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Judge, someone would defend, and others would complain of, his appointment. It would be said that it was an unconstitutional course to make such an attack on the appointment; and then the House would have to resort to the passing of an abstract Resolution, that in future Judges should not be appointed by a representative body. The hon. and learned Member for West Staffordshire said the Crown had the power of excluding the Recorder, the Common Serjeant, and the Aldermen from the Commission.

MR. STAVELEY HILL: What I said was that the Crown would, under the Act, be within its right in issuing the Commission to them, or any of them.

SIR HENRY JAMES: The words of the Statute were specific—that these Judges, including the Recorder, the Common Serjeant, and the Aldermen, should form the Court. The House could not attack the City of London, but they could attack the legislation by which that state of things was brought about. Though that legislation proceeded from a Liberal Government, he could not be accused of inconsistency in attacking it.

MAJOR NOLAN did not think it was opportune, just after a Member of the House had been appointed to a Judgeship by a representative body, to bring forward this Motion, which looked very like a Party move. He thought that popular control in the appointment of Judges should be extended instead of being diminished.

Question put.

The House *divided*:—Ayes 57; Noes 102: Majority 45.—(Div. List, No. 131.)

Words *added*.

Main Question, as amended, put.

Resolved, That the privilege of electing the judicial officers of the Corporation of the City of London, vested in that Corporation, having been expressly approved by the Royal Commissioners appointed in 1854, this House is of opinion that no circumstances have since transpired which call for the interference of Parliament.

CRIMINAL CODE (INDICTABLE OFFENCES) BILL.

LEAVE. FIRST READING.

THE ATTORNEY GENERAL (SIR JOHN HOLKER), on rising to move for leave to bring in a Bill to establish a Code of Indictable Offences and the

Procedure relating thereto, said: I should have preferred bringing on this subject at an earlier hour, but, owing to the state of Public Business, I was afraid that if I did not take advantage of the present opportunity of doing so, I should not easily find another. The Government have for long been fully impressed with the advantages which would accrue from a thorough condensation and simplification of the law. In recent years many Statutes consolidating Acts of Parliament upon various subjects have been prepared and passed; but, up to this time in England, no serious effort has been made to completely codify any branch of the law. Codification has, however, been resorted to in other Dominions of Her Majesty; and notably in India, where, some years ago, a penal code was enacted which has been found of the greatest use, and has given universal satisfaction. The success of this penal code was, to a great extent, due to the labours of a very learned jurist and sound practical lawyer, who was formerly the legal member of the Council of India. I allude to Sir James Stephen—a name well-known to all who take an interest in the law, or in the philosophical literature of the country. When the Indian Penal Code had been passed and brought into operation, Sir James Stephen left India, and returned to England. After his return, he continued to devote himself to the improvement of the law—his favourite study—and, after long and patient labour, he produced a work which has, I believe, been received with approbation by all who have to do with the administration of justice. I mean his *Digest of the Criminal Law*. When this work appeared, it was drawn to the attention of the Government; and it was—I may say, without using any exaggerated language—hailed with the greatest satisfaction; because it demonstrated the possibility of reducing, at all events, one most complicated branch of the law—I mean the criminal law—into not only a reasonable, but an exceedingly narrow compass, and of rendering it easy of comprehension and perfectly intelligible. The work to which I have alluded is simply a statement of the existing law in a number of well-arranged and lucidly expressed sections, and it would of itself serve, with little alteration, for a code, if the law, as it at present exists, were altogether satisfactory; but such is not the case. That portion of the law with which this work of Sir James Stephen deals needs not only condensation and simplification, but, in many particulars, needs considerable amendment. Immediately the *Digest of the Criminal Law* was published, it came under the attention of the Lord Chancellor and the Law Officers of the Crown, and it was at once perceived that this work formed an excellent preparation for the codification of that portion of the law embraced in it; and it was obvious that the publication of the work, and the fact that the learned author of it was willing, nay, most anxious to continue his labours, and to render every assistance in his power in carrying into effect any scheme of codification that might be determined upon, afforded to the Government an excellent opportunity of making a commencement in the codification of the law, of which they certainly would be unwise not to avail themselves. Codification was recognized as most desirable, but it was clear that the whole law could not be codified at once. A commencement must necessarily be made with some branch or section of the law. It seemed to be more essential to condense, to simplify, to explain, and amend—for codification means condensation, simplification, explanation, and amendment—the criminal law rather than any other branch; because the criminal law is necessarily so largely resorted to, and is, moreover, so largely administered by persons who are not trained lawyers, and who require some plain statement of the law for their guidance. Furthermore, this part of the law seemed more susceptible of codification than any other, and the way to its codification had already been paved by the work to which I have referred. The Government, therefore, speedily came to the resolution to take advantage of the opportunity—I think I may call it the rare opportunity—which presented itself, and boldly to attempt the codification of the criminal law, or, at all events, of a very considerable portion of it. They, accordingly, took Sir James Stephen into their councils, and in the result confided to him the task of preparing the Bill by which they designed to accomplish their object—the Bill which I have now the honour to ask the leave of the House to

