

## CHAPTER XLIII.

## FORGERY IN GENERAL.

## ARTICLE 355.

## DEFINITION OF FORGERY—INTENT TO DEFRAUD.

FORGERY is making a false document, as defined in Article 356, with intent to defraud.

An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person, ascertained or unascertained, capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact; nor by the fact that he had, or thought he had, a right to the thing to be obtained by the false document.

The presumption may be rebutted by proof that at the time when the false document was made there was no person who could be reasonably supposed by the offender to be capable of being defrauded thereby; but it is not necessarily rebutted by proof that there was no person who could in fact be defrauded thereby.

It is uncertain whether, in the absence of any evidence as to the existence of any person who can be defrauded by a false document, an intent to defraud will or will not be presumed from the mere making of the document.

An intent to deceive the public or particular persons, but not to commit a particular fraud or specific wrong upon any particular person, is not an intent to defraud within the meaning of this Article.

*Illustrations.*

(1.) <sup>2</sup> A makes a false receipt, the effect of which, if the receipt were genuine, would be to render B accountable to C for a larger sum than B

<sup>1</sup> 3 Hist. Cr. Law, 180-188.

<sup>2</sup> *P. v. Boardman*, 2 Moo. & Rob. 147.

has in fact received on C's account. A is presumed to have intended to defraud, although the receipt was not used in fact, and was probably not intended to be used in fact for the purpose of increasing B's liability.

(2.)<sup>1</sup> A imitates a Bank of England note with intent to defraud any person to whom it may be passed, but without specially intending to defraud the Bank of England. This is an intent to defraud.

(3.)<sup>2</sup> A makes a false acceptance to a bill of exchange, and puts it in circulation, intending to take it up, and actually taking it up before the bill is presented to the acceptor for payment. This is forgery with intent to defraud.

(4.)<sup>3</sup> A being directed by his master to fill up a blank cheque with an amount to be ascertained, and to take up a bill with the proceeds, A fills it up for a larger amount and keeps the difference on a claim that it was due to him for salary. Here there is an intent to defraud.

(5.)<sup>4</sup> A pays to his credit at a bank a false promissory note. The bank hold guarantees for a much larger amount. Notwithstanding this the inevitable conclusion is that he meant to defraud.

(6.)<sup>5</sup> A signs B's name without his authority to two deeds of transfer of railway shares, by one of which the shares purport to be transferred by C to B, and by the other to be transferred from B to D. The circumstances are such that no one can be defrauded by these deeds. <sup>6</sup>This rebuts the presumption of an intent to defraud raised by the writing of B's name.

(7.)<sup>7</sup> A imitates a cheque in B's handwriting and name on a bank at which, to A's knowledge, B had long ceased to keep an account. The jury may infer from this an absence of intent to defraud.

(8.)<sup>7</sup> A imitates a cheque in B's name on a bank from which B had, without A's knowledge, withdrawn his balance the day before. Here the fact that no one could be defrauded by the false cheque does not rebut the presumption of an intent to defraud.

(9.)<sup>8</sup> A makes a false will. It does not appear whether there was or was

<sup>1</sup> 24 & 25 Vict. c. 96, s. 44, would now apply in terms to such a case. In *R. v. Mazagora*, R. & R. 291, the judges held that the jury ought in such a case to have found an intent to defraud the Bank of England.

<sup>2</sup> *R. v. Geach*, 9 C. & P. 499; and in the case stated by Coleridge, J., in *R. v. Todd*, 1 Cox, C. C. 57.

<sup>3</sup> *R. v. Wilson*, 1 Den. 384.

<sup>4</sup> Compare *R. v. James*, 7 C. & P. 553, with *R. v. Cooke*, 8 C. & P. 582-5. I have taken the very words of Patterson, J. "Inevitable conclusion" is a little less strong and distinct than "conclusive presumption of law," an expression which the judge seems to have shrunk from.

<sup>5</sup> This is a barely possible supposition, though Cresswell, J., held that it was so in *R. v. Marcus*, 2 C. & K. 356. Rolfe, B., held otherwise in *R. v. Hontson*, 2 C. & K. 777, see note.

<sup>6</sup> *R. v. Marcus*, 2 C. & K. 356.

<sup>7</sup> This and Illustration (8) are founded on the dictum of Maule, J., in *R. v. Nash*, 2 Den. C. C. 499.

<sup>8</sup> *Tuff's Case*, 1 Den. C. C. 319. The Court were equally divided on a question which, I submit, was substantially the one stated.

not any person who could be defrauded by it. It is uncertain whether an intent to defraud is or is not to be presumed.

(10.)<sup>1</sup> A forges a diploma of the College of Surgeons, intending to induce a belief that the document is genuine, and that he is a member of the College of Surgeons, and shews it to two persons with intent to induce that belief in them. This is not an intent to defraud within the meaning of this Article, though it is an intent to deceive.

#### ARTICLE 356.

##### MAKING A FALSE DOCUMENT DEFINED.

To make a false document is

(a.)<sup>2</sup> to make a document purporting to be what in fact it is not;

(b.)<sup>3</sup> to alter a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document;

(c.)<sup>4</sup> to introduce into a document without authority, whilst it is being drawn up, matter which, if it had been authorized, would have altered the effect of the document;

(d.) to sign a document

(i.) in the name of any person without his authority, whether such name is or is not the same as that of the person signing;

<sup>5</sup>(ii.) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing;

<sup>6</sup>(iii.) in a name represented as being the name of a different person from that of the person signing it, and intended to be mistaken for the name of that person;

<sup>7</sup>(iv.) in a name of a person personated by the person signing the document, provided that the effect of the instrument

<sup>1</sup> *R. v. Hodgson*, D. & B. 3. It would, however, be an offence under the Medical Act, 21 & 22 Vict. c. 90, s. 40. This Act was passed in 1858, two years after the decision of *R. v. Hodgson*. The offence is "falsely pretending to be, &c., a surgeon, &c.," and the penalty is £20. The forgery of a diploma would seem to deserve more severe punishment.

<sup>2</sup> Illustration (1).

<sup>3</sup> Illustrations (2) and (3).

<sup>4</sup> Illustrations (4) and (5).

<sup>5</sup> Illustrations (6) and (7).

<sup>6</sup> Illustration (8).

<sup>7</sup> Illustration (9).

depends upon the identity between the person signing the document and the person whom he professes to be.

But it is not making a false document,

<sup>1</sup> to procure the execution of a document by fraud;

<sup>2</sup> to omit from a document being drawn up matter which would have altered its effect if introduced, and which might have been introduced, <sup>3</sup> unless the matter omitted qualifies the matter inserted;

<sup>4</sup> to sign a document in the name of a person personated by the person who signs it, or in a fictitious name, provided that the effect of the instrument does not depend upon the maker's identity with the person personated, or on the correctness of the name assumed by him.

<sup>5</sup> It is not essential to the making of a false document that the false document should be so framed that if genuine it would have been valid or binding, provided that in cases in which the forgery of any particular instrument is made a specific offence by any statute, the false document must, in order that the offence may be completed, fall within the description given in the Act.

<sup>6</sup> The fact that a document is made to resemble that which it purports to be and is not, is evidence for the consideration of the jury of an intent to defraud, but is not essential to the making of a false document.

<sup>7</sup> Provided that in cases in which the forgery of any particular instrument is made a specific offence by any statute, the false document must have such a resemblance to the document which it is intended to resemble as to be likely to deceive a common person.

*Illustrations.*

(1.) <sup>8</sup> A conveys land to B in fee. Afterwards A and C draw up and

<sup>1</sup> Illustrations (10), (11).

<sup>2</sup> Illustration (12).

<sup>3</sup> Illustration (13).

<sup>4</sup> Illustration (14).

<sup>5</sup> Illustrations (15)-(17).

<sup>6</sup> Illustration (18).

<sup>7</sup> Illustration (19).

<sup>8</sup> *R. v. Eitson*, L. R. 1 C. C. R. 200, and in 1 Hawk. P. C. 264.

execute a deed purporting to be of earlier date than the conveyance to B, by which the same land purports to be let to C for a term of 999 years. The second deed is a false document, though executed by A and C.

(2.)<sup>1</sup> A obtains a blank acceptance from B, with authority to fill it up for any amount not exceeding £200. A fills it up for £500. This is a false document.

(3.)<sup>2</sup> A persuades his servant, William Wilkinson, to write his name across a stamped paper, so as to appear to be the name of the acceptor of a bill of exchange. A then fills up the bill and addresses it to Mr. William Wilkinson, Halifax, so as to make the bill appear as if it had been drawn upon and accepted by a different William Wilkinson. This is a false document.

(4.)<sup>3</sup> A gets B to sign a receipt, and afterwards makes additions to it, so as to make it appear that a larger sum was paid to B than had actually been paid. The altered receipt is a false document.

(5.)<sup>4</sup> A, employed to draw up B's will, inserts in it legacies out of his own head. The will is a false document.

(6.)<sup>5</sup> Sheppard signs a draft in the name of H. Turner, Junior, of Noah's Row, Hampton Court, there being no such place or person. The note is a false document.

(7.)<sup>6</sup> Thomas Brown authorizes B to sign a promissory note in the name of Thomas Brown, in order that it might be used as the note of a different and entirely fictitious Thomas Brown. This is a false document, whether B knew or not of the use for which the note was intended.

(8.)<sup>7</sup> B agrees to give A time for the payment of a debt, if A will get his mother-in-law, C. Watters (whose Christian name is unknown to B), to execute a promissory note. A gets his wife to sign the note in her maiden name, "A. Watters," and produces the note to B as the note of his mother-in-law. This is a false document.

(9.)<sup>8</sup> A, personating the Hon. A. A. Hope, the brother of the Earl of Hoptown, draws a bill of exchange in the name of A. A. Hope on a person to whom he was known by that name, and who would have paid it if A had really been A. A. Hope, the brother of the Earl of Hoptown. The bill is a false document, though the person on whom it was drawn knew and gave credit to the person who drew it.

<sup>1</sup> *R. v. Hart*, R. & M. 486; 7 C. & P. 653. In this case the words "£200" were written in the corner of the blank acceptance, and erased. Littledale, J., however, told the jury that the filling up the acceptance for a greater amount than that which was authorized was forgery: *R. v. Bateman*, 2 Russ. Cr. 715; 1 Cox, C. C. 186, is to the same effect.

<sup>2</sup> *R. v. Blenkinsop*, 1 Den. C. C. 276; 2 Russ. Cr. 724.

<sup>3</sup> *R. v. Griffiths*, D. & B. 584. It is not easy to see why this case was reserved.

<sup>4</sup> 1 Hawk. P. C. 264.

<sup>5</sup> *Sheppard's Case*, 1 Lea. 236.

<sup>6</sup> *R. v. Parkes*, 2 Lea. 775.

<sup>7</sup> *R. v. Mahoney*, 6 Cox, C. C. 487; 2 Russ. Cr. 726-7.

<sup>8</sup> *R. v. Hadfield*, 2 Russ. Cr. 733. This is the well-known case of the man who married the girl known as the Beauty of Buttermere.

(10.) <sup>1</sup> A gets B to make his mark to a deed by representing it to be a requisition to a person to stand for a seat in Parliament. A does not make a false document.

(11.) <sup>2</sup> A reads B a document by which an action is agreed to be settled for £9. B agrees to sign it, and pays the £9. A, before B signs it, alters the 9 to 12. A does not make a false document.

(12.) <sup>3</sup> In drawing up B's will, A omits a legacy to C. A does not make a false document.

(13.) <sup>4</sup> In drawing up B's will, A omits a devise of an estate for life to C, whereby the will operates to give D an estate in possession, and not in remainder, on B's death. A makes a false document.

(14.) <sup>5</sup> A, personating B, draws a cheque in his assumed name of B, on a bank with which in his assumed name he had opened a genuine account by the actual payment of money to his credit. A does not make a false document.

(15.) <sup>6</sup> A, with intent to defraud, counterfeits the will of a living person. A is guilty of forgery.

(16.) <sup>7</sup> A, with intent to defraud, counterfeits a bill of exchange on unstamped paper, a stamp being necessary to the validity of such a bill. A commits forgery.

(17.) <sup>8</sup> If a person is indicted for forging a bill of exchange, it must be shewn that the document forged is a bill of exchange.

<sup>1</sup> *R. v. Collins*, 2 M. & R. 461. But see Mr. Greaves' remarks (2 Russ. Cr. 718, note). Mr. Greaves suggests, I think rightly, that this was a case of forgery by an innocent agent, B.

<sup>2</sup> *R. v. Chadwick*, 2 M. & R. 545.

<sup>3</sup> *1 Hawkins*, P. C. 265. The distinction seems idle, as every omission of a legacy must increase the residue.

<sup>4</sup> Such, I submit, would be the law, though I know of no case in which the precise question has been determined. If the law is otherwise, a person passing by a false name would go half way to forgery every time he signed it. If a man passing by a false name drew many bills and regularly provided for them, and at last drew one for which he could not and ought to have known that he could not provide, I do not think he would be guilty of forgery any more than if he had used his own name. The use of a false name is no doubt a fact from which an intent to defraud may often be inferred, but which is a different matter. See the observations of Sir E. H. East on *Aichles' Case*, 2 East, P. C. 969. Since this first edition of this work was published the case of *R. v. Martin*, L. R. 5 Q. B. D. 34, has been decided, which, without going quite as far as Illustration (14), confirms the view suggested by it. In that case, *Robert Martin*, for some reason which did not appear, drew in payment for a pony a cheque in the name of William Martin on a bank where he had ceased to have an account. This was held not to be forgery, though it was obtaining the pony by a false pretence. See, too, *R. v. Dunn*, 1 Leach, C. C. 59.

<sup>5</sup> *Murphy's Case*, 2 East, P. C. 949.

<sup>6</sup> *Hawkeswood's Case*, 2 East, P. C. 955.

<sup>7</sup> See several cases collected in 2 Russ. Cr. 755-61, all of which turn on the

(18.)<sup>1</sup> A is charged with forging a Bank of England note. If the resemblance of the forged and the real note is sufficient to deceive a common person, the conviction will not be quashed, because in certain important particulars the two documents differ.

(19.)<sup>2</sup> A forges a note in these words, "I promise to pay for self and company of my bank in England." A cannot be convicted of forging a Bank of England note.

#### ARTICLE 357.

##### "DOCUMENT."

The word document in Articles 355 and 356 does not include trade-marks or other signs, though they may be written or printed.

