

CHAPTER IV.

PARTIES TO THE COMMISSION OF CRIMES—PRINCIPAL AND ACCESSORY.

ARTICLE 35.

PRINCIPALS IN FIRST DEGREE.

² WHOEVER actually commits, or takes part in the actual commission of a crime, is a principal in the first degree, whether he is on the spot when the crime is committed or not; and if a crime is committed partly in one place and partly in another, every one who commits any part of it at any place is a principal in the first degree.

Illustrations.

(1.)³ A lays poison for B, which B takes in A's absence. A is a principal in the first degree.

(2.)⁴ A steals goods from a ship, and lays them in a place at some distance, whence B, by previous concert, carries them away for sale. A and B are both principals in the first degree.

ARTICLE 36.

INNOCENT AGENT.

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

Illustrations.

(1.)⁵ A tells B, a child under seven, to bring him money belonging to C. B does so. A is a principal in the first degree.

¹ 2 Hist. Cr. Law, ch. xxii. pp. 221-241; Draft Code, ss. 71-74.

² Foster, 347-50, gives the history of the distinction between principals in the first and second degree. See also Hale, ch. xxii. 1 P. C. 233; ch. xxxiv. 1 P. C. 435, and ch. lv. (512).

³ Foster, 349, says simply that A is "a principal" without mentioning the degree, but as no one has "aided" or "abetted," it would seem that he must be a principal in the first degree.

⁴ *R. v. Kelly*, 2 C. & K. 379.

⁵ *R. v. Manley*, 1 Cox, C. C. 104.

(2.)¹ A, knowing a note to be forged, asks B, who does not know it to be forged, to get it changed for him. B does so, and gives A the money. A is a principal in the first degree.

(3.)² B, in the last illustration, knows that the note is forged. A is an accessory before the fact.

ARTICLE 37.

PRINCIPALS IN THE SECOND DEGREE.

³ Whoever aids or abets the actual commission of a crime, either at the place where it is committed, or elsewhere, is a principal in the second degree in that crime.

⁴ Mere presence on the occasion when a crime is committed does not make a person a principal in the second degree, even if he neither makes any effort to prevent the offence or to cause the offender to be apprehended, but such presence may be evidence for the consideration of the jury of an active participation in the offence.

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

Illustrations.

(1.)⁵ A, B, C, and D go out with a common design to rob. A commits the robbery; B stands by ready to help; C is stationed some way off to give the alarm if anyone comes. A is a principal in the first degree, B, C, and D are principals in the second degree.

(2.)⁶ B is indicted for inflicting on C an injury dangerous to life with intent to murder. A is indicted for aiding and abetting B. A must be shewn to have known that it was B's intent to murder C, and it is not enough to shew that A helped B in what he did.

¹ *R. v. Palmer*, 1 Russ. Cr. 53.

² *R. v. Soares*, R. & R. 25.

³ See cases in 1 Russ. Cr. 49-50. *R. v. Kelly*, R. & R. 421, perhaps marks the limit between a principal in the second degree and an accessory. In that case B stole horses and brought them to A, who was waiting half a mile off; A and B then rode away on them. It was held that A was an accessory before the fact. The distinction is now of no importance.

⁴ *R. v. Coney and Others*, L. R. 8 Q. B. D. 534. See especially the judgment of Cave, J., 536-43.

⁵ *Foster*, 350.

⁶ *R. v. Cruise*, 8 C. & P. 546.

ARTICLE 38.

COMMON PURPOSE.

¹ When several persons take part in the execution of a common criminal purpose, each is a principal in the second degree, in respect of every crime committed by any one of them in the execution of that purpose.

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

Illustrations.

(1.)² A constable and his assistants go to arrest A at a house in which are many persons. B, C, D, and others come from the house, drive the constable and his assistants off, and one of the assistants is killed, either by B, C, D, or one of their party. Each of the party is equally responsible for the blow, whether he actually struck it or not.

(2.)³ Three soldiers go to rob an orchard. Two get into a fruit tree. The third stands at the door with a drawn sword, and stabs the owner, who tries to arrest him. The men in the tree are neither principals nor accessories, unless all three came with a common resolution to overcome all opposition.

(3.)⁴ Smugglers fight with revenue officers. In the fight a smuggler fires a gun which kills another smuggler. The gun was not fired at any of the revenue officers. The man who fired the gun is responsible for the act, but not his companions.

(4.)⁵ Two parties of persons fight in the street about the removal of goods to avoid a distress. One of the persons engaged kills a looker-on, totally unconcerned in the affray. The other persons present are not responsible for his crime.

(5.)⁶ Two persons go out to commit theft. One, unknown to the other, puts a pistol in his pocket, and shoots a man with it. The other person is not responsible for the shot.

¹ See cases referred to in the Illustrations. See also *Fost.* 350-2; 1 *Russ. Cr.* 65-6, 737-8, 742-6.

² *Sissinghurst House Case*, 1st Resolution; 1 *Hale*, P. C. 462.

³ *Plummer's Case*, *Foster*, 353. More fully reported in *Kelynge*, 155 (edition of 1873). Lord Holt in his judgment fully explains the whole law.

⁴ *Ibid.*, 352.

⁵ *R. v. Hodgson and Others*, 1 *Leach*, 8.

⁶ *Per Park, J., Duffey's Case*, 1 *Lew.* 194.

(6.)¹ Three persons go out to practice with a rifle and manage their practice so carelessly that a person is killed by a shot fired by one of them : all are guilty of manslaughter.

ARTICLE 39.

ACCESSORIES BEFORE THE FACT.

² An accessory before the fact is one who ³ directly or indirectly counsels, procures, or commands any person to commit any felony or piracy ⁴ which is committed in consequence of such counselling, procuring, or commandment.

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

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

Illustrations.

(1.)⁵ A supplies B with corrosive sublimate, knowing that B means to use it to procure her own abortion, but being unwilling that she should take the poison, and giving it to her because she threatened to kill herself if he did not. B does so use it and dies. Even if B is guilty of murdering herself, A is not an accessory before the fact to such murder.¹

(2.)⁶ B and C agree to fight a prize fight for a sum of money; A, knowing of their intention, acts as stakeholder. B and C fight, and C is killed. A is not present at the fight and has no concern with it except being stakeholder. Even if in such a case there can be an accessory before the fact, A is not accessory before the fact to the manslaughter of C.

¹ *R. v. Salmon*, L. R. 6 Q. B. D. 79.

² 1 Hale, P. C. 615; 2 Hawk. P. C. 442; 1 Russ. Cr. 49-77. As to principals and accessories in forgery, see 2 Russ. Cr. 790. In the following Articles I use the word "instigate" as equivalent to "counsel, procure, or command." Draft Code, s. 71.

³ *R. v. Cooper*, 5 C. & P. 535-7.

⁴ 11 & 12 Will. 3, c. 7, s. 9.

⁵ *R. v. Frostoll*, L. & C. 161. Contrast with this *R. v. Russell*, 1 Moody, 558.

⁶ *R. v. Taylor*, L. R. 2 C. C. R. 147.

ARTICLE 40.

WHERE CRIME SUGGESTED IS COMMITTED IN A DIFFERENT WAY.

¹ When a person instigates another to commit a crime, and the person so instigated commits the crime which he was instigated to commit, but in a different way from that in which he was instigated to commit it, the instigator is an accessory before the fact to the crime.

Illustration.

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

ARTICLE 41.

WHERE CRIME COMMITTED IS PROBABLE CONSEQUENCE OF
CRIME SUGGESTED.

² If a person instigates another to commit a crime, and the person so instigated commits a crime different from the one which he was instigated to commit, but likely to be caused by such instigation, the instigator is an accessory before the fact.

Illustrations.

(1.) ³ A describes C to B, and instigates B to murder C. B murders D, whom he believes to be C, because D corresponds with A's description of C. A is accessory before the fact to the murder of D.

(2.) ³ A instigates B to rob C, B does so, C resists and B kills C. A is accessory before the fact to the murder of C.

(3.) ⁴ A advises B to murder C (B's wife) by poison. B gives C a poisoned apple, which C gives to D (B's child). B permits D to eat the apple, which it does, and dies of it. A is not accessory to the murder of D.

¹ Foster, 369-70; Draft Code, s. 72.

² Ibid. 370; Ibid. s. 72.

³ Foster, 370.

⁴ *Saunders' Case*, Plowd. 475; 1 Hale, P. C. 431. This decision is of higher authority than Foster's *dicta*; and marks the limit to which they extend, if it does not throw some doubt on them.

ARTICLE 42.

WHERE INSTIGATION IS COUNTERMANDED.

¹ If an accessory before the fact countermands the execution of the crime before it is executed, he ceases to be an accessory before the fact, if the principal had notice of the countermand before the execution of the crime, but not otherwise.

Illustration.

¹ A advises B to murder C, and afterwards, by letter, withdraws his advice. B does murder C. A is not an accessory before the fact if his letter reaches B before he murders C; but he is if it arrives afterwards.

ARTICLE 43.

INSTIGATION TO COMMIT A CRIME DIFFERENT FROM THE ONE COMMITTED.

² When a person instigates another to commit a crime, and the person so instigated commits a different crime, the instigator is not accessory before the fact to the crime so committed.

Illustration.

³ A instigates B to murder C, B murders D, A is not accessory before the fact to the murder of D.

ARTICLE 44.

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

⁴ Accessories before the fact, principals in the second degree, and principals in the first degree in any felony,

¹ 1 Hale, P. C. 618. In the case supposed the instigator would probably have committed the offence of inciting to the commission of a crime (Art. 47), though he would not be an accessory before the fact. It may also be doubted whether this doctrine would extend to the case of a man who did his best to countermand his advice, but failed, as by an accident in the course of post, &c.

² Cf. Draft Code, s. 72.

³ Foster, 369, s. 1.

⁴ 24 & 25 Vict. c. 94, s. 2, as explained by *R. v. Hughes*, Bell, C. C. 242. The section referred to applies only to cases in which a felony has been committed, and does not affect the common law offence of inciting to commit a felony (Art. 47). *R. v. Gregory*, L. R. 1 C. C. R. 77.

are each considered as having committed that felony, and each may be indicted, tried, convicted and punished as if he alone and independently had committed the felony; although any other party to the crime may have been acquitted.

ARTICLE 45.

ACCESSORIES AFTER THE FACT.

¹ Every one is an accessory after the fact to felony who knowing a felony to have been committed by another, receives, comforts, or assists him, ² in order to enable him to escape from punishment;

or rescues him from an arrest for the felony;

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

or opposes his apprehension,

Provided that a married woman who receives, comforts, or relieves her husband knowing him to have committed a felony, does not thereby become an accessory after the fact.

ARTICLE 46.

PUNISHMENT OF ACCESSORIES AFTER THE FACT IN GENERAL AND UNDER THE CONSOLIDATION ACTS.

³ Every accessory after the fact to any felony is guilty of a substantive felony for which he may be convicted, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and for which he may be indicted either together with the principal felon or alone (except where it is otherwise specially enacted).

¹ 1 Russ. Cr. 63-6; 1 Hale, P. C. 618-20; 2 Hawk. P. C. Bk. II. c. 29; Draft Code, s. 73.

² As to the addition of these words, see 2 Hawk. P. C. Bk. II. c. 29, ss. 28-9.

