for some felony which was excluded from the benefit of clergy before or on the first day of the then session of Parliament (Feb. 8, 1827), or which should be made punishable with death by some statute passed after that day."

This benefit of clergy constituted in former times so remarkable a feature in criminal law, and a general ac-

quaintance with its nature is still so important for the illustration of the books, that it may be desirable to subjoin further notice on the subject. It originally consisted in the privilege allowed to a clerk in orders, when prosecuted in the temporal court, of being discharged from thence and handed over to the court christian, in order to make a canonical purgation, that is to clear himself on his own oath, and that of other persons as his compurgators. *Vide Reeves's Hist. Eng. L. vol. 2, pp.* 114, 134 : 25 Edw. III. *st.* 3, 4 ; a privilege founded, as it is said, upon the text of scripture, " Touch not mine anointed, and do my prophets no harm. " In England this was extended by degrees to all who could read, and so were capable of becoming clerks : *Reeves* ubi supra *et* vol. 4, p. 156. But by 4 Hen. VII, c. 13, it was provided, that laymen allowed their clergy should be burned in the hand, and should claim it only once ; and as to the clergy, it became the practice in cases of heinous and notorious guilt, to hand them over to the ordinary, *absque purgatione facienda*, the effect of which was, that they were imprisoned for life : 4 *Blackstone*, 369. Afterwards, by 18 Eliz. c. 7, the delivering over to the ordinary was abolished altogether, but imprisonment was authorized in addition to burning in the hand. By 5 Anne, c. 6, the benefit of clergy was allowed to those entitled to ask it, without reference to their ability to read. By 4 Geo. I., c. 11 ; 6 Geo. I., c. 23, and 19 Geo. II., c. 74 the punishment of transportation was authorized in certain cases, in lieu of burning in the hand ; and by the act last mentioned the court might impose, instead of burning in the hand, a pecuniary fine, or (except in manslaughter)order the offender to be whipped. As to the nature of the offences to which the benefit of clergy applied, it had no application except in capital felonies, and from the more atrocious of

these it had been taken away by various statutes prior to its late abolition by 7–8 Geo. IV. c. 28, s. 6. As the law stood at the time of that abolition, clerks in orders, were, by force of the benefit of clergy, discharged in clergyable felonies without any corporal punishment whatever, and as often as they offended, and the only penalty being a forfeiture of their goods ; and the case was the same with peers and peeresses, as to whom see. 4–5 V., c. 22 ; but they could claim it only for the first offence. As to commoners also, they could have benefit of clergy only for the first offence, and they were discharged by it from the capital punishment only, being subject on the other hand, not only to forfeiture of goods, but to burning in the hand, whipping, fine, imprisonment, or in certain cases transportation in lieu of capital sentence."—1 *Hale*, p. 517.

By the general repeal act of 1869, section 97 of chap. 99 of the Consolidated statutes of Canada remained in force. It is as follows :

" Benefit of clergy with respect to persons convicted of felony having been abolished in Upper Canada on the thirteenth day of February, 1833, and in Lower Canada from and after the first day of January, 1842, no person convicted of felony shall suffer death, unless it be for some felony which was excluded from the benefit of clergy by the law in force in that part of this province in which the trial is had when the benefit of clergy was abolished therein, or which has been made punishable with death by some act passed since that time."

It is now repealed by 49 V., c. 4, D.

JOINDER OF OFFENCES.

In *R.* v. *Jones*, 2 *Camp.* 131, Lord Ellenborough said: " In point of law, there is no objection to a man being

tried on one indictment for several offences of the same sort. It is usual, in felonies, for the judge, *in his discretion*, to call upon the counsel for the prosecution to select one felony, and to confine themselves to that; but this practice has never been extended to misdemeanors."

In *R.* v. *Benfield*, 2 *Burr.* 980, an information against five for riot and libel had been filed, on which three of them were acquitted of the whole charge, and Benfield and Saunders found guilty of the libel. It was objected that several distinct defendants charged with several and distinct offences cannot be joined together in the same indictment or information, because the offence of one is not the offence of the other. But it was determined that several offences may be joined in one and the same indictment or information, if the offence wholly arise from such a joint act as is criminal in itself, without any regard to any particular default of the defendant which is peculiar to himself; as, for instance, it may be joint for keeping a gaming house, or for singing together a libellous song, but not for exercising a trade without having served an apprenticeship, because each trader's guilt must arise from a defect peculiar to himself, and 2 *Hawkins*, 140, was said to be clear and express in this distinction.

In *Young's case*, 1 *Leach*, 511, Buller, J., said: "In misdemeanors the case in Burrowes, *R.* v. *Benfield*, 2 *Burr.* 980, shews that it is no objection to an indictment that it contains several charges. The case of felonies admits of a different consideration; but even in such cases, it is no objection in this stage of the prosecution (writ of error.) On the face of an indictment every count imports to be for a different offence, and is charged as at different times; and it does not appear on the record whether the offences are or are not distinct. But, if it appear before the defendant has pleaded, or the jury are charged, that he is to be tried for separate offences, it has been the practice of the judges to quash the indictment, lest it should confound the prisoner in his defence, or prejudice him in the challenge of the jury; for he might object to a juryman's trying one of the offences, though he might have no reason to do so in the other. But these are only matters of prudence and discretion. If the judge who tries the prisoner does not discover it in time, I think he may put the prosecutor to make his election on which charge he will proceed. I did it at the last sessions at the Old Bailey, and hope that, in exercising that discretion, I did not infringe on any rule of law or justice. But, if the case has gone to the length of a verdict, it is no objection in arrest of judgment. If it were it would overturn every indictment which contains several counts."