allow me to introduce. In the preparation of this Bill, Sir James Stephen has, of course, had all the assistance the Government have been able to place at his disposal. He has received, during the course of his labours, suggestions from the Lord Chancellor, the Law Officers, and the eminent draftsmen who usually prepare the Government measures; but it is only right and fair to say that the great bulk of the labour of preparing the code which the Bill contains has fallen upon Sir James. He is, in fact, the originator and the author of the work, and to him, mainly, at all events—if the Bill meets, as I hope it will meet, with acceptance and approval in this House and in the country—the credit of the measure will be justly due. Having made these preliminary observations, I will ask leave to draw the attention of the House a little more particularly to the measure I propose to introduce. This measure is, no doubt, to a great extent, a tentative one, and a measure of this sort must necessarily be so. It is an experiment to a considerable degree, and, being an experiment, it has not been thought right to make it of too ambitious a nature. This code has, accordingly, been confined to a portion of the criminal law—that is to say, that portion which relates to indictable offences. When the Bill is laid before the House, it will be found to contain a statement of the persons who are to be regarded as parties to the commission of such offences; of the circumstances which form excuses or justifications for the commission of acts which would otherwise constitute crimes; a minute and careful definition of the various indictable offences known to our law—or, at all events, of such of them as are ordinarily considered to fall within the category of crimes; a statement of the punishments which may be inflicted on those who commit such offences. And to all this is added a complete code of procedure which is to be adopted for the purpose of bringing those who perpetrate crimes to justice, and of subjecting them to the punishment due to their misdeeds. I daresay, perhaps, hon. Members may ask why the code has been confined to indictable offences, and why it does not include offences punishable on summary conviction? If such a question is asked, I shall answer, in all candour, that the code has been confined to indictable offences, and has not been extended to cases punishable on summary conviction, not because the desirability of codifying the law relating to them is not recognized, but because, if we were to include those offences in the present code, the labour of passing the measure through Parliament would be too vast and overwhelming, and the result would be that our endeavours to make a beginning of codification would probably prove unsuccessful. There is a clear and well-marked dividing line between indictable offences and those punishable upon summary conviction. If we split our subject into two parts, we may be able to grapple with one of them. We propose to grapple with indictable offences; and, if our exertions are not in vain, and we are able to produce and pass into law a measure that meets with the approval of the country on this subject, then we shall not hesitate, on a future occasion, with a bold and confident front and a good heart, to approach Parliament, and submit a scheme for the codification of that part of the criminal law which, at present, in this Bill we do not propose to touch. I have described the measure which I ask leave to introduce as "a code of indictable offences;" but it is necessary that this expression should not be misunderstood, and that its generality should receive at the outset some qualification. The measure is a code of all such offences as are ordinarily regarded as crimes; but there are instances of indictable offences created by Acts of Parliament upon various subjects, as sanctions for the special provisions of such Acts, which have not been inserted, because it would not be possible to make them thoroughly intelligible, and to deal with them completely, without re-enacting *in extenso* in the code the provisions of the Statutes which have created those offences, or rendering it necessary for those who use the code to make constant reference to the Statutes themselves. Now, it is obvious that if the provisions of such Statutes as I have referred to had to be introduced into this Bill, the bulk of the measure would be swollen to an enormous and unwieldy size, which would greatly diminish its value; and, if the reader of the code were under the necessity, in order to understand its provisions, of repeatedly referring to other