³ 24 & 25 Vict. c. 94, ss. 3, 4, as interpreted by *R. v. Falcon*, L. & C. 217. Each of the Consolidation Acts contains a section providing specifically that accessories before the fact, and principals in the second degree to felonies punishable thereby, shall be liable to the same punishment as the principals. These provisions would seem to be co-extensive in their operation with those of 24 & 25 Vict. c. 94, ss. 3, 4. See 24 & 25 Vict. c. 96, s. 98; *Ibid.* c. 97, s. 56; *Ibid.* c. 98, s. 49; *Ibid.* c. 99, s. 35; *Ibid.* c. 100, s. 67.

Every such offender is liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and the Court may require the offender to enter into his own recognizance, and to find sureties (both or either) for keeping the peace, in addition to such imprisonment; but no such person can be imprisoned for not finding sureties for any period exceeding one year.

¹ Every accessory after the fact to any felony punishable under the Larceny Act, 1861; the Malicious Injuries to Property Act, 1861; the Forgery Act, 1861; the Coinage Offences Act, 1861; or the Offences against the Person Act, 1861 (except murder), is liable upon conviction to the punishments above mentioned; but offenders against the first, second, and third, but not offenders against the fourth and fifth, of the said Acts may be sentenced to solitary confinement in addition to the other punishments above mentioned.

¹ 24 & 25 Vict. c. 96, ss. 98-117; *Ibid.* c. 97, ss. 56-73; *Ibid.* c. 98, ss. 49-51; *Ibid.* c. 99, ss. 35-38; *Ibid.* c. 100, ss. 35-71.

CHAPTER V.

¹ DEGREES IN THE COMMISSION OF CRIME—INCITEMENT—
CONSPIRACY—ATTEMPTS.

ARTICLE 47.

INCITEMENT TO COMMIT A CRIME.

² EVERY one who incites any person to commit any crime commits a misdemeanor, whether the crime is or is not committed.

ARTICLE 48.

CONSPIRACY TO COMMIT A CRIME.

³ When two or more persons agree to commit any crime, they are guilty of the misdemeanor called conspiracy whether the crime is committed or not.

ARTICLE 49.

DEFINITION OF ATTEMPTS.

⁴ An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted.

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

An act done with intent to commit a crime, the com-

¹ 2 Hist. Cr. Law, ch. xxii. pp. 221-241.

² *R. v. Higgins*, 2 East, P. C. 5-22; *R. v. Schofield*, Cald. 397; *R. v. Gregory*, L. R. 1 C. C. 77. In *R. v. Leddington*, 9 C. & P. 79, a man was charged with inciting a man to commit suicide, and Alderson, B., directed an acquittal, saying, "This is a case which by law we cannot try." The reasons for this direction are not given, and a note to the case does not make them clear. As to the case of *R. v. Welham*, see Note II.

³ *Mulcahy v. R.*, L. R. 3 H. L. 317; *R. v. Bunn*, 12 Cox, C. C. 316, and see cases collected in Roscoe, Cr. Ev. 409-10.

⁴ See cases referred to in Illustrations, and Draft Code, s. 74.

mission of which in the manner proposed was, in fact, impossible, is not an attempt to commit that crime.

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

Illustrations.

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

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

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

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

(5.)⁵ A procures indecent prints with intent to publish them. A has attempted to publish indecent prints. (*Sembla.*)

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

(7.)⁷ A having in his possession indecent prints, forms an intent to publish them. A has not attempted to publish indecent prints.

(8.)⁷ A mistaking a log of wood for B, and intending to murder B, strikes the log of wood with an axe. A has not attempted to murder B.

(9.)⁸ A puts his hand into B's pocket with intent to steal whatever he finds there; the pocket is empty. A has not attempted to steal from B's person.

¹ *R. v. Banford*, 31 L. T. (N.S.) 488.

² *Roberts's Case*, Dearsley, C. C. 539.

³ *Chessman's Case*, L. & C. 140.

⁴ *R. v. Eagleton*, Dear. C. C. 515.

⁵ *Dugdale v. R.*, 1 E. & B. 435; *R. v. Dugdale*, Dear. C. C. 64.

⁶ Per Jervis, C.J., in *Roberts's Case*, Dearsley, C. C. 551.

⁷ Per Bramwell, B., in *R. v. McPherson*, D. & B. 201.

⁸ *Collin's Case*, L. & C. 471. It is submitted, however, that he has committed an assault on B with intent to commit a felony, Article 245 (a).

(10.)¹ A kneels down in front of a stack of corn, and lights a lucifer match, intending to set the stack on fire; but observing that he is watched blows it out. A has attempted to set fire to the stack.

ARTICLE 50.

ATTEMPT—MISDEMEANOR.

Every attempt to commit an offence, whether treason, felony, or misdemeanor,² is a misdemeanor, unless it is otherwise specially provided for.

¹ *R. v. Taylor*, 1 F. & F. 511.

² It is difficult to put a case of an attempt to commit treason, as an overt act done with intent to commit treason would generally be treason: see the next Chapter. In the case of treasons defined in Arts. 58 and 59 there might be an attempt. See many cases collected in 1 Russ. Cr. 190, and 2 Hist. Cr. Law, 221-7.

PART II.

OFFENCES AGAINST PUBLIC ORDER—INTERNAL
AND EXTERNAL.

CHAP. VI.—HIGH TREASON—TREASONABLE FELONIES, AND ASSAULTS ON THE QUEEN.

CHAP. VII.—AFFRAYS — UNLAWFUL ASSEMBLIES — ROUTS — RIOTS — TUMULTUOUS PETITIONING—UNLAWFUL DRILLING.

CHAP. VIII.—OFFENCES AGAINST INTERNAL TRANQUILITY BY UN-

LAWFUL ENGAGEMENTS AND COMBINATIONS AND CONFEDERACIES.

CHAP. IX.—OFFENCES AGAINST EXTERNAL PUBLIC TRANQUILITY—OFFENCES AGAINST FOREIGN NATIONS.

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* CHAPTER VI.

HIGH TREASON, TREASONABLE FELONIES, AND ASSAULTS
ON THE QUEEN.

ARTICLE 51.

HIGH TREASON BY IMAGINING THE QUEEN'S DEATH.

¹ EVERY one commits high treason who forms and displays by any overt act, or by publishing any printing or writing, an intention to kill or destroy the Queen, or to do her any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint.

ARTICLE 52.

WHAT AMOUNTS TO IMAGINING THE QUEEN'S DEATH.

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

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

¹ 25 Edw. 3, st. 5, c. 2; 36 Geo. 3, c. 7, ss. 1, 6; 57 Geo. 3, c. 6; 11 Vict. c. 12, s. 2; and Draft Code, s. 75.

² Foster's Discourse of H. T. ch. i. s. 5, pp. 195-7; ch. ii. ss. 3, 4, 6, pp. 211-13; Draft Code, s. 75.

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

(b.) to levy war against the Queen either in the first or in the second of the senses assigned to that expression in Article 53; or

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

(d.) who conspires to levy war against the Queen in the first or second, but not in the third, of the senses assigned to that expression in Article 53.

ARTICLE 53.

HIGH TREASON BY LEVYING WAR.

¹ Every one commits high treason who levies war against the Queen in any of her dominions.

The expression "to levy war" means—

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

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

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

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

¹ 25 Edw. 3, st. 5, c. 2; Foster's Discourse on H. T. ch. ii.; as to (a.) see Foster, pp. 208 and 209; as to (b.) see s. 3; and see 36 Geo. 3, c. 7, s. 1, which, whilst in force, was a statutory recognition of Foster's doctrine; as to (c.) s. 4; as to the proviso, see 25 Edw. 3, st. 5, c. 2, and Foster, pp. 209-10; see also Note V., and Draft Code, s. 75. In *R. v. Gallagher and others*, 15 Cox, 281, it was held by Coleridge, C.J., Brett, M.R., and Grove, J., that war might be levied by a few persons using, for treasonable purposes, explosives calculated to do great damage. I held the same at Liverpool in the summer of 1883, in *R. v. Deasy*, 15 Cox, 334.

ARTICLE 54.

HIGH TREASON BY ADHERING TO THE QUEEN'S ENEMIES.

¹ Every one commits high treason who, either in the realm or without it, actively assists a public enemy at war with the Queen. Rebels may be public enemies within the meaning of this Article.

ARTICLE 55.

ADHERENCE TO A DE FACTO KING NOT TREASON.

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

ARTICLE 56.

KILLING THE KING'S WIFE OR SON.

³ Every one commits high treason who forms and displays by any overt act an intention

(a) To kill the wife of a king regnant; or,

(b) To kill that son of a king or queen regnant who is for the time being heir-apparent to the king or queen.

ARTICLE 57.

WHEN WORDS ARE TREASON.

⁴ The speaking of words expressive of the intentions above mentioned is not an overt act within the meaning of Articles 51, 52, and 56.

¹ 25 Edw. 3, st. 5, c. 2, as explained by Hale, 1 P. C. 159-70. An officer betraying his post is a traitor at common law, though such offences are usually dealt with under martial law; see 1 Hale, 163. I suppose a deserter in the field who joins the enemy commits high treason as well as a military offence. Draft Code, s. 75.

² 11 Hen. 7, c. 1; and see 6th Rep. C. L. C. p. 23.

³ 25 Edw. 3, st. 15, c. 2, as explained in 1 Hale, P. C. 124-129. Draft Code, s. 75.

⁴ Foster, 200-20.

The writing of such words is such an overt act.

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

The speaking of words of advice, consultation, or command, or otherwise connected with the execution of such intentions, is such an act.

ARTICLE 58.

VIOLATING THE KING'S WIFE, ETC.

¹ Every one commits high treason who violates (whether by her own consent or not)

the wife of a king regnant; or

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

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

ARTICLE 59.

KILLING THE CHANCELLOR, ETC.

² Every one commits high treason who slays the chancellor,

¹ 25 Edw. 3, st. 5, c. 2, as explained by Hale. Draft Code, s. 75.

² It may be permissible to suggest (as mere matter of curiosity) a doubt whether this would now apply to all the judges of the Supreme Court or only to those who are not members of the Chancery Division (25 Edw. 3, st. 5, c. 2). It is enacted by 13 Eliz. c. 2, that every one commits high treason who uses, or puts in ure, in any place within this realm, or in any of the Queen's dominions, any bull, writing, instrument of absolution or reconciliation obtained from the Bishop of Rome to those who will be contented to forsake the due obedience to the Queen and to yield and subject themselves to the authority of the Bishop of Rome, or who willingly receive absolution or reconciliation under any such instrument. This enactment is printed in the Revised Statutes, but by 9 & 10 Vict. c. 59, it is repealed so far only as the same imposes the penalties or punishments therein mentioned. Whether the effect of this is to make the using of such bulls a treason which cannot be punished, I do not know, nor does it much matter. As the 9 & 10 Vict. c. 59, further provides that the repeal of the penalty is not to make the forbidden acts lawful, it is impossible to be quite sure that doing them would not be a statutory misdemeanor. As to which see 6th Rep. C. L. C. pp. 35-41. I know not why 13 Eliz. c. 2, was not repealed simply.

or the treasurer, or the king's justices of the one bench or the other, justices in eyre or justice of assize, and all other justices assigned to hear and determine being in their places doing their offices.

ARTICLE 60.

PUNISHMENT FOR TREASON.

¹ Every one who is convicted of high treason must be sentenced to be hanged by the neck until he is dead; but Her Majesty may (if the offender is a man) direct, by a warrant signed by one of her principal Secretaries of State, that instead thereof such offender's head shall be severed from his body whilst alive.

ARTICLE 61.

ALL PRINCIPALS IN TREASON.

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

ARTICLE 62.

TREASONABLE FELONIES.

