
THE CRIMINAL CODE.

THE
CRIMINAL CODE

OF THE

DOMINION OF CANADA,

AS AMENDED IN 1893,

WITH

COMMENTARIES, ANNOTATIONS, PRECEDENTS
OF INDICTMENTS; &c., &c.

BY

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BEING A THIRD EDITION OF THE AUTHOR'S WORK ON THE CRIMINAL
STATUTE LAW OF THE DOMINION OF CANADA.

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PREFACE.

JULY 1st, 1893.

THE coming into force on this day of the Criminal Code has necessitated a new edition of this work, heretofore published *sub. nom.* "The Criminal Statute Law of Canada." (Two editions, first in 1874, second in 1888.)

In the present volume will be found, besides the text of the Code, under each section thereof to which they respectively apply :

1.—The report of the Imperial Commissioners on the draft Code of 1879, submitted to the Imperial House of Commons in the form of a Bill in 1880, from which the present Code has been in a large measure textually taken :

2.—The cases from England and each of the Provinces of the Dominion brought down to the latest date :

3.—A reference to the Imperial corresponding statute now in force in England :

4.—A reference to the Imperial statutory enactments applying to Canada and to the unrepealed Canadian statutes on the same or cognate subjects :

5.—Copious extracts from Russell, Greaves, Archbold, Bishop and other well known books on Criminal Law :

6.—Forms of indictments adapted to the changes in the law for the offences the more frequently met with in our courts; in many instances, these might be shorter, but, till there is a settled jurisprudence on the new law, it was

deemed prudent not to expose those who have to draft indictments to useless risks :

7.—The changes, extensions, or additions to the law, either italicized in the text of the statute, or pointed out in the annotation. This has been done even in the parts specially relating to justices of the peace, magistrates, coroners, etc., though, as in the previous editions, the size of the book did not allow the annotation of these enactments.

The index of matters and tables of cases have been prepared by C. H. Masters, Esq., of the New Brunswick Bar, assistant reporter to the Supreme Court.

The following synopsis of the principal parts of the new statute to which the attention of the practitioner should be more especially called may prove useful, though it must not be taken as giving more than about one-half of the amendments introduced :

Enactments on magistrates, coroners, justices of the peace, constables, etc.

553. As to jurisdiction, p. 627, *post*.

568-642. A coroner cannot commit for trial: the finding of murder or manslaughter by a coroner's jury is to be reviewable by a magistrate. (*New*).

590. Depositions before a justice on a preliminary inquiry must be read over and signed by the witness and the justice, the accused, the witness and justice *being all present together at the time of such reading and signing*: depositions to be written on one side only of each sheet; may be taken by stenographer; same for depositions on trial of summary convictions, sec. 843, except that the witnesses need not sign their depositions, sec. 856. (*New*).

550. Trials of offenders under sixteen to be private. (*New*).

552. Arrest without warrant, in what cases legal by peace-officers and others. (*Amended*).

562, 796, 818. Affidavit of service of summons at place of abode must state that it was made on some inmate thereof, apparently not under sixteen. (*New*).

562-563. No summons or warrant to be signed in blank. (*New*).

575. Search-warrant authorized for lottery-tickets or instruments. (*New*).

585, 586, 591. (*Amended*).

593. (*New*).

595. (*New*).

784. The summary trials of indictable offences not limited to the police limits of cities. (*New*).

846. Certain objections not fatal. (*New*).

864. No summary conviction for assault if either complainant or accused objects thereto. (*New*).

959. Provisions as to sureties and articles of the peace. (*New*).

Page 948. Enactment as to absence of seal from documents of justices repealed, and not re-enacted.

GENERAL ENACTMENTS—OFFENCES NEW, OR ALTERED, OR EXTENDED.

13. Abolition of rule that a wife committing an offence in presence of her husband acts under coercion.

The rule, however, will still subsist for a wife who is accessory after the fact to her husband. And (*new*) a husband accessory after the fact to his guilty wife *will be presumed to act under coercion*, sec. 63.