In the case of *R.* v. *Heywood, L. & C.* 451, this decision in *Young's case* was followed by the court of crown cases reserved, and it was held, that, although it is no objection in point of law to an indictment that it charges the prisoner with *several different* felonies in different counts, yet, as matter of practice, a prisoner ought not, in general, to be charged with different felonies in different counts of an indictment; as, for instance, a murder in one count, and a burglary in another, or a burglary in the house of A. in one count, and a "distinct" burglary in the house of B. in another, or a larceny of the goods of A. in one count, and a "distinct" larceny of the goods of B. at a different time in another, because such a course of proceeding is calculated to embarrass the prisoner in his defence. And where it has been done, and an objection is taken to the indictment on that ground before the prisoner has pleaded or the jury are charged, the judge *in his discretion may* quash

the indictment, or put the prosecutor to elect. But it is no objection in arrest of judgment, or on a writ of error. Thus, where an indictment charged the prisoner in three several counts with three several felonies in sending three separate threatening letters, Byles, J., compelled the prosecutor to elect upon which count he would proceed.—*R.* v. *Ward*, 10 *Cox*, 42. And since different judgments are required, it seems that the joinder of a count for a felony with another for a misdemeanor, would be holden to be bad upon demurrer, or after a *general* verdict, upon motion in arrest of judgment.—1 *Starkie, Cr. Pl.* 43. But now, see sec. 143 of the Procedure Act, *post.*

So in *R.* v. *Ferguson, Dears.* 427, where the prisoner, having been indicted for a felony and a misdemeanor in two different counts of one indictment, and found guilty, not *generally*, but of the felony only, the prisoner moved in arrest of judgment, against the misjoinder of counts, the judge reserved the decision, and Lord Campbell, C. J., delivering the judgment of the court of crown cases reserved, said: "There is really no difficulty in the world in this case, and I must say that I regret that the learned recorder, for whom I have a great respect, should have thought it necessary to reserve it. The question is, whether the indictment was bad on account of an alleged misjoinder of counts. The prisoner was convicted on the count for felony only, and it is the same thing as if he had been convicted upon an indictment containing that single count; and it is allowed that there was abundant evidence to warrant that conviction. There is not the smallest pretence for the objection, that the indictment also contained a count for misdemeanor, and it does not admit of any argument."

So in *R.* v. *Holman, L. & C.* 177, where the prisoner was charged in an indictment by one count for embezzlement and the other for larceny as a bailee. *At the close of the case for the prosecution*, it was objected that the indictment was bad, for misjoinder of counts, and that the objection was fatal, although not taken till after plea pleaded and the jury had been charged; and, upon the court proposing to direct the counsel for the prosecution to elect on which count he would proceed, the prisoner's counsel further contended that the indictment was so absolutely bad that the election of counts was inadmissible.

The court directed the counsel for the prosecution to elect on which count he would proceed reserving, at the request of the prisoner's counsel, the points raised by him as above stated for the consideration of the court for crown cases reserved. The counsel for the prosecution elected to proceed on the second count, and upon that count the prisoner was convicted, and the conviction affirmed.

Where the defendant was indicted, in several counts, for stabbing with intent to murder, with intent to maim and disable, and with intent to do some grievous bodily harm, it was holden that the prosecutor was not bound to elect upon which count he would proceed, notwithstanding the judgment is by the statute different, being on the first count capital, and on the others transportation.—*R.* v. *Strange*, 8 *C. & P.* 172; *Archbold*, 70.

When the enactment contained in sec. 191 of our Procedure Act was in force in England, as 7 Will. IV and 1 Vic., c. 85, s. 11, a prisoner was charged in one indictment with feloniously stabbing with intent—first, to murder; second, to maim; third, to disfigure; fourth, to so some grievous bodily harm; to which was added a count for a common assault. The case was far advanced before the learned judge was aware of this, and at first he thought of stopping it; but as it was rather a serious one, he left the

case, without noticing the last count, to the jury, who (properly as the learned judge thought upon the facts) convicted the prisoner; and the counsel for the prosecution then, being aware of the objection of misjoinder, requested that the verdict might be taken on the last count for felony, which was done accordingly; and this was held right by all the judges.—*R.* v. *Jones*, 2 *Moo. C. C.* 94.

Here in Canada, now, there is no objection to a count for a common assault, in an indictment for any of the felonies, where, under sec. 191 of our Procedure Act, the jury may find a verdict for the assault. But, of course, such a count is not necessary, as the jury may, in that case, convict of the misdemeanor, without its being alleged in the indictment. See 1 *Bishop's Cr. Proc.* 446.

If in any case not falling under sec. 191 of the Procedure Act, a count for a felony is joined with a count for a misdemeanor, on motion to quash, or demurrer, it seems that the indictment should be quashed or the prosecutor ordered to proceed on one of the counts only. If the defendant does not take the objection and allows the trial to proceed, the conviction will be legal, if a verdict is taken *distinctly* on one of the counts. If a verdict is given of guilty generally, without specifying on which of the counts, the conviction will be held bad on motion in arrest of judgment, or in error, notwithstanding sec. 143 of the Procedure Act, though this clause is much more extensive than the corresponding English clause, 14-15 V., c. 100, s. 25. For how could the court know what sentence to give if it is not clear what offence the jury have found the prisoner guilty of. See 1 *Starkie, Cr. Pl.* 43; *R.* v. *Jones*, 2 *Moo. C. C.* 94; *R.* v. *Ferguson, Dears.* 427.

Though in law, the right to charge different felonies in one indictment cannot be denied, yet, in practice, the

court, in such a case, will always oblige the prosecutor to elect and proceed on one of the charges only.—*Dickinson's quarter sessions*, 190.