⁴ Every one is guilty of felony, and is liable upon conviction

¹ For common law judgment see Chitty, Crim. Law, 365-6. It was modified by 30 Geo. 3, c. 48, as to women (who before that Act were liable to be burnt alive for treason), as to men by 54 Geo. 3, c. 146, and 33 & 34 Vict. c. 23, s. 31. The odd exception made in the parenthesis arises thus: the Act 30 Geo. 3, c. 48, applies only to women, and the 54 Geo. 3, c. 146, only to men. The proviso as to beheading occurs in the second only. The Act of 1870 repeals parts of the Acts of 1790 and 1814. It would seem, however, that the power exists at common law. See Foster, 269-70. The Act (31 Vict. c. 24) for executing sentence of death within gaols does not apply to cases of treason. Indeed ss. 2 and 16 together appear to exclude its operation in such cases. An execution for treason would, therefore, it would seem, have to be public. Sir E. Coke's Scriptural reasons for the punishment of treason may be seen in 3 Inst. 211. Cf. Draft Code, s. 75.

² Foster, 343, and see 341-6.

³ 1 Hale, P. C. 238; Foster, 345-6; and see 2 Hist. Cr. Law.

⁴ 11 Vict. c. 12, preamble and s. 3 (redrawn); Draft Code, s. 79.

thereof to penal servitude for life as a maximum punishment, who ¹ forms any of the intentions hereinafter mentioned, and expresses such intention either by any overt act or by publishing any printing or writing; ² that is to say,

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

(b.) An intention to levy war against Her Majesty, Her heirs or successors, within any part of the United Kingdom in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe, both houses or either house of Parliament; or

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

³ A conspiracy to effect any of the said intentions is an overt act within the meaning of this Article.

ARTICLE 63.

INCITING TO MUTINY.

⁴ Every one commits felony, and is liable upon conviction thereof to penal servitude for life as a maximum punishment, the maximum alternative term of imprisonment being three years, who maliciously and advisedly endeavours

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

¹ "Shall . . . compass, imagine, invent, devise, or intend."

² The words "or by open advised speaking" occur in the Act, but by s. 4 it is provided that no person shall be prosecuted for offences so expressed unless the warrant for the offender's apprehension is issued "within two years next after the passing of the Act," i.e. before April 22, 1850. The words, I suppose, are therefore spent, although they are printed in the Revised Statutes.

³ *Mulcahy v. R.*, L. R. 3 H. L. 306.

⁴ 37 Geo. 3, c. 70, s. 1. As to the punishment, see 7 Will. 4 & 1 Vict. c. 91, s. 52, s. 2, 3 (S); Draft Code, s. 82.

(b) to incite or stir up any such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatever.

ARTICLE 64.

ASSAULTS ON THE QUEEN.

¹ Every one who does any of the acts hereinafter specified is guilty of a high misdemeanor, and is liable upon conviction thereof to be sentenced to seven years penal servitude, or to imprisonment with or without hard labour for any period not exceeding three years, and during the period of such imprisonment to be publicly or privately whipped as often (not exceeding thrice) and in such manner as the Court directs; that is to say,

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

(i.) Points, aims, or presents at or near the person of the Queen any ²firearm, loaded or not, or any other kind of arm; or

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

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

(iv.) Strikes, or strikes at, the person of the Queen in ³any manner whatever; or

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

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

(b.) Whoever produces or has near the person of the Queen

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

² "Any gun, pistol, or any other description of firearms, or of other arms whatsoever."

³ "With any offensive weapon or in any other."

any ¹ arm or destructive or dangerous thing with intent to use the same to injure the person of the Queen or to alarm Her Majesty.

ARTICLE 65.

CONTEMPTS AGAINST THE QUEEN.

² Every one commits a misdemeanor who is guilty of any contempt against the person of Her Majesty, or her royal dignity, by means of any contumelious, insulting, or disparaging words, acts, or gestures.

ARTICLE 66.

SOLEMNISING OR ASSISTING AT MARRIAGE OF A MEMBER OF THE ROYAL FAMILY.

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

⁴ Every person committing such a misdemeanor is put out of the Queen's protection. His lands, tenements, goods, and chattels are forfeited to the Queen, and he is to be imprisoned for life (perhaps, at the Queen's pleasure).

¹ "Any gun, pistol, or any other description of firearms, or of other arms whatsoever."

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

³ 12 Geo. 3, c. 11. The punishment is *præmunire*, as explained by Coke, 1 Inst. 130 a; see 7th Rep. C. C. L. p. 37.

⁴ 3 Inst. 158; 1 Russ. Cr. 418; Draft Code, s. 97.

CHAPTER VII.

AFFRAYS, UNLAWFUL ASSEMBLIES, ROUTS, RIOTS, TUMULTUOUS PETITIONING AND UNLAWFUL DRILLING.

ARTICLE 67.

SENDING CHALLENGES AND PROVOKING TO FIGHT.

EVERY one commits a misdemeanor who

- (a.) ¹ Challenges any other person to fight a duel ; or,
 (b.) ² Endeavours by words, or by writings, to provoke any other person to challenge the offender or to commit a breach of the peace.

ARTICLE 68.

GOING ARMED SO AS TO CAUSE FEAR.

³ Every one commits a misdemeanor who goes armed in public, without lawful occasion, in such a manner as to alarm the public.

ARTICLE 69.

AFFRAY.

⁴ An affray is the fighting of two or more persons in a public place to the terror of Her Majesty's subjects. Every affray is a misdemeanor.

ARTICLE 70.

UNLAWFUL ASSEMBLY.

⁵ An unlawful assembly is an assembly of three or more persons :—

¹ 3 Inst. 158 ; 1 Russ. Cr. 418 ; Draft Code, s. 97.

² *R. v. Phillips*, 6 East, 463. It appears from the judgment in this case (pp. 470-5) that the offence defined in clause (b.) is only a special illustration of the general law as to incitement.

³ 2 Edw. 3, c. 3, paraphrased with reference to the explanations given in 1 Hawk. P. C. 488-9.

⁴ 3 Inst. 158 ; 1 Russ. Cr. 406 ; Draft Code, s. 96.

⁵ Brook's Abt. "Riot" ; Viner's Abt. "Riot" ; Lambard, ch. v. 172-184 ; Dalton, pp. 310-14 ; 1 Hawk. P. C. 513-18. See also Report of Criminal Code Commission of 1879, p. 20, and Draft Code, ss. 84, 86.

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

Every unlawful assembly is a misdemeanor.

Illustrations.

- (a.)¹ Sixteen persons meet for the purpose of going out to commit the offence of being by night, unlawfully, upon land, armed in pursuit of game. This is an unlawful assembly.
 (b.)² A, B, and C meet for the purpose of concerting an indictable fraud. This, though a conspiracy, is not an unlawful assembly.
 (c.)³ A, B, and C having met for a lawful purpose, quarrel and fight. This (though an affray) is not an unlawful assembly.
 (d.)⁴ A large number of persons hold a meeting to consider a petition to parliament lawful in itself; but they assemble in such numbers, with such a show of force and organization, and when assembled make use of such language as to lead persons of ordinary firmness and courage in the neighbourhood to apprehend a breach of the peace. This is an unlawful assembly.

ARTICLE 71.

ROUTES.

⁵ A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled.

ARTICLE 72.

RIOTS.

⁶ A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public; or

⁶ A lawful assembly may become a riot if the persons

¹ *R. v. Broadribb*, 6 C. & P. 571. The meeting in this case was in a private house.

² (SUBMITTED.) Compare 1 Hawk. P. C. 515.

³ 1 Hawk. P. C. 514.

⁴ *Redford v. Birley*, 3 Starkie, N. P. 107-8; *R. v. Vincent*, 9 C. & P. 91.

⁵ See note to Article 70. Draft Code, ss. 85, 87.

⁶ Founded on the language of Holt, C.J., in *R. v. Soley*, 11 Modern, 116.

assembled form and proceed to execute an unlawful purpose to the terror of the people, although they had not that purpose when they assembled.

¹ Every person convicted of riot is liable to be sentenced to hard labour.

Illustration.

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

ARTICLE 73.

PREVENTING READING PROCLAMATION AND CONTINUING TO RIOT
AFTER PROCLAMATION.

² Whenever twelve persons or more are unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, ³ it is the duty of the justices of the peace, and the sheriff and under-sheriff of the county, or of the mayor, bailiffs, or other head officers, or justices of the peace of a city or town corporate, to resort to the place where such assembly is, and among the rioters, or as near to them as the person making the proclamation can safely come, with a loud voice command or cause to be commanded silence to be, and then openly and with loud voice make or cause to be made a proclamation ⁴ in these words or like in effect:

“Our Sovereign Lady the Queen chargeth and com-
mandeth all persons being assembled immediately to dis-
perse themselves, and peaceably to depart to their habita-
tions, or to their lawful business, upon the pains contained
in the Act made in the first year of King George for
preventing tumultuous and riotous assemblies. God save
the Queen.”

¹ 3 Geo. 4, c. 114.

² 1 Geo. 1, st. 2, c. 5, ss. 1, 2, 3 (redrawn). Draft Code, ss. 88, 9.

³ Actual riot is not necessary. *R. v. James*, 5 C. & P. 153.

⁴ The omission of “God save the Queen” defeats the effect of the proclamation. *R. v. Child*, 4 C. & P. 442.

All persons commit felony, and are liable to¹ penal servitude for life as a maximum punishment, with a maximum alternative term of three years imprisonment and hard labour, who

(a.)² Wilfully and knowingly oppose, obstruct, let, hinder or hurt, any person who begins to make, or goes to make, the said proclamation, whereby such proclamation is not made, or

(b.)³ Who remain, or continue together unlawfully, riotously and tumultuously, for one hour, after the proclamation aforesaid was made; or if they know that its making was hindered, for one hour after it would have been made if it had not been hindered as aforesaid.

ARTICLE 74.

RIOTOUS DEMOLITION OF HOUSES, ETC.

⁴ All persons are guilty of felony, and are liable to penal servitude for life, as a maximum punishment, who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish, or pull down, or destroy, any building, public building, machinery, or mining plant, as defined in the note hereto,⁵ or begin to do so.

¹ Substituted for death by 7 Will. 4 & 1 Vict. c. 91, s. 1, and the Penal Servitude Acts. S.

² Sect. 5.

³ 1 Geo. 1, st. 2, c. 5, ss. 1 and 5 (redrawn).

⁴ 24 & 25 Vict. c. 97, s. 11 (redrawn). S. Draft Code, s. 90.

⁵ "Building" means any church, chapel, meeting-house, or other place of divine worship, house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, granary, shed, hovel, fold, and any building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof.

"Public building" means any building other than those above mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish or place, university, college, or hall of any university, or inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution.

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

"Mining plant" means any steam-engine, or other engine for sinking, working,

ARTICLE 75.

RIOTOUS DAMAGE OF HOUSES, ETC.

¹ All persons are guilty of a misdemeanor, and liable to seven years penal servitude, as a maximum punishment, who being so assembled as aforesaid unlawfully and with force injure or damage any of the things aforesaid.

ARTICLE 76.

PERSONS ASSEMBLED IN ORDER TO SMUGGLE.

² Every one commits a misdemeanor, and is liable to a fine of not more than £500, and not less than £100, who

ventilating, or draining any mine, or any shaft, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine.

¹ 24 & 25 Vict. c. 97, s. 12 (redrawn). Draft Code, s. 91.

