

CRIMINAL CODE (INDICTABLE OFFENCES).

RETURN to an Address of the Honourable The House of Commons,
dated 7 April 1879;—for,

“ COPY of MEMORANDUM showing the principal CHANGES proposed to be made in the existing LAW by the CRIMINAL CODE (INDICTABLE OFFENCES) BILL, as settled by the CRIMINAL CODE COMMISSIONERS.”

This Memorandum states most of the changes proposed to be made in the existing law by the above-mentioned Bill. Some minor alterations, however, are unnoticed, because they consist chiefly in the removal of slight defects and inaccuracies in the language of the various Statutes which are substantially re-enacted.

Section 5.—Abolishes all common law offences not provided for by the Act. The effect of this will be to do away with the following offences:—Oppression at common law, extortion at common law, champerty, maintenance, being a common barrator, refusing to serve an office, being a common scold, refusing to receive a guest at an inn, and all conspiracies, except those specifically mentioned in the Bill (as to which see ss. 77, 79, 102, 126, 127, 149, 180, 284, 419, 420, 421), or in some other Statute.

Section 8.—Directs the punishment of death to be inflicted in private in all cases, and not, as at present, in cases of murder only.

Section 9.—Abolishes solitary confinement. It has already been practically superseded by the 28 & 29 Vict. c. 126, s. 17, which makes separate confinement general.

Section 10.—Lays down a general rule as to the manner of flogging and whipping.

Section 13.—Gives power to the Court to discharge a prisoner without a verdict being given, if the Court thinks the accused person deserves no more than a nominal punishment, such discharge to be equivalent to an acquittal.

Section 15.—Embodies the existing law, but the law as to the effect of previous convictions is altered by provisions in various parts of the Act. At present every one who is convicted of felony after a previous conviction for felony is liable to penal servitude for life. By the Code increased punishment is provided by several sections for persons convicted of certain specified offences after a previous conviction for any “offence involving dishonesty.” (See s. 6, ss. 275, 308, 380.)

Section 17.—Forbids cumulative sentences to be passed so as to inflict more than two years continuous imprisonment, and empowers the Court to pass a sentence of penal servitude instead of imprisonment.

Section 23.—Abolishes the present plea that a married woman acts under compulsion when she commits an offence in her husband's presence, and lays down a definite rule as to the effect of compulsion in all cases.

Sections 25-70.—This part of the Act in the main represents the existing law as to the circumstances which excuse or justify acts which would otherwise be crimes, and, more particularly, the law relating to the degree of force which may be used in arresting offenders. Such alterations as it makes are, for the most part, made necessary by the abolition of the distinction between felonies and misdemeanours. There are, besides, a few special alterations in particular cases, notice of which will be given on the margin of the Draft Bill which the Commissioners propose to annex to their Report. It lays down a definite rule as to the suppression of dangerous riots, not materially varying from Lord

Chief Justice Tindal's charge to the Grand Jury after the Bristol riots, but more explicit and complete. (See Sections 48-53.)

Section 71.—This repeals the old law as to accessories and principals; substantially the same object is effected in a different way by 24 & 25 Vict. c. 94.

Section 74.—Under the present law an attempt to commit an offence under circumstances making its commission impossible; *e.g.*, attempting to pick a pocket which has nothing in it, is not an indictable offence. Section 74 reverses this.

Section 75.—The definition given of high treason omits treason by killing the Chancellor, &c., and treason by violating the King's eldest daughter, being unmarried. The definition is also so framed as to exclude the wide construction put in some cases upon the words of 25 Edw. 3, st. 5, c. 2, as to levying of war.

Section 78.—The offence of being accessory after the fact to treason is punished, not as at present with death, but with penal servitude for life as a maximum. The same punishment is given for misprision of treason (which is re-defined).

Section 84.—It may be doubted whether this section does not carry the law as to what constitutes an unlawful assembly a little further than it goes at present.

Section 98.—This Section makes it a specific offence to take part in, or promote, a prize fight. It is somewhat doubtful at present on what ground prize fights are illegal, though they have more than once been held to be so.

Section 111.—Punishes judicial corruption with 14 years' penal servitude as a maximum; the offence at present is a common law misdemeanour.