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Acts of Parliament, instead of his perplexity and embarrassment in endeavouring to discover and apply the law being removed or greatly diminished, it would be rather aggravated and increased. Furthermore, there are to be found in some Acts of Parliament enactments which provide that acts which, as a rule, the Statutes treat as constituting summary offences merely, shall, under certain circumstances, be offences of a more serious character, and subject those who commit them to indictment. To render, however, these enactments intelligible, it would be necessary to set forth all the provisions relating, not only to the indictable offences, but also to those punishable on summary conviction. If this were done, we should be departing from the rule we have laid down for our guidance—that is to say, to make this Bill a code of indictable offences, and indictable offences only, and we should be creating, at all events, an appearance of confusion. For this purpose, it has been determined, also, to omit from the Bill the indictable offences to which I have just referred. After the explanation I have just given, hon. Members will see that, although the measure is described as a code of indictable offences, it will not upon investigation be found to include every crime of this nature which may be discovered in the Statute Book; but, as I have said, all offences which are ordinarily considered crimes will be found dealt with in its pages. And I venture to say that if the measure I propose to introduce becomes law, Judges and magistrates engaged in the administration of the criminal law will very rarely be called upon to consult any other Statute or text-book than the code which this measure will contain. Now, the code not only condenses and consolidates the law, but in several respects it alters it. I deem it essential that I should at once explain to the House what the principal alterations are. I will not attempt, on the present occasion, to describe all the amendments; but I will deal with those which are most prominent. The first important alteration is the abolition of the distinction between felony and misdemeanour, and the substitution for those terms of the expression "indictable offences." It does not seem to us to be necessary to keep up the antiquated distinction between felonies and misdemeanours. In old times misdemeanours were not only regarded as offences of a trivial and unimportant character as compared with felonies, which generally involved the penalty of death, but the misdemeanours then known to the law were really comparatively trivial and unimportant. When this was the case, there might be some semblance of reason for the law providing that different consequences should be entailed by one species of crimes from those which flowed from another. In later times, however, it cannot be said that the misdemeanours which are to be found in our Statute Books, in respect of which punishment is inflicted on those committing them, are either trivial or unimportant. Some of the most serious offences known to the law, and punished with great severity, are misdemeanours; and, in order that I may illustrate it, I will draw the attention of the House to a few examples. Perjury, which sometimes involves a culpability almost as great as that of murder, as in the case of a man who falsely swears that another man has committed some crime for which he may be capitally punished; conspiracy to murder, misappropriation by agents, obtaining money by false pretences, and several other crimes of the same character, are instances. These are certainly crimes as aggravated and pernicious in character as many felonies —for example, embezzlement, theft, bigamy, larceny by bailees, and so on. I do not say that there is no distinction between the sets of crimes I have enumerated; but I do not see why you should treat one class as a misdemeanour and another as a felony. Therefore, I submit that as grounds exist at the present time for making distinctions between misdemeanours and felonies, on account of the minor character of the former, and, as most of the distinctions which formerly did exist between the two classes of crimes—for example, forfeiture was incurred in felony and not in misdemeanour—have been swept away by legislation, there appears to be no sufficient reason why any of the differences which still remain should be preserved. Accordingly, it has been determined to put an end to them by the present measure, and this determination will be found to have been carried out. The removal of the distinction between felonies and misde-

meanours is important, if, for no other reason, because it enables us early to adopt a uniform system of procedure, as I shall endeavour somewhat more fully to point out when I come to that portion of the measure which deals with procedure. The next alteration in the law which the code effects relates to the persons by whom crimes are committed. At present, in felonies, those who incite and persuade to the commission of crimes are called accessories before the fact, and, in some respects, are treated somewhat differently from those who actually take part in the perpetration of the offence. In treason, however, there are no accessories, nor are there in misdemeanours, and the law gives this strange reason for the exception—

"That there are no accessories in treason, because the crime is too serious; and none in misdemeanour, because misdemeanours are supposed to be of too little importance for refinements."

The whole doctrine as to accessories before the fact is, no doubt, a refinement, and those who have prepared this Bill consider that subtleties and refinements in criminal law are very objectionable, and we wish to abolish this one; and, therefore, we propose to call those who incite others to crime and those who absolutely commit crimes by the same ugly names, and to treat them exactly alike. Another important alteration which is worked by the code has relation to punishments. We desire that the punishment in all cases should be made proportionate to the guilt of the offender, and should be fixed upon some reasonable and intelligible principle. There used to be, formerly, a great number of enactments which provided that for certain offences persons should be sentenced to not more than a given, that is to say, a maximum punishment, and to not less than a given, that is to say, a minimum punishment. Minimum punishments were a great evil, and I am happy to say that these punishments have been to a very considerable extent set aside by recent legislation; and now a very large discretion is confided to Judges, and they are enabled, upon their view of the circumstances, to mitigate the punishment almost to any extent. I think that is right. Still, although great service has been effected by the sweeping away of minimum punishments, our Statute Book remains disgraced by an enormous variety of maximum punishments, fixed apparently without any particular regard to the gravity of the offences in respect to which they are imposed as compared with others. For example, threats to murder, conspiracies to murder, administering poison with intent to harm, are punishable with a maximum punishment of 10 years' penal servitude; while throwing explosives at a ship or house, stealing an heiress, maiming cattle, cutting hop binds, are offences punishable by a maximum punishment of 14 years' penal servitude. Is there, however, any reason or sense in this distinction? I submit there is not, and that all these crimes ought to subject those who commit them to the same maximum punishment. I have only specified a few instances, as illustrations, to make my meaning clear. It would be very easy to pick out numbers of other examples, which would equally demonstrate the uneven and unequal character of maximum punishments at present appropriated to various crimes. Now, the variety of maximum punishments is an evil, because it produces embarrassment and confusion and uncertainty, and an appearance of injustice, if not injustice itself. Moreover, it necessitates a vast increase in the bulk of the enactments by which offences have to be provided for. The number, then, or, I should rather say, the variety of maximum punishments has, therefore, been greatly diminished; and, by this diminution, the framers of the criminal code have been enabled to effect what, I think, hon. Members, when their attention is called to it, will consider an extraordinary amount of condensation. It has been thought right, also, in the case of stealing and other frauds provided for by the code, under the head of theft, in apportioning the maximum punishments, not only to have regard to the nature of the thing stolen or obtained, the position of the person committing the offence, the place where the crime is committed, and the manner of committing such crime, but also to the value of the property obtained by the offender. I think the House will agree that this is only reasonable. Why should a man, who ruins hundreds by opening a fictitious bank, or floating a company to work a sham mine, be liable only to the maximum punishment which