² 39 & 40 Vict. c. 36, ss. 188, 9. These sections are obscure in some points. I believe them to mean what is stated in the text. The first part of the article gives the effect of s. 188 with only a slight change in the order of the words. The second part is what I suppose to be the meaning of s. 189. That section begins by providing that every one who procures or hires any person to assemble for the purposes specified in the 3rd paragraph of the Article in the text, is to be imprisoned for the term mentioned. It then proceeds to enact that if any person "engaged in the commission of any of the above offences" is armed, or disguised, &c., he is to be imprisoned for a term not exceeding three years. "The above offences" can hardly mean the offences mentioned in the earlier part of the section, as a man hiring another to run goods would hardly be likely to be armed or disguised, nor would it make matters worse if he were. I suppose, therefore, the "above offences" are the offences specified in s. 188, though the words may probably refer also to numerous revenue offences created by s. 186. This, however, raises new difficulties. Upon this view the latter part of s. 189 enacts that a person is to be imprisoned if, forming one of an assembly of three people for smuggling purposes, he is, (1) armed, (2) disguised, (3) armed and in possession of smuggled goods within five miles of the coast, &c., (4) disguised and in possession of smuggled goods, &c. It is impossible for any one to commit (3) or (4) unless he has already committed either (1) or (2). Why, then, should any special punishment be provided for him? It is like enacting that every man who steals a sheep shall be liable to penal servitude, and then enacting separately that if he steals it on a road or in a field he shall be liable to the same punishment. I rather think the intention must have been to provide for the case of a person found alone in possession of smuggled goods near the coast, and armed or disguised, and that by a slip in the drafting some such words as "or if any person whatever" were left out before the words "so armed or disguised." A comparison of this provision with s. 250 of the repealed Act strengthens this conjecture. In

with any two other persons assembles for,¹ or having so assembled, does unship, land, run, carry, convey, or conceal any spirits, tobacco, or prohibited, restricted, or uncustomed goods.

If any person engaged in any of the said offences is armed with firearms or other offensive weapons, or, whether so armed or not, is disguised in any way, or being so armed or disguised is found within five miles of the sea coast or of any tidal river with any goods liable to forfeiture under the 39 & 40 Vict. c. 36, or any other Act relating to the Customs, he must be imprisoned with or without hard labour for a term not exceeding three years.

Every one must be imprisoned for a term not exceeding twelve months who procures, or hires, or deposes, or authorizes any other person to procure or hire any person or persons to assemble for the purpose of being concerned in the landing or unshipping, or carrying, conveying, or concealing any goods which are prohibited to be imported, or the duties for which have not been paid or secured.

ARTICLE 77.

THREE PERSONS ARMED IN PURSUIT OF GAME BY NIGHT.

²Every one commits a misdemeanor, and is liable, upon conviction thereof, to a maximum punishment of fourteen

that enactment an assembly of five persons for the purposes mentioned formed one offence, and an assembly of two persons formed another. There must be some mistake in the drafting, as there is no nominative case to the verb "shall be imprisoned."

¹ So in the Act. Perhaps "for" ought to be "in order to."

² 9 Geo. 4, c. 69, s. 12. The words "night" and "game," which occur in the section, are explained to the effect given in the text by ss. 12 and 13. The statute appears to be intended rather to prevent the murderous conflicts which are the frequent and natural results of the offence punished than to protect game. I have accordingly introduced it here. By 7 & 8 Vict. c. 29, s. 1, some of the provisions of the 9 Geo. 4, c. 69, were made applicable to "any person by night unlawfully taking or destroying any game or rabbits on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such land into any such public road, highway, or path, in the like manner as upon any such land open or enclosed." I do not think, however, that this applies to the provision in the text. Draft Code, s. 94.

years penal servitude and a maximum alternative term of three years hard labour,

who, with two or more other persons together, between the end of the first hour after sunset and the beginning of the last hour before sunrise, unlawfully enters or is on any land, whether open or enclosed, for the purpose of taking or destroying hares, pheasants, grouse, heath or moor game, black game, bustards, or rabbits, any of such persons being armed with any gun, crossbow, firearms, bludgeon, or other offensive weapon.

ARTICLE 78.

RIOTOUSLY PREVENTING THE SAILING OF SHIP.

¹ All ² persons are guilty of misdemeanor, and are liable upon conviction thereof to a maximum term of twelve months and a minimum term of six months hard labour, who being riotously assembled together to the number of three or more, unlawfully and with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigation of any ³ vessel, or unlawfully and with force board any ³ vessel with intent to do so.

Every person who commits any of the offences aforesaid after a previous conviction for any such offence is guilty of felony, and is liable upon conviction thereof to a maximum punishment of fourteen years penal servitude.

ARTICLE 79.

FORCIBLE ENTRY AND DETAINER.

⁴ Every one commits the misdemeanor called a forcible entry who, in order to take possession thereof, enters upon

¹ 33 Geo. 3, c. 67.

² Seaman, keelman, caster, ship carpenter, or other person.

³ Ship, keel, or other vessel.

⁴ 1 Russ. Cr. 421-434; 1 Hawk. P. C. 495-512. There are many statutes in force on the subject, viz. 5 Ric. 2, st. 1, c. 7 (8 in common editions); 15 Ric. 2, c. 2; 8 Hen. 6, c. 9; 31 Eliz. c. 11; 21 Ja. 1, c. 15. These statutes give no definition of the offence, but provide a mode of procedure for giving possession to the party forcibly dispossessed. It is curious to compare these provisions with the Indian Code of Criminal Procedure, Act X., of 1872, c. 40. See on forcible entry, *Low v. Telford*, L. R. 1 App. Cas. 414. Draft Code, s. 95.

any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats, or in breaking open any house, or in collecting together an unusual number of persons for the purpose of making such entry.

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

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

ARTICLE 80.

POLITICAL MEETINGS IN WESTMINSTER.

¹ Every meeting is an unlawful assembly which consists of more than fifty persons, and is held in any street, square, or open place in the city or liberties of Westminster, or county of Middlesex, within a mile from the gate of Westminster Hall, and out of the parish of St. Paul's, Covent Garden, for the purpose, or on the pretext, of considering or preparing any petition or address to the Queen, or to both Houses or either House of Parliament, for alteration of matters in Church or State, on any day on which either House of Parliament meets, sits, or is summoned or adjourned, or prorogued to meet or sit, or on which the ² High Court of Justice, or any division or judge thereof, sits at Westminster Hall: Provided that this does not extend to any meeting held for the election of members of parliament, or to persons attending upon the business of either House of Parliament, or the said Court, or any of its divisions or judges.

¹ 57 Geo. 3, c. 19, s. 23.

² "His Majesty's Courts of Chancery, King's Bench, Common Pleas and Exchequer, or any of them, or any judge of any of them," &c. These words will be made inoperative by the removal of the Courts to the Royal Courts of Justice.

Every person who convenes or calls together, or gives any notice for convening or calling together any such meeting commits a misdemeanor.

ARTICLE 81.

PROCURING SIGNATURES TO PETITION WITHOUT AUTHORITY AND TUMULTUOUS PETITIONING.

¹ Every one commits a misdemeanor, and is liable, upon conviction thereof, to a penalty not exceeding the sum of £100 in money, and three months imprisonment,

(a.) who solicits, labours, or procures the getting of hands or other consent of more than twenty persons to any petition or address to the Queen, or to either House or both Houses of Parliament, for alteration of matters established by law in Church or State, unless the matter of the petition or address has been first consented to and ordered by three or more justices of the county where the matter arises, or by the major part of the grand jury at the assizes or quarter sessions, or in London by the lord mayor, aldermen, and commons, in common council assembled.

(b.) who repairs to the Queen or either House of Parliament upon pretence of presenting any petition or address accompanied by more than ten persons at any one time.

ARTICLE 82.

UNLAWFUL DRILLING.

² All assemblies are unlawful which are held in order that the persons assembled may train or drill themselves, or be trained or drilled to the use of arms, or for the purpose of practising military movements or evolutions without lawful authority.

Every person commits felony, and is liable upon conviction thereof to a ³ maximum punishment of seven years penal servitude, who

¹ 13 Car. 2, c. 5.

² 80 Geo. 3 and 1 Geo. 4, c. 1, s. 1 (redrawn). Draft Code, ss. 92, 3.

³ There is no provision for hard labour in cases of imprisonment.

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

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

(c.) who aids or assists therein.

Every person commits a misdemeanor, and is liable upon conviction thereof to a maximum punishment of two years imprisonment and fine, who attends or is present at any such assembly for the purpose of being, or who at any such assembly is, trained or drilled to the use of arms, or the practice of military exercise, movements, or evolutions.

CHAPTER VIII.

OFFENCES AGAINST INTERNAL TRANQUILLITY BY UNLAWFUL ENGAGEMENTS AND COMBINATIONS AND CONFEDERACIES.

ARTICLE 83.

UNLAWFUL OATHS. OATHS TO COMMIT MURDER OR TREASON.

¹ Every one is guilty of felony, and liable to penal servitude for life, as a maximum punishment, the maximum alternative term of imprisonment being in case (a.) three years, who

(a.) Administers, or causes to be administered, or aids or assists at the administering of any oath, engagement, or obligation in the nature of an oath, purporting, or intending to bind the person taking the same to commit treason or murder, or any felony which on the 12th of July, 1812, was punishable with death; or

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

ARTICLE 84.

OTHER UNLAWFUL OATHS.

² Every one is guilty of felony, and is liable, upon conviction, to seven years penal servitude as a maximum and five years penal servitude as a minimum punishment, who

(a.) Administers, or causes to be administered, or is aiding and assisting at, or present at and consenting to the

¹ 52 Geo. 3, c. 104, ss. 1, 6 (redrawn). As to punishment see in case (a.) 7 Wm. 4 & 1 Vict. c. 91, s. 1. See 2 Hist. Cr. Law, 294-7, and Draft Code, s. 99.

² 37 Geo. 3, c. 123, ss. 1, 5 (redrawn). The punishment is transportation for any term not exceeding seven years, and no alternative term of imprisonment is given. The 9 & 10 Vict. c. 24, s. 1, applies only to cases in which a sentence of more than seven years transportation may be given. It does not therefore apply to this case. By the penal servitude statutes, penal servitude is substituted for transportation, and five years is now the minimum term for which penal servitude can be inflicted. The result would, I suppose, be as stated in the text. Draft Code, s. 100.

administering or taking of any oath, or engagement or obligation in the nature of an oath, purporting or intending to bind the person taking the same—

- (i.) To engage in any mutinous or seditious purpose ;
 - (ii.) To disturb the public peace ;
 - (iii.) To be of any association, society, or confederacy formed for any such purpose ;
 - (iv.) To obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose ;
 - (v.) Not to inform or give evidence against any associate, confederate, or other person ;
 - (vi.) Not to reveal or discover any unlawful combination or confederacy, or any illegal act done or to be done ; or any illegal oath or engagement which may have been administered or tendered to, or taken by¹ any person, or the import of any such oath or engagement ; or who
- (b.) Takes any such oath or engagement, not being compelled thereto.

ARTICLE 85.

COMPULSION, HOW FAR A DEFENCE.

² No person who takes any oath or engagement referred to in Article 83 or Article 84, under compulsion, shall be justified or excused thereby, unless within fourteen days after the taking thereof in the case of oaths referred to in Article 83, or within four days after the taking thereof in the case of oaths referred to in Article 84, if not prevented by actual force or sickness, and then within four days after the cessation of the hindrance produced by such force or sickness, he declares the same, and the whole of what he knows touching the same, and the persons by whom, and in whose presence, and when and where such oath or engagement was administered or taken, by information on oath before one of Her Majesty's justices of the peace, or one of Her Majesty's

¹ "Such person or persons, or to or by any other person or persons."

