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## CHAPTER XXXV.

## OFFENCES RELATING TO THE COIN.

## SECTION 252.

## INTERPRETATION OF TERMS.

In this chapter the following words and expressions are used in 5  
the following senses:—

“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 10  
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 15  
pass for coin of a higher denomination, and counterfeit coin in an unfinished state.

“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 20  
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 25  
other person.

## SECTION 253.

## COINING.

Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life: 30

(a.) Who makes any counterfeit gold or silver current coin; or,

(b.) Who gilds or silvers any counterfeit current coin; or,

(c.) 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, 35

(d.) Who gilds, silvers, files, or alters any current silver or copper coin with intent to make it resemble or pass for current gold or silver coin.

SECTION 254.

DEALING IN AND IMPORTING COUNTERFEIT COIN.

Everyone shall be guilty of an indictable offence, and shall upon conviction thereof be liable to penal servitude for life, who, without  
5 lawful authority or excuse to be proved by the party accused,—

(a.) 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, whether or not such coin was in a fit state to be uttered, and whether or not the  
10 counterfeiting thereof was finished; or,

(b.) Imports or receives into the United Kingdom from beyond the seas any counterfeit current coin knowing it to be counterfeit.

SECTION 255.

MAKING INSTRUMENTS FOR COINING.

15 Everyone shall be guilty of an indictable offence, and shall be liable on conviction thereof to penal servitude for life, who, without lawful authority or excuse to be proved by the party accused,—

(a.) Makes, mends, begins or proceeds to make or mend, buys, sells, or has in his custody or possession, any machine, tool, or thing  
20 specially adapted or intended to be employed in any part of the process of coining current coin or counterfeit coin, knowing that it is so adapted or intended; or,

(b.) Knowingly conveys out of any of Her Majesty's mints any such thing as is mentioned in sub-section (a), or any useful part  
25 thereof, or any coin, bullion, metal, or mixture of metals.

SECTION 256.

CLIPPING AND POSSESSION OF METAL OBTAINED THEREBY.

(a.) Everyone shall be guilty of an indictable offence, and shall upon conviction be liable to *fourteen years* penal servitude, who impairs,  
30 diminishes, or lightens any current gold or silver coin with intent that when so dealt with it may pass as current gold or silver coin.

(b.) Everyone shall be guilty of an indictable offence, and shall upon conviction thereof be liable to *seven years* penal servitude, who has in his custody or possession any filings or clippings, gold or silver  
35 bullion, or gold or silver in dust or solution, obtained by impairing current gold or silver coin, knowing it to have been so obtained.

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## SECTION 257.

## OFFENCES RELATING TO COPPER COIN.

Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to *seven years* penal servitude :

(a.) Who counterfeits the Queen's current copper coin ; or 5

(b.) Who (without lawful authority or excuse (the proof whereof shall lie 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, 10

(c.) 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.

## SECTION 258.

## OFFENCES RELATING TO FOREIGN GOLD AND SILVER COIN. 15

Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to *seven years* penal servitude ;

(a.) Who makes counterfeit gold or silver coin of any foreign prince, state, or country ; or,

(b.) Who brings or receives into the United Kingdom counterfeit 20 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, whether or not such coin was in a fit state to be uttered, and whether or not the counterfeiting thereof was finished. 25

## SECTION 259.

## COINING FOREIGN COPPER COIN.

Everyone who makes any counterfeit copper coin of any foreign prince, state, or country shall be guilty of an indictable offence, and shall upon conviction thereof be liable to be imprisoned with 30 hard labour for *two years*.

## SECTION 260.

## POSSESSION OF COUNTERFEIT GOLD OR SILVER.

Everyone shall be guilty of an indictable offence, and shall upon 35 conviction thereof be liable to *five years* penal servitude, who has in his possession any counterfeit current gold or silver coin, knowing such coin to be counterfeit, and with intent to utter it.

SECTION 261.

UTTERING COUNTERFEIT GOLD OR SILVER COIN.

Everyone shall be guilty of an indictable offence, and shall upon conviction thereof be liable to *two years* imprisonment and hard labour, who utters any counterfeit current gold or silver coin knowing it to be counterfeit.