But the same offence may be charged in different ways, in different counts of the same indictment, to meet the several aspects which it is apprehended the case may assume in evidence, or in which it may be seen in point of law, and it is said in *Archbold*, p. 72: "Although a prosecutor is not, in general, permitted to charge a defendant, with different felonies in different counts, yet he may charge the same felony in different ways in several counts in order to meet the facts of the case; as, for instance, if there be a doubt whether the goods stolen, or the house in which a burglary or larceny was committed, be the goods or house of A. or B., they may be stated in one count as the goods or house of A., and in another as the goods or house of B. See *R.* v. *Egginton*, 2 *B. & P.* 508; *R.* v. *Austin*, 7 *C. & P.* 796. And the verdict may be taken generally on the whole indictment.—*R.* v. *Downing*, 1 *Den.* 52. But, inasmuch as the word 'felony' is not *nomen collectivum* (as 'misdemeanor' is, see *Ryalls* v. *R.*, 11 *Q. B.* 781, 795), if the verdict and judgment, in such case, be against the defendant for 'the felony aforesaid,' it will be bad unless the verdict and judgment be warranted by each count of the indictment."—*Campbell* v. *R.*, 11 *Q. B.* 799, 814; see 1 *Bishop's Cr. Proc.* 449.

Indictments for misdemeanors may contain several counts for different offences, and, as it seems, though the judgments upon each be different.—*Young* v. *R.*, 3 *T. R.* 98, 105, 106; *R.* v. *Towle*, 2 *Marsh*, 466; *R.* v. *Johnson*, 3 *M. & S.* 539; *R.* v. *Kingston*, 8 *East*, 46; and see *R.* v. *Benfield*, 2 *Burr.* 980; *R.* v. *Jones*, 2 *Camp.* 131; *Dickinson's Q. S.* 190; *Starkie's Cr. Pl.* 43. Even where

several different persons were charged in different counts, with offences of the same nature, the court held that it was no ground for a demurrer, though it might be for an application to the discretion of the court to quash the indictment.—*R.* v. *Kingston*, 8 *East*, 41. Where two defendants were indicted for a conspiracy and a libel, and at the close of the case for the prosecution, there was evidence against both as to the conspiracy, but against one only as to the libel, the judge then put the prosecutor to elect which charge he would proceed upon.—*R.* v. *Murphy*, 8 *C. & P.* 297. On an indictment for conspiracy to defraud by making false lists of goods destroyed by fire, one set of counts related to a fire in June, 1864, and another to a fire in November, 1864. The prosecution was compelled to elect which charge of conspiracy should be first tried, and to confine the evidence wholly to that in the first instance.—*R.* v. *Barry*, 4 *F. & F.* 389. And on an indictment against the manager and secretary of a joint-stock bank, containing many counts, some charging that the defendants concurred in publishing false statements of the affairs of the bank, and others that they conspired together to do so, the prosecutors were put to elect on which set of counts they would rely.—*R.* v. *Burch*, 4 *F. & F.* 407. If, where there are several counts charging different offences in law, the judgment be entered up generally upon all, that the defendant '*for his said offences*' be adjudged, etc., and it appears that any count was bad in law, the judgment will be reversed in error.—*O'Connell* v. *R.*, 11 *C. & F.* 155. To prevent this it is now usual, in cases of misdemeanor, to pronounce and enter up the same judgment separately on each count of the indictment."—*Archbold*, 72.

Where a prisoner is indicted for a felony, it is not necessary to prefer a separate bill against him for an attempt to commit it; and where he is indicted for a misdemeanor, it is not necessary to add another count for an attempt to commit it; because upon an indictment for the felony or misdemeanor, if, upon the trial, it appear that the defendant merely attempted to commit the offence, but did not complete it, the jury may acquit him of the offence charged, and find him guilty of the attempt.—Procedure Act, sec. 183.

So, upon an indictment for robbery, the prisoner may now be found guilty of an assault with intent to rob.—S. 192 Procedure Act. So, upon an indictment for embezzlement, if the offence upon the evidence appear to be a larceny, the jury may acquit the prisoner of the embezzlement, and find him guilty of simple larceny, or of larceny as clerk or servant; or upon an indictment for larceny, if upon the evidence the offence appears to be embezzlement, the jury may acquit of the larceny and find the party guilty of embezzlement.—S. 195 Procedure Act. So, if upon an indictment for obtaining money or goods by false pretences, the offence upon the evidence turn out to be larceny, the defendant, notwithstanding, may be convicted of the false pretences.—S. 196 Procedure Act. So, if upon an indictment for larceny, the offence upon the evidence turn out to be an obtaining by false pretences, the jury may acquit of the larceny and find the defendant guilty of obtaining by false pretences.—S. 198 Procedure Act. So, upon an indictment for any misdemeanor, if the facts given in evidence amount to a felony, the defendant shall not on that account be acquitted of the misdemeanor, unless the court think fit to discharge the jury and order

the defendant to be indicted for the felony.—S. 184 Procedure Act. But this provision applies only where the facts given in evidence prove the *act charged* in the indictment; "while they include such misdemeanor," says the statute. And if a felony is proved, but no misdemeanor, the provision does not apply.

The commencement of a second or subsequent count is in form thus: "And the jurors aforesaid, upon their oath aforesaid, do further present that," etc., proceeding to state the offence. The absence of the words "upon their oath aforesaid" would be a fatal and not amendable defect, but as to the particular count only.—See *Archbold*, 73.

Counts for different misdemeanors on which the judgment is of the same nature may be joined in the same indictment, and, on such counts judgment may, and indeed ought to be, separately entered.—*R.* v. *Orton*, 14 *Cox*, 436 *and* 546; *R.* v. *Bradlaugh*. 15 *Cox*, 217.

Counts for different misdemeanors of the same class may be joined in the same indictment.—*R.* v. *Abrahams*, 24 *L. C. J.* 325.

Although, in general, it is not permitted to include two different felonies under different counts of an indictment, yet the same offence may be charged in different ways in different counts of the same indictment. Thus, in the first count, the accused may be charged with having stolen wood belonging to A., and in another with having stolen wood belonging to *B.*—*R.* v. *Falkner*, 7 *R. L.* 544.

JOINDER OF DEFENDANTS—SEPARATE TRIALS.

Two parties accused of the same offence on the same indictment are not entitled as of right to a separate defence either in felonies or misdemeanors.—*R.* v. *McConohy*, 5 *R. L.* 746.