² 52 Geo. 3, c. 104, s. 2; 37 Geo. 3, c. 123, s. 2 (consolidated). Cf. Draft Code, s. 23.

principal Secretaries of State, or Her Majesty's Privy Council or if he is in actual service in Her Majesty's forces by sea or land, either by such information on oath as aforesaid, or by information to his commanding officer.

ARTICLE 86.

UNLAWFUL CLUBS AND SOCIETIES.

¹ Every club or society is an unlawful combination and confederacy :

(a.) If its members according to its rules, or according to any provision or agreement for that purpose, are required, or permitted to, or do take any unlawful oath or undertaking as defined in Articles 83 and 84, or any oath not required or authorized by law ; or

(b.) Take or in any manner bind themselves by any such oath or agreement on becoming or in consequence of being members of any such society ; or

(c.) ² Take, subscribe, or assent to any test or declaration not required or authorized by law or allowed in the manner mentioned in the note hereto, whether by words, signs, or otherwise, either in order to become or in consequence of being a member of such society or club ; or

¹ (a.) to (h.) inclusive, 39 Geo. 3, c. 79, s. 2 ; (c.) is repeated in and extended by 57 Geo. 3, c. 19, s. 25 ; (i.) and (j.), 57 Geo. 3, c. 19, ss. 24, 25. The preamble of 39 Geo. 3, c. 79, recites the existence of a treasonable conspiracy carried on both in Great Britain and Ireland in order to overturn the government, and that in pursuance of this design societies have been instituted, "inconsistent with the existence of regular government," and in particular, societies of United Englishmen, United Irishmen, and United Scotsmen, United Britons, and the London Corresponding Societies. It then describes the proceedings of these societies ; and section 1 enacts that they shall be "utterly suppressed and prohibited" as "unlawful combinations and confederacies." Section 2 contains the provisions embodied in the text. Section 1 can hardly be regarded as creating a distinct offence, as the societies which are suppressed no longer exist. It would however make it penal to revive those societies or similar ones.

² The form of the test must be approved and subscribed by two or more justices of the peace of the county, and registered with the clerk of the peace. Such approbation is valid only till the next general session for the county, unless on application made by the parties concerned it is then confirmed by the majority of the justices present. Sect. 3.

(*d.*) If the names of the members, or any of them, are kept secret from the society at large; or

(*e.*) ¹ If there is any committee or select body so chosen or appointed that the members constituting the same are not known by the society at large to be members of such committee or select body; or

(*f.*) If there is any president, secretary, delegate, or other officer so chosen or appointed that his election or appointment to such office is not known to the society at large; or

(*g.*) If the names of all the members, and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers, are not entered in a book or books to be kept for that purpose, and to be open to the inspection of all the members of such society; or

(*h.*) If the society is composed of different divisions or branches, or of different parts acting in any manner separately or distinct from each other, or of which any part has any separate or distinct president, secretary, treasurer, delegate, or other officer elected or appointed by or for such part, or to act as an officer for such part; or

(*i.*) If the society elects, appoints, nominates, or employs any committee, delegate, representative, or missionary to meet or communicate with any other society or club, or with any committee, delegate, representative, or missionary of any other society or club, or to induce or persuade any person to become a member thereof; or

(*j.*) ² If the society professes for its object the confiscation and division of land, and the extinction of the funded property of the kingdom.

¹ In the Act it is "shall be any committee so instituted that the same shall not be known," &c. I suppose the two "shalls" are put in for the sake of the grammar only, but the second "shall" may possibly indicate that an intention to conceal the names is required as well as the mere fact of concealment.

² In the 57 Geo. 3, c. 19, reference is made by name to the Spenceans, or Spencean Philanthropists, analogous to the reference in 39 Geo. 3, c. 79, to the United Englishmen, &c.

ARTICLE 87.

QUAKERS AND RELIGIOUS AND CHARITABLE SOCIETIES EXCEPTED.

¹ The provisions of Article 86 do not extend to any meeting or society of Quakers, or to any meeting or society formed or assembled for purposes of a religious or charitable nature only, and in which no other matter or business is treated of or discussed, or to any lodge of Freemasons, two members of which certify on oath in the manner prescribed in 39 Geo. 3, c. 79, s. 6.

ARTICLE 88.

PUNISHMENT OF MEMBERS.

² Every member of any such society, and every person who acts as a member thereof, or directly or indirectly maintains correspondence or intercourse with any such society, or with any division, branch, committee, or other select body, president, treasurer, secretary, delegate, or other officer or member thereof as such, or aids, abets, or supports any such society by contribution of money or otherwise, is liable, upon summary conviction, to be imprisoned for not more than three months, or less than one month, or to be fined not more than £20, and not less than £6 6s. 8d., and in default of payment to be imprisoned for any term not exceeding three months, or if convicted on indictment, to a maximum punishment of seven years penal servitude, or two years imprisonment without hard labour.

ARTICLE 89.

PERMITTING MEETINGS OF UNLAWFUL CLUBS.

³ Whoever knowingly permits any meeting of any club or society, or any division, committee, or branch of a club or society declared by Article 86 to be unlawful, to be held in any house or place belonging to him or in his occupation, is

¹ 57 Geo. 3, c. 19, ss. 26, 27; 39 Geo. 3, c. 79, s. 5.

² 39 Geo. 3, c. 79, ss. 8, 9; 57 Geo. 3, c. 19, s. 25.

³ 57 Geo. 3, c. 19, s. 28; 39 Geo. 3, c. 79, s. 13.

liable to a penalty of £5 for the first offence, and for every subsequent offence is deemed to be guilty of an unlawful combination and confederacy, and is liable to the penalties specified in Article 88.

ARTICLE 90.

JESUITS AND MONKS.

¹ Every Jesuit, and every member of any other religious order, community, or society of the Church of Rome bound by monastic or religious vows who comes into this realm, commits a misdemeanor, and is liable upon conviction thereof to be banished from the United Kingdom for the term of his natural life,

² provided that the Secretary of State, being a Protestant, may grant a licence to any such person to come into the United Kingdom and to remain there for a period not exceeding six months; and any Secretary of State may revoke such licence before the expiration of the time mentioned therein. If the licensee does not depart from the United Kingdom within twenty days after the time mentioned in the licence, or after notice of revocation thereof, he commits a misdemeanor, and is liable to be banished from the United Kingdom for life.

³ Every such person commits a misdemeanor who, within any part of the United Kingdom, admits any person to become a regular ecclesiastic, or brother or member of any such religious order, community, or society, or aids or consents thereto, or administers or causes to be administered, or aids or assists in administering, any vow or engagement purporting or intended to bind the persons taking the same to the rules, ordinances, or ceremonies of such religious order, community, or society.

⁴ Every person commits a misdemeanor and must be banished from the United Kingdom for life who within any

¹ 10 Geo. 4, c. 7, ss. 28, 29.

² *Ibid.* s. 31.

³ *Ibid.* s. 32.

⁴ *Ibid.* s. 34.

part of the United Kingdom is admitted or becomes a Jesuit or brother or member of any other such religious order or community aforesaid.

¹ Every person ordered to be banished who does not depart from the United Kingdom within thirty days may be removed to such place as Her Majesty, by the advice of her Privy Council, directs.

² Every person ordered to be banished who is found at large in the United Kingdom after three months from such order is liable to penal servitude for life as a maximum punishment.

³ Nothing in this Article contained affects any religious order, community, or establishment consisting of females bound by religious or monastic vows.

ARTICLE 91.

SEDITIONOUS WORDS AND LIBELS.

⁴ Every one commits a misdemeanor who with a seditious intention speaks any words or publishes anything capable of being a libel. If the matter published consists of words spoken, the offence is called the speaking of seditious words. If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a seditious libel.

The word "publish" in this Article is used in the same sense as in Article 270, and the word "libel" in the second of the two senses specified in Article 267.

ARTICLE 92.

SEDITIONOUS CONSPIRACY.

⁵ Every one commits a misdemeanor who agrees with any

¹ 10 Geo. 4, c. 7, s. 35.

² Ibid. s. 36.

³ Ibid. s. 37.

⁴ 1 Hawk. P. C. 66, 486; 4 Steph. Com. 238; 1 Russ. Cr. 336, and see 2 Hist. Cr. Law, ch. xxiv. pp. 298-396. Draft Code, s. 102.

⁵ See Wright on the Law of Conspiracy, 28-31. Draft Code, s. 102.

other person or persons to do any act for the furtherance of any seditious intention common to both or all of them. Such an offence is called a seditious conspiracy.

ARTICLE 93.

SEDITIONOUS INTENTION DEFINED.

¹ A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, ² or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.

³ An intention to shew that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the government or constitution as by law established, with a view to their reformation, or to excite Her Majesty's subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill-will between classes of Her Majesty's subjects, is not a seditious intention.

¹ 60 Geo. 3 & 1 Geo. 4, c. 8; and *O'Connell v. B.*, 11 Cl. & F. 155, 234. Draft Code, s. 102.

² These words were not in the earlier editions of this work. I do not think they enlarge the sense, but they make it more explicit. They were intended to meet such cases as those of Most and Mertens, tried in 1881 and 1882 for publishing articles in the *Freiheit* applauding the assassination of the Emperor of Russia and that of Lord Frederick Cavendish and Mr. Burke at Dublin. See too the case of *R. v. Collins*, 9 C. & P. 458, and judgment of Littledale, J., 460.

³ *R. v. Lambert and Perry*, 2 Camp. 398; *R. v. Vincent*, 9 C. & P. 91.

ARTICLE 94.

PRESUMPTION AS TO INTENTION.

¹ In determining whether the intention with which any words were spoken, any document was published, or any agreement was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

ARTICLE 95.

SPREADING FALSE NEWS.

² Every one commits a misdemeanor who cites or publishes any false news or tales whereby discord or occasion of discord or slander may grow between the Queen and her people or the great men of the realm (³ or which may produce other mischiefs).

¹ *R. v. Burdett*, 4 B. & A. 95; *R. v. Harney*, 2 B. & C. 257.

² 3 Edw. 1, c. 34.

³ See Starkie on Slander, by Folkard, 670-2. The definition is very vague and the doctrine exceedingly doubtful.

CHAPTER IX.

OFFENCES AGAINST EXTERNAL PUBLIC TRANQUILLITY.

OFFENCES AGAINST FOREIGN NATIONS.

ARTICLE 96.

VIOLATION OF AMBASSADORS' PRIVILEGES.

¹ EVERY one is guilty of a misdemeanor who, by force or personal restraint, violates any privilege conferred upon the diplomatic representatives of foreign countries by the law of nations, as collected by Her Majesty's Courts from the practice of different nations, and the authority of writers thereon.

ARTICLE 97.

ARREST OF AMBASSADOR.

² Every one commits a misdemeanor who sets forth or prosecutes or executes any writ or process whereby is arrested or imprisoned the person of any ambassador or other public minister of any foreign prince or state, authorized and received as such by Her Majesty, or any domestic servant of any such ambassador or minister, registered as such in the office of a principal secretary of state, or in the office of the sheriff of London and Middlesex.

ARTICLE 98.

PUNISHMENT.

³ Every person who commits the offence defined in Article 97 is liable to such pains, penalties, and corporal punishment as the Lord Chancellor, the Lord Chief Justice of England, and the Lord Chief Justice of the Common Pleas, or any two of them, shall judge fit to be imposed and inflicted.