SECTION 262.

UTTERING BASE COPPER OR FOREIGN COIN.

Everyone shall be guilty of an indictable offence, and shall upon conviction thereof be liable to *two years* imprisonment and hard labour:

(a.) 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.) Who utters any counterfeit current copper coin, knowing it to be counterfeit; or,

(c.) Who has in his possession any counterfeit current copper coin, knowing it to be counterfeit, and with intent to utter it; or,

(d.) 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.) 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.) Who utters any counterfeit gold or silver coin of any foreign prince, state, or country, knowing it to be counterfeit; or

(g.) Who utters or has in his possession, intending to utter it, any gold or silver coin, impaired, diminished, or lightened unlawfully, and not by fair use, knowing the same to have been so unlawfully dealt with.

SECTION 263.

RULE OF EVIDENCE.

The fact that any coin is counterfeit may be proved by any witness, and need not be proved by any moneyer or officer of Her Majesty's mint.

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## CHAPTER XXXVI.

## MISCHIEF.

## SECTION 264.

## PRELIMINARY.

Nothing shall be an offence under any provision contained in this chapter unless it is done without legal justification or excuse, and without any claim of right founded either on a mistake of law or on a mistake of fact, nor unless the offender either intended to cause the event constituting the offence, or knowingly ran the risk of causing it by some act which he knew would probably cause it. 5 10

The provisions of this chapter shall extend as well to cases in which the offender is in possession of any property to which any injury is done as to other cases, and as well to consequences intentionally caused by an omission to discharge any legal duty, as to consequences caused by acts. 15

## SECTION 265.

## ARSON.

Arson is the act of setting fire—

To any building, hovel, shed, or other permanent erection whatsoever; 20

Or to any stack of cultivated vegetable produce, or of wood or bark, or of any mineral or vegetable fuel, or of gorse, heath, or fern;

Or to any crop of cultivated vegetable produce, or to any wood, coppice, or plantation of trees, or to any heath, gorse, or fern; 25

Or to any mine; 25

Or to any ship, whether in a complete or unfinished state;

Or to any of Her Majesty's military, naval, or victualling stores or other ammunition of war.

## SECTION 266.

## PUNISHMENT OF ARSON AND ATTEMPTS TO COMMIT ARSON. 30

(a.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who commits arson.

(b.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to *fourteen years* penal servitude: 35

(i.) Who attempts to commit arson;

(ii.) Who sets fire or attempts to set fire to anything in, against, or under any building or other thing the setting fire to which

would amount to arson, and which building or other thing is likely to catch fire from the thing set on fire. A.D. 1878.

Every male *under sixteen years* of age who commits any offence against this section shall be liable to be whipped once.

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### SECTION 267.

#### MISCHIEF BY GUNPOWDER.

(a.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who by the explosion of gunpowder or other explosive substance throws  
10 down or damages the whole or any part of any dwelling-house any person being therein, or the whole or any part of any building so as to endanger the life of any person.

(b.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for *fourteen years*,  
15 who places or throws any gunpowder or other explosive substance in, into, upon, under, against, or near any building, ship, or vessel with intent to destroy or damage any such building, ship, or vessel, or any engine, machinery, working tools, fixtures, or chattels, whether or not any explosion takes place, and whether or not any damage is  
20 caused thereby.

Every male *under sixteen years* of age who commits any offence against this section shall be liable to be whipped once.

### SECTION 268.

#### INJURIES TO RAILWAY TRAINS.

25 (a.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life, who, with intent to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using any railway, does or causes to be done anything whatever to any part of the railway, or to any  
30 machinery or signal belonging to it or near to it, or to any such engine, carriage, or truck.

(b.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to *two years* imprisonment and hard labour, who by any unlawful act, or by any wilful omission or  
35 neglect, obstructs or causes to be obstructed any engine, tender, carriage, or truck using any railway.

Every male *under sixteen years* of age who commits an offence against this section shall be liable to be whipped once.

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## SECTION 269.