16-60. (Drawn by Lord Blackburn for Imperial draft.) This part of the Act in the main represents the existing law as to the circumstances which excuse or justify acts which would otherwise be crimes, and more particularly the law relating to the degree of force which may be used in arresting offenders. Such alterations as it makes are for the most part made necessary by the abolition of the

distinction between felonies and misdemeanours. There are, besides, a few special alterations in particular cases, notice of which is given under each section in this volume. A definite rule is laid down as to the suppression of dangerous riots (ss. 38-43) not materially varying from Lord Chief Justice Tindal's charge to the Grand Jury after the Bristol riots (*see* 1st Stephens Hist. Cr. L. 204), but more explicit and complete. (From Imp. Comm. memo. to Parliament.)

61. Puts the rules as to accessories and abettors in a new form.

64. Any one may be found guilty of attempt to commit an offence although the commission of the offence was impossible under the circumstances.

65. Treason. (*Amended*).

67. Accessory after the fact to treason. (*New*).

72. Inciting to mutiny. (*New*).

120, 121, 122, 123, 124. As to seditious offences. (*New*).

125. Libel on foreign sovereigns (*New*).

126. Spreading false news. (*New*).

127, 128, 129, 130. As to piracy. (*New*).

131. Bribery and corruption of judges, members of parliament, or of a legislature. (*New*).

132. Corruption of peace officers. (*New*).

135. Breach of trust by public officer. (*New*).

137. Selling office. (*New*).

139. Disobedience to orders of court. (*New*).

140. Neglect of peace officer. (*New*).

141. Neglect to aid peace officer. (*New*).

142. Neglect to aid peace officer. (*New*).

145. New provisions as to perjury.

150. False statements. (*New*).

151. Fabricating evidence. (*New*).

152. Conspiracy to bring false accusations. (*New*).
- 159, 160. As to escapes and rescues. (*New*).
170. Blasphemous libel. (*New*).
177. Indecent acts. (*Amended*).
179. Obscene books, etc. (*New*).
188. Conspiracy to defile. (*New*).
- 192, 193. As to nuisances. (*New*).
194. Selling things unfit for food.. (*New*).
- 195, 196, 197, 198. Gaming or disorderly houses. (*New*).
206. Misconduct in respect to dead bodies. (*New*).
- 210, 211. Amendments of statute concerning duty of parents, masters or husbands to provide necessaries, etc. See p. 144, *post*.
- 227, 228, 229. Alter the law of murder and manslaughter: murder is not now to be defined as "killing with malice aforethought." But killing with malice aforethought does not cease to be murder. Accidental killing of any one in the commission of a felony is not now to be murder. See pages 153 to 212, *post*, as to details.
237. Aiding and abetting suicide. (*New*).
238. Attempt to commit suicide. (*New*).
239. Neglect to obtain assistance in child-birth. (*New*).
266. Law as to rape altered.
271. Killing child in mother's womb. (*New*).
283. Abduction of girl under sixteen. (*Amended*).
291. Law of libel as to public meetings. (*New*).
- 303-305. Law of larceny amended. Embezzlement as a distinct offence abolished. A fraudulent conversion now the gist of the offence, not an unlawful taking. See pages 307 to 340, *post*.
313. The law as to stealing by husband of his wife's property and *vice versa*, and as to receiving by avowterer amended.