¹ *Triquet and Others v. Bath*, 3 Burr. 1481. As to what constitutes authority on a question of international law, see *E. v. Keyn*, L. R. 2 Ex. D. 63.

² 7 Anne, c. 12, ss. 3, 4, 6.

ARTICLE 99.

LIBELS ON FOREIGN POWERS.

¹ Every one is guilty of a misdemeanor who publishes any libel tending to degrade, revile, or expose to hatred and contempt any foreign prince or potentate, ambassador or other foreign dignitary, with intent to disturb peace and friendship between the United Kingdom and the country to which any such person belongs.

The word "publish" is used here in the same sense as in Article 270, and the word "libel" in the second of the two senses specified in Article 267.

(SUBMITTED.) Nothing is an offence against this Article which is a fair criticism on a matter of public interest as defined in Article 274.

ARTICLE 100.

INTERFERENCE IN FOREIGN HOSTILITIES.

² Every person commits a misdemeanor, and is liable upon conviction thereof to fine and imprisonment with or without hard labour, or either of such punishments, at the discretion of the Court, who does any of the following acts ³ without the licence of Her Majesty under her sign manual, or signified by Order in Council, or by proclamation, that is to say—

(a.) ⁴ Who, within the limits of Her Majesty's dominions, prepares or fits out any naval or military expedition to proceed against the dominions of any ⁵ friendly state, or is

¹ *R. v. D'Eon*, 1 Blac. 510; *R. v. Lord G. Gordon*, 22 St. Tr. 213-233. (This was the case of a libel on Marie Antoinette seven years after the defendant's acquittal for high treason.) *R. v. Vint* (1801). Vint wrote of the Emperor Paul, "The Emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency." Starkie (by Folkard), 669. *R. v. Peltier*, 88 State trials, 589; 6th Rep. C. L. Com. art. 50, p. 34. Draft Code, s. 104.

² 33 & 34 Vict. c. 90 (redrawn). As to the history of this offence, see 3 Hist. Cr. Law, 257-62.

³ Sect. 15.

⁴ Sect. 11.

⁵ "Friendly state" means "any foreign state at peace with Her Majesty (sect. 4).

engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in such expedition; or

(b.) ¹Who, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid; or

(c.) ²Who, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent; or

(d.) ³Who, being the master or owner of any ship, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any illegally enlisted person; as defined in Article 101; or

(e.) ⁴Who, within Her Majesty's dominions, with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with any friendly state,

Builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any ship, or issues or delivers any commission for any ship,

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

(i.) If forthwith upon a proclamation of neutrality being

¹ 33 & 34 Vict. c. 90, s. 4.

² Sect. 5.

³ Sect. 7.

⁴ Sect. 8 (redrawn).

issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State; and

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

ARTICLE 101.

SHIPS, ETC., REFERRED TO IN ARTICLE 100 TO BE FORFEITED.

¹ All ships and their equipments used in or forming part of any such expedition as is mentioned in Article 100 (a.), or in respect of which is committed any of the offences defined in Article 100 (e.), and all arms and munitions of war used in forming part of any such expedition as is mentioned in Article 100 (a.), are forfeited to Her Majesty.

The expression "illegally enlisted persons" in Article 100 (a.) means—

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

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

(iii) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any

¹ See section referred to in the Articles mentioned.

commission or engagement in the military or naval service of any foreign state at war with a friendly state;

Every ship referred to in Article 100 (*d.*) is to be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace; and

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

ARTICLE 102.

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

Every person is guilty of a misdemeanor, and is liable upon conviction thereof to the punishment specified in the last Article, who

(*a.*)¹ Within the dominions of Her Majesty, and without such licence as is mentioned in Article 100, by adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting, the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state; or

(*b.*)² Who induces any other person to quit Her Majesty's dominions, or to embark on any ship within Her Majesty's dominions, under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state.

¹ 33 & 34 Vict. c. 90, s. 10.

² Sect. 6.

ARTICLE 103.

PRESUMPTION OF KNOWLEDGE OF PURPOSE FOR WHICH SHIP
IS BUILT.

¹ Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state, or is delivered to or to the order of such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship must, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state lies on the builder of such ship.

¹ 33 & 24 Vict. c. 90, s. 9.

CHAPTER X.

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

ARTICLE 104.

PIRACY.

¹ PIRACY by the law of nations is—

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

Whoever commits piracy by the law of nations is liable (it seems) to the same punishment as if the act constituting

¹ The definition is founded on one given by Sir Charles Hedges, in *R. v. Dawson*, 13 St. Tr. 454, and recognised by the Judicial Committee of the Privy Council in *A. G. of Hong Kong v. Kwook-a-sing*, L. R. 5 P. C. 179, 199; see, too, 7th Rep. C. L. C. p. 70. As to the punishment, the text gives what I suppose is the result of 28 Hen. 8, c. 15, ss. 2 & 3; 39 Geo. 3, c. 37, s. 1; 1 Geo. 4, c. 90, s. 1; 7 & 8 Geo. 4, c. 28, s. 12. The doubt expressed at the end of the Article is founded on the absence of any express authority for the affirmative of the proposition, and on the absurdity of the negative. If a Queen's ship were to fall in with an armed vessel belonging to no state, and obviously cruising for piratical purposes, would the commanding officer hesitate to seize that vessel because it had not actually taken a prize? It seems equally difficult to suppose that the vessel would be permitted to escape, or that it could lawfully be arrested if the crew were not pirates. The language of several of the statutes given in Articles 108, 109, and 110, seems to imply that a pirate is the name of a known class of persons, like a soldier or sailor, and that a man may be a pirate though he has never actually robbed, as he may be a soldier though he has not actually fought. By 13 & 14 Vict. c. 26 the Admiralty Courts are empowered when any of Her Majesty's ships attack or are engaged with any persons alleged to be pirates afloat or ashore, to "take cognizance of and determine whether the persons or any of them so attacked or engaged were pirates." The object of the Act was to determine the amount of certain rewards to be paid to the captors; no definition of pirates is given. See 2 Hist. Cr. Law, pp. 27-8, and Draft Code, s. 105.

piracy had been committed within the body of an English county.

² It is doubtful whether persons cruising in armed vessels, with intent to commit piracies, are pirates or not.

ARTICLE 105.

PIRACY WITH VIOLENCE.

¹ Every one commits felony and must upon conviction thereof be sentenced to ² death who, with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel, assaults with intent to murder any person on board of or belonging to such ship or vessel, or stabs, cuts, or wounds any such person, or unlawfully does any act by which the life of such person may be endangered.

ARTICLE 106.

COMMITTING ACTS OF HOSTILITY UNDER FOREIGN COMMISSION.

³ Every one is deemed to be a pirate who, being a natural-born subject of Her Majesty, or denizen of this kingdom, commits any piracy, robbery, or act of hostility against others Her Majesty's subjects on the sea under colour of any commission from any foreign prince or state, or pretence of authority from any person whatever.

ARTICLE 107.

ADHERING ON THE SEA TO THE QUEEN'S ENEMIES.

⁴ Every one is deemed to be a pirate who, being a natural-born subject or denizen of Her Majesty, during any war commits any hostility against Her Majesty's subjects upon

¹ 7 Will. 4 & 1 Vict. c. 88, s. 2. Draft Code, s. 106.

² The Act 31 Vict. c. 24, as to executions taking place within the walls of a prison, does not apply to this offence; see ss. 2 and 16.

³ 11 & 12 Will. 3, c. 7, s. 7. For this and the four following Articles, see Draft Code, ss. 107-109.

⁴ 18 Geo. 2, c. 30.

the sea, or in any haven, river, creek, or place where the admiral has power or jurisdiction, by virtue or under colour of any commission from any of Her Majesty's enemies, or in any way adherent or gives aid or comfort to Her Majesty's enemies upon the sea or in any other such place as aforesaid.

ARTICLE 108.

BOARDING SHIPS AND THROWING CARGO OVERBOARD.

¹ Every one is deemed to be a pirate who, belonging to any ship or vessel whatever, upon meeting any merchant ship or vessel on the high seas, or in any port, haven, or creek, forcibly boards and enters into such ship or vessel, and though he does not seize or carry off such ship or vessel, throws overboard or destroys any part of the goods or merchandises belonging to such ship or vessel.

ARTICLE 109.

MASTERS AND SEAMEN FAVOURING PIRATES.

² Every one is deemed to be a pirate who, being the commander or master of any ship, or a seaman or mariner in any place where the admiral has jurisdiction, betrays his trust, and turns pirate, enemy, or rebel, and piratically and feloniously runs away with his ship, or any barge, boat, ordnance, ammunition, goods, or merchandise; or

Yields them up voluntarily to any pirate; or

Brings any seducing message from any pirate, enemy, or rebel; or

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

Lays violent hands on his commander whereby to hinder

¹ 8 Geo. 1, c. 24, s. 1 (last part).

² 11 & 12 Will. 3, c. 7, s. 8. Section 9 enacts in substance that accessories to piracy shall be punished as pirates.

him from fighting in defence of his ship and goods committed to his trust; or

Confines his master, or makes or endeavours to make a revolt in the ship [¹ even if the object of such revolt is to redress real grievances].

ARTICLE 110.

TRADING WITH PIRATES AND CONSPIRING WITH THEM.

² Every one is deemed to be a pirate who in any wise trades with any pirate by truck, barter, exchange, or in any other manner, or furnishes any pirate, felon, or robber upon the seas with any ammunition, provision, or stores of any kind; or

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

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

ARTICLE 111.

PUNISHMENT FOR STATUTORY PIRACIES.

³ Every one who commits any of the offences defined in Articles 106-110, both inclusive, is liable upon conviction of such act to penal servitude for life as a maximum punishment, the maximum period of imprisonment being three years.

ARTICLE 112.

NOT FIGHTING PIRATES.

⁴ Every one commits a misdemeanor, and must, on conviction thereof, be imprisoned for six months, who being a

¹ The words bracketed give the effect of *E. v. Hastings*, 1 Moody, 82; *E. v. McGregor*, 1 C. & K. 429. As to "confines," see *R. v. Jones*, 11 Cox, C. C. 393.

² 8 Geo. 1, c. 24, s. 1 (first part).

³ 7 Will. 4 & 1 Vict. c. 88, s. 3, S.

⁴ 8 Geo. 1, c. 24, s. 6. Draft Code, s. 110.

commander, master, or any officer or seaman, or mariner of any merchant ship which carries guns and arms, does not when attacked by any pirate, or by any ship on which any pirate is on board, fight and endeavour to defend himself and his vessel from being taken by such pirate, or who utters any words to discourage the other mariners from defending the ship, so that the ship falls into the hands of such pirate.

ARTICLE 113.

SLAVE-TRADING DEFINED.

¹ Each of the following acts and every contract to do any one of them is an act of slave-trading:—

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

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

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

(d.) To ship, tranship, embark, receive, detain, or confine on board any ² vessel slaves or other persons—

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

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

(e.) To fit out, man, navigate, equip, dispatch, use, employ, let, or take to freight, or on hire, any ² vessel, in order to do any act of slave-trading before mentioned.

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

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

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

² "Ship, vessel, or boat."

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

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

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

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

ARTICLE 114.

PIRATICAL SLAVE-TRADING.

³Every subject of Her Majesty, and every person resident or being in any of Her Majesty's dominions ⁴commits piracy, felony, and robbery, and is liable, upon conviction thereof, to penal servitude for life as a maximum punishment, who upon the high seas, or in any place where the admiral has jurisdiction, knowingly and wilfully does or assists in doing any of the following things, that is to say:—

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

As a slave; or

For the purpose of his being imported or brought as a slave into any ⁵place whatsoever; or

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

(b.) Who ships, embarks, receives, detains, or confines any

¹ "Ship, vessel, or boat."