## MISCHIEF TO SHIPS.

- (a.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life :
- (i.) Who casts away or in anywise destroys any ship or vessel 5  
whatever, whether in a complete or unfinished state ; or,
- (ii.) Who does anything tending to the immediate loss or destruction of any ship, vessel, or boat ; or,
- (iii.) Who, with intent to bring any ship, vessel, or boat into danger, masks, alters, or removes any light or signal, or exhibits 10  
any false light or signal.
- (b.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for *fourteen years,*
- (i.) Who destroys any part of any ship or vessel in distress, wrecked, 15  
stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel.
- (ii.) Attempts to cast away or destroy any ship or vessel whatever, whether in a complete or unfinished state.
- (c.) Everyone shall be guilty of an indictable offence, and shall be 20  
liable upon conviction thereof to penal servitude for *seven years :*
- (i.) Who damages with intent to destroy or render it useless any ship or vessel, whether complete or incomplete, by any means 25  
other than fire, gunpowder, or other explosive substance ; or,
- (ii.) 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 30  
things aforesaid.

Every male *under sixteen* who commits any offence against this section shall be liable to be whipped once.

## SECTION 270.

## INJURIES TO SEA WALLS AND WORKS CONNECTED WITH WATER. 35

- (a.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for life :
- (i.) 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, whereby any land or building is, or is in danger of being, overflowed or damaged; or,
- Any work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal; or,
- 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,
- (ii.) 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.
- (b.) Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to penal servitude for *seven years* :
- (i.) 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 water; or,
- (ii.) 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,
- (iii.) Who cuts through, breaks down, or otherwise destroys the dam, flood-gate, or sluice of any fishpond, 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,
- (iv.) Who puts lime or any other noxious material in any river, with intent to destroy any fish then being or afterwards to be put therein; or
- (v.) Who cuts through, breaks down, or otherwise destroys the dam or flood-gate of any millpond, reservoir, or pool.
- Every male *under sixteen years* of age who commits any offence under this section shall be liable to be whipped once.

## SECTION 271.

## INJURIES TO CATTLE.

Everyone shall be guilty of an indictable offence, and shall upon conviction thereof be liable to *fourteen years* penal servitude, who kills, maims, wounds, or causes grievous bodily harm to any cattle.

Every tame beast used for food or labour shall be cattle within the meaning of this section, whether the person in whose posses-



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sion such beast is at the time when the offence is committed upon it uses or intends to use it for either of those purposes or not.

## SECTION 272.

## INJURIES TO MACHINERY AND TO MINES.

Everyone shall be guilty of an indictable offence, and shall be 5 liable upon conviction thereof to *seven years* penal servitude, and if a male *under sixteen years* of age to be whipped once :

(a.) Who cuts, breaks, destroys, or damages with intent to destroy or render useless any goods, or articles in any stage of manufacture, or who by force enters any house, shop, building, or place with 10 intent to commit any such offence ; or

(b.) Who cuts, breaks, destroys, or damages with intent to destroy or render useless any machine or engine, whether fixed or movable, used or intended to be used for any agricultural operation, or prepared for or employed in any manufacture, other than the manu- 15 facture of woven goods, or any tool or implement, whether fixed or movable, prepared for or employed in any such manufacture ; or

(c.) Who by any unlawful act done to any mine, or to any thing whatever, movable or immovable, used in conducting the business thereof, or by causing any water to flow into it by any means what- 20 ever, destroys or damages the mine or hinders, obstructs, or delays the working thereof, or attempts to do so ; or,

(d.) 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 any way 25 or work connected therewith, or employed in working it ; or

(e.) Who cuts or otherwise destroys any hop binds growing on poles in any plantation of hops ; or

(f.) Who injures or removes anything whatever forming part of or used in or about any electric or magnetic telegraph, or in the 30 working thereof, or prevents or obstructs in any manner whatever the sending, conveyance, or delivery of any communication by any such telegraph.