##### *Illustrations.*

(1.)<sup>3</sup> A paints a picture, and intending to represent that it was painted by an eminent artist, writes that artist's name in the corner. This may be a cheat, but is not forgery,

(2.)<sup>4</sup> A prints a number of wrappers imitating advertisements in which egg powders were wrapped for sale by B their maker. He incloses spurious egg powders in the wrappers, and sells them. This is not forgery though it is obtaining money by false pretences.

question whether peculiarly worded instruments answer the statutory description given in the indictment.

<sup>1</sup> *Elliot's Case*, 2 East, P. C. 951.

<sup>2</sup> *Jonas's Case*, 2 East, P. C. 952. He might however be convicted, if he changed such a document, of obtaining goods by false pretences.

<sup>3</sup> *R. v. Cross*, D. & B. 460.

<sup>4</sup> *R. v. Smith*, D. & B. 566. It would seem as if in this case the element wanting to complete the offence was the intent to defraud by means of the document, rather than the absence of a document capable of being forged; the offence lay in selling spurious as real powders. The wrappers without the powders could have no effect whatever. The essence of a forgery is, that the document itself should be made the instrument of fraud.

## CHAPTER XLIV.

## PUNISHMENT OF PARTICULAR FORGERIES.

## ARTICLE 358.

"UTTER," "RESEMBLE," "FORGE."

<sup>2</sup> In this chapter the word "utter" includes "offer, dispose of, and put off;" and when it is stated that any uttering is an offence, uttering with knowledge of the character of the thing uttered is intended.

The word "resembling" means "made or apparently intended to resemble."

The word "forge" includes "alter."

<sup>3</sup> "Having in possession" includes knowingly and wilfully having

(a.) in the possession or custody of any other person

(b.) in any place for the use or benefit of the possessor or any other person.

## ARTICLE 359.

## FORGERIES PUNISHABLE WITH PENAL SERVITUDE FOR LIFE.

Every one commits<sup>1</sup> felony, and is liable upon conviction thereof to penal servitude for life as a maximum punishment, who

(a.)<sup>4</sup> forges, counterfeits, or utters any of the seals mentioned in the note<sup>5</sup> hereto; or

<sup>1</sup> 3 Hist. Cr. Law, 180-8.

<sup>2</sup> These are mere drafting abridgments. In the Act the words "utter, offer, dispose of, and put off," "resembling and made, or apparently intended to resemble," and "forge and utter" are invariably coupled together. The meaning of the word "utter" was much discussed in *R. v. Ion*, 2 Den. 475, in which it was held to be an uttering to produce a forged receipt for inspection, and in order to lead the person to whom it was produced to believe that the person producing it had paid his rents.

<sup>3</sup> s. 45, much abridged.

<sup>4</sup> 24 & 25 Vict. c. 98, s. 1, 8.

<sup>5</sup> The Great Seal of the United Kingdom, Her Majesty's Privy Seal, any Privy Signet of Her Majesty, Her Majesty's Royal Sign Manual, any of Her Majesty's seals appointed by the 24th Article of the Union between England and Scotland, to be kept, used, and continued in Scotland, the Great Seal of Ireland and the Privy Seal of Ireland.



forges or counterfeits the stamp or impression of any such seal; or

utters any document or instrument whatsoever having thereon or affixed thereto:

(i.) the stamp or impression of any such forged or counterfeited seal; or

(ii.) any forged or counterfeited stamp or impression resembling the stamp or impression of any of the seals mentioned in the note hereto; or

forges or utters any document or instrument having any of the said stamps or impressions thereon or affixed thereto; or

(b.) who forges or utters with intent to defraud,

<sup>1</sup> any transfer of any stock mentioned in the note, <sup>2</sup> any power of attorney for transferring any share or interest in any such stock, or for receiving dividends thereon;

<sup>3</sup> any India bond, or any bond, debenture, or security issued or made under the authority of any Act of Parliament relating to India, or any indorsement thereon or assignment thereof;

<sup>4</sup> any exchequer bill, exchequer bond, or exchequer debenture, any endorsement thereon or assignment thereof, or any receipt or certificate for interest accruing thereon;

<sup>5</sup> any <sup>6</sup> bank note or any endorsement thereon or assignment thereof;

<sup>7</sup> any stock certificate or coupon, or any document purporting to be a stock certificate or coupon issued in pursuance of Part V. of the National Debt Act, 1870 (33 & 34 Vict. c. 71), or of any former Act;

<sup>1</sup> 24 & 25 Vict. c. 98, s. 2, S.

<sup>2</sup> "Any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England, or at the Bank of Ireland, or of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter, or by, under, or by virtue of any Act of Parliament."

<sup>3</sup> 24 & 25 Vict. c. 98, s. 7, S.

<sup>4</sup> *Ibid.* s. 8, S. "Exchequer Bill" includes "Treasury Bill": see 40 Vict. c. 2, s. 10.

<sup>5</sup> *Ibid.* s. 12, S.

<sup>6</sup> "Any bank note or bill of exchange of the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, or of any other body corporate, company, or persons carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill."

<sup>7</sup> 33 & 34 Vict. c. 58 (incorporated with 24 & 25 Vict. c. 98).

<sup>1</sup> any deed, bond, or writing obligatory, or any assignment thereof at law or in equity, or any name, handwriting, or signature purporting to be that of any attesting witness thereto;

<sup>2</sup> any will, codicil, or testamentary instrument;

<sup>3</sup> any bill of exchange or promissory note, or any acceptance, endorsement, or assignment of either respectively;

<sup>4</sup> any undertaking, order, warrant, authority, or request, for the payment of money, or for the delivery or transfer of any goods or chattels, or of any note, bill, or security for the payment of money, or for procuring or giving credit, or any endorsement on or assignment of any such document, any accountable receipt, acquittance, or receipt for money or for goods, or for any note, bill, or other security for the payment of money, or any endorsement on or assignment of any such accountable receipt;

<sup>5</sup> any court roll, or copy of any court roll, relating to any copyhold or customary estate; or

(c.) <sup>6</sup> who obliterates, adds to, or utters the crossing on any cheque or draft crossed with the name of a banker, or with two transverse lines with the words "and Company," or any abbreviation thereof, or utters any cheque or draft so dealt with, knowing that it is so dealt with; or

(d.) <sup>7</sup> who does any of the following things to any register of births, baptisms, marriages, deaths, or burials

<sup>1</sup> 24 & 25 Vict. c. 98, s. 20, S.

<sup>2</sup> Ibid. s. 21, S.

<sup>3</sup> Ibid. s. 22, S. A agrees to pay B for goods by his, A's, acceptance, and that he, A, will accept it, and procure its endorsement by C. B sends a form for acceptance accordingly, but with no drawer's name. A accepts it and forges C's endorsement to it. He cannot be indicted under this section, but probably might be convicted of a common law forgery: *R. v. Harper*, L. R. 7 Q. B. D. 78.

<sup>4</sup> Ibid. s. 23, S. As to what is not a receipt, see *R. v. French*, L. R. 1 C. C. R. 287. An I. O. U. may be an undertaking for payment of money: *R. v. Chambers*, L. R. 1 C. C. R. 340. A turnpike ticket is a receipt: *R. v. Fitch*, L. & C. 159. A bank pass book is an accountable receipt: *R. v. Smith*, L. & C. 168: *R. v. Moody*, L. & C. 173. A guarantee against negligence and dishonesty is an "undertaking for the payment of money": *R. v. Joyce*, L. & C. 576. A pawnbroker's ticket is a warrant for the delivery of goods: *R. v. Morrison*, Bell, C. C. 158.

<sup>5</sup> 24 & 25 Vict. c. 98, s. 30, S.

<sup>6</sup> Ibid. s. 25, S.

<sup>7</sup> Ibid. s. 36, S.

authorized or required by law for the time being to be kept (that is to say):

(i.) destroys, defaces, or injures any such register, or permits any such register to be so dealt with; or

(ii.) forges, or fraudulently alters, in any such register, any entry relating to any birth, baptism, marriage, death, or burial; or

(iii.) does any of the things above mentioned to any part of any such register, or to any certified copy of any such register, or to any part of any such certified copy; or

(iv.) knowingly and unlawfully inserts, or causes or permits to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any such fact, or gives any false certificate relating thereto; or

(v.) certifies any writing to be a copy or extract from any such register, knowing such writing, or the part of the register of which it is a copy, to be false in any material particular; or

(vi.) who forges the seal of or belonging to any register office or burial board; or

(vii.) who utters any such register, entry, certified copy, certificate, or seal, knowing the same to be false, forged, or altered, or any copy of any entry in any register, knowing the entry to be forged; or

(e.)<sup>1</sup> who does any of the following things to any copy of any register required by law to be transmitted to any registrar or other officer (that is to say):

(i.) knowingly and wilfully inserts, or causes or permits to be inserted therein, any false entry of any matter relating to any<sup>2</sup> baptism, marriage, or burial;

(ii.) forges or utters any such copy;

(iii.) knowingly and wilfully signs or verifies any such copy, knowing any part of it to be false;

(iv.) unlawfully destroys, defaces, or injures any such copy;

(v.) unlawfully and for a fraudulent purpose takes any such copy from its place of deposit, or conceals it; or

<sup>1</sup> 24 & 25 Vict. c. 98, s. 37, S.

<sup>2</sup> The word "birth" seems to be wanted here.

(*f.*) <sup>1</sup> who <sup>2</sup> demands or endeavours to have any share or interest in stock transferred, or to receive any dividend or money payable in respect thereof, by virtue of any forged power or authority, knowing it to be forged; or

<sup>3</sup> demands or endeavours to obtain or receive any share or interest of or in any stock, as defined in the National Debt Act, 1870 (33 & 34 Vict. c. 71), or to receive any dividend or money payable in respect thereof, by virtue of any forged or altered certificate or coupon, knowing it to be forged; or

(*g.*) <sup>4</sup> who commits any felony which was punishable by death before the 1 Will. 4, c. 66, and which is not otherwise punishable under the 24 & 25 Vict. c. 98, and which consists in forging or uttering any document, or acting under a forged document or personation, or making or being in possession of instruments for making any kind of paper, or other offence of the same nature.

## ARTICLE 360.

FORGERIES PUNISHABLE WITH FOURTEEN YEARS PENAL  
SERVITUDE.

Every one commits felony, and is liable upon conviction thereof to fourteen years penal servitude as a maximum punishment, who with intent to defraud <sup>5</sup> forges or utters:

<sup>1</sup> 24 & 25 Vict. c. 98, s. 2, S.

<sup>2</sup> See definition in clause (*a.*).

<sup>3</sup> 33 & 34 Vict. c. 58, s. 3, S.

<sup>4</sup> 24 & 25 Vict. c. 98, s. 48, S. This section is exceedingly verbose, and is not likely to be put in force. I have therefore greatly abridged it. To judge from the Index to the Revised Statutes, it can apply only to two statutes, 52 Geo. 3, c. 143, s. 6, referring to forging certificates, &c., of redemption of the land tax and 7 & 8 Geo. 4, c. 53, s. 56, relating to the forgery of instruments to receive money from the Bank of England, on account of the Receiver General of Excise, &c. In each case the punishment was originally death, and in each it was reduced to transportation for life by 1 Will. 4, c. 66, s. 1.

<sup>5</sup> 24 & 25 Vict. c. 98, s. 26, S., "shall fraudulently forge or alter or shall" utter; s. 31, "shall forge or fraudulently alter or shall" utter; s. 33, "whoever with intent to defraud shall forge or alter," &c. I see no difference in the meaning of these phrases, nor do I understand why they are varied. The word "forge" in itself implies an intent to defraud.

(a.) <sup>1</sup> any debenture issued under any lawful authority either within her Majesty's dominions or elsewhere;

(b.) <sup>2</sup> any <sup>3</sup> document made under any Act in force for the time being relating to the registry of deeds, or the seal or any impression of the seal of any office for the registry of deeds, or anything purporting to be the name, handwriting, or signature of any person to any such document required to be signed by the law for the time being; or

any document mentioned in (b.) having thereon any such forged stamp, impression, name, handwriting, or signature;

(c.) <sup>4</sup> any <sup>5</sup> instrument made, or purporting or appearing to be made, by <sup>6</sup> any of the officers mentioned in the note hereto, or the name, handwriting, or signature of any such officer; or

(d.) <sup>7</sup> who <sup>8</sup> draws any bill of exchange or order for the delivery or transfer of <sup>9</sup> goods for, in the name, or on the account of any other person by procuration or otherwise without lawful authority or excuse, or utters any such bill or order knowing it to be so drawn; or

(e.) <sup>10</sup> who <sup>11</sup> demands or obtains any <sup>12</sup> property whatsoever, under, upon, or by virtue of any forged instrument

<sup>1</sup> 24 & 25 Vict. c. 98, s. 26, S.

<sup>2</sup> Ibid. s. 31, S.

<sup>3</sup> any memorial, affidavit, affirmation, entry, certificate, endorsement, document, or writing.

<sup>4</sup> 24 & 25 Vict. c. 98, s. 33, S.

<sup>5</sup> "certificate, report, entry, endorsement, declaration of trust, note, direction, authority, instrument, or writing."

<sup>6</sup> The Accountant-General, or any other the officers of the Court of Chancery in England and Ireland, any judge or officer of the Landed Estates Court in Ireland, every officer of every Court in England or Ireland, every cashier or other officer or clerk of the Governor and Company of the Bank of England or Ireland.

<sup>7</sup> 24 & 25 Vict. c. 98, s. 24, S.

<sup>8</sup> "draws, makes, signs, accepts, or indorses."

<sup>9</sup> "any bill of exchange or promissory note, or any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money."

A document which is in form a receipt may be in substance a warrant, &c. *R. v. Kay*, L. R. 1 C. C. R. 29.

<sup>10</sup> 24 & 25 Vict. c. 98, s. 33, S.

<sup>11</sup> "demands, receives, or obtains, or causes or procures to be delivered or paid to any person, or endeavours" to do any such thing.

<sup>12</sup> chattel, money, security for money, or other property whatsoever.

whatsoever, knowing it to be forged, or under, upon, or by virtue of any probate or letters of administration, knowing the<sup>1</sup> will on which such probate or such letters of administration were obtained to have been forged, or knowing the probate of letters of administration to have been obtained by any false oath, affirmation, or affidavit.

## ARTICLE 361.

## FORGERIES PUNISHABLE WITH SEVEN YEARS PENAL SERVITUDE.

Every one commits felony, and is liable upon conviction thereof to seven years penal servitude as a maximum punishment, who

(a.)<sup>2</sup> forges the seal of any Court of record; or

(b.)<sup>3</sup> forges or utters any process of any Court of justice whatever, or

serves or enforces any such forged process knowing it to be forged, or delivers, or causes to be delivered, to any person any paper falsely purporting to be any such process, or a copy thereof, or to be any judgment, decree, or order of any Court of law or equity, or a copy thereof, or

acts, or professes to act, under any such false process knowing (in any such case) such process to be false; or

(c.)<sup>4</sup> forges or utters any copy or certificate of any record, or utters any such copy or certificate having thereon any forged name, handwriting, or signature; or

<sup>1</sup> testament, codicil, or testamentary writing.