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

³ 5 Geo. 4, c. 113, s. 9 (redrawn). The punishment in the text is substituted for the punishment of death by 1 Vict. c. 81, s. 1, and the penal servitude Acts.

⁴ "Dominions, ports, settlements, factories, or territories now or hereafter belonging to Her Majesty, or being in Her Majesty's occupation or possession."

⁵ "Island, colony, country, territory, or place."

person on board any vessel for the purpose of his being carried away, conveyed, or removed as a slave; or

For the purpose of his being imported or brought as a slave into any¹ place whatsoever; or

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

ARTICLE 115.

PUNISHMENT OF SLAVE-TRADING.

² Every one [³ owing allegiance to Her Majesty] commits felony, and is liable upon conviction thereof to be kept in penal servitude for a maximum term of fourteen years, or to be imprisoned with hard labour for a maximum term of five years who [³ in any part of the world] does any of the acts of slave-trading specified in Article 113, clauses (a.), (b.), (c.), (d.), (e.); or

Knowingly and wilfully does any of the acts of slave-trading specified in Article 113, clauses (f.), (g.), (h.), (i.), or (k.).

ARTICLE 116.

SERVING ON A SLAVE-SHIP, FELONY.

⁴ Every one commits the same offence, and is liable to the same punishment as is specified in the last Article, who takes charge or command, or navigates, or embarks on board any vessel as captain, master, mate, surgeon, or supercargo, or contracts to do so, knowing that such vessel is actually employed, or is on that voyage or occasion intended to be employed in any act of slave-trading.

¹ "Island, colony, country, territory, or place."

² 5 Geo. 4, c. 113, s. 10 (redrawn).

³ These words are inserted to give the effect of *R. v. Zulueta*, 1 C. & K. 215, 226-7. See, however, *Santos v. Illidge*, 8 C. B. (N.S.) 861, in which the Court of Exchequer Chamber was equally divided upon a very similar, though not identical point.

⁴ 5 Geo. 4, c. 113, s. 10.

ARTICLE 117.

SERVING ON A SLAVE-SHIP, MISDEMEANOR.

¹ Every one commits a misdemeanor, and is liable upon conviction, to a maximum punishment of two years imprisonment, who with the knowledge mentioned in the last Article, does any of the things mentioned in that Article, as petty officer, seaman, marine, or servant, or in any other capacity not specifically mentioned therein.

ARTICLE 117A.

KIDNAPPING PACIFIC ISLANDERS.

² Every one commits felony and is liable upon conviction thereof to the highest punishment other than capital punishment, or to any less punishment awarded to any felony by the law of the colony in which he is tried, who

(i.) Decoys a native of any of the islands in the Pacific Ocean, not being in Her Majesty's dominions nor within the jurisdiction of any civilised power, for the purpose of importing or removing such native into any island or place other than that in which he was at the time of the commission of such offence; or carries away, confines, or detains any such native for the purpose aforesaid without his consent, proof of which consent lies on the party accused:

(ii.) Ships, embarks, receives, detains, or confines, or assists in shipping, embarking, receiving, detaining, or confining,

¹ 5 Geo. 4, c. 113 s. 11.

² 35 & 36 Vict. c. 19, ss. 9 and 10, and see preamble, for a definition of Pacific Islanders. Sect. 9 provides that offenders may be tried and punished for such felony in any supreme Court of Justice in any of the "Australian colonies," i.e. (see s. 2) New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia. To these Fiji was added by 38 & 39 Vict. c. 51, which also empowered Her Majesty to erect a court at Fiji for the trial of offences committed in the Pacific Ocean, or the islands thereof. The Acts do not seem to contemplate the trial in England of such offences. There are however no words to exclude the jurisdiction of the English Courts, though the provisions as to punishment depend upon the laws of the colonies. It may be that if such an offence were tried in England, 7 & 8 Geo. 4, c. 28, ss. 8 and 9, would apply (see Article 18, *supra*). See as to this subject, 2 Hist. Cr. Law, p. 58-9.

for the purpose aforesaid, a native of any of the aforesaid islands, on board any vessel either on the high seas or elsewhere without the consent of such native, proof of which consent lies on the party accused :

(iii.) Contracts for the shipping, embarking, receiving, detaining, or confining on board any vessel for the purpose aforesaid any such native without his consent, proof of which consent lies on the party accused :

(iv.) Fits out, mans, navigates, equips, uses, employs, lets or takes on freight or hire any vessel, or commands or serves or is on board any such vessel with intent to commit, or that any one on board such vessel should commit, any of the offences above enumerated :

(v.) Ships, lades, receives, or puts on board, or contracts for the shipping, lading, receiving, or putting on board of any vessel money, goods, or other articles with the intent that they should be employed, or knowing that they will be employed, in the commission of any of the offences above enumerated.

Any person who aids, abets, counsels, or procures the commission of any of the said offences, is liable to be tried and punished as a principal offender.

PART III.

ABUSES AND OBSTRUCTIONS OF PUBLIC AUTHORITY.

<p>CHAP. XI.—ABUSES OF AUTHORITY— OPPRESSION—EXTORTION—FRAUD —NEGLECT OF DUTY—REFUSAL TO ACT.</p> <p>CHAP. XII.—DISOBEDIENCE TO LAW- FUL ORDERS.</p> <p>CHAP. XIII.—BRIBERY AND CORRUP- TION—SALE OF OFFICES.</p>	<p>CHAP. XIV.—MISLEADING JUSTICE— PERJURY — FALSE SWEARING — SUBORNATION.</p> <p>CHAP. XV.—ESCAPE — RESCUE— PRISON BREACH — MISPRISONS— COMPOUNDING OFFENCES.</p>
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CHAPTER XI.

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

ARTICLE 118.

“PUBLIC OFFICER” DEFINED.

¹ THE expression “public officer,” in this chapter, means a person invested with authority to execute any public duty, and legally bound to do so, but does not include any member of either House of Parliament as such, or any ecclesiastical, naval, or military officer acting in the discharge of duties for the due discharge of which he can be made accountable only by an ecclesiastical, naval, or military court.

ARTICLE 119.

EXTORTION AND OPPRESSION BY PUBLIC OFFICERS.

² Every public officer commits a misdemeanor who, in the

¹ See 7 Rep. Crim. Law Crs. ch. iv. p. 153, and cf. 5 Rep. Crim. Law Crs. p. 40. It would be foreign to the purpose of this work to discuss the question of the limits of the jurisdiction of the Courts of Common Law, and Ecclesiastical and Military Courts.

² *R. v. Wyatt*, 1 Salk. 380; *R. v. Bembridge*, 3 Doug. 327, and 22 St. Tr. 1-159; Bacon, Abridgment, tit. “Office and Officer,” N.; *R. v. Bouron*, 3 B. & Ad. 434; and see cases referred to in the Illustrations.

exercise, or under colour of exercising the duties of his office, does any illegal act, or abuses any discretionary power with which he is invested by law from an improper motive, the existence of which motive may be inferred either from the nature of the act, or from the circumstances of the case. But an illegal exercise of authority, caused by a mistake as to the law, made in good faith, is not a misdemeanor within this Article.

¹ If the illegal act consists in taking under colour of office from any person any money or valuable thing which is not due from him at the time when it is taken, the offence is called "extortion."

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

Illustrations.

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

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

(3.) ³ A and B, justices of the peace, refuse licences to the keepers of public houses, because they refuse to vote as the justices wish. A and B commit oppression.

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

¹ 4th Article of impeachment against Scroggs, C.J., 8 St. Tr. 199.

² This was the gist of the Cheyte Singh charge in the impeachment of Warren Hastings. It is remarkable that neither in Debrett's History of the Trial, nor in Mr. Mill's History of India, nor in Lord Macaulay's elaborate Essay on Warren Hastings, nor in Marshman's History of India, are the charges against Hastings distinctly stated. It seems to a lawyer natural to give at least an abstract of the indictment in order to render an account of a trial intelligible, but historians are apt to take a different view. Lord Macaulay in particular is so much interested in Burke's rhetoric that he omits to say what it was all about. In Mr. Massey's History of George III., vol. iii. p. 337, Burke's summary of the ten charges which he opened is given, but Mr. Massey observes that only one of the ten was distinct and substantive. The transactions with Cheyte Singh are described in Mill's British India, iv. 321, &c., in Lord Macaulay's Essays, p. 620 (ed. of 1850), and in Marshman's History, i. 424.

³ *R. v. Williams*, 2 Burr. 1317.

⁴ *R. v. Okey*, 8 Mod. 46. According to *R. v. Morfit*, Rus. & R. 307, decided long afterwards, A might have committed his servant for theft.

(5.)¹ A, a justice, acting as such, orders B to be whipped, without such proof or information as the law requires. A commits oppression.

(6.)² A, a constable, having B in custody on a warrant for an assault, obtains money from B upon colour and pretence that A will procure the warrant to be discharged. A commits extortion.

(7.)³ A, a justice, commits B, a pauper, to prison for refusing to answer questions which A had a right to put as to B's settlement, believing in good faith that A had a legal right to commit B. A does not commit a misdemeanor.

(8.)⁴ A, a justice, illegally refuses to accept bail for a person entitled to be bailed, under an opinion, hastily adopted in a crisis of real danger, that it was right to do so. A does not commit a misdemeanor.

ARTICLE 120.

ILLEGALLY IMPRISONING SUBJECTS BEYOND THE SEAS.

⁵ Every one commits a misdemeanor who knowingly frames, contrives, writes, seals, or countersigns any warrant for the commitment, detainer, or transportation of any subject of this realm resident in England, Wales, or Berwick, as a prisoner in or to Scotland, Ireland, Jersey, Guernsey, or any other place beyond the sea, with or without the Queen's dominions or who so commits, detains, imprisons, or transports any person.

Whoever commits any such misdemeanor is put out of the Queen's protection. His lands, tenements, goods, and chattels are forfeited to the Queen, and he is to be imprisoned for life (or perhaps at the Queen's pleasure).

ARTICLE 121.

FRAUDS AND BREACHES OF TRUST BY OFFICERS.

⁶ Every public officer commits a misdemeanor who, in the discharge of the duties of his office commits any fraud or breach of trust affecting the public, whether such fraud or

¹ See precedent of indictment, 2 Chit. Crim. Law, 236.

² Precedent of indictment, 2 Chit. Crim. Law, 292.

³ *R. v. Jackson*, 1 T. R. 653.

⁴ *R. v. Badger*, 4 Q. B. 475.

⁵ 31 Car. 2, c. 2, s. 11, the Habeas Corpus Act. The penalty is *præmunire*, as explained by Coke, 1 Inst. 130 a. 7th Rep. C. C. L. p. 37.

⁶ See cases in Illustrations.

breach of trust would have been criminal or not if committed against a private person.

Illustrations.

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

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

ARTICLE 122.

NEGLECT OF OFFICIAL DUTY.

³ Every public officer commits a misdemeanor who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter.

Illustrations.

(1.)⁴ A, the mayor of B, neglects to perform various acts which it was in his power to do, and which a man of ordinary prudence, firmness, and activity, might have been expected to do, in order to suppress riots in B. A is guilty of a misdemeanor.

(2.)⁵ A, the Lord Mayor of London, refrains from making the proclamation in the Riot Act, and from ordering soldiers to disperse a mob, because he is afraid to do so, in circumstances in which a man of ordinary courage would not have been afraid. A commits a misdemeanor.