## SECTION 273.

## GENERAL PROVISION AS TO MISCHIEF.

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Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to the punishments herein-after mentioned, who commits any damage, injury, or spoil upon any real or personal property whatever, whether of a public or private nature, to the value of *one pound*, for which no punishment is herein-before 40 provided ; that is to say,

Every such offender shall be liable to *five years* penal servitude if the amount of the damage, spoil, or injury exceeds 20*l.*, and to *two years* imprisonment and hard labour if it does not exceed 20*l.* but does exceed 1*l.* A.D. 1878.

5 The 52nd section of the Act passed in the 25th year of Her Majesty's reign, chapter 97, shall be amended as follows: It shall be read as if for the words "for which no punishment is herein-  
" before provided " were substituted the words " the amount of which  
" does not exceed *five pounds*, and which is punishable under the  
10 " Criminal Code (Indictable Offences), 1878, section 273, or which  
" is not punishable under the provisions of that Act."

### SECTION 274.

#### THREATS TO BURN, ETC.

Everyone shall be guilty of an indictable offence, and shall be  
15 liable upon conviction thereof to *ten years* penal servitude, who, knowing the contents thereof, sends, delivers, utters, or directly or indirectly causes to be received any document threatening to burn or destroy any building, or any rick or stack of grain, hay, or  
20 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.

### SECTION 275.

#### MAKING AND POSSESSING GUNPOWDER FOR CERTAIN PURPOSES.

Everyone shall be guilty of an indictable offence, and shall be  
liable upon conviction thereof to *two years* imprisonment and hard  
25 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 indictable offence punishable under the  
30 provisions of this chapter or of chapter XX. or XXI.

### SECTION 276.

#### MISCHIEVOUS BREACH OF CONTRACT.

Everyone shall be guilty of an indictable offence, and shall upon  
conviction thereof be liable to be fined *twenty pounds* or to be  
35 imprisoned and kept to hard labour for *three calendar months*, who does or conspires with any other person to do any of the following things; that is to say,

(a.) Who wilfully and without legal justification or excuse, or claim of right, founded either on a mistake of law or on a mistake

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of fact, 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 valuable property, whether real or personal, to destruction or serious injury; or, 5

(b.) 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 without legal justification or excuse, and without claim of right founded on a mistake either of law or of fact, 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, 15

The expression "municipal authority" in this section means—

- (i.) The Metropolitan Board of Works. 20
- (ii.) The Common Council of the City of London.
- (iii.) The Commissioners of Sewers of the City of London.
- (iv.) The town council of any borough for the time being subject to the Act passed in the 6th year of the reign of King William IV., chap. 76., intituled An Act to provide for the regulation of municipal corporations in England and Wales, and any Act amending the same. 25
- (v.) Any commissioners, trustees, or other persons invested by any local Act of Parliament with powers for improving, cleansing, lighting, or paving any town, or any local board. 30

Any municipal authority, company, or contractor authorised or required by or in pursuance of any general or local Act of Parliament to supply any streets of any place with gas, or to supply water on demand to the inhabitants of any place, shall for the purposes of this section be deemed to have imposed upon them respectively by Act of Parliament the duty of supplying such place with gas or water. 35

No one shall be proceeded against under this section unless he has been proceeded against as for a summary offence under the Conspiracy and Protection of Property Act, 1875, and has declared that he objects to being tried for such offence by a court of summary jurisdiction. 40

Nothing in this section shall apply to seamen or to apprentices in the sea service. A.D. 1878.

Every person, and the husband and wife of every person, who is indicted for any offence against this section shall be a competent witness upon the trial of such indictment.

CHAPTER XXXVII.  
BANKRUPTCY AND BREACH OF CONTRACT.

SECTION 277.

ABSCONDING WITH PROPERTY IN CONTEMPLATION OF BANKRUPTCY.

10 Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to *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 *twenty pounds* or upwards, 15 which ought by law to be divided amongst his creditors, 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 20 is satisfied that he had no intent to defraud.

SECTION 278.

PUNISHMENT OF FRAUDULENT DEBTORS.