<sup>2</sup> Clause (a.) represents part of 24 & 25 Vict. c. 98, s. 28, S., which occurs in the middle of the section. The statute says nothing in this case of forging the stamp or impression of such seals.

<sup>3</sup> Clause (b.) represents the effect of that part of sect. 27, S., which makes it an offence, *inter alia*, to forge the process of certain Courts named, combined with that part of sect. 28 which make it an offence to forge the process of any other Court than those mentioned in sect. 27, and to serve the forged process of any Court whatever. These sections are singularly cumbrous and ill-arranged, besides being intolerably wordy. A somewhat similar provision as to County Courts occurs in 9 & 10 Vict. c. 95, s. 57: see *R. v. Richmond*, Bell, 142, and *R. v. Evans*, D. & B. 236.

<sup>4</sup> 24 & 25 Vict. c. 98, s. 28, S.

(d.) <sup>1</sup> forges or utters any <sup>2</sup> original document whatever of any Court which, on the 6th of August, 1861, was a Court of record, of equity, or of Admiralty in England or Ireland, or any document, or copy of a document, used, or intended to be used, as evidence in any such Court; or

(e.) <sup>3</sup> who, being the clerk of any Court or other officer, or deputy of the clerk or officer having custody of the records of any Court, utters a false copy or certificate of any record; or

(f.) <sup>4</sup> who not being such officer or deputy, signs or certifies any copy of any record or certificate as such officer or deputy; or

(g.) <sup>5</sup> who forges or utters any instrument, whether written or printed in whole or in part, made evidence by any Act of Parliament in force for the time being, and not mentioned specifically in any other Article of this chapter; or

<sup>6</sup> any summons, conviction, order, or warrant of any justice of the peace, or any recognizance purporting to have been entered into before any person authorized to take it, or any examination, deposition, affidavit, affirmation, or solemn declaration taken or made before any justice of the peace; or

<sup>7</sup> any licence of or certificate for marriage; or

<sup>8</sup> the <sup>9</sup> signature of a witness attesting the execution of any power of attorney or other authority to transfer any

<sup>1</sup> 24 & 25 Vict. c. 98, s. 27, S.

<sup>2</sup> "record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognizance, cognovit actionem, or warrant of attorney, or any original document whatsoever of or belonging to any Court of record, or any bill, petition, process, notice, rule, answer, pleading, interrogatory, deposition, affidavit, affirmation, report, order, or decree, or any original document whatsoever" of the other Courts named. As the Courts of Equity and Admiralty in England now form divisions of the High Court, the distinction between the different classes of documents would seem to have ceased to exist.

<sup>3</sup> 24 & 25 Vict. c. 98, s. 28, S.

<sup>4</sup> Ibid. s. 28, S.

<sup>5</sup> Ibid. s. 29, S.

<sup>6</sup> Ibid. s. 32, S.

<sup>7</sup> Ibid. s. 35, S.

<sup>8</sup> Ibid. s. 4, S.

<sup>9</sup> "any name, handwriting, or signature purporting to be the name, &c., of."

interest in any stock mentioned in Article 359 (b.) or (f.), or to receive any dividend or money payable in respect thereof.

(h.)<sup>1</sup> who, being a clerk, officer, or servant or other person employed by the Bank of England or Ireland, knowingly and with intent to defraud makes out or delivers any dividend warrant or warrant for the payment of any annuity, interest, or money payable at either of the said banks for an amount greater or less than that to which the person on whose behalf such warrant is made out is entitled.

## ARTICLE 362.

MAKING OR POSSESSION OF PAPER, ETC., FOR FORGING BANK NOTES  
PUNISHABLE WITH FOURTEEN YEARS PENAL SERVITUDE.

Every one commits felony and is liable on conviction thereof to fourteen years penal servitude as a maximum punishment, who does any of the following things without lawful authority or excuse, the proof whereof lies upon him (that is to say):

(a.)<sup>2</sup> who purchases or receives from any person, or has in his custody or possession any forged<sup>2</sup> or blank bank note, knowing it to be forged; or

(b.)<sup>3</sup> who makes, uses, sells, exposes to sale, utters, or knowingly has in his custody or possession any<sup>4</sup> bank-note paper, or  
any frame, mould, or instrument for making such paper, or

<sup>1</sup> 24 & 25 Vict. c. 98, s. 6, S.

<sup>2</sup> Ibid. s. 13.

<sup>3</sup> Ibid. s. 14.

<sup>4</sup> "Bank note paper" means any paper whatsoever with the words "Bank of England," or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof, in a waving or curved shape, or with any number, sum, or amount expressed in a word or words in Roman letters, appearing visible in the substance of the paper, or with any device or distinction peculiar to, and appearing in, the substance of the paper used by the Banks of England and Ireland respectively for any notes, bills of exchange, or bank post bills of such bank respectively.



who by any act or contrivance causes the numerical sum or amount of any bank note <sup>1</sup> in a word or words in Roman letters to appear visible in the substance of the paper whereon the same is written or printed, or

who causes any of the words or marks mentioned in the definition of bank-note paper given in the footnote to appear in the substance of any paper.

<sup>2</sup> Provided that nothing in this Article is to prevent any person from issuing any bill of exchange or promissory note having the amount thereof expressed in guineas, or in numerical figures denoting the amount thereof in pounds sterling, appearing visible in the substance of the paper upon which the same is written or printed; <sup>3</sup>

or from making, using, or selling any paper having waving or curved lines, or any other devices in the nature of water-marks visible in the substance of the paper, not being bar lines or laying wire lines, provided that they are not so contrived as to form the ground-work or texture of the paper, or to resemble the waving or curved laying wire lines or bar lines or the water-marks of the paper used by the Bank of England or the Bank of Ireland respectively; or

(c.) <sup>4</sup> who engraves or makes in any manner, upon any plate or other thing, any note purporting to be a <sup>5</sup> bank note, or blank bank note, or any part thereof, or any name, word,

<sup>1</sup> "Bank note, bank bill of exchange, or bank post bill."

<sup>2</sup> 24 & 25 Vict. c. 98, s. 15.

<sup>3</sup> This probably means "any note in the substance of the paper of which there visibly appear either words or figures expressing the amount in guineas, or figures denoting the amount thereof in pounds sterling."

It may possibly mean "nothing in this section prevents any person from issuing any note having the amount expressed in guineas, whatever kind of paper he may use for the purpose, or any note having the amount thereof expressed in numerical figures, denoting its value in pounds sterling, and appearing visible, &c."

<sup>4</sup> 24 & 25 Vict. c. 98, s. 16, S.

<sup>5</sup> "Any promissory note, bill of exchange, or bank post bill, or part of a promissory note, bill of exchange, or bank post bill, purporting to be a bank note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England, or of the Governor and Company of the Bank of Ireland, or of any other body corporate, company, or persons carrying on the business of bankers, or to be a blank bank note, &c. (as before inserting 'blank' before 'bank')." It is almost impossible to be quite sure whether these sections are quite correctly stated or not, the phraseology is quite bewildering.

or character resembling any subscription to any bill of exchange or promissory note issued by any company or person mentioned in the note; or

uses any such plate or thing, or any other instrument or device for making or printing any such note,<sup>1</sup> or part thereof, or knowingly has in his possession any such plate, thing, or instrument, or device; or

knowingly utters or has in his possession any paper on which is made or printed any<sup>1</sup> blank bank note, or<sup>1</sup> part of a bank note, or any word, name, or character resembling any subscription thereto; or

(d.)<sup>2</sup> who engraves or makes upon any material whatever<sup>3</sup> any word, number, figure, device, character, or ornament, the impression taken from which resembles<sup>4</sup> any part of a<sup>4</sup> bank note; or

uses or knowingly has in his possession or custody<sup>5</sup> any material or instrument or device for impressing or making any such impression as aforesaid upon any paper or other material; or

<sup>3</sup> knowingly utters or has in his custody or possession any paper or other material upon which there is any such impression; or

(e.)<sup>5</sup> who makes or uses any frame, mould, or instrument for the manufacture of paper with the name or firm of any<sup>6</sup> bank (other than the Bank of England and the Bank of Ireland) appearing visible in the substance of the paper; or

knowingly has in his custody or possession any such frame, mould, or instrument; or

makes, uses, sells, exposes to sale, utters, or knowingly has in his custody or possession any such paper; or

by any act or contrivance causes any such name to appear visible in the substance of the paper upon which it is printed or written; or

<sup>1</sup> See note (5), *ante*, p. 301.

<sup>2</sup> 24 & 25 Vict. c. 98, s. 17, S.

<sup>3</sup> "Any plate whatsoever, or any wood, stone, or other material."

<sup>4</sup> See note (5), *ante*, p. 301.

<sup>5</sup> 24 & 25 Vict. c. 98, s. 18, S.

<sup>6</sup> "body corporats, company, or person carrying on the business of bankers."

(f) <sup>1</sup> who engraves or makes upon any plate or upon any <sup>2</sup> material any bill of exchange, promissory note, undertaking, or order for payment of money, or any part of any such document in any language, and, whether under seal or not, purporting to be a document of any foreign prince or state, or of any minister or officer in the service of any such prince or state, or of any corporation recognised by any such prince or state or of any person or company of persons resident out of Her Majesty's dominions; or uses or has in his possession any plate or material upon which any such document, or any part thereof, is engraved; or knowingly utters or has in his custody or possession any paper upon which any part of any such document is made or printed.

## ARTICLE 363.

## OFFENCES RELATING TO EXCHEQUER BILLS AND PAPER USED FOR THEM, SEVEN YEARS PENAL SERVITUDE.

Every one commits felony, and is liable upon conviction thereof to a maximum punishment of seven years penal servitude, or

(a.) <sup>3</sup> who, without lawful authority or excuse (the proof whereof lies upon the party accused), makes, causes, or procures to be made, or aids or assists in making, or knowingly has in his possession,

(i.) any paper in the substance of which appears any thread or <sup>4</sup> device, or any part of any thread or device, peculiar to and appearing in the substance of paper <sup>5</sup> used for <sup>6</sup> exchequer bills, and intended to imitate the same;

<sup>1</sup> 24 & 25 Vict. c. 93, s. 19, S. Taking a positive impression of an Austrian note on glass by photography is a "making" within this section: *R. v. Rivaldi*, L. & C. 330.

<sup>2</sup> "Upon any wood, stone, or other material."

<sup>3</sup> 24 & 25 Vict. c. 93, s. 10, S.

<sup>4</sup> "words, letters, figures, marks, lines, threads, or other devices."

<sup>5</sup> Provided, or to be provided or used.

<sup>6</sup> "Exchequer bills, bonds, or debentures."

(ii.) <sup>1</sup> any frame, mould, or instrument having therein any such <sup>2</sup> device;

(iii.) <sup>3</sup> any machinery for working any thread into the substance of any paper, or any such thread, such instrument, machinery, or thread being intended to imitate any such device;

(iv.) <sup>4</sup> any plate peculiarly employed for printing exchequer bills, or any die or seal peculiarly used for preparing any such plate or for sealing exchequer bills, or any plate, die, or seal intended to imitate any such plate, die, or seal; or

(b.) <sup>5</sup> who causes, or assists in causing, any such device, or any part of any such device as aforesaid, and intended to imitate the same, to appear in the substance of any paper whatever; or

(c.) <sup>6</sup> who takes, or assists in taking, any impression of any such plate, die, or seal as is mentioned in clause (a.) (iv.), <sup>6</sup> or purchases or receives, or knowingly has in his custody or possession, any such plate, die, or seal; or

(d.) <sup>6</sup> who purchases or receives, or knowingly has in his possession or custody, any paper provided by or under the direction of the Commissioners of Inland Revenue or of the Treasury for the purpose of being used as exchequer bills before such paper is duly stamped, signed, and issued for public use.

#### ARTICLE 364.

##### TRADE-MARKS DEFINED.

A trade-mark is

(a.) <sup>7</sup> A <sup>8</sup> mark lawfully used by any person to denote any

<sup>1</sup> 24 & 25 Vict. c. 98, s. 9, S. "Exchequer Bill" includes "Treasury Bill": 40 Vict. c. 2, s. 10.

<sup>2</sup> "Device" here has the same meaning as in note (2), except the word "thread."

<sup>3</sup> 24 & 25 Vict. c. 98, part of s. 9. The language thus paraphrased is exceedingly clumsy: "any . . . instrument having therein any words, &c., or any machinery for working any threads, &c., or any such thread, and intended to imitate such words, &c." The words in italics are hardly grammatical, but I suppose they mean what is stated in the text.

<sup>4</sup> 24 & 25 Vict. c. 98, s. 9, S. Exchequer bill includes Treasury bill throughout this Article, 40 Vict. c. 2, s. 10.

<sup>5</sup> Ibid. s. 10, S.

<sup>6</sup> Ibid. s. 11.

<sup>7</sup> 25 & 26 Vict. c. 88, s. 1.

<sup>8</sup> "Name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark."

chattel to be an article or thing of the manufacture, workmanship, production, or merchandise, of such person, or to be an article or thing of any peculiar or particular description made or sold by such person ;

(b.) any <sup>1</sup>mark or sign which in pursuance of any statute in force for the time being relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provision of such statutes or any of them.

#### ARTICLE 365.

##### FORGING TRADE-MARKS.

Every one commits a misdemeanor, and <sup>2</sup>is liable upon conviction thereof to a maximum punishment of two years imprisonment and hard labour, with a fine and imprisonment until the fine (if any) has been paid, who does any of the following things with intent to defraud or to enable another to defraud any person (that is to say) :

(a.) Forges or counterfeits any trade-mark ;

(b.) applies any trade-mark, or any forged or counterfeited trade-mark, to any chattel or article

not being the <sup>3</sup>merchandise of any person <sup>4</sup>denoted or intended to be denoted thereby ; or

not being the <sup>3</sup>merchandise of any person whose trade-mark is so forged or counterfeited ;

(c.) applies any trade-mark or any forged or counterfeited trade-mark to any chattel or article not being the particular or peculiar description of <sup>3</sup>merchandise denoted or intended to be denoted by such trade-mark or by such forged and counterfeited trade-mark ;

<sup>1</sup> "Name, signature, word, letter, number, figure, mark, or sign."