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may be inflicted on a poor, hungry wretch, who steals a loaf. Again, the opportunity has been seized for placing the law with respect to cumulative punishments upon a more satisfactory basis than that upon which it at present stands. At present, if a man has committed several offences, he may be punished for each with the amount of punishment appropriated to it, such punishment to begin when the previous sentence has expired. The effect of this is that a man may sometimes be sentenced to four, six, eight, or 10 years' imprisonment with hard labour—sentences which those who are acquainted with prison discipline will tell you are almost greater than human nature can endure. Provision is made in the code to prevent the possibility of any such sentences being for the future imposed. The next amendment in the code to which I will call attention—and I think I shall be considered justified in calling it an amendment—is the omission from the definitions of offences comprised in it of all mention of malice, of all use of that word, or any of its derivatives. This omission has been decided on, because the legal and popular senses of malice are irreconcilably different, and all the efforts of Judges are frequently unavailing to make juries understand and appreciate this difference. The legal meaning of this word "malice" may be said to be "wilful illegality of conduct;" but it is obvious that illegality of conduct may be the result of motives which are almost praiseworthy. It may be the result of anger, perhaps well grounded, of just indignation, or even of pity. If the illegality of conduct complained of is the result of those motives, the jury cannot understand the explanation given; because the popular notion of malice is "ill-will towards some particular person or persons, and ill-will which it is immoral to feel." In the lay mind the idea of malice is excluded if the ill-will is such as circumstances may not only reasonably engender but morally justify. This word "malice" is largely used in our existing criminal law; but it is a word which is full of danger, and the source of infinite confusion and difficulty. It has been deemed right to avoid its use altogether in the code, and, where necessary, to substitute for it words which convey the full legal explanation which the Court would have put upon the word malice, had it been employed. That is a great simplification, and will be found of great use in the administration of the law. I now come to some alterations of considerable moment in Part V. of the code—that is, that part which relates to offences against the person. Under this head is to be found homicide, which, of course, includes murder. With regard to murder, we have ventured to make two radical changes in the law. First, we have abolished what I will call constructive murders—such as homicides, which are declared to be murders by reason of the existence, not of actual malice in the mind of the offender, but malice which is presumed by the law; second, we have endeavoured to place the doctrine of provocation upon a simpler and more intelligible footing. In order that I may make myself clear on these points, let me explain what I mean by constructive murder. I use this expression, which I acknowledge is inaccurate, for the sake of brevity. At present, if a man is engaged in committing a felony, and he kills anyone, he is guilty of murder, although the killing might be accidental, and the offender may not have had the intention of inflicting even the slightest harm. For example, if a man endeavouring to break into a house were to push open a shutter, and the bar which had served as its fastening were to fall on the head of some person inside and kill him, the burglar would be guilty of murder. Again, to use a common illustration, if a man were to shoot at a barndoor fowl, intending to steal the body, and should accidentally hit some one hard by and kill him, the intended fowl-stealer would be guilty of murder. So, according to the present law, if a man resisting an officer of justice in the execution of his duty occasions his death by tripping him up and causing him to fall on his head on the curbstone, he will have committed murder. Now, I think the House will agree with me that such acts as I have described do not fall within the category of murders, and, though known as murders, they are merely murders by construction of law. It seems to me that murder by construction of law is a disgrace to the juridical system of the country, and should no longer be retained. A man who was found endeavouring to break

into a house should be tried for the crime he intended to commit. So the fowl-stealer should be tried for that offence. And a man struggling with a policeman should be charged with resisting the police in the execution of their duty. To call those acts, which were done without the slightest intention to kill, murder, is monstrous. I would maintain that no one should be pronounced guilty of the atrocious crime of murder—a crime which, if it is brought home to a man, subjects him to the appalling punishment of an ignominious death—unless he has deliberately intended to take away life, or to inflict grievous bodily harm, or he has deliberately done an act likely in itself to cause death or grievous bodily harm, and has by such act caused death, having at the time a stolid indifference whether such result would follow the commission of his act or not. In the instance I have alluded to, of a man doing an act with the intention of killing or causing grievous bodily harm, and thereby destroying a fellow-creature, I think all will agree that he ought to be convicted of murder; and I think most hon. Members will also admit that the man who takes away life by an act likely to cause death or grievous bodily harm—for example, by exploding a barrel of gunpowder underneath a crowded room, utterly regardless of what the consequences of his act may be—should also be treated as having perpetrated this heinous crime; but I submit, with confidence, that no acts which in atrocity fall short of these should be considered murder. Accordingly, the code sweeps away all constructive murders, and pronounces the man to be alone guilty of this terrible crime who causes death by such acts as I have described, involving the intention or the utter indifference to results which I have indicated. The second material alteration in the law of murder is upon the subject of provocation. As the law stands, and as I submit it ought to stand, if a man slays another under circumstances of great provocation, the crime is reduced from murder to manslaughter. The provocation does not entirely excuse the act, but it takes away from it the element of malignity. The question, however, arises, what are the circumstances which amount to provocation? The rules of the existing law on this subject are not as perspicuous and as reasonable as they might be. At present, it is, at all events, doubtful whether, with one or two exceptions, any insults, however gross and shameful, if not accompanied by violence or the threat of violence, will amount to provocation, although a mere slap in the face might. It is proposed to make the doctrine of provocation more certain and more in accordance with reason, by enacting that—

"Any wrongful act or omission of such a nature as to be sufficient to deprive an ordinary person aggrieved thereby of the power of self-control shall be provocation."