Every person adjudged bankrupt, and every person whose affairs are liquidated by arrangement under the law relating to bankruptcy 25 for the time being, shall be guilty of an indictable offence, and shall be liable upon conviction thereof to a maximum punishment of *two years* imprisonment and hard labour :

(a.) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the 30 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 35 intent to defraud ;

(b.) 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

- A.D. 1878. — 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;
- (c.) 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 5 satisfied that he had no intent to defraud;
- (d.) 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 10 any part of his property to the value of *ten pounds* or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud;
- (e.) If after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within *four months* 15 next before such presentation or commencement, he fraudulently removes any part of his property of the value of *ten pounds* or upwards;
- (f.) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to 20 defraud;
- (g.) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fails for the period of a month to inform such trustee as aforesaid thereof;
- (h.) If after the presentation of a bankruptcy petition against 25 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;
- (i.) If after the presentation of a bankruptcy petition against 30 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 35 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;
- (j.) If after the presentation of a bankruptcy petition against him or commencement of the liquidation, or within *four months* 40 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;

(k.) If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within *four months* 5 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;

(l.) If after the presentation of a bankruptcy petition against 10 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;

(m.) If within *four months* next before the presentation of a 15 bankruptcy petition against him or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit, and has not paid for the same;

(n.) If within *four months* next before the presentation of a 20 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;

(o.) If within *four months* next before the presentation of a 25 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;

(p.) If he is guilty of any false representation or other fraud for 30 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.

### SECTION 279.

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

Everyone shall be guilty of an indictable offence, and shall be liable upon conviction thereof to *one year's* imprisonment and hard labour,

Who in any bankruptcy or liquidation by arrangement or com- 40 position with creditors in pursuance of the law relating to bankruptcy for the time being in force wilfully and with intent to defraud

A.D. 1878. makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular.

### SECTION 280.

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

Everyone shall be guilty of an indictable offence, and shall upon 5 conviction thereof be liable to imprisonment ;

(a.) Who, 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 10 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.) Who being the master of a British ship—

(i.) Discharges any seaman or apprentice in any place situate in 15 any British possession abroad (except the possession in which he was shipped) without previously obtaining the sanction in writing endorsed on the agreement 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) 20 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 25 (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 30 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 35 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. A.D. 1

Upon the trial of any person for any of the offences in this section mentioned, the burden of producing the sanction or certificate above mentioned, or proving 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, shall be upon the persons charged.

### SECTION 281.

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

15

Everyone shall be guilty of an indictable offence, and shall upon conviction thereof be liable to imprisonment:

(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;

(b.) Who being a master of a British ship knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable.

Any person accused of any of the offences aforesaid may, for the purpose of giving such proof as is required of him, give evidence in the same manner as any other witness.

### SECTION 282.

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

35

Every master of, or seaman or apprentice belonging to, any British ship shall be guilty of an indictable offence, and shall be liable upon conviction thereof to imprisonment, who by wilful breach



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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, 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.

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## PART VII.

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### PROCEDURE.

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#### CHAPTER XXXVIII.

#### INTRODUCTORY PROVISIONS.

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##### SECTION 283.

15

##### POWER TO MAKE RULES.

Subject to the provisions of this Act Her Majesty may at any time, by and with the advice of the Lord Chancellor, the Lord Chief Justice of England, and the other judges of the High Court, or of the greater number of them (of whom the Lord Chancellor and the Lord Chief Justice of England shall be two), cause to be prepared rules providing—

(a.) For the regulation of proceedings incidental to the trial of cases in the High Court either upon an order made to change the place of trial to the High Court from some other court, or upon a criminal information, or upon the finding of a bill by the grand jury of Middlesex; and it shall be lawful by such rules to abolish trials at bar, and to substitute therefor such other mode of trial as may be thought proper.

(b.) For the regulation of all matters relating to proceedings before the Court of Appeal in Criminal Cases not hereby provided for.

(c.) Generally for the regulation of any matters relating to the practice and procedure of the superior courts and courts of quarter session in criminal matters, for which provision is not expressly made by this Act.

35

SECTION 284.

CIVIL REMEDY NOT TO BE SUSPENDED BY FACT THAT ACT IS A CRIMINAL OFFENCE.