In *R.* v. *Littlechild*, *L. R.* 6 *Q. B.* 293, *Held*, that it is in the discretion of the court to grant a separate trial or not.

In *R.* v. *Gravel (Montreal, Q. B. March*, 1877,) for subornation of perjury separate trials refused, *Ramsay, J.* —In *R.* v. *Bradlaugh*, 15 *Cox*, 217, for libels, separate trial granted. Where several persons are jointly indicted the judge will not allow a separate trial on the ground that the depositions disclose statements and confessions made by one prisoner implicating another which are calculated to prejudice the jury, and that there is no legal evidence disclosed against the other prisoner.—*R.* v. *Blackburn*, 6 *Cox*, 333.

The prosecution has always a right to a separate trial. —1 *Bishop, Cr. Proc.* 1034; 2 *Hawkins, c.* 41, *par.* 8.

See on the question 1 *Chitty, C. L.* 535; 1 *Starkie, Cr. Pl.* 36; 1 *Bishop, Cr. Proc.* 463, 1018; 1 *Wharton*, 433. —*R.* v. *Payne*, 12 *Cox*, 118; *O'Connell.* v. *R.*, 11 *C. & F.* 115, *and* remarks under sec. 214, *post.*

For conspiracy and riot, there can be no severance of trial.—1 *Wharton*, 434; *Starkie's Cr. Pl.* 36, *et seq.*

106. Any number of the matters, acts or deeds by which any compassings, imaginations, inventions, devices or intentions, or any of them, have been expressed, uttered or declared, may be charged against the offender, for any felony, under the "*Act respecting Treason and other Offences against the Queen's authority.*"—31 *V., c.* 69, *s.* 7. 11-12 *V., c.* 12, *s.* 5, *Imp.*

The Act respecting Treason is c. 146, p. 30, *ante.*

107. In any indictment for perjury, or for unlawfully, illegally, falsely, fraudulently, deceitfully, maliciously or corruptly taking, making, signing or subscribing any oath, affirmation, declaration,

affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient to set forth the substance of the offence charged against the accused, and by what court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing was taken, made, signed or subscribed, without setting forth the bill, answer, information, indictment, declaration or any part of any proceeding, either in law or equity, and without setting forth the commission or authority of the court or person before whom such offence was committed.—32-33 *V.*, *c.* 23, *s.* 9. 14-15 *V.*, *c.* 100, *s.* 20, *Imp.*

See *R.* v. *Dunning*, 11 *Cox*, 651, *and R.* v. *Hare*, 13 *Cox*, 174.

108. In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, willully, falsely, fraudulently, deceitfully, maliciously or corruptly, to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient, whenever such perjury or other offence aforesaid has been actually committed, to allege the offence of the person who actually committed such perjury or other offence, in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully and corruptly did cause and procure the said person to do and commit the said offence in manner and form aforesaid; and whenever such perjury or other offence aforesaid has not actually been committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.—32-33 *V.*, *c.* 23, *s.* 10. 14-15 *V.*, *c.* 100, *s.* 21, *Imp.*

109. In any indictment for murder or manslaughter, or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused; but it shall be sufficient in any indictment for murder to charge that the accused did feloniously, wilfully, of his malice aforethought, kill and murder the deceased,—and it shall be sufficient in any indictment for manslaughter to charge that the accused did feloniously kill and slay the deceased; and it shall be sufficient in any indictment against any accessory to any murder or manslaughter to charge the principal with the murder or manslaughter, as the case may be, in the manner hereinbefore specified, and then to charge the accused as an accessory, in the manner heretofore used and accustomed, or by law provided.—32-33 *V.*, *c.* 20, *s.* 6. 24-25 *V.*, *c.* 100, *s.* 6, *Imp.*

110. In any indictment for stealing, or, for any fraudulent purpose, destroying, cancelling, obliterating or concealing the whole or any part of any document of title to land, it shall be sufficient to allege such document to be or contain evidence of the title, or of part of the title, or of some matter affecting the title, of the person or of some one of the persons having an interest, whether vested or contingent, legal or equitable, in the real property to which the same relates, and to mention such real property or some part thereof.—32-33 *V.*, *c.* 21, *s.* 16, *part.* 24-25 *V.*, *c.* 96, *s.* 28, *Imp.*

111. Any number of distinct acts of embezzlement, or of fraudulent application or disposition, not exceeding three, committed by the offender, against Her Majesty, or against the same municipality, master or employer, within the space of six months from the first to the last of such acts, may be charged in any indictment,—and if the offence relates to any money or any valuable security, it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender is proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security of which such amount was composed is not proved, or if he is proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security was delivered to him in order that some part of the value thereof should be returned to the person delivering the same, or to some other person, and such part has been returned accordingly.—32-33 *V.*, *c.* 21, *s.* 73. 24-25 *V.*, *c.* 96, *s.* 71, *Imp.*

See, *ante*, p. 383, under sec. 52 of the Larceny Act, to which this clause applies.

112. In any indictment for obtaining or attempting to obtain any property by false pretences it shall be sufficient to allege that the person accused did the act with intent to defraud, and without

alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money or valuable security; and on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to defraud.—32-33 *V.*, *c.* 21, *s.* 93, *part.* 24-25 *V.*, *c.* 96, *s.* 88, *Imp.*

Sill v. *R.*, *Dears.* 132, is not now law since this enactment.

See sec. 77, of c. 164, p. 420, *ante*, as to the offence of obtaining under false pretences. See Greaves' note under sec. 114, *post*.

113. It shall not be necessary to allege, in any indictment against any person for wrongfully and wilfully pretending or alleging that he inclosed and sent, or caused to be inclosed and sent, in any post letter, any money, valuable security or chattel, or to prove on the trial, that the act was done with intent to defraud.—32-33 *V.*, *c.* 21, *s.* 96, *part.*

This clause is not in the Imperial Acts. It has reference to sec. 79, p. 440, *ante*, of the Larceny Act.