If there is such an act as a jury will consider sufficient to deprive a man against whom the act is committed of the power of self-control, that shall be considered a sufficient provocation. In addition to the two alterations in the law relating to homicide which I have mentioned, there are two other changes which have been introduced into the code, and to which I think I ought to revert. In the first place, it is provided that if a woman kills her child—born alive—by an injury inflicted during the birth of the child, or immediately afterwards, but at a time when, owing to distress of mind and agony of body, she is in such a state as not to have complete self-control, although her condition may not amount to a state of insanity, it shall be open to the jury to find against her a verdict of manslaughter, instead of the more dreadful verdict of murder. Practically, this provision will not diminish the severity of the law, but will materially aid in bringing offenders to justice. It is well known that the law is, in fact, unable to secure the punishment of such offences as I have alluded to, for a jury will not convict the offenders. I do not say they are wrong, but the consequence is that this class of crime either escapes punishment altogether, or is put in the same category as concealment of birth, and is visited with a punishment of very inadequate severity. It seems only reasonable that this Assembly of men, who, when legislating for men, are often willing to show great indulgence for human weakness, should view with merciful consideration the condition of poor fallen women, and provide that the act of a woman who consigns to death a creature that can scarcely be said to have

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lived, in a moment of nervous excitement, perhaps burning shame and intense mental and bodily anguish, shall not necessarily be regarded as the awful crime of murder. I own the provision of the code to which I have just alluded may be open to the objection of not being thoroughly logical; but if it is our lot to be obliged to choose between mercy and logic, let us not hesitate to give our votes in favour of the former. Again, under the present law, it is no offence to cause the death of an infant—I must use this word for want of one more expressive—that has not been thoroughly born alive—that is, in whose system a complete and separate circulation has not been set up, because such child is not by the law considered as a human being. The result of this doctrine is, that if, during the course of birth, the mother or nurse, or any bystander deliberately inflicts a wound or other injury upon the child which is being born, and which prevents its being born alive into the world, although such injury is inflicted with the most wicked and evil intention and motive it is possible to conceive, not only has no murder been committed, but no offence whatsoever punishable under the law by even the mildest sentence. I believe such a state of the law is discreditable and mischievous. The code provides a remedy, and enacts that such injury which would, had it been inflicted on a child completely born alive, have been murder, shall not be murder in deed, but still a most serious offence, and render the perpetrator liable to the maximum punishment of penal servitude for life. I now come to Part VI. of the Code—the part which relates to offences against the rights of property. Under this head falls the law of larceny, or theft. I think it will be found that the code, if it does not work any thorough and radical change in the existing law of larceny, and offences cognate to larceny, nevertheless places such law upon a basis supported by intelligible principles, systematizes and simplifies it, and makes it very easy to comprehend. This branch of the criminal law is at present in a state of most bewildering confusion. It abounds in distinctions without real differences, and in refinements and subtleties which I consider a reproach even to a system of judicature established in a barbarous age, and which lead to nothing but uncertainty and embarrassment, and the frustration of justice. We do away with all subtleties, and deal with all the cases to be found in books. Let me explain. The existing law of larceny consists—(1.) Of rules of the common law which, as applied to present times, are irrational rules. (2.) Of exceptions to those irrational rules, and of further exceptions founded upon these exceptions. (3.) With regard to the punishments imposed for these offences, of many cruel enactments which still exist, and of vestiges and modifications of many more exceedingly cruel and monstrous enactments which have been swept away. By the common law, many things were not the subject of larceny—namely, a great number of animals, all choses in action, and therefore a variety of documents, land, and things growing out of the land or appertaining to it. Then, again, by the common law, to constitute larceny or theft, it was necessary that there should be a wrongful taking—something, in fact, in the nature of a trespass. With respect to punishment by the common law, larceny, as a rule, was a capital offence; but the offender was entitled to the benefit of clergy. It may be that these provisions of the common law were appropriate to the state of society several centuries ago; but it is obvious that they have long ceased to be applicable to the condition of the country in modern times. Unfortunately, instead of removing these rules altogether, and replacing them by others of a more rational character, the course the Legislature has pursued hitherto has been to engraft exceptions upon them, and, when necessity seemed to dictate, exceptions upon exceptions, until at length a state of confusion has arisen scarcely paralleled in the history of chaos. In the first place, numbers of exceptional enactments have rendered various kinds of property the subject-matter of larceny which were not so at common law. Again, the rule that there must be a taking amounting to a trespass has been set aside in effect, sometimes by legal fictions which have been invented for the purpose, and sometimes by positive enactments, in cases where legal fictions were inapplicable. Then, as to the punishment inflicted for theft, the common law, which made it a clergyable crime, was at one time deemed too lenient, and Statutes were passed