<sup>2</sup> 25 & 26 Vict. c. 88, s. 14. Clauses (a.), (b.), and (c.) represent sect. 2. Clauses (d.), (e.), (f.), and (g.) represent sect. 3. Clause (h.) gives the effect of the words, "Cause or procure to," &c., which are inserted in every statement of sects. 2 and 3, and also the effect of sect. 13. The Act is exceptionally verbose and lengthy. Sect. 5 contains a definition of forgery, which appears to me quite superfluous.

<sup>3</sup> "Manufacture, workmanship, production, or merchandise."

<sup>4</sup> "Denoted or intended to be denoted by such trade-mark, or denoted or intended to be denoted by such forged or counterfeited trade-mark."

(*d.*) applies any trade-mark or any forged or counterfeited trade-mark to any <sup>1</sup> thing intended for any purpose of trade or manufacture, or in, on, or with which any chattel or article is intended to be sold, or is sold or offered or exposed for sale;

(*e.*) incloses or places any chattel or article in, upon, under, or with any <sup>1</sup> thing to which any trade-mark has been falsely applied, or to which any forged or counterfeit trade-mark has been applied;

(*f.*) applies or attaches any chattel or article to any case, cover, reel, ticket, label, or other thing to which any trade-mark has been falsely applied, or to which any false or counterfeit trade-mark has been applied;

(*g.*) incloses, places, or attaches any chattel or article in, upon, under, with, or to any <sup>1</sup> thing having thereon any trade-mark of any other person;

(*h.*) <sup>2</sup> causes or procures to be committed any of the offences defined in this Article, or aids, abets, or counsels the commission of any of them.

Every person committing any such misdemeanor as aforesaid forfeits to her Majesty—

all chattels and articles to which any such trade-mark or counterfeit trade-mark is applied or caused or procured to be applied;

every instrument for applying any such trade-mark or counterfeit trade-mark in his possession or power;

the chattels and articles and the things mentioned in clauses (*d.*), (*e.*), and (*g.*), and all similar things made to be used in like manner in his possession or power.

#### ARTICLE 366.

##### FORGERY AT COMMON LAW, MISDEMEANOR.

<sup>3</sup> Every one commits a misdemeanor who forges any

<sup>1</sup> "Cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing."

<sup>2</sup> 25 & 26 Vict. c. 88, s. 13.

<sup>3</sup> *R. v. Ward*, East, P. C. 861; *R. v. Sharman*, Dear 285 (overruling *R. v. Boulton*, 2 C. & K. 604).

document by which any other person may be injured, or utters any such document knowing it to be forged with intent to defraud, whether he effects his purpose or not.

*Illustrations.*

The forgery or uttering of any of the following documents is a misdemeanor :—

<sup>1</sup> An order from a magistrate to a gaoler to discharge a prisoner as upon bail being given.

<sup>2</sup> A certificate of character to induce the Trinity House to enable a seaman to act as master.

<sup>3</sup> Testimonials whereby the offender obtained an appointment as a police constable.

<sup>4</sup> The like with intent to obtain the office of a parish schoolmaster.

<sup>5</sup> A certificate that a liberated convict was gaining his living honestly to obtain an allowance.

<sup>1</sup> *R. v. Harris*, R. & M. 393.

<sup>2</sup> *R. v. Moah*, D. & B. 550.

<sup>3</sup> *R. v. Toshack*, 1 Den. C. C. 492.

<sup>4</sup> *R. v. Sharman*, Dear. C. C. 285.

<sup>5</sup> *R. v. Mitchell*, 2 F. & F. 44.

## CHAPTER XLV.

## PERSONATION.

## ARTICLE 367.

## PERSONATION TO OBTAIN PROPERTY.

EVERY one commits felony and is liable upon conviction thereof to penal servitude for life as a maximum punishment, who falsely and deceitfully personates

(a.) <sup>1</sup> any person, or the heir, executor, or administrator, wife, widow, next of kin, or relation of any person, with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property ;

(b.) <sup>2</sup> any owner of any share or interest of or in any stock, annuity, or other public fund transferable at the Bank of England or the Bank of Ireland ;

(c.) any owner of any share or interest of or in the capital stock of any body corporate, company, or society established by charter or by virtue of an Act of Parliament ;

(d.) any owner of any dividend or money payable in respect of any such share or interest as aforesaid ;

and who thereby (in the case of clauses (b.), (c.), and (d.)) transfers or endeavours to transfer any share or interest belonging to such owner, or thereby receives or endeavours to receive any money due to any such owner as if such offender were the true and lawful owner.

## ARTICLE 368.

## ACKNOWLEDGING RECOGNIZANCE, ETC., IN FALSE NAME.

<sup>3</sup> Every one commits felony and is liable upon conviction

<sup>1</sup> 37 & 38 Vict. c. 36, s. 1, S.

<sup>2</sup> 24 & 25 Vict. c. 98, s. 3, S. Besides these general enactments there are various special Acts punishing personation in particular cases. See 33 & 34 Vict. c. 58, s. 21, as to personation of stock-holders ; 26 & 27 Vict. c. 73, s. 111, as to personating persons interested in India stock ; 30 & 31 Vict. c. 131, s. 35, as to personation of persons interested in joint stock companies' stock. The other enactments as to personation of voters &c., are enumerated in Archbold, 628.

<sup>3</sup> 24 & 25 Vict. c. 98, s. 34, S.



thereof to seven years penal servitude as a maximum punishment, who without lawful authority or excuse (the proof of which is on the party accused) acknowledges any recognizance or bail, or any *cognovit actionem*, or judgment, or any deed or other instrument before any Court, judge, or other person lawfully authorized in that behalf.

ARTICLE 368A.

PERSONATION IN FRAUD OF THE ADMIRALTY.

<sup>1</sup> Every one commits a misdemeanor, and is liable on conviction thereof to five years penal servitude as a maximum punishment on indictment, and to six months imprisonment and hard labour as a maximum punishment on summary conviction, who in order to receive any pay, wages, allotment, prize-money, bounty-money, grant or other allowance in the nature thereof, half pay pension, or allowance from the compassionate fund of the Navy, payable or supposed to be payable by the Admiralty, or any other money so payable or supposed to be payable, or any effects or money in charge or supposed to be in charge of the Admiralty, falsely and deceitfully personates any person entitled or supposed to be entitled to receive the same.

ARTICLE 368B.

PERSONATION AT ELECTIONS.

<sup>2</sup> Every one commits felony, and is liable upon conviction thereof to two years imprisonment and hard labour as a maximum punishment, who commits the offence of personation or aiding, abetting, counselling or procuring that offence at any parliamentary or municipal election.

A person is for all purposes of the laws relating to parlia-

<sup>1</sup> 28 & 29 Vict. c. 124, s. 8, S.

<sup>2</sup> 46 & 47 Vict. c. 51, s. 6; 35 & 36 Vict. c. 33, s. 24; and Schedule 3 of 46 & 47 Vict. c. 51.

---

mentary and municipal elections deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

## CHAPTER XLVI.

## OFFENCES RELATING TO THE COIN.

## ARTICLE 369.

## INTERPRETATION OF TERMS.

In this chapter the following words and expressions are used in the following senses :—

<sup>1</sup> "Current," applied to coin, means coin coined in any of Her Majesty's mints or lawfully current by virtue of any proclamation or otherwise in any part of Her Majesty's dominions, whether within the United Kingdom or without.

"Copper," applied to coin, includes bronze or mixed metal and every other kind of coin inferior in value to silver.

"Counterfeit coin" means coin not genuine, but resembling, or apparently intended to resemble, or pass for genuine coin; and includes genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination.

<sup>2</sup> A coin fraudulently filed at the edges so as to remove the milling, and on which a new milling has been added to restore the appearance of the coin, is a counterfeit coin.

"Gild" and "silver," as applied to coin, include casing with gold or silver respectively, and washing and colouring by any means whatsoever with any wash or materials capable of producing the appearance of gold or silver respectively.

"Utter" includes "tender" and "put off."

"Having in possession" includes knowingly and wilfully having

(a.) in the possession or custody of any other person; or

(b.) in any place for the use or benefit of the possessor or any other person.

<sup>1</sup> 3 Hist. Cr. Law, 177-180.

<sup>2</sup> 24 & 25 Vict. c. 99; and see 46 & 47 Vict. c. 43, s. 3 (Counterfeit Medals Act) in Article 375A.

<sup>3</sup> Sect. 1. The interpretation clause is rather clumsy, but the text will be found to represent it correctly, though as to the word "possession" in an abridged shape.

<sup>4</sup> *R. v. Hermann*, L. R. 4 Q. B. D. 284.

## ARTICLE 370.

COINING AND POSSESSION OF INSTRUMENTS FOR COINING—PENAL  
SERVITUDE FOR LIFE.

Every one commits felony and is liable upon conviction thereof to penal servitude for life as a maximum punishment,

(a.) <sup>1</sup> who makes any counterfeit gold or silver current coin; or

(b.) <sup>2</sup> who gilds or silvers any counterfeit current coin; or

(c.) <sup>2</sup> who gilds or silvers any piece of metal or mixture of metals whatever of a fit size and figure to be coined, with intent that it shall be coined into counterfeit current gold or silver coin; or

(d.) <sup>2</sup> who gilds, files, or alters any current silver or copper coin with intent to make it resemble or pass for current gold or silver coin; or

(e.) <sup>3</sup> who buys, sells, receives, pays, or puts off any counterfeit gold or silver current coin at a lower rate than it imports or was apparently intended to import, or offers to do any such thing, <sup>4</sup> whether or not such coin was in a fit state to be uttered, and whether or not the counterfeiting thereof was finished; or

(f.) <sup>5</sup> who imports or receives into the United Kingdom from beyond the seas any counterfeit current coin knowing it to be counterfeit; or

(g.) <sup>6</sup> who makes, mends, begins or proceeds to make or mend, buys, sells, or has in his custody or possession,

(i.) any puncheon, counter-puncheon, matrix, stamp, die, pattern or mould, in or upon which is made or impressed or which is adapted and intended to make or impress the figure, stamp, or apparent resemblance of both or either of the sides

<sup>1</sup> 24 & 25 Vict. c. 99, s. 2, S.

<sup>2</sup> Ibid. s. 3, S.

<sup>3</sup> Ibid. s. 6, S.

<sup>4</sup> Ibid. s. 30.

<sup>5</sup> Ibid. s. 7, S.

<sup>6</sup> Ibid. s. 24, S.

of any current gold or silver coin, or of any coin of any foreign state, prince, or country, or any part of either side thereof, knowingly; or

(ii.) any edger, edging or other tool, collar, instrument, or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling the marks on the edge of such coin as aforesaid, knowing the same to be so adapted and intended; or

(iii.) any press for coinage, or any cutting engine for cutting, by force of a screw or any other contrivance, round blanks out of gold, silver, or other metal or mixture of metals, or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been, or to be intended to be, used for or in order to counterfeiting any such coin as aforesaid; or

(*h.*)<sup>1</sup> who knowingly conveys out of any of Her Majesty's mints any puncheon, counter-puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press, or engine used or employed in coining, or any useful part of any of the said things, or any coin, bullion, metal, or mixture of metals.

<sup>2</sup> None of the acts specified in (*e.*), (*f.*), (*g.*), and (*h.*) is an offence, unless it is done without lawful authority or excuse, to be proved by the party accused.

#### ARTICLE 371.

##### CLIPPING—PENAL SERVITUDE FOR FOURTEEN YEARS.

<sup>3</sup> Every one commits felony and is liable on conviction to a maximum punishment of fourteen years penal servitude, who impairs, diminishes, or lightens any current gold or silver

<sup>1</sup> 24 & 25 Vict. c. 99, s. 25, S.

<sup>2</sup> A orders a die for coining counterfeit half-crowns (see clause (*g.*) (i.)) from B. B communicates with the Mint, and is permitted by them to finish and deliver the die to A. A receives it. A has the die in his possession without lawful excuse: *R. v. Harvey*, L. R. 1 C. C. R. 285.

<sup>3</sup> 24 & 25 Vict. c. 99, s. 4, S.

coin with intent that when so dealt with it may pass as current gold or silver coin.

## ARTICLE 372.

## COINING COPPER OR FOREIGN MONEY—PENAL SERVITUDE FOR SEVEN YEARS.

Every one commits felony and is liable to seven years penal servitude as a maximum punishment,

(a.)<sup>1</sup> who counterfeits the Queen's current copper coin; or

(b.)<sup>1</sup> who (without lawful authority or excuse (the proof whereof lies upon him)) knowingly makes or mends, or begins or proceeds to make or mend, or buy or sell, or have in his custody or possession, any instrument, tool, or engine adapted and intended for counterfeiting any of the Queen's current copper coin; or,

(c.)<sup>2</sup> who buys, sells, receives, pays, or puts off any counterfeit copper coin at a lower rate or value than the same imports or was apparently intended to import; or

(d.)<sup>3</sup> who makes counterfeit gold or silver coin of any foreign prince, state, or country; or

(e.)<sup>4</sup> who brings or receives into the United Kingdom counterfeit gold or silver coin of any foreign prince, state, or country, knowing the same to be counterfeit, without lawful authority or excuse, to be proved by the party accused,<sup>5</sup> whether or not such coin was in a fit state to be uttered, and whether or not the counterfeiting thereof was finished; or

(f.)<sup>6</sup> who has in his custody or possession any filings or clippings, gold or silver bullion, or gold or silver in dust or solution, obtained by impairing current gold or silver coin, knowing it to have been so obtained.

<sup>1</sup> 24 & 25 Vict. c. 99, s. 14.

<sup>2</sup> Ibid. s. 14, S.

<sup>3</sup> Ibid. s. 19, S.

<sup>4</sup> Ibid. s. 18, S.

<sup>5</sup> Ibid. s. 30.

<sup>6</sup> Ibid. s. 5, S.

## ARTICLE 373.

## COINING FOREIGN COPPER MONEY—PENAL SERVITUDE FOR SEVEN YEARS.

<sup>1</sup> Every one commits a misdemeanor who makes any counterfeit copper coin of any foreign state; the maximum punishment is, for the first offence, one year's imprisonment without hard labour; for the second offence, after conviction of the first, seven years penal servitude.