114. In any indictment for forging, altering, uttering, offering, disposing of or putting off any instrument whatsoever, where it is necessary to allege an intent to defraud, it shall be sufficient to allege that the person accused did the act with intent to defraud, without alleging an intent to defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to defraud.—32-33 *V.*, *c.* 19, *s.* 51. 24-25 *V.*, *c.* 98, *s.* 44, *Imp.*

See, *ante*, c. 165, general remarks on forgery.

The words "where it is necessary to allege an intent to defraud" were inserted to prevent its being supposed that this clause made it necessary to allege an intent to defraud in cases where the clause creating the offence did not make such an intent an ingredient in the offence.—*Greaves' note.*

This section, and section 112, *ante*, apply to two matters the statement of the intent to defraud in indictments for forgery and false pretences, and the evidence in support of such intent.

Before this act passed, it was necessary in these cases to allege that the defendant did the act charged with intent to defraud some particular individual mentioned in the indictment, and to prove that in fact the defendant did such act with intent to defraud the person so specified. This in most instances led to the multiplication of counts, alleging an intent to defraud different persons, so as to meet any view that the jury might take of the evidence, and sometimes upon the evidence, a difficulty occurred in ascertaining whether any person in particular could be said to be intended to be defrauded. (See *R.* v. *Marcus*, 2 *C & K.* 356; *R.* v. *Tuffs*, 1 *D. C. C.* 319). This clause is intended to obviate all such difficulties, and it renders it sufficient to allege in the indictment, that the forgery or uttering was committed, or the goods obtained, with intent to defraud, without specifying any particular person intended to be defrauded; and it likewise renders it unnecessary to prove that the defendant intended to defraud any particular person, and makes it sufficient to prove that he did the act with intent to defraud.—*Greaves' note.*

115. In any indictment against any person for buying, selling, receiving, paying or putting off, or offering to buy, sell, receive, pay or put off, without lawful authority or excuse, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, at or for a lower rate or value than the same imports or was apparently intended to import, it shall be sufficient to allege that the person accused did buy, sell, receive, pay or put off, or did offer to buy, sell, receive, pay or put off the false or counterfeit coin, at or for a lower rate of value than the same imports, or was apparently intended to import, without alleging at or

for what rate, price or value the same was bought, sold, received, paid or put off, or offered to be bought, sold, received, paid or put off.—32-33 *V.*, *c.* 18, *s.* 6, *part.* 24-25 *V.*, *c.* 99, *s.* 6, *Imp.*

See 1 *Russ.* 135.

"Under the former enactment it was necessary to allege in the indictment, and prove by evidence, the sum for which the coin was bought, etc.; *R.* v. *Joyce, Carr. Supp.* 184; *R.* v. *Hedges*, 3 *C. & P.* 410; the last part of this clause renders it unnecessary to allege the sum for which the coin was bought, etc., and consequently whatever the evidence on that point may be, there can be no variance between it and the allegation in the indictment, and all that need be proved is that the coin was bought, etc., at some lower rate or value than it imports.—*Greaves' note.*

116. It shall be sufficient in any indictment for any offence against the "*Act respecting Malicious Injuries to Property*," where it is necessary to allege an intent to injure or defraud, to allege that the person accused did the act with intent to injure or defraud, as the case may be, without alleging an intent to injure or defraud any particular person, and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to injure or defraud as the case may be.—32-33 *V.*, *c.* 22, *s.* 68. 24-25 *V.*, *c.* 97, *s.* 60, *Imp.*

This clause places the law on these points in the same position as in cases of forgery and false pretences. *Secs.* 112 *and* 114, *ante.*

117. In any indictment for any offence committed in or upon or with respect to,—

(*a.*) Any church, chapel, or place of religious worship, or anything made of metal fixed in any square or street, or in any place dedicated to public use or ornament, or in any burial-ground,—

(*b.*) Any highway, bridge, court-house, gaol, house of correction, penitentiary, infirmary, asylum, or other public building,—

(*c.*) Any railway, canal, lock, dam, or other public work, erected or maintained in whole or in part at the expense of Canada, or of any of the Provinces of Canada, or of any municipality, county, parish or township, or other sub-division thereof,—

(*d.*) Any materials, goods or chattels belonging to or provided for, or at the expense of Canada, or of any such Province, or of any municipality or other sub division thereof, to be used for making, altering or repairing any highway or bridge, or any court-house or other such building, railway, canal, lock, dam or other public work as aforesaid, or to be used in or with any such work, or for any other purpose whatsoever,—

(*e.*) The whole or any part of any record, writ, return, affirmation, recognizance, *cognovit actionem*, bill, petition, answer, decree, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or of any original document whatsoever, of or belonging to any court of justice, or relating to any cause or matter, begun, depending or terminated in any such court, or of any original document in any wise relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, or in any Government or public office,—

(*f.*) The whole or any part of any will, codicil or other testamentary instrument, or—

(*g.*) Any writ of election, return to a writ of election, indenture, poll-book, voters' list, certificate, affidavit, report, document or paper, made, prepared or drawn out according to any law respecting provincial, municipal or civic elections,—

It shall not be necessary to allege that any such property instrument or article is the property of any person.—32-33 *V.*, *c.* 21, *ss.* 17, *part*, 18, *part*, 20, *part, and c.* 29, *s.* 19. 29-30 *V.* (*Can.*), *c.* 51, *s.* 188, *part.* 24-25 *V.*, *c.* 96, *ss.* 29, 30, 31, *Imp.*

118. If in any indictment for any offence, it is requisite to state the ownership of any property, real or personal, which belongs to or is in possession of more than one person, whether such persons are partners in trade, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named, and another or others, as the case may be.—32-33 *V.*, *c.* 29, *s.* 17.