subjecting the offender in almost every case of stealing to the penalty of death; but, after a time, this terrible severity produced a recoil in the feelings of mankind, and various fresh Statutes were passed mitigating the punishment in cases of theft and fraud, but mitigating it inadequately, and upon no definite and intelligible principle. I think I have said enough to show that, owing to the causes I have mentioned, the law of larceny has been brought into a state of deplorable entanglement, which is certainly anything but creditable to the judicial system of a civilized community. The whole subject is dealt with in a thoroughly effectual manner in a few sections of the 6th chapter of the code. The irrational common law rules have been swept aside—every species of determinate property, subject to certain necessary conditions, is declared to be the subject of larceny; all exceptions and fictions have been got rid of, and it is, in substance, declared that the man shall be guilty of theft who either takes with intent to steal property which is in the possession of another, or with the like intent appropriates to his own use property of another in his own possession, or with the like intent obtains property belonging to another by means of false pretences. With regard to the distinction between stealing and false pretences, by no possibility can any good result from its retention, for both are equally pernicious and criminal acts. In addition to these improvements in the law of larceny, in chapter 6 will be found some alterations with regard to forgery. Under the present law, forgery is dealt with partly by Statute and partly by the common law; various Statutes render the forgery of a great number of specified documents felony punishable with great severity, and the forgery of other documents not enumerated in these Statutes is left to the common law, which declares the act to be a misdemeanour, punishable by fine and imprisonment. It is impossible to read the list of documents the forgery of which is made a heinous offence by the existing Statute, without perceiving how exceedingly incomplete it is, and we cannot help, when contemplating the present law, being struck with the clumsy and unsystematic character of the arrangement which punishes the forgery of a number of instruments specifically with penal servitude, and leaves to an unwritten law of extreme generality and vagueness to punish the forgery of other documents by fine and imprisonment. For example, how strange it must appear that a man who forges a receipt which makes it appear that he has paid *5s.* more than he really has paid is to be subjected to penal servitude for life, while the man who alters a contract so as to defraud another of, it may be, thousands of pounds, is only to be guilty of misdemeanour, and to be punished simply by fine and imprisonment. Sir, the law of forgery is, by this code, placed upon a sounder footing by alterations which I will not now occupy time by describing; but which will, I think, not fail to be appreciated when they come to be discussed. And now I have mentioned the salient changes in the law with reference to indictable offences effected by the measure which I propose to introduce; but these alterations—I will at once boldly call them amendments of the law—are a small part of the benefit which will be produced by this Bill. In addition to amending the law, the code will, if passed, in a most remarkable manner curtail, condense, and simplify it. The essence of dozens of volumes of text-books, of numbers of Acts of Parliament, of piles of reported cases, will be found in this Bill, which is certainly not more lengthy than several Consolidation Acts which have been passed in recent Sessions. I now wish to say a few words upon the second branch of this Statute—that which relates to procedure. Now, Sir, to commence with, I must state that henceforth there is to be but one course of procedure in all cases. This is not so now, for indictable offences are, as I have said, divided into two classes—felonies and misdemeanours—and a different method of procedure in many respects is resorted to in the case of a man accused of the one kind of crime from that which is adopted with regard to a man accused of the other. For example, the law as to arrest is different in felonies and misdemeanours. So with respect to bail, to challenges, to allowing juries to separate, to joining charges in indictments, and many other matters. For the future, however, these distinctions are to be abolished. There is to be no exceptional or varying procedure; in all instances the course to be pursued is chalked out; in all instances it is the same. That