## ARTICLE 374.

## UTTERING AND POSSESSING WITH INTENT TO UTTER.

Every one commits a misdemeanor, or in case (*d.*) a felony, and is liable to a maximum punishment of one year's imprisonment and hard labour in case (*a.*), two years imprisonment and hard labour in case (*b.*), five years penal servitude in case (*c.*), and penal servitude for life in case (*d.*),

(*a.*) <sup>2</sup> who utters counterfeit current gold or silver coin, knowing it to be counterfeit; or,

(*b.*) <sup>3</sup> who at the time of such uttering as is specified in clause (*a.*) has in his custody or possession any other piece of such counterfeit coin, or who, on the same day, or on any of the ten days next ensuing, utters any such counterfeit coin, knowing the same to be counterfeit; or,

(*c.*) <sup>4</sup> who has in his possession three or more pieces of counterfeit current gold or silver coin, with intent to utter them or any of them; or,

(*d.*) <sup>5</sup> who commits any of the above-mentioned offences, after having been previously convicted at any time of any one of them, or of any felony relating to the coin.

<sup>1</sup> 24 & 25 Vict. c. 99, s. 22, S.

<sup>2</sup> *Ibid.* s. 9, S.

<sup>3</sup> *Ibid.* s. 10, S.

<sup>4</sup> *Ibid.* s. 11, S.

<sup>5</sup> *Ibid.* s. 12, S.

## ARTICLE 375.

## UTTERING BASE COPPER OR FOREIGN COIN.

Every one commits a misdemeanor

(a.) <sup>1</sup> who, without lawful authority or excuse to be proved by him, exports or puts on board any vessel for the purpose of being exported from the United Kingdom any counterfeit current coin whatever, knowing the same to be counterfeit; or,

(b.) <sup>2</sup> who utters any counterfeit current copper coin, knowing it to be counterfeit; or

(c.) <sup>2</sup> who has in his possession three or more pieces of such counterfeit coin, knowing the same to be false and with intent to utter any of them; or

(d.) <sup>3</sup> who, with intent to defraud, utters as current gold or silver coin any coin which is not such coin, or any medal or piece of metal or mixed metal resembling in size, figure, and colour, the current coin as which it is uttered, but being of less value; or

(e.) <sup>4</sup> who defaces any current coin whatever by stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened; or,

(f.) <sup>5</sup> who utters any counterfeit gold or silver coin of any foreign prince, state, or country, knowing it to be counterfeit; or,

(g.) <sup>6</sup> who has in his custody or possession more than five pieces of counterfeit gold or silver coin or any counterfeit copper coin of any foreign prince, state, or country, without lawful authority or excuse to be proved by such person.

<sup>7</sup> The offences defined in clauses (b.), (d.), and (f.) are complete, whether or not the coin was in a fit state to

<sup>1</sup> 24 & 25 Vict. c. 99, s. 8, S.

<sup>2</sup> Ibid. s. 15, S.

<sup>3</sup> Ibid. s. 13, S. As to the degree of resemblance necessary to bring a medal within this section, see *R. v. Robertson*, L. & C. 604.

<sup>4</sup> Ibid. s. 18.

<sup>5</sup> Ibid. ss. 22, S., 23.

<sup>6</sup> Ibid. s. 20.

<sup>7</sup> Ibid. s. 30.



be uttered, and whether or not the counterfeiting thereof was finished.

The maximum punishment for the offence in clause (a.) is two years imprisonment and hard labour; for each of the offences in clauses (b.), (c.), (d.), and (e.), one year's imprisonment with hard labour.

The maximum punishment for the offence in clause (f.) is, for the first offence six months imprisonment with hard labour; <sup>1</sup>for a second offence, after a previous conviction therefor, two years imprisonment and hard labour; <sup>1</sup>and after two previous convictions the offence is felony, and the offender is liable to penal servitude for life as a maximum punishment.

The punishment for the offence numbered (g.) is a fine not exceeding forty shillings, and not less than ten shillings for every such piece of money, half to go to the informer, and half to the poor of the parish where the offence is committed, and forfeiture of the counterfeit coins, which are to be destroyed. In default of payment, the offender may be imprisoned with hard labour for a maximum period of three months. The proceeding is to be before any justice of the peace.

#### ARTICLE 375A.

##### MAKING OR SELLING MEDALS RESEMBLING COIN.

<sup>2</sup> Every one commits a misdemeanor, and is liable on conviction thereof to be imprisoned with hard labour for one year as a maximum punishment, who

without due authority or excuse (the proof whereof lies on the person accused)—

makes or has in his possession for sale, or offers for sale, or sells,

any medal, cast, coin, or other like thing made wholly or partially of metal or any metallic combination and resembling in size, figure, and colour any of the Queen's

<sup>1</sup> 24 & 25 Vict. c. 99, s. 21, S.

<sup>2</sup> 46 & 47 Vict. c. 43, s. 2. As to "current coin," see Art. 369.

---

current gold or silver coin, or having thereon a device resembling any device on any of the Queen's current gold or silver coin, or being so formed that it can by gilding, silvering, colouring, washing, or other like process, be so dealt with as to resemble any of the Queen's current gold or silver coin.

## CHAPTER XLVII.

<sup>1</sup> MALICIOUS INJURIES TO PROPERTY.

## ARTICLE 376.

<sup>2</sup> BURNING SHIPS OF WAR, ETC.—FELONY—DEATH.

EVERY one is guilty of felony, and must upon conviction thereof be sentenced to death, who either within this realm or in any of the islands, countries, ports, or places thereto belonging,

wilfully and maliciously sets on fire, burns, or otherwise destroys; or

causes to be set on fire or burnt or otherwise destroyed; or aids, procures, abets, or assists in the setting on fire or burning or otherwise destroying

(a.) any of Her Majesty's ships or vessels of war, whether afloat or building or begun to be built in any of Her Majesty's dockyards, or building or repairing by contract in any private yards for the use of Her Majesty; or

(b.) any of Her Majesty's arsenals, magazines, dockyards, rope-yards, victualling offices, or any of the buildings erected therein or belonging thereto; or

(c.) any timber or materials there placed for building, repairing, or fitting out of ships or vessels; or

(d.) any of Her Majesty's military, naval, or victualling stores or other ammunition of war; or

(e.) any place or places where any such military, naval, or victualling stores or other ammunition of war is, are, or shall be kept, placed, or deposited.

<sup>1</sup> 3 Hist. Cr. Law, 188-190.

<sup>2</sup> 12 Geo. 3, c. 24. The punishment is not altered either by 7 & 8 Geo. 4, c. 28, or 1 Vict. c. 91. The Court, however, may order the judgment of death to be recorded: 4 Geo. 4, c. 48.

## ARTICLE 376A.

OFFENCES COMMITTED BY OR IN RELATION TO EXPLOSIVE  
SUBSTANCES.

<sup>1</sup> Every one is guilty of felony, and is liable on conviction thereof in case (a.) to penal servitude for life, in case (b.) to penal servitude for twenty years, and in case (c.) to penal servitude for fourteen years—

(a.) who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not;

(b.) who within or (being a subject of Her Majesty) without Her Majesty's dominions unlawfully and maliciously—

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

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

whether any explosion does or not take place, and whether any injury to person or property has been actually caused or not;

(c.) (i.) who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object. In this case the explosive substance is forfeited.

<sup>1</sup> 45 Vict. c. 3, ss. 2, 3, 4, 5, 6 and 9.

(ii) In any proceeding against any person for a crime under this clause, such person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

Every one is guilty of felony, and is upon conviction thereof liable to the same punishment as if he had been guilty as a principal, who

within or (being a subject of Her Majesty) without Her Majesty's dominions by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any crime under this Article.

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

#### <sup>1</sup> ARTICLE 377.

##### ARSON, ETC.—PENAL SERVITUDE FOR LIFE.

Every one commits felony, and is liable on conviction thereof to penal servitude for life as a maximum punishment, who unlawfully and maliciously does any of the following acts (that is to say):—

- (a.) <sup>2</sup> who <sup>3</sup> sets fire to any <sup>4</sup> place of divine worship;  
<sup>5</sup> or to any dwelling-house, any person being therein;

<sup>1</sup> 24 & 25 Vict. c. 97.

<sup>2</sup> *Ibid.* s. 1, S. W.

<sup>3</sup> As to what constitutes "setting fire," it is not necessary that flame should be seen: *R. v. Stallion*, 1 Moo. 398; but it is not sufficient that wood should be scorched black: *R. v. Russell*, Car. & M. 541. It is sufficient if the wood has been at a red heat: *R. v. Parker*, 9 C. & P. 45. I suppose the question is whether the thing burnt has or has not begun to be decomposed by the action of fire.

<sup>4</sup> "Church, chapel, meeting-house, or other place of divine worship."

<sup>5</sup> 24 & 25 Vict. c. 97, s. 2, S. W.

<sup>1</sup> or to any <sup>2</sup> private building, whether in the possession of the offender or of any other person, with intent to injure or defraud any person ;

<sup>3</sup> or to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, port, dock, harbour, or canal, or other navigation ;

<sup>4</sup> or to any <sup>5</sup> public building ;

<sup>6</sup> or to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, any cultivated vegetable produce, furze, gorse, heath, fern, turf, peat, coals, charcoal, wood, or bark, or to any steer of wood or bark ;

<sup>7</sup> or to any mine of coal, cannel coal, anthracite, or other mineral fuel ;

<sup>8</sup> or to any ship, whether in a complete or unfinished state ; or

(b.) <sup>9</sup> who by the explosion of gunpowder or other explosive substance throws down or damages the whole or any part of any dwelling-house any person being therein, or of any building so as to endanger the life of any person ; or

(c.) <sup>10</sup> who cuts, breaks, destroys, or damages with intent to destroy or render useless any of the <sup>11</sup> goods or articles mentioned below being in any stage of manufacture,

<sup>1</sup> 24 & 25 Vict. c. 97, s. 3, S. W.

<sup>2</sup> Private building means "house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, store-house, granary, hovel, shed, fold, farm building, building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof." Many cases are collected in Fisher's Digest, 2318-2321 as to the buildings which fall under one or the other of these terms. But they are all nisi prius rulings, and the matter is too minute to be referred to in detail here.

<sup>3</sup> 24 & 25 Vict. c. 97, s. 4, W.

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

<sup>5</sup> Public building means building other than such as are before mentioned, belonging to the Queen or to any county, riding, division, city, borough, poor law union, parish or place, or to any university or college, or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution.

<sup>6</sup> 24 & 25 Vict. c. 97, s. 17, S. W.

<sup>7</sup> 24 & 25 Vict. c. 97, s. 26, S. W.

<sup>8</sup> Ibid. s. 42, S. W.

<sup>9</sup> Ibid. s. 9, S. W.

<sup>10</sup> Ibid. s. 14, S. W.

<sup>11</sup> Any goods or article of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other, or mixed with any other material, or any frame work, knitted piece, stocking, hose or lace, being in

or any <sup>1</sup> tool or machinery employed in manufacturing or preparing such goods, or who by force enters any house, shop, building, or place with intent to commit any such offence; or

(*d.*) <sup>2</sup> who breaks down, cuts down, or otherwise damages or destroys any sea bank, or sea wall, or the bank, dam, or wall of or belonging to any water <sup>3</sup> whereby any land or building shall be, or shall be in danger of being, overflowed or damaged; or

(*e.*) <sup>4</sup> who <sup>5</sup> destroys any <sup>6</sup> work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal; or

(*f.*) <sup>7</sup> who pulls or throws down, or in anywise destroys any bridge (whether over any stream of water or not) or any viaduct or aqueduct over or under which any highway, railway, or canal passes; or

(*g.*) <sup>8</sup> who does any injury with intent and so as thereby to render dangerous or impassable any such bridge, viaduct, or aqueduct, or any highway, railway, or canal passing over, or under the same or any part thereof; or

(*h.*) <sup>9</sup> who with intent to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using any railway;

puts, places, casts, or throws <sup>10</sup> anything whatever across any railway; or

the loom or frame, or any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, or any warp or shute of any such article, or any frame work, knitted piece, stocking, hose or lace.

<sup>1</sup> Any "loom, frame, machine, engine, rack, tackle, tool or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles."

<sup>2</sup> 24 & 25 Vict. c. 97, s. 30, S. W.

<sup>3</sup> Water means river, canal, drain, reservoir, pool, or marsh.

<sup>4</sup> 24 & 25 Vict. c. 97, s. 30, S. W.

<sup>5</sup> Throws, breaks, or cuts down, levels, undermines, or otherwise destroys.

<sup>6</sup> Work = quay, wharf, jetty, lock, sluice, flood gate, weir, tunnel, towing path, drains, watercourse, or other work.

<sup>7</sup> 24 & 25 Vict. c. 97, s. 33, S. W.

<sup>8</sup> Ibid. s. 33, S. W.

<sup>9</sup> Ibid. s. 35, W. The whole section might be expressed thus: "who attempts to obstruct," &c.

<sup>10</sup> "Any wood, stone, or other matter or thing."

- takes up, removes, or displaces any rail, sleeper, or other thing belonging to any railway; or  
 turns, moves, or diverts any points or other machinery belonging to any railway; or  
 makes, shows, hides, or removes any signal or light upon or near to any railway; or  
 does, or causes to be done, any other matter or thing; or  
 (i.) <sup>1</sup> who casts away or in anywise destroys any ship or vessel whether complete or in an unfinished state; or  
 (j.) <sup>2</sup> who casts away or in anywise destroys any ship or vessel with intent thereby to prejudice the owner or part owner of such ship or vessel or of any goods on board the same, or any insurer of the ship, freight, or goods; or  
 (k.) <sup>3</sup> who with intent <sup>4</sup> to bring any ship, vessel, or boat into danger, masks, alters, or removes any light or signal, or exhibits any false light or signal; or  
 (l.) <sup>5</sup> does anything tending to the immediate loss or destruction of any ship, vessel, or boat for which no punishment is otherwise provided by the 24 & 25 Vict. c. 97.

## ARTICLE 378.

## ARSON, ETC.—FOURTEEN YEARS PENAL SERVITUDE.

Every one commits felony, and is liable upon conviction thereof to fourteen years penal servitude as a maximum punishment, who unlawfully and maliciously does any of the following things (that is to say),

- (a.) <sup>6</sup> who sets fire to any building other than those men-

<sup>1</sup> 24 & 25 Vict. c. 97, s. 42, S. W.

<sup>2</sup> *Ibid.* s. 43, S. W. This section and s. 42 are like dividing theft into two offences, theft, and theft with intent to injure the owner of the stolen goods, each offence being punished in the same way.

<sup>3</sup> 24 & 25 Vict. c. 97, s. 47, S. W.

<sup>4</sup> The word "maliciously" is here omitted, though "unlawfully" is retained. The reason, no doubt, is that one particular form of malice, viz., an intent to bring a ship into danger, is specified, but it is singular that in the latter part of the same section (s. 35) the words "unlawfully and maliciously" are used, though a specific malicious intent, viz., the injury of railway carriages, is mentioned.