119. If, in any indictment for any offence, it is necessary for any

purpose to mention any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision and that of the next preceding section shall extend to all joint stock companies and trustees.—32-33 *V., c.* 29, *s.* 18.

These two clauses are taken from the Imperial Act, 7 Geo. IV., c. 64, s. 14. Formerly, where goods stolen were the property of partners, or joint-owners, all the partners or joint-owners must have been correctly named in the indictment, otherwise the defendant would have been acquitted.

The word "*Parceners*" refers to a tenancy which arises when an inheritable estate descends from the ancestor to several persons possessing an equal title to it. —*Wharton, Law Lexicon.*

It must be remembered that the words of the statute, in sec. 118, are, "*another or others;*" and if an indictment allege property to belong to A. B. and *others*, and it appears that A. B. has only one partner, it is a variance.

The prisoner was indicted for stealing the property of G. Eyre "and *others*," and it was proved that G. Eyre had only one partner; it was held, per Denman, Com. Serj., that the prisoner must be acquitted.—*Hampton's Case*, 2 *Russ.* 303. So where a count for forgery laid the intent to be to defraud S. Jones "and *others*," and it appeared that Jones had only one partner, it was held that the count was not supported.—*R.* v. *Wright*, 1 *Lewin*, 268.

In *R.* v. *Kealey*, 2 *Den.* 68, the defendant was indicted for the common law misdemeanor of having attempted, by false pretences made to J. Baggally and others, to obtain from the said J. Baggally and others

one thousand yards of silk, the property of the said J. Baggally and others, with intent to cheat the said J. Baggally and others of the same. J. Baggally and others were partners in trade, and the pretences were made to J. Baggally; but none of the partners were present when the pretences were made, nor did the pretences ever reach the ear of any of them. It was objected that there was a variance, as the evidence did not show that the pretences where made to J. Baggally and others; but the objection was overruled by Russell Guerney, Esq., Q. C., and, upon a case reserved, the conviction was held right.

Greaves, in *note a*, 2 *Russ.* 304, says on this case: "It is clear that the 7 Geo. IV., c. 64, s. 14 (secs. 118 and 119, *ante*, of the Procedure Act) alone authorizes the use of the words 'and others;' for, except for that clause, the persons must have been named. There the question really was, whether that clause authorized the use of it in this allegation. The words are, 'whenever it shall be necessary to mention, *for any purpose whatsoever*, any partners, etc.' ('if it be necessary *for any purpose* to mention,' etc., sec. 119, *ante.*) Now it is plain that the prisoner had applied to Baggally to purchase the goods of the firm, and the inference from the statement in the indictment is that he had actually made a contract for their purchase, and, if that contract had been alleged, it must have been alleged as a contract with the firm, and it was clearly correct to allege an attempt to make a contract as made to the firm also."

Now, such a variance, as mentioned in *Hampton's* and *Wright's* cases, *ubi supra*, would not be fatal, if amended.—3 *Burn*, 25; see sec. 238 *post;* and *R.* v.

Pritchard, L. & C. 34; *R.* v. *Vincent*, 2 *Den.* 464; *R.* v. *Marks*, 10 *Cox*, 367.

It is not necessary that a strict legal partnership should exist. Where C. and D. carried on business in partnership, and the widow of C., upon his death, without taking out administration, acted as partner, and the stock was afterwards divided between her and the surviving partner, but, before the division, part of the stock was stolen; it was holden that the goods were properly described as the goods of D. and the widow.—*R.* v. *Gaby*, *R. & R.* 178.

And where a father and son carried on business as farmers; the son died intestate, after which the father continued the business for the joint benefit of himself and the sons next of kin; some sheep were stolen, and were laid to be the property of the father and the sons next of kin, and all the judges held it right.—*R.* v. *Scott*, *R. & R.* 13.

In an indictment for stealing a Bible, a hymn-book, etc., from a Methodist chapel, the goods were laid as the property of John Bennett and others, and it appeared that Bennett was one of the Society, and a trustee of the chapel: Parke, J., held that the property was correctly laid in Bennett.—*R.* v. *Boulton*, 5 *C. & P.* 537.

In *R.* v. *Pritchard*, *L. & C.* 34, it was held that the property of a banking co-partnership may be described as the property of one of the partners specially named and others, under the clause in question; but see now sec. 122 of the Procedure Act, *post*, as to bodies corporate, and the property under their control.—*R.* v. *Beacall*, 1 *Moo. C. C.* 15.

120. In any indictment for any offence committed on or with respect to any house, building, gate, machine, lamp, board, stone, post, fence or other thing erected or provided by any trustees or commissioners, in pursuance of any act in force in Canada, or in any Province thereof, for making any turnpike road, or to any conveniences or appurtenances thereunto respectively belonging, or to any materials, tools or implements provided for making, altering or repairing any such road, it shall be sufficient to state any such property to belong to the trustees or commissioners of such road, without specifying the names of such trustees or commissioners.—32-33 *V.*, *c.* 29, *s.* 20. 7 *Geo.* 4, *c.* 64, *s.* 17, *Imp.*

121. In any indictment for any offence committed on or with respect to any buildings, or any goods or chattels, or any other property, real or personal, in the occupation or under the superintendence charge or management of any public officer or commissioner, or any, county, parish, township or municipal officer or commissioner, it shall be sufficient to state any such property to belong to the officer or commissioner in whose occupation or under whose superintendence, charge or management such property is, and it shall not be necessary to specify the names of any such officer or commissioner.—32-33 *V.*, *c.* 29, *s.* 21. 7 *Geo.* 4, *c.* 64, *s.* 16, *Imp.*

It has been held that if a person employed by a trustee of turnpike tolls to collect them, lives in the toll house rent free, the property in the house, in an indictment for burglary, may be laid in the person so employed by the lessee, he having the exclusive possession, and the toll house not being parcel of any premises occupied by his employer.—*R.* v. *Camfield*, 1 *Moo. C. C.* 42.