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part of the Bill which I desire to bring to the attention of the House, which relates to the question of procedure, not only declares that the procedure to be adopted in this country for the purpose of bringing to justice those who commit indictable offences, shall be the same in all cases; but it goes on to state what that procedure is to be. Every step which has to be taken, from the laying of the information that a crime has been committed down to the punishment of the offender after conviction has taken place, is in this portion of the measure minutely, but tersely and clearly described. Any Judge or magistrate, when he has to consider what course ought to be pursued at any particular stage of the proceedings, will not be under the necessity of trying to discover the law in a number of complicated, verbose, and perplexing enactments, or almost equally perplexing text books; but he will have it all before him, clearly stated in a few short sections of the code, which, if he will read it with intelligence, it will be almost impossible for him to make any mistake. The greater part of the procedure thus described is old. It is the procedure prescribed by the law as it at present stands, and the only merit I claim for the measure I advocate in respect to this old procedure is, that the law is now, for the first time, drawn completely from its various hiding places and laid bare to the public view. It is condensed and simplified, and rendered so plain that it may be said that those who run may read. I say this is the only merit of this part of the work; but this merit is surely one of great magnitude. But although, in the main, the procedure which is described and prescribed in the code is old, still some changes of great importance have been made—changes which have long been demanded, and which, I think, will be highly approved. In the first place, provision is made for doing away altogether with all the subtleties, refinements, and difficulties which formerly arose from the law of venue. Under this code, it will no longer be endured that if a man is proved to have committed a robbery, but it turns out that the crime was perpetrated in county B instead of county A, that, therefore, the prosecution shall fail, and the trial prove abortive. This simple change will at once render useless whole chapters of so-called learning, which, I fear, has benefited no one except the scoundrels. Again, provision is made that if a man proceeds against another by indictment in the first instance, instead of bringing him before a magistrate, the most timely and ample notice shall be given to the accused of the nature of the charge which is made against him, and of the evidence by which that charge is intended to be supported. Up to this time, when an indictment has been, in the first instance, preferred, the accused has only been able to obtain information of the accusation, and the evidence to be adduced in support of it as a matter of favour. Now, he is to be entitled to it as an absolute and undoubted right. There is also a provision made by the Bill enabling the Court to change, if necessary, the place of trial, and to direct, under certain circumstances, and in suitable cases, that the proceedings shall be conducted after the model of civil, instead of criminal, proceedings. The House will at once perceive the importance of such a power. In many cases, the criminal law is set in motion to enforce private civil rights much more than to punish public wrongs. Take the case of indictments for nuisances, for stopping up highways, for impeding navigation, for libel, and so on. In a sense, all these are public wrongs for which criminal proceedings may be instituted; but, in another sense, they are the invasions of private civil rights, and it is only reasonable that the proceedings in respect of them should be conducted in the same manner as in ordinary civil actions. The effect will be that the accused will be able in a criminal proceeding, directed to be tried as a civil case, to give evidence in his own behalf, and the Court will have power to make all necessary orders with regard to costs. As to the accused giving evidence in ordinary cases when the proceedings are not ordered to be conducted after the model of proceedings in civil cases, we have inserted a provision to the effect that any man put upon his trial may make a statement if he chooses to do so, and if he does make a statement, he is to be subjected to cross-examination upon it. For obvious reasons, however, we do not provide that a prisoner shall be permitted to give evidence on his own behalf under the sanction of an oath. I pass over some minor changes, and I

now pause for a moment to point out that the Bill, in a remarkable manner, simplifies and places upon a reasonable and satisfactory footing proceedings in error. I shall abstain from any endeavour to describe proceedings in error, for it would be impossible for me to explain them in a manner to make myself intelligible to hon. Members who are not lawyers, and even the lawyers would, I believe, if they could only bring themselves to be perfectly honest, admit that the subject is almost a sealed book. It is to be a sealed book no longer, but a book translated, abbreviated, revised, and amended by this Bill. There is a provision on a subject cognate to error to which I wish especially to draw attention. At present, as is well known, though a convicted person may get his conviction reversed on the ground of error in law, he has, in the great majority of cases, no remedy for mistake, in fact; the jury may take an unduly adverse view of the evidence; they may consider circumstances which are really consistent with innocence strongly indicative of guilt; and they may, and perhaps not unfrequently —sometimes even in accordance with the view expressed by the presiding Judge—come to a wrong verdict. *Humanum est errare* is an aphorism applicable to the verdicts of juries in criminal cases as well as to any of the ordinary transactions of life. It is, indeed, startling to consider that at present, whereas a man who has been mulcted in £25 damages in a civil action can obtain a new trial, if the verdict was against the weight of evidence, a man who is convicted of murder by an erroneous verdict, and, consequently, condemned to death, has no such remedy. He can appeal to the clemency of the Crown, and the Home Secretary, whose office it is to advise the Crown, does his best to investigate the matter and to discover the error, if error there be; but he has not the proper means of so doing, for he cannot sift the evidence as it can be sifted in a public Court; and even if he takes a view favourable to the condemned, the remission of the sentence, even if complete, which he advises Her Majesty to make, does not wipe out the stain of conviction, and the degradation — lifelong degradation— which is entailed thereby. I hardly know of a greater reproach to which our system is open than this peremptory and absolute denial of a new trial to persons convicted of crime. Of course, the danger is that if the law is altered, every man who is convicted will move the Court for a fresh investigation; but I do not think this would be the case in practice. However, the Bill avoids the possibility of such a course being pursued, for though it allows an application for a new trial, it does so only under certain conditions, the observance of which will render it impossible that an improper or mischievous use should be made of the provision. In addition to giving the right, with such leave as is prescribed by the Bill, to move the Court of Appeal for a new trial, it is provided that the Court of Appeal in criminal cases, whose decision is at present final, may, if they think proper, allow an appeal from their decision to the House of Lords. Such a provision would seldom require to be acted upon; but in some cases the want of such an enactment has been severely felt, and I may be pardoned if, as an illustration of what I say, I point to the *Franconia* case, which, upon a point of the most serious and vital national importance, was decided in a Court of 13, by a majority of one. Surely, in such a case as this, it would have been most satisfactory if the opinion of the highest tribunal in the land could have been obtained. I might mention many other improvements in the law which the Bill I desire to introduce effects; but I will abstain from alluding to more than one. This last amendment which I shall mention is, to my mind, one of enormous advantage. It is the simplification of criminal pleading. There is, at present, so much technicality in the law, so much refinement and subtlety, so many pitfalls and quicksands, which can only be avoided by the most excessive caution and astuteness, that the greatest difficulty is experienced in framing indictments for offences which are at all out of the beaten track. I would challenge the experience of every lawyer and member of Quarter Sessions in the House in support of my assertion, that at present indictments drawn by the most reliable and experienced lawyers run to a length and assume a complication completely monstrous. An indictment of 50, 60, or 100 counts, contained in a roll of parchment almost as long as this House, is