Section 112.—A similar punishment for corruption in the case of ministerial officers of justice.

Section 113.—Punishes official corruption with seven years' penal servitude as a maximum, instead of fine and imprisonment, which is the present punishment.

Section 119.—Defines perjury so as to omit the materiality which is included in the present definition.

Sections 120, 121.—Increase the maximum punishment of perjury from seven years' penal servitude to penal servitude for life, where it is committed in order to procure a conviction for offences punishable with death or penal servitude, and to 14 years in all other cases.

Section 125.—Creates the offence of fabricating evidence punishable with seven years' penal servitude as a maximum; (*e.g.*, a man puts a bullet in a particular place in order to cause it to be believed that A. who fired a gun to frighten B. fired it with intent to murder him).

Sections 127, 128.—Provide increased maximum punishment (from imprisonment with hard labour to seven years' penal servitude) for conspiracies and other attempts to pervert justice.

Sections 135, 136, 138.—Several alterations are made in the law as to escapes and rescues by these sections, which punish peace officers and officers of prisons facilitating the escape of prisoners more severely than other such offenders.

Section 141.—This provision for the punishment of blasphemous libels is substituted for 9 & 10 Will. 3, c. 35, as amended by 35 Geo. 3, c. 100. By these Acts the expression of certain opinions on religious subjects is subjected to punishment. By Section 141 blasphemous libels are punished; but the expression, in decent language, of religious opinions, is protected.

Section 144.—The present punishment for unnatural offences is 10 years' penal

penal servitude as a minimum. The minimum punishment is abolished by this Section.

Section 146.—Acts of indecency are at present indictable only if committed in a public place. By Sub-section (b) of this Section they are made punishable if they are done with intent to insult or offend any person anywhere.

Section 147. This Section is believed to represent the law as to publishing obscene productions, but it states it more distinctly than it has hitherto been stated.

Section 148. By the present law (24 & 25 Vict. c. 100, s. 19) it is an indictable offence "by false pretences, false representations, or other fraudulent means, to procure any woman or girl under 21 years of age to have illicit carnal connexion with any man." This Section prefixes the words, "from motives of lucre," to the words quoted.

Section 152. Declares that non-repair of highways and other such offences are not to be deemed to be criminal offences, though they are proceeded against by indictment.

Section 153.—Subjects the offence of selling things unfit for food to hard labour as well as imprisonment.

Section 158. Is believed to state in substance the present law as to indignities to dead bodies; yet it does so in rather more general terms than those in which the law has hitherto been stated.

Section 161. Confines the duty of masters to provide necessaries for apprentices, to apprentices under 16 years of age. The obligation is not so confined by 24 & 25 Vict. c. 100, s. 26, which was founded on 11 & 15 Vict. c. 11, s. 1, passed soon after the conviction of Sloane for ill-treating a servant.

Section 168. Declares that it is not murder to procure a person's death by false evidence. This may, perhaps, be regarded as a moot question at present.

Section 170. Settles the case as to killing by any influence on the mind.

Sections 174, 175. Define murder in such a manner as to avoid some of the constructions put upon the expression "malice aforethought."

Section 176. — By the present law it is doubtful whether any provocation, except a blow or the sight of adultery, will reduce murder to manslaughter. Section 176 makes "any wrongful act or insult of such a nature as to deprive an ordinary person of the power of self control," sufficient for that purpose.

Section 183. Provides a punishment for aiding suicide. As the law now stands, this offence makes the offender an accessory before the fact to murder.

Sections 185, 186. These sections punish women who neglect to obtain assistance in childbirth, with intent that the child should not live, or with intent to conceal the fact of the birth of the child. They are intended to provide for cases of child murder which, in the present state of the law, often go unpunished.

Section 188.—By the present law (24 & 25 Vict. c. 100, ss. 21, 22), attempts to strangle, &c., in order to commit a crime, are punishable by penal servitude for life and flogging. Section 188 extends this to attempts to render persons incapable of resistance to crimes by violent means other than attempts to strangle.

Section 207.—The offence of rape is so defined as to include the commission of the offence by the personation of a husband, and by false misrepresentations as to the nature of the act. This embodies the effect of certain decisions which, however, are not altogether consistent.