122. All property, real and personal, whereof any body corporate has, by law, the management, control or custody, shall, for the purpose of any indictment or proceeding against any other person for any offence committed on or in respect thereof, be deemed to be the property of such body corporate.—32-33 *V.*, *c.* 29, *s.* 22.

This clause is not in the English statutes. It is only declaratory of the common law, and it was held in England without this clause, that when goods of a corporation are stolen, they must be laid to be the property of the corpo-

ration in their corporate name and not in the names of the individuals who comprise it.—*R.* v. *Patrick and Pepper*, 1 *Leach.* 253. So in *R.* v. *Freeman*, 2 *Russ.* 301, the prisoner was indicted for stealing a parcel, the property of the London and North Western Railway Company. The parcel was stolen from the Lichfield Station, which had been in the possession of the company for three or four years, by means of their servants; but no statute was produced which authorized the company to purchase the Trent Valley Line; an Act incorporating the company was, however, produced. It was held that, as a corporation is liable in trover, trespass and ejectment, they might have an actual possession, though it might be wrongful, which would support the indictment.

In *R.* v. *Frankland, L. & C.* 276, it was held: 1st. That the incorporation of a private company must be proved by legal and documentary evidence; 2nd. That partners in a company not incorporated, might be proved to be such by parol evidence; 3rd. That Thomas Bolland and others, who were described in the indictment as the owners of the property embezzled, being partners in a company not incorporated, the indictment was supported by proof that the money was the property of the company.

123. In any indictment against any person for stealing any oysters or oyster brood from any oyster bed, laying or fishery, it shall be sufficient to describe, either by name or otherwise, the bed, laying or fishery in respect of which any of the said offences has been committed, without stating the same to be in any particular county, district or local division.—32-33 *V.*, *c.* 21, *s.* 14, *part.* 24-25 *V.*, *c.* 96, *s.* 26, *Imp.*

See sec. 11 of *The Larceny Act*, p. 294, *ante.*

124. In any indictment for any offence mentioned in sections twenty-five to twenty-nine, both inclusive, of "*The Larceny Act.*"

shall be sufficient to lay the property in Her Majesty, or in any person or corporation, in different counts in such indictment; and any variance in the latter case, between the statement in the indictment and the evidence adduced, may be amended at the trial; and if no owner is proved the indictment may be amended by laying the property in Her Majesty.—32-33 *V.*, *c.* 21, *s.* 36.

These sections of the *Larceny Act*, p. 312 *et seq.*, *ante*, apply to the stealing of ores and minerals, and the unlawfully selling or buying gold and silver from mines.

125. In any indictment for any offence committed in respect of any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, of the Legislature of any Province of Canada, for the payment of any fee, rate or duty whatsoever, the property therein may be laid in the person in whose possession, as the owner thereof, it was when the larceny or offence was committed, or in Her Majesty, if it was then unissued, or in the possession of any officer or agent of the Government of Canada or of the Province, by authority of the Legislature whereof it was issued or prepared for issue.—35 *V.*, *c.* 33, *s.* 1, *part.*

Sec. 2 of the *Larceny Act*, p. 278, *ante*, declares these stamps to be chattels, and included in the word property.

126. In every case of larceny, embezzlement or fraudulent application or disposition of any chattel, money or valuable security, under sections fifty-three, fifty-four and fifty-five of "*The Larceny Act*," the property in any such chattel, money or valuable security may, in the warrant of commitment by the justice of the peace before whom the offender is charged, and in the indictment preferred against such offender, be laid in Her Majesty, or in the municipality, as the case may be.—32-33 *V.*, *c.* 21, *s.* 72, *part.* 24-25 *V.*, *c.* 96, *s.* 70, *Imp.*

See, *ante*, p. 401, under these clauses of the *Larceny Act.*

127. An indictment in the common form for larceny may be preferred against any person who steals any chattel let to be used by him in or with any house or lodging,—and in every case of stealing any fixture so let to be used, an indictment in the same form as if the

offender was not a tenant or lodger may be preferred,—and in either case the property may be laid in the owner or person letting to hire. 32-33 *V., c.* 21, *s.* 75, *part.* 24-25 *V., c.* 96, *s.* 94, *Imp.*

See, *ante*, p. 404 under sec. 57 of the Larceny Act.

128. No indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "*as appears upon the record*" or "as appears by the record," or of the words "with force and arms," or of the words "against the peace,"—or for the insertion of the words "against the form of the statute" instead of the words "against the form of the statutes," or *vice versâ, or for the omission of such words,—or for the want of an addition or for an imperfect addition of any person mentioned in the indictment,* or because any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name,—or for omitting to state the time at which the offence was committed in any case in which time is not of the essence of the offence, or for stating the time imperfectly, or for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, —or for want of a proper or perfect venue, or for want of a proper or formal conclusion, or for want of or imperfection in the addition of any defendant,—or for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case in which the value or price or amount of damage, injury or spoil is not of the essence of the offence.—32-33 *V., c.* 29, *s.* 23.

The words 'against the form of the statute" are not necessary in any indictment.—*Castro* v. *R.*, 14 *Cox*, 546.

This clause is taken from the Imperial Act, 14-15 V., c. 100, s. 24. The words in *italics* are not in the Imperial Act.

By this enactment no objection can be taken against an indictment in the following cases:

1. The want of the averment of any matter unnecessary to be proved.

2. The omission of the words "as appears upon the record."

3. The omission of the words "as appears by the record."

4. The omission of the words "with force and arms."

5. The omission of the words "against the peace."

6. The insertion of the words "against the form of the statute" instead of "against the form of the statutes," and vice versâ.

7. The omission of such words.

8. Want of, or imperfection in the addition of any person mentioned in the indictment.

9. That any person is designated by a name of office, or other descriptive appellation instead of his proper name.

10. Omitting to state the time at which any offence was committed in any case where time is not of the essence of the offence.