From the passing of this Act no civil remedy which any person  
5 may have against any other person for any act or omission shall be  
suspended or in any way affected by the fact that such act or omission  
amounts to a criminal offence; but if upon any civil proceeding  
it appears to the court that the act or omission for which the  
action is brought amounts to a criminal offence, the court may give  
10 the same directions and take the same measures for the prosecution  
of the defendant as are herein-after authorised with regard to  
persons who appear to the court to have committed perjury.

The word court has the same meaning in this section as in section  
323.

15

SECTION 285.

PROCEEDINGS AGAINST PERSONS ACTING UNDER THIS ACT.

The following rules shall be observed as to all actions and  
prosecutions commenced against any person for anything done in  
pursuance of this Act.

20 (a.) The case shall be tried in the county where the thing com-  
plained of was done, unless the person proceeded against consents  
to its being tried elsewhere, and the power herein-after given to  
the High Court to order the place of trial to be changed shall not  
extend to any such prosecution.

25 (b.) The action or prosecution must be commenced within six  
months after the thing complained of is done.

(c.) Notice in writing of the plaintiff's intention to bring such  
action, and of the cause thereof, must be given to the defendant at  
least one month before its commencement.

30 (d.) The defendant may plead in general that the thing complained  
of was done in pursuance of this Act, and upon that plea may prove  
any special matter in his defence.

(e.) The defendant may tender a sum of money to the plaintiff by  
way of amends before the action is brought, or pay a sum of money  
35 into court after it is brought, and if such amends appear upon the  
trial to be sufficient, the plaintiff shall not be entitled to recover.

(f.) If the defendant becomes entitled to recover costs from the  
plaintiff, he shall recover his full costs as between solicitor and

A.D. 1878. client, and have the same remedy as any defendant has by law in other cases.

(g.) If the plaintiff becomes entitled to costs he shall not recover them unless the judge before whom the trial takes place certifies his approval of the action.

5

### SECTION 286.

#### ABOLITION OF DISTINCTION BETWEEN FELONY AND MISDEMEANOR.

*From the time when this Act comes into force* the distinction between felonies and misdemeanors shall be abolished, and all indictable offences shall be proceeded against in the same manner; 10 provided that nothing herein contained shall affect any specific punishment appointed for any offence by any Act of Parliament now in force: Provided also, that Peers of Parliament shall be entitled to the same privilege in respect of indictable offences, upon conviction of which the offender may be sentenced to death or penal servitude, 15 as they now are with respect to treason and felony: Provided also, that *from the passing of this Act* every disqualification which attaches to a conviction for felony shall attach to a conviction of any offence committed after the passing of this Act for which the offender might when he was convicted have been sentenced to 20 death, transportation, or penal servitude.

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## CHAPTER XXXIX.

### WHAT OFFENCES TRIABLE IN ENGLAND, AND BY WHAT COURTS.

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#### SECTION 287.

25

#### WHAT OFFENCES MAY BE TRIED IN ENGLAND.

Every person may be proceeded against in England, according to the provisions herein-after contained, for any indictable offence to which this Act extends, or for which he may be tried in England under the provisions of any other statute now or hereafter to be in force.

30

**SECTION 288.**

**JURISDICTION OF THE SUPERIOR COURTS.**

The superior courts shall have jurisdiction to try all indictable offences whatsoever.

5

**SECTION 289.**

**JURISDICTION OF THE COURTS OF QUARTER SESSIONS.**

The courts of quarter session shall have jurisdiction to try all offences whatever, except

10 (a.) Offences punishable under the following chapters and sections of this Act, that is to say:—Chapter V., Chapter VII., Chapter IX., Chapter XI., Chapter XII., Section 104, Section 110, Chapter XX., Chapter XXIV., Chapter XXVI., Chapter XXXII., Chapter XXXIV.

(b.) Offences which may be punished by penal servitude for life although the offender has not been previously convicted.

15 (c.) Offences against either House of Parliament or subject to the penalties of *præmunire*.

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**CHAPTER XL.**

**PLACE OF ARREST, COMMITMENT, AND TRIAL.**

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**SECTION 290.**

20

**LOCAL JURISDICTION OF COURTS.**

Every court shall have jurisdiction to try any person for any offence for which the court is otherwise competent to try him, wherever such offence may have been committed.