<sup>5</sup> 24 & 25 Vict. c. 97, s. 47, S. W.

<sup>6</sup> *Ibid.* s. 6, W.



tioned in <sup>1</sup> Article 377 (a.) (whether finished or unfinished); <sup>2</sup>  
or

(b.) <sup>3</sup> who sets fire to anything in, against, or under any building under such circumstances that if the building were thereby set fire to, the offence would amount to felony; or

(c.) <sup>4</sup> who sets fire to any crop of hay, grass, corn, grain, pulse, or cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever the same may be growing; or

(d.) <sup>5</sup> who attempts by any overt act to set fire to any building or to anything mentioned in clause (b.) of this Article, or to any mine mentioned in Article 377, clause (a.); or to set fire to, cast away, or destroy any ship or vessel under such circumstances that if such building, mine or ship were thereby set fire to, cast away or destroyed, the offender would be guilty of felony; or

(e.) <sup>6</sup> who places or throws in, into, upon, <sup>7</sup> under, against or near any building, ship, or vessel any gunpowder or other

<sup>1</sup> If it were not for the arbitrary and practically unimportant distinction between the punishment for this offence, and for the offences defined in Art. 377, clause (a.), the following enactment would include them all:—"Whoever sets fire to any building whatever shall be liable to penal servitude for life as a maximum punishment." This would reduce six cumbrous sections, filling a page of Chitty's Statutes, to two lines.

<sup>2</sup> *R. v. Manning*, L. R. 1 C. C. R. 338. It is a question for a jury what constitutes a building.

<sup>3</sup> 24 & 25 Vict. c. 97, s. 7, W. In *R. v. Child*, L. R. 1 C. C. R. 307, it was said that the legislature probably meant to enact that, if any person sets fire to any thing in a house likely to set fire to the house itself, he should be guilty of felony, but that they had failed to say so. In that case A set fire to goods in a house to spite the owner, but with no intention to burn the house, and (as the jury were considered by the Court to have found) not thinking it probable that what he was doing would have that effect, and not being reckless on the subject. My impression is that the legislature said what it meant, but that the judge who reserved the case (Blackburn, J.) was not followed by the jury in the directions which he gave.

<sup>4</sup> 24 & 25 Vict. c. 97, s. 16, S. W.

<sup>5</sup> 24 & 25 Vict. c. 97, ss. 8, S. W., 27, 44, S. W.

<sup>6</sup> *Ibid.* ss. 10, S. W., 45, S. W.

<sup>7</sup> The word "under" does not occur in s. 45, which applies to ships and vessels and which repeats s. 10 verbatim, with the exception of the omission of that word and the substitution of "injury is effected" for "damage is caused." The omission of "under" as to vessels dates from before the invention of torpedoes.

explosive substance with intent to destroy or damage any such building, ship, or vessel, or any engine, machinery, working tools, fixtures, goods, or chattels, whether or not explosion takes place, and whether or not any damage is caused; or

(*f.*)<sup>1</sup> who destroys any part of any ship or vessel in distress, wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel; or

(*g.*)<sup>2</sup> who kills, maims, or wounds any cattle; or

(*h.*)<sup>3</sup> who cuts or otherwise destroys any hopbinds growing on poles in any plantation of hops.

## ARTICLE 379.

## THREATS TO BURN, ETC.—TEN YEARS PENAL SERVITUDE.

<sup>4</sup> Every one commits felony, and is liable upon conviction thereof to a maximum punishment of ten years penal servitude, who, knowing the contents thereof, sends, delivers, utters, or directly or indirectly causes to be received any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, whether in or under any building or not, or any ship or vessel, or to kill, maim, or wound any cattle.

## ARTICLE 380.

## MALICIOUS MISCHIEF—SEVEN YEARS PENAL SERVITUDE.

Every one commits felony, and is liable upon conviction to seven years penal servitude as a maximum punishment,

<sup>1</sup> 24 & 25 Vict. c. 97, s. 49, S.

<sup>2</sup> *Ibid.* s. 40, S. An injury inflicted by the hand may be a wound: *R. v. Bullock*, L. R. 1 C. C. R. 115. On repealed statutes to the same effect, see *R. v. Owens*, 1 Moo. 205, and *R. v. Hughes*, 2 C. & P. 420, in which Parke, B., said setting a dog at an animal whereby it was bitten was not a maiming or wounding.

<sup>3</sup> 24 & 25 Vict. c. 97, s. 19, S. W.

<sup>4</sup> *Ibid.* s. 50, S. W.

who does any of the following acts unlawfully and maliciously (that is to say),

(a.) <sup>1</sup> who cuts, breaks, destroys, or damages with intent to destroy or render useless any machine or engine, whether fixed or moveable, used or intended to be used for <sup>2</sup> any agricultural operation, or prepared for or employed in any manufacture other than those enumerated in note 4 to Article 377 (c.), or any tool or implement, whether fixed or moveable, prepared for or employed in any such manufacture;

(b.) <sup>3</sup> or who by any overt act attempts to set fire to any of the stacks or produce mentioned in Article 377, clause (a.), or to anything mentioned in Article 378, clause (c.), under such circumstances that if the same were set on fire the offender would be guilty of felony;

(c.) <sup>4</sup> or who, with intent thereby to destroy or damage any mine or to hinder <sup>5</sup> [obstruct] or delay the working thereof,

causes any water to be conveyed or run into any mine, or into any subterranean passage communicating therewith;

or <sup>6</sup> pulls down, fills up, obstructs, or damages with intent to destroy, obstruct, or render useless any airway, waterway, drain, pit, level, or shaft of or belonging to any mine; or

\* <sup>7</sup> pulls down or destroys, or damages with intent to destroy or render useless, any steam or other engine for sinking, draining, ventilating, or working any mine, or in anywise assisting <sup>8</sup> therein, or any appliance or apparatus in connection with any such engine, or any staith, building, or

<sup>1</sup> 24 & 25 Vict. c. 97, s. 15, S. W. Some cases on the application of this section to imperfect machines are collected in Fisher's Digest, pp. 2591-2593.

<sup>2</sup> "Sowing, reaping, mowing, threshing, ploughing, or draining, or for performing any other agricultural operation."

<sup>3</sup> 24 & 25 Vict. c. 97, s. 18, S. W.

<sup>4</sup> *Ibid.* s. 28, S. W.

<sup>5</sup> This word refers only to the paragraph marked with a \*.

<sup>6</sup> This accumulation of intents is clumsy, but not unmeaning. The expression "Damage with intent to destroy any airway with intent to obstruct a mine," has a meaning slightly narrower than "damaging an airway with intent to obstruct a mine," but not very different from it.

<sup>7</sup> 24 & 25 Vict. c. 97, s. 29, S. W.

<sup>8</sup> The words "sinking—mine" are here repeated.

erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, whether any such <sup>1</sup> thing is completed or unfinished; or

<sup>2</sup> stops, obstructs, or hinders the working of any such engine, apparatus, or appliance: or

(*d.*) <sup>3</sup> who wholly or partially cuts through, severs, breaks, unfastens, or damages with intent to destroy or render useless, any rope, chain, or tackle of whatever material used in any mine, or upon <sup>4</sup> any way or work connected therewith or employed in working it;

(*e.*) <sup>5</sup> who cuts off, draws up, or removes any piles, chalk, or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank, dam, or wall of any other <sup>6</sup> water; or

(*f.*) <sup>7</sup> who, with intent and so as thereby to obstruct and prevent the carrying on or completing or maintaining the navigation of any navigable river or canal, opens or draws up any flood-gate or sluice, or does any injury or mischief to such river or canal; or

(*g.*) <sup>8</sup> who cuts through, breaks down, or otherwise destroys the dam, flood-gate, or sluice of any fish-pond, or of any water being private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish therein, or so as thereby to cause the loss or destruction of any of them; or

<sup>1</sup> The words "bridge—trunk" are here repeated.

<sup>2</sup> The words relating to the intent with which these acts are not to be done follow these words. I think, however, that they are meant to apply to all the words which precede them. If not, the words as to intent at the beginning of the clause do not apply to the paragraph beginning "or pulls down." The sections are very clumsy.

<sup>3</sup> 24 & 25 Vict. c. 97, s. 29, S. W.

<sup>4</sup> "Any inclined plane, railway, or other way or other work whatsoever in anywise belonging or appertaining to or connected with or employed in any mine, or the working or business thereof."

<sup>5</sup> 24 & 25 Vict. c. 97, s. 31, S. W.

<sup>6</sup> "river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock."

<sup>7</sup> 24 & 25 Vict. c. 97, s. 31, S. W.

<sup>8</sup> *Ibid.* s. 32, S. W.

(*h.*)<sup>1</sup> who puts lime or any other noxious material in any such water<sup>2</sup> or in any salmon river with intent to destroy any fish then being or afterwards to be put therein; or

(*i.*) who cuts through, breaks down, or otherwise destroys the dam or flood-gate of any mill pond, reservoir, or pool; or

(*j.*)<sup>3</sup> who damages with intent to destroy or render it useless, any ship or vessel, whether complete or incomplete, by any means other than fire, gunpowder, or other explosive substance<sup>4</sup> or

(*k.*)<sup>4</sup> who cuts away, casts adrift, removes, alters, defaces or destroys any boat, buoy, buoy rope, perch, or mark used or intended for the guidance of seamen for the purposes of navigation, or who does any act with intent to do any of the things aforesaid, or who in any other manner injures or conceals any of the things aforesaid.

#### ARTICLE 381.

##### MALICIOUS MISCHIEF—FIVE YEARS PENAL SERVITUDE.

<sup>5</sup> Every one commits felony, and is liable upon conviction thereof to five years penal servitude as a maximum punishment, who unlawfully and maliciously

(*a.*) cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling, shrub, or any underwood, if the injury done exceeds the sum of £5,<sup>6</sup> or the sum of £1 if the thing injured grows in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house; or

<sup>1</sup> 24 & 25 Vict. c. 97, s. 32, S. W.

<sup>2</sup> These words are added by 36 & 37 Vict. c. 71, s. 13. For definition of "salmon river," see 28 & 29 Vict. c. 121, s. 3, and 24 & 25 Vict. c. 109, s. 4.

<sup>3</sup> 24 & 25 Vict. c. 97, s. 46, S. W.

<sup>4</sup> Ibid. s. 48, S. W.

<sup>5</sup> 24 & 25 Vict. c. 97, ss. 21, S. W., 20, S. W. These sections are thus arranged in the Act (20.): Whoever cuts . . . trees . . . in any park, &c., if the damage exceeds £1, is guilty of felony, &c. (21.) Whoever cuts . . . trees . . . not growing in any park, &c., if the damage done exceeds £5, is guilty of felony, &c. The text is only half as long, and has precisely the same meaning.

<sup>6</sup> These sums are exclusive of consequential damage. A did injury to the

(b.) <sup>1</sup> cuts or injures any electric line or work with intent to cut off any supply of electricity.

## ARTICLE 382.

## MAKING AND POSSESSING GUNPOWDER FOR CERTAIN PURPOSES.

<sup>2</sup> Every one commits a misdemeanor, and is liable upon conviction thereof to a maximum punishment of two years imprisonment and hard labour, who knowingly has in his possession, or makes or manufactures any gunpowder, explosive substance, dangerous or noxious thing, machine, engine, instrument, or thing with intent thereby or by means thereof, to commit, or for the purpose of enabling any other person to commit any felony mentioned in the 24 & 25 Vict. c. 100, or the 24 & 25 Vict. c. 97.

## ARTICLE 383.

## SUNDRY INJURIES TO PROPERTY.

Every one commits a misdemeanor, and is liable upon conviction thereof to the punishments or other consequences stated in the schedule printed in the note hereto, who unlawfully and maliciously does any of the following things (that is to say):

amount of £1 to a hedge which it would cost £4 14s. 6d. to replace. This is injury to the amount of £1, not to the amount of £5 14s. 6d.: *R. v. Whiteman*, Dear. 353 (upon 7 & 8 Geo. 4, c. 30, s. 19).

<sup>1</sup> 45 & 46 Vict. c. 58, s. 22. "Electric line" is defined to mean "a wire or wires conductor or other means used for the purpose of conveying, transmitting or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents.

"Works" means and includes electric lines, also any buildings, machinery, engines, works, matters or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under the Act.

<sup>2</sup> 24 & 25 Vict. c. 100, s. 64, S. W.; 24 & 25 Vict. c. 97, s. 54, S. W. The felonies in question are those specified in this chapter, and in chapters xxiv.-xxx., both inclusive, and in Articles 74 and 168.

(a.) <sup>1</sup> who being possessed of <sup>2</sup> any building or part of any building as tenant for a term, at will, or on sufferance, or held over after the termination of any tenancy, pulls down or demolishes, or begins to pull down or demolish the same or any part thereof, or pulls down or severs from the freehold any fixture being fixed in or to, or being part of such building; or

(b.) <sup>3</sup> who cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or part of any tree, sapling, or shrub, or any underwood wheresoever growing, to the amount of one shilling at the least; or

(c.) <sup>4</sup> who destroys or damages with intent to destroy any

## SCHEDULE.

24 & 25 Vict. c. 97. No. of Clause.	Punishment.	How inflicted.
(a) Sect. 13.	As for a misdemeanor at common law.	On indictment.
(b) Sect. 22.	<i>For first offence</i> , three months imprisonment, with hard labour as a maximum punishment, or a maximum fine of £5 over and above the damage done.	On conviction before a justice of the peace.
	<i>For second offence</i> , imprisonment with hard labour for a maximum period of twelve months.	Do.
	<i>For third and other offences</i> , maximum punishment of two years imprisonment and hard labour, S. W.	On indictment.
(c) Sect. 23.	<i>First offence</i> . Six months imprisonment and hard labour as a maximum punishment, or a fine of £20 as a maximum over and above the amount of the damage done.	On conviction before a justice of the peace.
	<i>Subsequent offences</i> . Felony, maximum punishment five years penal servitude, S. W.	On indictment.

<sup>1</sup> 24 & 25 Vict. c. 97, s. 13.

<sup>2</sup> "any dwelling-house or other building, or part of any dwelling-house or other building."

<sup>3</sup> 24 & 25 Vict. c. 97, s. 22.

<sup>4</sup> 24 & 25 Vict. c. 97, s. 23.

plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory; or

(d.) <sup>1</sup> who destroys or damages with intent to destroy any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture and growing on any land not being a garden, orchard, or nursery ground; or

(e.) <sup>2</sup> who cuts, breaks, throws down, or in anywise destroys any fence of any description whatever, or any wall, stile, gate, or any part thereof; or

(f.) <sup>3</sup> who throws down, levels, or otherwise destroys in

SCHEDULE.