- 314. As to receiving stolen goods. (*Amended*).
 - 315. As to receiving post letters. (*Amended*).
 - 346. Stealing by pick-locks, etc. (*New*).
 - 351. Stealing on railways. (*New*).
 - 353. Provision as to stealing of promissory notes, etc.,
left out.
 - 356. Previous conviction on charge of stealing.
(*Amended*).
 - 365. False statements by promoters, directors of com-
panies. (*Amended*).
 - 366. False accounting by clerks. (*New*).
 - 367. False statement by public officers. (*New*).
 - 369. Punishment increased from six months to ten
years.
 - 394. Conspiracy to defraud. (*New*).
 - 396. Practising witchcraft. (*New*).
 - 406. Extortion by threats. (*New*).
 - 403-418. Burglary. (*Amended*).
 - 417. Being masked by night. (*New*).
 - 423. Forgery. (*Amended*).
 - 428. Sending telegram in false name. (*New*).
 - 429. Sending false telegrams or letters. (*New*).
 - 456-457. Personation. (*New*).
 - 478. Previous conviction on offences against coin.
(*Amended*).
 - 481. Mischief. (*Amended*).
 - 482. Arson. (*Amended*).
 - 499. Damaging any property by night to amount of
\$20. (*New*).
 - 502. Punishment decreased from ten years to two
years.
 - 503. To destroy an election ballot or paper, seven
years. By s. 100, c. 8, R. S. C. (*unrepealed*) to destroy
any ballot paper, not more than six months.
-

- 507a. Injuries to harbours. (*New*).
 527. Conspiracies. (*New*).
 528. Attempts. (*New*).
 529. " (*New*).
 530. " (*New*).
 531-532. Accessories after the fact. (*New*).

PROCEDURE.

534. Effect of criminal offence on civil remedy.
 535. Distinction between felony and misdemeanour abolished. (*New*).
 539-540. Court of Sessions of the Peace, to have jurisdiction in manslaughter, perjury, forgery, counterfeiting coin, blasphemous libel, bribery at elections. (*New*).
 542. No alien to be prosecuted for an offence committed within the jurisdiction of the Admiralty, *even on board a British ship*, without leave of the Governor-General. (*New*).
 551. Limitation of time. (*Amended*).
 595. (*New*). P. 658 *post*.
 610, 611, 612, 613, 616, 617, 619, 626, 627, 629. Indictments. (*Amended*).
 631, 632, 633. Pleas in bar. (*Amended*).
 640. Abolishes the law of venue. Jurisdiction of courts, not confined to territorial limits. (*New*).
 641. Vexatious indictments Act extended to all prosecutions. (*New*).
 648. Bench warrant. (*Amended*).
 656. Pleas in abatement abolished. (*New*).
 660. Court may allow accused not to be present at trial. (*New*).
 661. Counsel's addresses to jury. (*Amended*).
 666. Challenging the array. (*New*).
 667. Calling the panel. (*New*).

668. Number of challenges, how regulated. (*New*).
673. Rules as to jury separating during trial. (*New*).
684. Evidence of any witness in forgery to require corroboration. (*New*).
690. Admissions by prisoner on trial. (*New*).
713. Verdict for a minor offence included in offence charged. (*Amended*).
But if on a charge of larceny, obtaining by false pretences is proved, or *vice versa*, the prisoner must now be acquitted. (*New*).
723. Variances and amendments. (*Amended*).
729. Any proceedings of the court on a Sunday are legal. (*New*).
731. *Jury de ventre inspiciendo* abolished.
743. Writ of error abolished.
744. Appeal when a reserved case refused. (*New*).
746. Powers of court of appeal. (*Amended*).
747. New trial. (*New*).
748. New trial by order of Minister of Justice. (*New*).
749. Intermediate effects of appeal. (*New*).
832-835. Costs. (*New*).
836. Compensation for loss of property. (*New*).
838. Restitution of stolen property. (*Amended*).
951-952. Punishments in cases not provided for and after previous conviction. (*Amended*).
959. Sureties for the peace, articles of the peace. (*New*).
961. Disabilities by a conviction. (*New*).
962-965. Outlawry and attainder abolished. (*New*).
-

A TABLE OF REGNAL YEARS.

FOR CONVENIENCE OF REFERENCE TO THE ENGLISH STATUTES AND LAW
REPORTS.