**SECTION 291.**

25

**-PLACE OF SITTING OF COURT.**

Courts shall sit either in the district for which they act, or in any county of a city, or town corporate, or detached part of a county included in, surrounded by, or adjacent thereto, or if they act for a county of a city or town corporate in any county adjacent thereto, 30 provided that no proceeding before any court shall be invalid only because it took place in any other district than the one in which the

A.D. 1878. court ought to have sat, unless it is made to appear affirmatively that the defendant was actually prejudiced by such error.

### SECTION 292.

#### LOCAL JURISDICTION OF GRAND JURY.

Any person may, subject to the provisions herein-after contained, prefer a bill of indictment against any person for any offence for which he is liable to be tried in England, before any grand jury sitting in England. 5

in and for the district in which the court is to sit before which the prosecutor is bound over to present a bill of indictment under the provisions contained in this Act, or 10

(if the offence was committed in a county of a city or town corporate) in and for the next adjoining county at large, or

(if the prosecutor is not bound over to prosecute) in and for the district in which the offence was committed, or in and for the district in which the alleged offender was or habitually resided at the time when the prosecutor served upon the defendant the notice herein-after mentioned; or 15

in and for any district in which the High Court under the provisions of this Act directs the bill to be preferred. 20

A bill of indictment against any person who is a party to any offence may be preferred before any grand jury before which a bill might be preferred against the person by whom the offence itself was committed.

A bill of indictment against any person charged with receiving property unlawfully obtained may be preferred before any grand jury before which a bill might be preferred against the person by whom the property was so obtained. 25

### SECTION 293.

#### WHAT JUSTICES ARE TO COMMIT FOR TRIAL, AND TO WHAT COURTS. 30

Any justice before whom any person is brought upon a charge of having committed any indictable offence may hold the preliminary inquiry herein-after mentioned, and shall, if he commits the defendant for trial as herein-after mentioned, bind over some person in the manner herein-after provided for to present a bill of indictment against the defendant at a court to be specified in the recognizance taken by such person, or such other court as may be appointed for the trial under the powers herein-after contained. 35

Such court shall in general be the court next to be held in and for the county or district in which, or within 500 yards of any part of the boundary of which, the offence was committed. If the justice has any doubt as to the county or district in which the offence was committed, or if it was committed on a voyage or journey such court may be the court next to be held in and for any county or district in which the justice thinks it probable that the offence may have been committed, or in or for any county or district through any part of which the offender, or the person or thing in respect of whom or which the offence was committed, passed in the course of such journey or voyage. If the offence was committed at sea, or out of England, or in any other case in which the justice considers such a course expedient for the ends of justice or for the convenience of the witnesses, such court may be the next court to be held in and for the district in which the preliminary inquiry herein-after provided for takes place, and no objection shall be taken to the validity of any trial on the ground only that the defendant was ordered to be tried at a wrong place; but if any defendant is aggrieved by any such order he may appeal against it to a judge of the High Court who may amend such order, and whose decision shall be final.

Every justice who acts for any county of a city or town corporate within which Her Majesty has not been pleased to direct a commission of oyer and terminer and gaol delivery to be executed for five years then last past shall, in general, commit all persons who are committed for offences not triable at the quarter sessions to be tried at the next court of oyer and terminer and general gaol delivery for the next adjoining county at large; provided that every such justice shall have the same powers as to committing persons for trial in other counties in special cases as are herein-before given to other justices.

No justice shall commit any person to take his trial before the High Court of Justice.

#### SECTION 294.

##### FOR WHAT OFFENCES JUSTICES MAY COMPEL APPEARANCE.

Every justice may issue warrants or summonses as herein-after mentioned for compelling the attendance of defendants before him for the purposes of the preliminary inquiry herein-after provided for,—

(a.) If the offence inquired into is alleged to have been committed in a district in or for which he acts; or

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(b.) If the person alleged to have committed such offence is alleged to reside or be in a district in or for which he acts; or

(c.) If the person against whom process is issued is alleged to be a party to an offence committed in any district referred to in sub-section (a) or by any person referred to in sub-section (b), or if he is 5 alleged to have unlawfully received property which was unlawfully obtained in any district referred to in sub-section (a) or by any person referred to in sub-section (b).