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by no means rare. Indeed, if the archives of the Courts were searched, scores of such indictments would be found deposited there every year. Now what is the use of all this particularity? It is necessary now to prevent the possibility of offenders escaping justice; but is there any need that it should be necessary? If these indictments were of any assistance in conveying information to the accused or to the Court, there might be a plea for their retention; but they are not; instead of being any assistance, they are a positive embarrassment; for, in order to be understood, they must be puzzled over with the same intensity of thought which a man brings to bear upon a quadratic equation, or some problem in mathematics even more perplexing still. Our system of pleading in criminal cases is ridiculous in the extreme; but it is worse than ridiculous—it is grievously mischievous, and essentially unjust to the accused. The Bill makes, if I may be forgiven for using an inelegant expression, a clean sweep of all this rubbish, and substitutes for it simpler indictments which will convey all that is necessary to the mind of the Court and the mind of the jury. For technicality it gives simplicity; for verbosity, terseness; and I hope hon. Members will find, for darkness, light. I thank the House for their patience, which I feel conscious I have severely tried by a speech of intolerable length, and I ask leave to introduce the Bill which establishes the Criminal Code.

MR. HIBBERT said, he did not gather from the statement of the hon. and learned Gentleman that it was intended by the code to make an alteration in the cases which were now necessarily sent to the Assizes for trial—for instance, burglary and bigamy cases. It was hardly the thing that such paltry and trivial cases should occupy the time of Her Majesty's Judges, when they might easily be tried at the Quarter Sessions.

THE ATTORNEY GENERAL (Sir JOHN HOLKER) said, there had been a good deal of discussion amongst the Judges with reference to increasing the jurisdiction of Quarter Sessions, and it was proposed to give power to the Sessions to try burglary cases.

MR. LEEMAN said, it was quite unnecessary for the Attorney General to make any apology for the very interesting speech with which he had favoured the House. As one who had for 40 years been connected with the administration of justice, he had listened with deep attention to all that had fallen from the hon. and learned Gentleman, and he considered that his proposals would not only be a great alteration, but a great improvement in the law. The changes proposed were of so extensive a character that they would require the gravest possible consideration; and he urged upon the hon. and learned Gentleman the propriety of giving as much time as possible for the consideration of the Bill before its second reading.

MR. PARNELL expressed the pleasure he had had in listening to the very careful statement which had been made by the Attorney General. Of course, it would be premature at that time to discuss the details of the measure; but he could only say that he considered, in many of the alterations which it was proposed to make, the change would be very beneficial. The hon. and learned Gentleman's intention to abolish the crime of constructive murder was a very valuable one. Some years ago, at Manchester, there was a very remarkable case tried. A number of persons combined together to commit a felony, and six of them were tried for the murder of a policeman who was shot. It was, proved that he was shot by one person, and by one alone, and yet the other five were found guilty of the murder because it was proved that they had combined together to commit a felony—that was to endeavour to rescue prisoners who were being conveyed to prison from the police court. They were all found guilty of the murder; three were executed, one received a free pardon, and two were sentenced to penal servitude for life. These two were still under confinement, and he hoped the Home Secretary would signalize the introduction of the Bill which abolished the crime of constructive murder by liberating them. There was one point which the Attorney General had not considered, and that was the law relating to criminal lunatics. That was in a very unsatisfactory state, as recently shown in the case of the Rev. Mr. Dodwell, and he thought the Attorney General would do well to direct his attention to the subject. He was pleased by the introduction of this measure, and he would do all that laid in his power to facilitate its passing.

MR. DILLWYN said, the only regret he had was that the Bill was not brought forward at an earlier period of the Session. He considered it the most important measure which the Government had introduced since they had been in power.

Motion *agreed to.*

Bill to establish a Code of Indictable Offences and the Procedure relating thereto, *ordered* to be brought in by Mr. ATTORNEY GENERAL, Mr. SOLICITOR GENERAL, and Mr. Secretary CROSS.

Bill *presented*, and read the first time. [Bill 178.]