SOVEREIGNS.	COMMENCEMENT OF REIGN.	Length of Reign.
William I.....	December 25, 1066.....	21
William II.....	September 26, 1087.....	13
Henry I.....	August 5, 1100.....	36
Stephen.....	December 26, 1135.....	19
Henry II.....	December 19, 1154.....	35
Richard I.....	September 3, 1189.....	10
John.....	May 27, 1199.....	18
Henry III.....	October 28, 1216.....	57
Edward I.....	November 20, 1272.....	35
Edward II.....	July 8, 1307.....	20
Edward III.....	January 25, 1327.....	51
Richard II.....	June 22, 1377.....	23
Henry IV.....	September 30, 1399.....	14
Henry V.....	March 21, 1413.....	10
Henry VI.....	September 1, 1422.....	39
Edward IV.....	March 4, 1461.....	23
Edward V.....	April 9, 1463.....	..
Richard III.....	June 26, 1483.....	3
Henry VII.....	August 22, 1485.....	24
Henry VIII.....	April 22, 1509.....	38
Edward VI.....	January 28, 1547.....	7
Mary.....	July 6, 1553.....	2
Philip and Mary.....	July 25, 1554.....	4
Elizabeth.....	November 17, 1558.....	45
James I.....	March 24, 1603.....	23
Charles I.....	March 27, 1625.....	24
The Commonwealth.....	January 30, 1649.....	11
Charles II*.....	May 29, 1660.....	37
James II.....	February 6, 1685.....	4
William and Mary.....	February 13, 1689.....	14
Anne.....	March 8, 1702.....	13
George I.....	August 1, 1714.....	13
George II.....	June 11, 1727.....	34
George III.....	October 25, 1760.....	60
George IV.....	January 29, 1820.....	11
William IV.....	June 26, 1830.....	7
Victoria.....	June 20, 1837.....	..

*Although Charles II. did not ascend the throne until 29th May, 1660, his regnal years were computed from the death of Charles I., January 13, 1649, so that the year of his restoration is styled the twelfth of his reign.

A TABLE OF REGNAL YEARS—Continued.

1831—1 & 2 Wm. IV.	1862—25 & 26 Vic.
1832—2 & 3 "	1863—26 & 27 "
1833—3 & 4 "	1864—27 & 28 "
1834—4 & 5 "	1865—28 & 29 "
1835—5 & 6 "	1866—29 & 30 "
1836—6 & 7 "	1867—30 & 31 "
1837—7 Wm. IV. and 1 Vic.	1868—31 & 32 "
1838— 1 & 2 Vic.	1869—32 & 33 "
1839— 2 & 3 "	1870—33 & 34 "
1840— 3 & 4 "	1871—34 & 35 "
1841— 4 & 5 "	1872—35 & 36 "
1841— 5 "	1873—36 & 37 "
1842— 5 & 6 "	1874—37 & 38 "
1843— 6 & 7 "	1875—38 & 39 "
1844— 7 & 8 "	1876—39 & 40 "
1845— 8 & 9 "	1877—40 & 41 "
1846— 9 & 10 "	1878—41 & 42 "
1847—10 & 11 "	1879—42 & 43 "
1848—11 & 12 "	1880—43 & 44 "
1849—12 & 13 "	1881—44 & 45 "
1850—13 & 14 "	1882—45 & 46 "
1851—14 & 15 "	1883—46 & 47 "
1852—15 & 16 "	1884—47 & 48 "
1853—16 & 17 "	1885—48 & 49 "
1854—17 & 18 "	1886—49 & 50 "
1855—18 & 19 "	1887—50 & 51 "
1856—19 & 20 "	1888—51 & 52 "
1857—20 "	1889—52 "
1857—20 & 21 "	1889—52 & 53 "
1858—21 & 22 "	1890—53 & 54 "
1859—22 "	1891—54 & 55 "
1859—22 & 23 "	1892—55 & 56 "
1860—23 & 24 "	1893—56 & 57 "
1861—24 & 25 "	

THE CRIMINAL CODE, 1892.

[55-56 VIC. c. 29].

AMENDMENT OF 1893.

[56 VIC. c. 32].

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