24 & 25 Vict. c. 97. No. of Clause.	Punishment.	How inflicted.
(d) Sect. 24.	<i>First offence.</i> Imprisonment and hard labour for one month as a maximum punishment, or a maximum fine of 20s. over and above the amount of the injury, and imprisonment with or without hard labour for a maximum term of a month, unless payment is sooner made, in default of payment of fine and costs if ordered.	Conviction before a justice of the peace.
	<i>Subsequent offences.</i> Imprisonment with hard labour for a maximum term of six months.	Do.
(e) Sect. 25.	<i>First offence.</i> Maximum fine of £5.	Conviction before a justice of the peace.
	<i>Subsequent offences.</i> Imprisonment with hard labour for a maximum term of twelve months.	Do.
(f) Sect. 34.	As for a misdemeanor.	On indictment.

<sup>1</sup> 24 & 25 Vict. c. 97, s. 24.

<sup>2</sup> Ibid. s. 25.

<sup>3</sup> Ibid. s. 34.



whole or in part any turnpike gate or toll-bar, or <sup>1</sup> fence belonging to any turnpike or toll-bar, so set up or erected to prevent passengers from passing by without payment of any toll directed to be paid by any Act of Parliament, or any house, building, or weighing engine erected for the better correction, ascertainment, or security of any such toll; or

(g.) <sup>2</sup> who cuts, breaks, throws down, destroys, injures, or removes anything whatever<sup>3</sup> being part of or used in or about any electric or magnetic telegraph, or in the working thereof, or prevents or obstructs in any manner whatever the sending, conveyance, or delivery of any communication by any such telegraph; or

(h.) <sup>4</sup> who by any overt act attempts<sup>5</sup> to commit any offence specified in clause (g.); or

(i.) <sup>6</sup> who destroys or damages any book, manuscript,

## SCHEDULE.

24 & 25 Vict. c. 97. No. of Clause.	Punishment.	How inflicted.
(g) Sect. 37.	Maximum punishment, two years imprisonment with hard labour. Provided that if the justice before whom any person is examined thinks it expedient for the ends of justice, he may inflict maximum punishment of imprisonment with hard labour for three months, or a maximum fine of £10.	On indictment.  On summary conviction.
(h) Sect. 38.	Maximum punishment of three months imprisonment with hard labour, or maximum fine of £10.	On conviction before a justice of the peace.
(i) Sect. 39.	Misdemeanor. Maximum punishment six months imprisonment and hard labour, W.	On indictment.

<sup>1</sup> "any wall, chain, rail, post, bar, or other fence."

<sup>2</sup> 24 & 25 Vict. c. 97, s. 37.

<sup>3</sup> "any battery, machinery, wire, cable, post, or other matter or thing whatsoever."

<sup>4</sup> 24 & 25 Vict. c. 97, s. 38.

<sup>5</sup> How can a man possibly attempt without an "overt act." See section on Attempts.

<sup>6</sup> 24 & 25 Vict. c. 97, s. 39, W.

<sup>1</sup> work of art, or thing kept for the purposes of art, science, or literature, or as an object of curiosity in any <sup>2</sup> repository open at all times or from time to time for the admission of the public, or to any considerable number of persons, whether by the permission of the proprietor, or by the payment of money; or

any picture, statue, monument, or other memorial of the dead, painted glass, or other ornament or work of art in any <sup>3</sup> place of divine worship or public building, or <sup>4</sup> public place, churchyard, or burial ground; or

any statue or monument exposed to public view, or any ornament, railing or fence surrounding such statue or monument; or

(*j.*) <sup>5</sup> who kills, maims, or wounds any dog, bird, or other animal not being cattle, but being either the subject of larceny at Common Law, or being ordinarily kept in a state of confinement, or for some domestic purpose; or

(*k.*) <sup>6</sup> who by any unlawful act or by any wilful omission

## SCHEDULE.

24 & 25 Vict. c. 97. No. of Clause.	Punishment.	How inflicted.
(j) Sect. 41.	<i>First offence.</i> Maximum punishment six months imprisonment with hard labour, or maximum fine of £20.	Conviction before a justice of the peace.
	<i>Subsequent offences.</i> Imprisonment with hard labour for a maximum term of twelve months.	Do.
(k) Sect. 36.	Maximum punishment two years imprisonment and hard labour.	On indictment.

<sup>1</sup> Work of art = picture, print, statue, bust, vase, or any other article or thing kept for the purposes of art.

<sup>2</sup> "museum, gallery, cabinet, library, or other depository."

<sup>3</sup> See definition of these words in Art. 1 (a) from "belonging to the Queen" to "In of Court."

<sup>4</sup> public place = street, square, public garden or ground.

<sup>5</sup> 24 & 25 Vict. c. 97, s. 41.

<sup>6</sup> Ibid. s. 36. Changing a signal so as to cause a train to go slower than it otherwise would is an obstructing: *R. v. Hadfield*, L. R. 1 C. C. R. 253; so is stretching out the arms as a signal: *R. v. Hardy*, L. R. 1 C. C. R. 278. A railway not opened for public traffic may be obstructed: *R. v. Bradford*, Bell, C. C. 269.

or neglect, obstructs or causes to be obstructed any engine or carriage using any railway or aids therein; or

(*l.*) <sup>1</sup> who unlawfully and maliciously commits any damage, injury, or spoil to an amount exceeding £5, to, or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is otherwise provided in this chapter; or

(*m.*) <sup>2</sup> who wilfully or maliciously commits any damage, injury, or spoil upon <sup>3</sup> any real or personal property whatsoever (<sup>4</sup> including injuries to trees, saplings, shrubs or underwood), either of a public or private nature, for which no punishment is hereinbefore provided.

Provided that this clause does not extend to any case where the party acts under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass not being wilful and malicious committed in hunting, fishing, or in the pursuit of game.

## SCHEDULE.

24 & 25 Vict. c. 97. No. of Clause.	Punishment.	How inflicted.
(l) Sect. 51.	Maximum punishment two years imprisonment and hard labour, and if offence committed between 9 P.M. and 5 A.M. maximum punishment five years penal servitude.	On indictment.
(m) Sect. 52.	Maximum punishment two months imprisonment and hard labour, or £5, and whatever sum not exceeding £5 the justice thinks fit as compensation for the damage. If payment of sums ordered, and costs if ordered, is not made within a time specified, the justice may commit the offender to prison for a maximum period of two months with hard labour, unless the sum ordered is sooner paid.	Conviction before a justice of the peace.

<sup>1</sup> 24 & 25 Vict. c. 97, s. 51.

<sup>2</sup> *Ibid.* s. 52.

<sup>3</sup> These words do not include an incorporeal right, such as the right to depasture cows on a moor: *Laws v. Elkington*, L. R. 8 Q. B. D. 283.

24 & 25 Vict. c. 97, s. 53.

CHAPTER XLVIII.

<sup>1</sup> OFFENCES RELATING TO GAME, WILD ANIMALS, AND FISH.

ARTICLE 384.

"NIGHT" AND "GAME" DEFINED.

IN this chapter the following words are used in the following senses:—

<sup>2</sup> "Night" means the interval between the end of the first hour after sunset, and the beginning of the last hour before sunrise.

<sup>3</sup> "Game" means hares, pheasants, partridges, grouse, heath or moor game, black game and bustards.

ARTICLE 385.

NIGHT POACHING AND ASSAULTING KEEPER.

Every one commits a misdemeanor and is liable upon conviction thereof to the maximum punishment mentioned in the schedule in the foot-note to this Article, who does any of the following things (that is to say):

(a.) <sup>4</sup> who by night unlawfully takes or destroys any

SCHEDULE.

Offence under Clause.	Maximum punishment.	How inflicted.
(a)	<i>First offence.</i> Three months hard labour. At the expiration two sureties in £5 or one in £10 not so to offend for one year. In default six months further hard labour, unless sureties found.	Conviction before two justices.
	<i>Second offence.</i> Six months hard labour. At the expiration thereof	Do.

<sup>1</sup> 3 Hist. Cr. Law, 275-282.

<sup>2</sup> 9 Geo. 4, c. 69, s. 12; 24 & 25 Vict. c. 96, ss. 17, 24.

<sup>3</sup> 9 Geo. 4, c. 69, s. 13.

<sup>4</sup> *Ibid.* s. 1.

game or rabbits in any land, whether open or inclosed, or by night unlawfully enters or is in any land, whether open or inclosed, with any gun, net, engine, or other instrument for the purpose of taking or destroying game; or

(b.) <sup>1</sup> who assaults or offers any violence with any gun, cross-bow, firearms, bludgeon, stick, club, or any other offensive weapon whatever, towards any person authorized to seize and apprehend <sup>2</sup> him for the offence specified in clause (a).

#### ARTICLE 386.

##### OFFENCES RELATING TO DEER, HARES, RABBITS, AND FISH.

Every one commits an offence, and is liable upon conviction thereof to the punishment and other consequences stated in the <sup>3</sup> schedule in the note hereto, who does any of the following things (that is to say):

#### SCHEDULE.

Offence under Clause.	Maximum punishment.	How inflicted.
	to enter into his own recognizance for £20, and two sureties at £10 each, or one at £20, not so to offend for two years. In default of sureties, further imprisonment with hard labour for one year, unless such sureties are found.	
	<i>Third offence.</i> Seven years penal servitude.	Indictment.
(b)	Seven years penal servitude.	Do.

<sup>1</sup> 9 Geo. 4, c. 69, s. 2.

<sup>2</sup> i.e. the owner or occupier of the land, the lord of the manor or reputed manor in which the land is situated, any person having a right or reputed right of free chase, or free warren thereon, any gamekeeper or servant of any such person, any person assisting such gamekeeper or servant, finding the offender on the land where the offence is committed, or in any place to which pursuit is made: Sect. 2.

<sup>3</sup> See Schedule, p. 349.

(a.) <sup>1</sup> who unlawfully and wilfully courses, hunts, snares, or carries away, kills, wounds, or attempts to kill or wound any deer kept or being

(i.) in the unenclosed part of any forest, chase, or purlieu ;

(ii.) <sup>2</sup> in the inclosed part of any forest, chase, or purlieu, or in any inclosed land where deer are usually kept; or

(b.) <sup>3</sup> who does not satisfy any justice of the peace before whom he is taken or summoned that he had a lawful occasion for any snare or engine for the taking of deer found in his possession or on his premises with his knowledge, and did not keep the same for any unlawful purpose, and that he came lawfully by any deer, or the head, skin, or other part thereof so found, or which (upon summoning the persons through whose hands the same appear to have passed) are shewn to have been first received by him, or to have been in his possession; or

(c.) <sup>4</sup> who unlawfully and wilfully sets or uses any snare

SCHEDULE.

No. of Clause.	Maximum punishment and other consequences.	How inflicted.
(a) (i.) Sect. 12.	<i>First offence.</i> Fine of £50.	Conviction before a justice.
	<i>Offence after previous conviction of any offence relating to deer for which a pecuniary penalty is imposed by any Act of Parliament, felony, two years imprisonment and hard labour.</i>	Indictment.
(a) (ii.) Sect. 13.	Felony. Two years imprisonment and hard labour.	Indictment.
(b) Sect. 14.	Fine of £20.	Conviction before a justice.
(c) and (d). Sect. 15.	Fine of £20.	Do.

<sup>1</sup> 24 & 25 Vict. c. 96, s. 12, S. W.

<sup>2</sup> *Ibid.* s. 13, S. W.

<sup>3</sup> *Ibid.* s. 14.

<sup>4</sup> *Ibid.* s. 15.

or engine whatsoever for the purpose of taking or killing any deer in any part of any forest, chase, or purlieu, whether such part is inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any inclosed land where deer are usually kept; or

(*d.*)<sup>1</sup> who unlawfully and wilfully destroys any part of the fence of any land where any deer are then kept; or

(*e.*)<sup>2</sup> who having entered into any forest, chase, or purlieu, inclosed or not, or into any inclosed land where deer are usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, unlawfully beats or wounds any person intrusted with the care of the deer, or any of his assistants, in the execution of the powers hereunder mentioned; <sup>3</sup> or

(*f.*)<sup>4</sup> who unlawfully and wilfully takes or kills any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be inclosed or not.

(*i.*) by night,

SCHEDULE.

No. of Clause.	Maximum punishment and other consequences.	How inflicted.
( <i>e.</i> ) Sect. 16.	Felony. Two years imprisonment and hard labour.	Indictment.
( <i>f.</i> ) (i.) Sect. 17.	Misdemeanor.	Do.
( <i>f.</i> ) (ii.) Sect. 17.	£5 fine.	Conviction before a justice.

<sup>1</sup> 24 & 25 Vict. c. 96, s. 15.

<sup>2</sup> *Ibid.* s. 16, S. W.

<sup>3</sup> Every person intrusted with the care of the deer, and any of his assistants, whether in his presence or not, may demand from every such offender any gun, fire-arms, snare, or engine in his possession, and any dog there brought for hunting, coursing, or killing deer, and in case such offender shall not immediately deliver up the same, may seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer.

<sup>4</sup> 24 & 25 Vict. c. 96, s. 17.

(ii.) by day (elsewhere than on any sea bank or river bank in the county of Lincoln, so far as the tide extends, or within one furlong of such bank); or

(g.)<sup>1</sup> who sets or uses any snare or engine for the taking of hares or rabbits in any such place at any time; or

(h.)<sup>2</sup> who<sup>3</sup> unlawfully and wilfully takes or destroys, or attempts to take or destroy any fish, otherwise than by angling in the day-time,

(i.) in any water running through or being in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein,

(ii.) in any other water being private property, or in which there is any private right of fishery; or

(k.)<sup>4</sup> who unlawfully or wilfully takes or destroys, or attempts to take or destroy, fish by angling in the day-time,

(i.) in any water mentioned in (h) (i.)

(ii.) in any water mentioned in (h) (ii.);

SCHEDULE.

No. of Clause.	Maximum punishment and other consequences.	How inflicted.
(g) Sect. 17.	£5 fine.	Conviction before a justice.
(h) (i.) Sect. 24.	Misdemeanor.	Indictment.
(h) (ii.) Sect. 24.	£5 fine above value of fish.	Conviction before a justice.
(k) (i.) Sect. 24.	£5 fine.	Do.
(k) (ii.) Sect. 24.	£2 fine.	Do.

<sup>1</sup> 24 & 25 Vict. c. 96, s. 17. It is not perfectly clear whether the words "unlawfully" and "wilfully" apply to this offence; but in any case they would, I think, be implied.