Section 209.—The maximum punishment for an attempt to ravish is raised from two years' imprisonment and hard labour, to seven years' penal servitude.

MEMORANDUM RELATIVE TO THE

Section 211.—An obvious mistake in the drafting of 38 & 39 Vict. c. 94, s. 4 (carnally knowing children under 13), is corrected.

Section 212.—The offence of killing a child in the act of birth, but unborn, is provided for. At present it appears to be unprovided for; at least, it is not punished by any express enactment.

Section 216.—As the law now stands it is doubtful whether a person who marries a second time during the life of his wife, believing her to be dead, but within seven years of the last occasion on which he saw or heard of her, is guilty of bigamy. The case of *R. v. Gibbons* (12 Cox, 237) decides that he is. The case of *R. v. Moore* (Cox, 514) decides that he is not. Section 216 is framed in accordance with *R. v. Gibbons*.

Sections 218, 219.—These Sections differ to some extent from 24 & 25 Vict. c. 100, ss. 53 and 54, in the drafting of which there seems to have been some mistake or confusion.

Section 221.—The punishment for the abduction of girls under 16 is raised from five years to seven years' penal servitude, the definition of the offence being narrowed to cases in which the object of the abductor is to have carnal knowledge of the girl, or to cause her to be so known.

Section 241.—The maximum punishment for threatening to publish a libel in order to extort money, is raised from three years' imprisonment and hard labour to five years' penal servitude.

Sections 244-5.—The whole of the law as to the things which are the subject of larceny is recast, everything being rendered capable of being stolen except things growing out of the earth of the value of less than 1s., and except game and other wild animals, as to which the law is left as it is.

Section 246.—Theft is so defined as to make a fraudulent conversion, and not an unlawful taking, the gist of the offence. This alteration in the definition involves a variety of alterations in detail which cannot be fully explained in this note. The most important of them is that many offences specially provided for in the Larceny Act fall under the general definition of theft given in the Draft Code.

Section 253.—This Section provides that if a husband and wife are living apart from each other, either shall be capable of stealing anything which, by law, is the property of the other. It also provides that anyone who assists a wife or husband in carrying off the property of the husband or wife shall be guilty of theft. By the present law, if a man receives from a wife the property of the husband he is not guilty either of theft or receiving stolen goods, unless he commits adultery with the wife.

Sections 265, 266.—There is some slight difference between these Sections, and 7 Will. 4 & 1 Vict. c. 36, ss. 27 and 29.

Section 263.—Puts stealing in railway stations or from railway carriages on the same footing as stealing from ships or docks.

Section 264.—Provides a special punishment for stealing by picklocks, &c.

Section 268.—Makes it an offence to bring into England or Ireland things stolen abroad.

Section 296.—Punishes extortion by threats to accuse of any crime whatever. The offence is at present confined to extort by threats to accuse of certain specified crimes, as to which see s. 295.

Sections 306, 307.—These Sections, to some extent, extend the law as to having possession of housebreaking implements by night, and introduce into it some new distinction (see 24 & 25 Vict. c. 96, s. 58).

Section 309.—This Section extends the law as to receiving stolen goods to the receipt of goods obtained by any indictable offence, e.g., forgery.

Part XXX.—This corresponds to 24 & 25 Vict. c. 98, and the common law offence of forgery, as to which see Section 336. The part is drawn on the principle adopted in the Act of 1861, of enumerating classes of instruments the forgery of

of which is an offence. The enumeration is more complete than the one given in that Act. Section 331, as to the forgery of contracts, is new; so is Section 335, as to the forgery of telegrams. Section 336, which is the equivalent of forgery at common law, gives a maximum punishment of two years' imprisonment and hard labour, in cases in which, at present, hard labour could not be given.

Part XXXI. Preparations for forgery. This part includes much of what is included in the Forgery Act. The Sections referred to have been re-drawn; but are not, it is believed, materially altered.

Section 362. The definition of counterfeit coin is so framed as to include coin filed and then re-milled so as to conceal the filing.

Section 367 (b). Creates a new offence: preparing metal for coining counterfeit gold or silver.