11. Stating the time imperfectly.

12. Stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened.

13. Want of a proper or perfect venue.

14. Want of a proper or formal conclusion.

15. Want of, or imperfection in the addition of any defendant.

16. Want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case where the value or price, or the amount of damage, injury or spoil is not of the essence of the offence.

On the first, second and third cases, no remarks are called for.

On the fourth, rendering unnecessary in any indictment the words "with force and arms," *Chitty* said, on these words, before this clause: "The words 'with force and

arms,' anciently *vi et armis*, were, by the common law, necessary in indictment for offences which amount to an actual disturbance of the peace, or consist, in any way, of acts of violence; but it seems to be the better opinion that they were never necessary where the offence consisted of a cheat or non-feasance, or a mere consequential injury ..... But the statute 37 Hen. VIII, c. 8, reciting that several indictments had been deemed void for want of these words, when in fact no such weapon had been employed, enacted that, 'that the words *vi et armis, videlicit, cum baculis, cultellis, arcubus et sagittis*,' shall not of necessity be put in any indictment or inquisition. Upon the construction of this statute, there seems to have been entertained very grave doubts whether the whole of the terms were intended to be abolished in all indictments, or whether the words following the *videlicet* were alone excluded. Many indictments for trespass, and other wrongs, accompanied with violence, have been deemed insufficient for want of the words 'with force and arms;' and, on the other hand, the court has frequently refused to quash the proceedings where they have been omitted, and the last seems the better opinion, for otherwise the terms of the statute appear to be destitute of meaning. It seems, to be generally agreed, that, where there are any other words imploying force, as, in an indictment for a rescue, the word 'rescued,' the omission of *vi et armis* is sufficiently supplied. But it is at all times safe and proper to insert them, whenever the offence is attended with an actual or constructive force, or affects the interest of the public."

The words "with force and arms," though not absolutely an essential allegation of the indictment, would, in certain

cases, not be easily replaced, as in indictments for forcible entry or forcible detainer. This clause would not apply, if a statute created an offence in the following words: "Whosoever, with force and arms, destroys, etc. Then the words *vi et armis* would be a necessary ingredient of the offence, and should be found in an indictment under such a clause.

As to the words "against the peace," at common law, they were necessary, where the offence charged was not one created by statute, and *contra pacem Domini Regis* were the words required; and this in the conclusion of each of the counts; *contra pacem* alone was insufficient, though *contra coronam et dignitatem ejus* was not necessary.—2 *Hale*, 188. So, formerly, great care was necessary in ascertaining whether the expression "against the form of the statute" or "against the form of the statutes" should be used; but one or the other was necessary when the indictment charged a statutory crime. In England, though a contrary opinion is given in *Archbold*, *p.* 67, it seems, according to *Broom's Comm. p.* 991, that, even now, the conclusion of the indictment must be *contra formam statuti*, where the offence charged is founded upon the statute law, as the 14-15 V., c. 100, s. 29, does not dispense with the conclusion; but whatever doubts may arise there are in Canada removed by the enactment stated as the seventh, *ante*, of our corresponding clause, as to the omission of these words.

It will be seen that another enactment in the Canadian clause, not to be found in the English act, is the eighth, *ante*, declaring immaterial the want of addition or imperfect addition of *any* person mentioned in the indictment. This covers all persons who are named as owners of the

property, regarding which the offence has been committed, and appears to be the rule even without this clause.—3 *Burn*, 23.

What is meant by the word "addition?" *Addition* is the title, or mystery (art, trade or occupation), and place of abode of a person besides his names.—*Wharton, Law Lexicon, verbo addition.*

By the ninth enactment of the clause in question, it is declared that no indictment shall be insufficient "for that any person mentioned in it is designated by a name of office or other descriptive appellation instead of his proper name."

This part of the clause applies only to the names of the prosecutor or of the party injured, or of any third parties mentioned in the indictment; it does not extend to the names of the defendant. Under it, an indictment alleging the goods stolen to be the property of the "Duke of Cambridge" without giving him any other names, would be held sufficient. *R.* v. *Frost, Dears.* 474. But it must be remembered that, if at the trial, it appear in evidence that the party injured is misnamed, or that the owner of the goods or house, etc., is another and different person from him named as such in the indictment, the variance, unless amended, is fatal, and the defendant must be acquitted.—2 *East, P. C.* 651, 781; *Archbold*, 46. But, now, under sec. 238 of the Procedure Act, see, *post*, such an amendment, asked for before verdict, would hardly ever be refused.

The enactments tenthly, eleventhly, and twelfthly, contained in the above sec. 128, refer to omitting in any indictment to state the time at which the offence was committed, in any case where time is not of the essence of the

offence, or to stating the time imperfectly, or to stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, the clause enacting in the same terms as the English act, that no objection to any indictment on these grounds will be available to the defendant.

At common law, where the date was not a necessary ingredient of the offence, a variance between the indictment and evidence in the time, when the offence was committed, was never considered material, and in *Sir Henry Vane's Case*, for high-treason, the jury, under instructions of the court, found the prisoner guilty, though the offence was proved to have been committed ten years anterior to the time laid in the indictment.—*Kelyng's C. C.* 19; *Stevens & Haynes* reprint. And the doctrine that the time laid in the indictment is not material, when not essential to the offence, was confirmed by all the judges in *Lord Balmerino's Case;* note in *Townley's Case, Fost.* 9.

So, Lord Hale, says: "But though the day or year be mistaken in the indictment of felony or treason, yet if the offence be committed in the same county at another time, the offender ought to be found guilty."—2 *Hale*, 179. But it was, nevertheless, necessary, though only a formal averment, except in particular cases, to state in the indictment the time at which the offence charged had been committed, that is to say the year and day, and any uncertainty or incongruity in the description of time was fatal to the indictment.—1 *Starkie, Cr. Pl.* 54, 60. The rule required a day to be specified, but did not require that day to be proved. *Lord Campbell, Lives of the Chief*