<sup>2</sup> 24 & 25 Vict. c. 96, s. 24.

<sup>3</sup> These words apply only to (ii.).

<sup>4</sup> 24 & 25 Vict. c. 96, ss. 24, 25.



<sup>1</sup> If any person is found committing any offence under (h) (i), (h) (ii), (k) (i) or (k) (ii), the owner of the ground, water, or fishery where such offender is found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net, or other implement, for taking or destroying fish then in such offender's possession, and if such offender does not immediately deliver up the same, may seize and take it from him for the use of such owner. Any person angling by day is by such taking or delivery exempted from any further damage or penalty.

<sup>1</sup> 24 & 25 Vict. c. 96, s. 24.

CHAPTER XLIX.

<sup>1</sup> OFFENCES CONNECTED WITH TRADE AND BREACH OF CONTRACT.

ARTICLE 387.

ABSCONDING WITH PROPERTY IN CONTEMPLATION OF BANKRUPTCY.

<sup>2</sup> EVERY one commits felony, and is liable upon conviction thereof to a maximum punishment of two years imprisonment and hard labour, who quits England and takes with him, or attempts or makes preparation for quitting England and for taking with him, any part of his property to the amount of £20 or upwards, which ought by law to be divided amongst his creditors,<sup>3</sup> having been adjudged a bankrupt, or having had his affairs liquidated by arrangement after the presentation of a bankruptcy petition against him, or the commencement of his liquidation, or within four months before such presentation or commencement, unless the jury is satisfied that he had no intent to defraud.

<sup>4</sup> ARTICLE 338.

PUNISHMENT OF FRAUDULENT DEBTORS.

<sup>5</sup> Every person adjudged bankrupt, and every person whose affairs are liquidated by arrangement in pursuance of the Bankruptcy Act, 1869, commits a misdemeanor, and is liable upon conviction thereof to a maximum punishment of two years imprisonment and hard labour,

<sup>1</sup> 3 Hist. Cr. Law, 228-233.

<sup>2</sup> 32 & 33 Vict. c. 62, s. 12.

<sup>3</sup> In the case of an infant adjudged a bankrupt for trading debts who was convicted under this section it was held that the conviction must be set aside, as since 37 & 38 Vict. c. 62, the infant could have no creditors capable of being defrauded: L. R. 5 Q. B. D. 28.

<sup>4</sup> 32 & 33 Vict. c. 62, s. 11.

<sup>5</sup> 32 & 33 Vict. c. 71.

(1.) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud :

(2.) If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud :

(3.) If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud :

(4.) If after the presentation of a bankruptcy petition [<sup>1</sup> by or ] against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of £10 or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud :

(5.) If after the presentation of a bankruptcy petition [<sup>1</sup> by or ] against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of £10 or upwards :

(6.) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud :

(7.) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof :

<sup>1</sup> 46 & 47 Vict. c. 52, s. 163 (1.)

(8.) If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :

(9.) If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intention to conceal the state of his affairs or to defeat the law :

(10.) If after the presentation of a bankruptcy petition against him or commencement of the liquidation, or within four months next before such presentation or commencement, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :

(11.) If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs :

(12.) <sup>1</sup> If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses :

(13.) <sup>1</sup> If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, by any false representation or other

<sup>1</sup> See *Ex parte Brett*, 1 Ch. D. 151.

fraud, has obtained any property on credit, and has not paid for the same :

(14.) <sup>1</sup> If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way in his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud :

(15.) If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud :

(16.) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs, or his bankruptcy or liquidation.

#### ARTICLE 388A.

##### UNDISCHARGED BANKRUPT OBTAINING CREDIT.

Where an undischarged bankrupt who has been adjudged bankrupt under the Bankruptcy Act, 1883, obtains credit to the extent of £20 or upwards from any person without informing such person that he is an undischarged bankrupt, he commits a misdemeanor to which all the provisions of the last Article apply.<sup>2</sup>

#### ARTICLE 389.

##### FALSE CLAIM ON BANKRUPT'S ESTATE.

<sup>3</sup> Every one commits a misdemeanor and is liable upon

<sup>1</sup> See *Ex parte Brett*, 1 Ch. D. 151.

<sup>2</sup> 46 & 47 Vict. c. 52, s. 31. This section applies to cases where credit is in fact obtained though no definite stipulation is made for it : *R. v. Peters*, L. R. 16 Q. B. D. 636.

<sup>3</sup> 32 & 33 Vict. c. 62, s. 14.

conviction thereof to a maximum punishment of one year's imprisonment and hard labour,

Who being a creditor in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular.

## ARTICLE 390.

## CONSPIRACIES IN RESTRAINT OF TRADE.

<sup>1</sup> A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.

*Illustration.*

<sup>2</sup> The defendants, a body of shipowners, agreed that if persons in a certain trade would deal exclusively with them, such persons should have certain advantages at their hands; and that if they dealt with any other shipowner, to however small an extent, they should lose all the advantages which otherwise they would derive from dealing with the defendants. Plaintiffs (also shipowners) alleged that this was done for the purpose of injuring them by driving them out of the trade. Defendants said it was done for the protection of their own trade, and it was held that the question would be which of these views was in fact true.

## ARTICLE 391.

## WHAT ACTS DONE IN RESTRAINT OF TRADE ARE NOT UNLAWFUL.

<sup>3</sup> The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of Article 390.

<sup>1</sup> 3 Hist. Cr. Law, 202-227.

<sup>2</sup> *Mogul Steamship Company v. McGregor*, L. R. 15 Q. B. D. 476. The law of conspiracy was much discussed in this case, which was an interlocutory application for an interim injunction.

<sup>3</sup> 34 & 35 Vict. c. 31, s. 2.

<sup>1</sup> No act in contemplation or furtherance of a trade dispute between employers and workmen is unlawful within the meaning of Article 390, unless a person doing it would be punishable for it on indictment, or liable to be imprisoned (either absolutely or at the discretion of the Court as an alternative for some other punishment) on summary conviction.

## ARTICLE 392.

## CONSPIRACIES IN RESTRAINT OF TRADE, MISDEMEANORS.

<sup>1</sup> Every conspiracy in restraint of trade is a misdemeanor, but no person convicted of a conspiracy to do, or procure to be done, in restraint of trade an act punishable only on summary conviction can be sentenced to imprisonment for more than three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

## ARTICLE 393.

## CRIMINAL BREACHES OF CONTRACT OF SERVICE—INTIMIDATION AND PICKETING.

<sup>2</sup> Every person commits a misdemeanor and is liable upon conviction thereof to be fined £20 or to a maximum imprisonment of three months with hard labour,

(a) <sup>3</sup> who wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose

<sup>1</sup> 38 & 39 Vict. c. 86. The words of the earlier part of the section are "punishable as a crime." "Crime" is defined at the end of the section as in the text.

<sup>2</sup> 38 & 39 Vict. c. 86, s. 3, last paragraph.

<sup>3</sup> *Ibid.* s. 5.

valuable property, whether real or personal, to destruction or serious injury; or

(b.) <sup>1</sup>who being employed by a municipal authority, or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing, or having reasonable cause to believe, that the probable consequence of his so doing, alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place or part, wholly or to a great extent of their supply of gas or water; or

(c.) <sup>2</sup>who being a master legally bound to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured; or

(d.) <sup>3</sup>who with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing wrongfully and without legal authority,

(i.) Uses violence to or intimidates such other person or his wife or children, or injures his property; or

(ii.) Persistently follows such other person about from place to place; or

(iii.) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

(iv.) Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or

(v.) Follows such other person with two or more other

<sup>1</sup> 38 & 39 Vict. c. 86, s. 4.

<sup>2</sup> Ibid. s. 6.

<sup>3</sup> Ibid. s. 7.



persons in a disorderly manner in or through any street or road.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place in order merely to obtain or communicate information is not a watching or besetting within (iv.).

Cases under this Article may be determined by a Court of summary jurisdiction, or if the accused objects to being tried for such offence by such a Court, the Court of summary jurisdiction [must<sup>1</sup>] deal with the case in all respects as if the offender were charged with an indictable offence, and the offence may be prosecuted on indictment accordingly.

#### ARTICLE 394.

##### BREACHES OF EMPLOYER'S DUTY TO SEAMEN—LEAVING SEAMEN BEHIND.

<sup>2</sup> Every one commits a misdemeanor who

(a.) <sup>3</sup> being the master or other person belonging to any British ship wrongfully forces on shore and leaves behind, or otherwise wilfully and wrongfully leaves behind, in any place on shore or at sea, in or out of Her Majesty's dominions, any seaman or apprentice belonging to such ship before the completion of the voyage for which such person was engaged, or the return of the ship to the United Kingdom; or

(b.) <sup>4</sup> who being the master of a British ship—

(i.) Discharges any seaman or apprentice in any place situate in any British possession abroad (except the possession in which he was shipped) without previously obtaining the sanction in writing endorsed on the agreement

<sup>1</sup> "may," but apparently it means "must."

<sup>2</sup> 17 & 18 Vict. c. 101.

<sup>3</sup> Ibid. s. 206.

<sup>4</sup> Ibid. s. 207.

of some public shipping master, or other officer duly sanctioned by the local government in that behalf, or (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place:

(ii.) Discharges any seaman or apprentice at any place out of Her Majesty's dominions without previously obtaining the sanction so endorsed as aforesaid of the British consular officer there, or in his absence, of two respectable merchants resident there:

(iii.) Leaves behind any seaman or apprentice at any place situate in any British possession abroad, on any ground whatever, without previously obtaining a certificate in writing so endorsed as aforesaid, from such officer or person as aforesaid, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion or disappearance:

(iv.) Leaves behind any seaman or apprentice at any place out of Her Majesty's dominions, on shore or at sea, on any ground whatever without previously obtaining the certificate endorsed in manner and to the effect last aforesaid, of the British consular officer there, or in his absence, of two respectable merchants, if there is any such at or near the place where the ship then is.

The said functionaries must, and the said merchants may, examine into the grounds of such proposed discharge, or into the allegation of such unfitness, inability, desertion, or disappearance as aforesaid in a summary way, and may for that purpose, if they think fit so to do, administer oaths, and may either grant or refuse such sanction or certificate as appears to them to be just.

<sup>1</sup> Upon the trial of any person for any of the offences in this Article mentioned, it lies upon such person to produce the sanction or certificate above mentioned, or to prove that he had obtained the same previously to having discharged or left behind such seaman or apprentice, or that

it was impracticable for him to obtain such sanction or certificate.

#### ARTICLE 395.

##### BREACHES OF SHIPOWNER'S DUTY TO SEAMEN—SENDING UNSEAWORTHY SHIPS TO SEA.

<sup>1</sup> Every person commits a misdemeanor

(a.) who sends or attempts to send or is party to sending or attempting to send a British ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, unless he proves that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness

(b.) who being the master of a British ship knowingly takes the same to sea in such unseaworthy state that the life of any person is likely thereby to be endangered, unless he proves that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence like any other witness.

#### ARTICLE 396.

##### BREACH OF DUTY BY SEAMEN TO EMPLOYERS.

<sup>2</sup> Every seaman who has been lawfully engaged, and every apprentice to the sea service, commits an offence and is liable upon summary conviction therefor to the consequences stated in the <sup>3</sup> schedule hereto, who

(a.) Deserts his ship [*i.e.* leaves the ship without intention to return and without just cause];

<sup>1</sup> 39 & 40 Vict. c. 80, s. 4.

<sup>2</sup> 17 & 18 Vict. c. 104, s. 243.

<sup>3</sup> See Schedule, p. 348.

(b.)<sup>1</sup> Neglects or refuses without reasonable cause to join his ship, or is absent without leave at any time within twenty-four hours of the ship's sailing from any port, either at the commencement or during the progress of any journey, or is absent at any time without leave and without sufficient reason from his ship or from his duty, in a manner not amounting to desertion, or not treated as such by the master;

(c.) Quits the ship without leave after her arrival at her port of delivery and before she is placed in security;

(d.) Wilfully disobeys any lawful command;

(e.) Continues wilfully to disobey lawful commands, or continues wilfully to neglect duty;

SCHEDULE.

Clause.	Imprisonment with or without hard labour.	Other forfeitures.
(a.)	Twelve weeks.	Forfeiture of all or any part of clothes and effects left on board, and of wages then earned, also if such desertion takes place abroad (at the discretion of the Court) to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed till his next return to the United Kingdom, and to satisfy any excess of wages paid to any substitute engaged in his place at a higher rate.
(b.)	Ten weeks.	Two days pay, and for every twenty-four hours absence either a sum not exceeding six days pay or expense of hiring a substitute.
(c.)	None.	Sum not exceeding a month's pay.
(d.)	Four weeks.	Two days pay.
(e.)	Twelve weeks.	Not exceeding six days pay for every twenty-four hours disobedience, or expenses of substitute.

<sup>1</sup> *Two Sisters*, 2 W. Rob. 125; 24 L. J. (Q. B.) 12.

- (f.) Assaults any master or mate ;  
 (g.) Combines with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede navigation of the ship or the progress of the voyage ;  
 (h.) Wilfully damages the ship, or embezzles or wilfully damages any of her stores or cargo ;  
 (i.) Commits any act of smuggling whereby loss or damage is occasioned to the master or owner.

## ARTICLE 397.

## BREACH OF DUTY OF SEAMEN TO EACH OTHER OR OTHER PERSONS ON BOARD.

Every master of, or seaman or apprentice belonging to, any British ship commits a misdemeanor who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness,

## SCHEDULE.

Clause.	Imprisonment with or without hard labour.	Other forfeitures.
(f.)	Twelve weeks.	None.
(g.)	Twelve weeks.	
(h.)	Twelve weeks.	Sum equal to loss sustained out of his wages.
(i.)	None.	Sum sufficient to reimburse the master or owner for such loss or damage. The whole or a proportionate part of the wages may be retained in satisfaction of or on account of such liability without prejudice to any further remedy.

refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb.

## ARTICLE 398.

## BREACH OF DUTY TO OTHER SHIP IN CASE OF A COLLISION.

<sup>1</sup> In every case of collision between two vessels, it is the duty of the master or person in charge of each vessel, if and in so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable, and as may be necessary in order to save them from any danger caused by the collision; and also to give the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

If she fails to do so, and no reasonable cause for such failure is shewn, the collision is, in the absence of proof to the contrary, deemed to have been caused by his wrongful act, neglect, or default. Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance, or give such information as aforesaid, is guilty of a misdemeanor.

<sup>1</sup> 36 & 37 Vict. c. 85, s. 16.