(3.)⁶ A, a sheriff, refuses to execute a criminal condemned to death. A commits a misdemeanor.

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

² *R. v. Valentine Jones*, 31 St. Tr. 251.

³ *R. v. Wyatt*, 1 Salk. 381; *R. v. Bembridge*, 3 Doug. 332; 22 St. Tr. 1-159; Comyn's Digest, tit. Indictment, D.; *R. v. Jones, Strange*, 1143; 4 Steph. Com. 328.

⁴ *R. v. Pinney*, 5 C. & P. 254, and 3 B. & Ad. 946. This is the case of the Bristol riots. Mr. Pinney was, in fact, acquitted; but the case involves the principle of the illustration.

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

⁶ *R. v. Antrobus*, 2 A. & E. 798.

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

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

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

ARTICLE 123.

REFUSAL TO SERVE AN OFFICE.

⁴ Every one commits a misdemeanor who unlawfully refuses or omits to take upon himself and serve any public office which he is by law required to accept if duly appointed; but this Article does not extend to cases in which any other penalty is imposed by law for such refusal or neglect, or to any case in which by law or by custom any person is permitted to make any composition in place of serving any office.

Illustration.

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

¹ 2 Hals. P. C. 58; and see precedent of indictment, 2 Chit. Crim. Law, 255.

² Hawk. P. C. p. 129; cf. p. 115.

³ *R. v. James*, 2 Den. 1. The conviction in this case was quashed on the narrow ground that the parties did not sufficiently tender themselves for marriage. The objection that the offence was only an ecclesiastical one was taken, but no judgment was delivered on it. A refusal to bury would probably stand on the same footing. By 1 Edw. 6, c. 1, it is enacted that a minister "shall not without lawful cause deny" (the Sacrament) "to any person that will devoutly and humbly desire it." An indictment for such a denial would be incongruous and indecent; but it is difficult to find any definite legal ground for saying that it would not lie. (See *Jenkins v. Cook*, L. R. 1 P. D. 80.)

⁴ *R. v. Bower*, 1 B. & C. 585; and see 5th Report, C. L. C. 41, where many authorities are cited. Also 1 Russ. Cr. 212-13.

CHAPTER XII.

DISOBEDIENCE TO LAWFUL ORDERS.

ARTICLE 124.

DISOBEDIENCE TO A STATUTE.

¹ EVERY one commits a misdemeanor who wilfully disobeys any statute of the realm by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, unless it appears from the statute that it was the intention of the Legislature to provide some other penalty for such disobedience.

ARTICLE 125.

DISOBEDIENCE TO LAWFUL ORDERS OF COURT, &C.

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

Illustrations.

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

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

¹ *R. v. Wright*, 1 Burr. 543; *R. v. Harris*, 4 T. R. 205; 5th Report, C. L. C. 43; 2 Hawk. P. C. 289. Draft Code, s. 114.

² 5th Report, C. L. C. 43; *Jones's Case*, 2 Moo. 171; *R. v. Dale*, Deaz. 37, Draft Code, s. 115.

³ *R. v. Sherlock*, L. R. 1 C. C. K. 20.

⁴ *R. v. Ferrall*, 2 Den. 51. In this case Pollock, C.B., asked how it would be if the man could not pay? and whether a refusal to pay a fine is indictable. The answer would seem to be that it is. Imprisonment on such an indictment would only be a roundabout way of doing what is commonly done in cases of fine, viz. inflicting an alternative term of imprisonment. Whether a man is sentenced to be fined £100 and to be imprisoned in default of payment, or to be imprisoned because he has not obeyed the order of the Court to pay a fine of £100, is rather a matter of form than anything else.

CHAPTER XIII.

BRIBERY AND CORRUPTION—SALE OF OFFICES.

ARTICLE 126.

JUDICIAL CORRUPTION.

¹ Every one who gives or offers to any person holding any judicial office, and every person holding any judicial office who accepts any bribe, commits a misdemeanor.

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

ARTICLE 127.

CORRUPTION OF OTHER PUBLIC OFFICERS.

² Every one commits a misdemeanor who by any means endeavours to force, persuade, or induce any public officer not being a judicial officer to do or omit to do any act which the offender knows to be a violation of such officer's official duty.

ARTICLE 128.

EMBRACERY.

³ Every one commits the misdemeanor called embracery

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

² 5th Report, C. L. C. art. 3, 35, p. 47. Many authorities are cited, and in particular the chapters of the 3rd Inst. and Hawkins referred to in the last note; also *R. v. Vaughan*, Burr. 2494, see especially 2501.

³ 1 Hawk. P. C. 466; 1 Russ. Cr. 264. It is provided by the Jury Act of 1825, 6 Geo. 4, c. 50, s. 61, that "notwithstanding anything therein contained every person who shall be guilty of the offence of embracery, and every juror who shall

who by any means whatever except the production of evidence and argument in open court attempts to influence or instruct any jurymen, or to incline him to be more favourable to the one side than to the other in any judicial proceeding whether any verdict is given or not, and whether such verdict, if given, is true or false.

ARTICLE 129.

DEFINITION OF BRIBERY OF VOTERS.

¹ Every one is guilty of bribery

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

² In order to induce any voter to vote or refrain from voting at any election;

³ or corruptly on account of such voter's having voted or refrained from voting at any election;

⁴ or in order to induce any person to procure or endeavour to procure the return of any person at any election, or the vote of any voter at any election,

(i.) ⁵ Gives, lends, or agrees to give or lend, or offers or promises, or promises to procure or to endeavour to procure any money or valuable consideration to or for ⁶ any person whatever:

(ii.) ⁷ Gives or procures, or agrees to give or procure, or offers or promises, or promises to procure or to endeavour to procure any office, place, or employment to or for any person whatever; or

(b.) ⁸ Who in consequence of any such gift, loan, offer, promise, procurement, or engagement, procures or engages,

be guilty or corruptly consent thereto," shall be liable to be proceeded against, and punished as before the Act. I do not know what was the reason for this section. See Draft Code, s. 129.

¹ 17 & 18 Vict. c. 102, s. 2.

² Ibid. 2 (1), (2).

³ Ibid. (1), (2).

⁴ Ibid. (3).

⁵ Ibid. (1), (2).

⁶ "Any person" = any voter, or to or for any person on behalf of any voter, or to or for any other person.

⁷ 17 & 18 Vict. c. 102, s. 2 (1), (2).

⁸ Sect. 2 (4).

promises or endeavours to procure the return of any person in any election or the vote of any voter at any election; or

(c.)¹ Who advances or pays or causes to be paid any money to, or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;² or

(d.)³ Who being a voter before or during any election directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; or

(e.)⁴ Who after any election directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting; or

(f.)⁵ Who, either directly or indirectly, corruptly pays any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election; or

(g.) Any candidate or other person who, either directly or indirectly, pays any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting; or

(h.) Any person on whose behalf and with whose privity any such payment as in clauses (f.) and (g.) is mentioned is made.⁶

¹ 17 & 18 Vict. c. 102, s. 2 (5).

² This clause does not extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred in any election.

³ *Ibid.* s. 3 (1).

⁴ *Ibid.* s. 3 (2).

⁵ The words of the proviso at the end of s. 2 are, "the aforesaid enactment shall not extend," &c. They seem, however, to be applicable only to s. 2 (5).

⁶ 30 & 31 Vict. c. 102, s. 49.

ARTICLE 130.

DEFINITION OF UNDUE INFLUENCE.

¹ Every one commits the offence of undue influence

(a.) Who directly or indirectly by himself or by any other person on his behalf makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm, or loss, upon or against any person in order to induce or compel him to vote or refrain from voting, or on account of his having voted or refrained from voting at any election; or

(b.) Who by abduction, duress, or any fraudulent device or contrivance impedes, or prevents the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon any voter either to give or refrain from giving his vote at any election.

ARTICLE 130A.

DEFINITION OF TREATING.

² Every person is guilty of treating

(a.) Who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat drink entertainment or provision to or for any person, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election; or

(b.) Who being an elector corruptly accepts or takes any such meat drink entertainment or provision.

ARTICLE 131.

PUNISHMENT OF BRIBERY AT CERTAIN ELECTIONS.

³ Every person is guilty of a misdemeanor, and is liable

¹ 46 & 47 Vict. c. 51, s. 2.

² 46 & 47 Vict. c. 51, s. 1.

³ 17 & 18 Vict. c. 102, ss. 2, 3, 5; 35 & 36 Vict. c. 60, ss. 2, 3; 46 & 47 Vict. c. 51,

upon conviction thereof to one year's imprisonment and hard labour as a maximum punishment, or to be fined any sum not exceeding £200, who

(a.) Commits bribery, undue influence or treating at or in respect of any election of any member to serve in Parliament, or any election to the office of mayor, alderman, councillor, auditor, assessor of a borough or ward of a borough subject to the provisions of the 5 & 6 Will. 4, c. 76.

ARTICLE 132.

DEFINITION OF OFFICE.

The word "office" in Articles 133 and 134 includes

¹ Every office in the gift of the Crown or of any officer appointed by the Crown, and all commissions, civil, naval and military, and all places or employments in any public department or office whatever in any part of her Majesty's dominions whatever, and all deputations to any such office and every participation in the profits of any such office or deputation.

ARTICLE 133.

SELLING OFFICES.

² Every one commits a misdemeanor who does any of the following things in respect of any office, or any appointment to or resignation of any office, or any consent to any such appointment or resignation, that is to say, every one who directly or indirectly

(a.) Sells the same, or receives any reward or profit from the sale thereof, or agrees to do so:

(b.) Purchases, or gives any reward or profit for the purchase thereof, or agrees or promises to do so.

³ Whoever commits either of these misdemeanors upon its

s. 6. Offenders are also liable to be sued for penalties by informers, and to disabilities as to voting. Personation is also a corrupt practice, and is punishable as felony; see Art. 368s.

¹ 5 & 6 Edw. 6, c. 16; 49 Geo. 3, c. 126, s. 1.

² 49 Geo. 3, c. 126, s. 3, greatly condensed.

³ 5 & 6 Edw. 6, c. 16, s. 1; 49 Geo. 3, c. 126, s. 2; *Ingram's Case*, 3 Inst. 154. The 5 & 6 Edw. 6, c. 16, s. 1, is repealed as to offices in the Customs, by 6 Geo. 4,

comission forfeits to the Queen any right which he may have in the office, and is disabled to hold it for life, and it is not lawful for the Queen to dispense him from such disability.

ARTICLE 134.

MAKING INTEREST FOR OFFICES FOR REWARD.

¹ Every one commits a misdemeanor who does any of the following things directly or indirectly :

(a.) Receives or agrees to receive any reward or profit for any interest, request, or negotiation about any office, or under pretence of using any such interest, making any such request or being concerned in any such negotiation :

(b.) Gives or procures to be given any profit or reward, or makes or procures to be made any agreement for the giving of any profit or reward for any such request or negotiation as aforesaid :

(c.) Solicits, recommends, or negotiates in any manner as to any appointment to or resignation of any office in expectation of any reward or profit :

(d.) ² Keeps any office or place for transacting or negotiating any business relating to vacancies in or the sale or purchase of or appointment to or resignation of offices.

c. 195, s. 10. It was, however, extended to offices in the Customs as well as to many others, by 49 Geo. 3, c. 126. I do not quite understand the result of this. The present Customs Act, 39 & 40 Vict. c. 36, throws no light on the subject.

¹ 49 Geo. 3, c. 126, s. 4.

² Ibid. s. 5.