Section 371 (c). The same as to foreign coin.

Section 400. The maximum punishment for the offence of severing hopbiuds is reduced from 14 years' penal servitude to seven.

Section 402. The maximum punishment for damaging toll-bars is raised from six months' hard labour to two years.

Part XXXV. Punishes threats, conspiracies, and attempts to commit offences in cases not specially provided for in the earlier part of the Code; such conspiracies and attempts are, for the most part, at present common law misdemeanours, punishable by fine and imprisonment. By the provisions of this part they are subjected to a punishment graduated according to the offence intended or attempted to be committed.

PROCEDURE.

Section 428. This Section gives power to the judges to make subsidiary rules of procedure. (*Cf.* 38 & 39 Vict. c. 77, s. 25.)

Section 431. Abolishes the distinction between felony and misdemeanour. The most important consequence of the abolition of this distinction is that the rules as to arrest without warrant and bail, which apply to felony and misdemeanour, respectively, are not applicable to offences under the Code. This is provided for by enacting, in regard to each offence under the Code, intended to be treated as felony is now treated, that offenders shall be liable to be arrested without warrant, and shall be bailable at discretion (*see* Titles I.-IV., *passim*), and by enacting that in all other cases offenders shall be entitled to bail, and shall not be arrested without warrant (s. 433).

Section 434.—This Section defines the jurisdiction of the Quarter Sessions, and slightly extends it. In particular, it makes burglary triable at Quarter Sessions, but restricts the Sessions to sentences of 14 years' penal servitude for that offence.

Section 437.—Gives justices power to inquire into a suspected offence, and take evidence on oath, although no person may be charged thereon.

Section 439. Directs coroners to send the inquisitions and depositions before a magistrate, *see* Section 506, which provides that accused persons are not to be tried on a coroner's inquisition.

Section 443.—Abolishes the necessity for backing warrants.

Section 458.—Extends the Vexatious Indictments Act to all offences whatever.

Sections 460, and other sections, practically abolish the law of venue.

Section 466. Modifies in some particulars a provision in Mr. Russell Gurney's Act as to taking the deposition of a witness who is ill, or who is discovered to be able to testify after a prisoner is committed.

Section 472.—Modifies some of the details of the present procedure as to

bailing persons entitled to be bailed, but unable to procure bail at the time of their committal.

Section 474.—Enables criminal informations to be filed in all cases not punishable by death or penal servitude, as in misdemeanours at present.

Section 475.—Gives power to the High Court to make orders for changing the place of trial.

Section 477-480.—Contain provisions for enabling special juries to be had in criminal cases.

Part XII.—Re-casts the law as to indictments.

Section 501.—Gives courts, otherwise competent to try offences, jurisdiction over all offences wherever committed.

Section 506.—Takes away the power of grand juries to present upon their own knowledge, and provides that no one is to be tried on a coroner's inquisition.

Section 507.—Gives the accused person a right to a copy of the indictment.

Section 510.—Abolishes outlawry.

Section 511.—Substitutes a Crown book for the formal record hitherto used.

Section 519.—Adopts for England and Ireland certain provisions as to calling the panel introduced into Ireland by 39 & 40 Vict. c. 78, s. 19.

Section 523.—Renders the accused person a competent witness.

Section 525.—Gives the Court power to require the attendance of witnesses.

Section 531.—Abolishes juries *de ventre inspiciendo* where pregnancy is pleaded in bar of execution, and substitutes a medical examination.

Section 535.—Gives the Court power to order a view as in Ireland (39 & 40 Vict. c. 78, s. 11).

Section 536.—Gives power to take a verdict or pass sentence on Sunday.

Section 537.—Gives the Attorney General power to order a stay of proceedings, and to delegate his power to do so to other counsel.

Part XLIV.—Abolishes proceedings in error in criminal cases, and establishes a new system of appeals and new trials in criminal cases.

Section 547.—Enables costs to be paid in case of all offences under the Code, as at present in cases of felony.

Section 549.—Makes accused liable in all cases to be ordered to pay costs, if convicted.

Section 551.—Alters the law as to restitution of property, providing that, except in one specified case, it shall affect the possession only.