### SECTION 295.

FOR WHAT DISTRICTS JUSTICES MAY ACT.

10

Every justice of the peace may do anything which he is authorised to do by this Act in and for any district for which he is a justice.

Any justice who is a justice for each of two adjoining districts, or for two districts one of which is surrounded by the other, may whilst he is in either of such districts do with respect to the other every- 15 thing which he is by this Act authorised to do in the district in which he is, and every warrant, order, or direction issued or given by him in either of such districts with respect to the other district shall be obeyed by all constables, peace officers, and other persons of such other district in the same manner as if it had been issued or 20 given in the district to which it relates.

### SECTION 296.

JUSTICES FOR COUNTIES AT LARGE MAY ACT AS SUCH IN COUNTIES OF CITIES AND BOROUGH AND IN AND FOR DETACHED PARTS OF COUNTIES.

Any justice of the peace for any county at large, or for any riding 25 or division of such county, may act as such at any place within any city, town, or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, or forming a detached part of another county at large, and situated within, surrounded by, or adjoining to any such county at large, riding, or division respectively. Every- 30 thing so done shall be as valid as if it had been done within such first-mentioned county at large, riding, or division respectively; provided that this enactment shall not empower any justice of the peace for any county at large, riding, or division, not being also a justice for such city, town, or other precinct, or not having autho- 35 rity as a justice of the peace therein, or any constable or other

officer acting under him, to act in any matter arising within any such city, town, or precinct. A.D. 1878.

The acts of any justice, and of any constable or officer in obedience thereto, shall be as good in relation to any detached part of any county at large which is surrounded in whole or in part by the county at large for which such justice acts as if the same were part of the said last-mentioned county at large; and all constables and other officers of such detached part shall obey all warrants, orders, and acts of every such justice, and perform their several duties in respect thereof.

#### SECTION 297.

SAVING AS TO STATUTORY JURISDICTION OF POLICE MAGISTRATES AND OTHER JUSTICES.

Nothing in this Act contained shall in any way restrict any powers conferred by or under the provisions of any statute or charter upon any stipendiary magistrate or other justice of the peace.

#### SECTION 298.

WHERE WARRANTS MAY BE EXECUTED.

Any warrant for the apprehension of any person, issued under the provisions herein-after contained, may be executed by apprehending the offender within any district in or for which any justice issuing the warrant has jurisdiction, or in case of fresh pursuit at any place within seven miles of any part of the border of that district, without being backed as herein-after mentioned.

25

#### SECTION 299.

BACKING WARRANTS.

The expression "to back a warrant" means to make upon the back of a warrant a written order authorising the execution of it within a district other than the one in or for which it was issued.

Every such order may be in the form (E.) in the first schedule hereto, or to the like effect, and shall be signed by the person who makes it, and shall be a sufficient authority to the person who brings it to be backed, and to all peace officers in the district for which it is backed, to execute it in such district by apprehending the person against whom it was granted, and conveying him before the justice by whom the warrant was originally issued, or dealing with him otherwise as herein-after mentioned.



A.D. 1878. — No warrant shall be backed until the handwriting of the justice by whom the warrant was issued has been proved on oath before the person by whom it is to be backed.

### SECTION 300.

WHEN WARRANTS MAY BE BACKED.

5

A warrant may be backed when the person against whom it is issued is or resides, or is suspected to be or reside, in the district in which the warrant is backed.

### SECTION 301.

WHERE AND BY WHOM WARRANTS MAY BE BACKED.

10

Any warrant issued in any part of the United Kingdom, or in any of the isles of Man, Guernsey, Jersey, Alderney, or Sark, by any justice or other person having authority to issue a warrant or process in the nature of a warrant therein, may be backed by any other such justice or person; provided that no warrant issued by any judge of the High Court in England, or by any justice of oyer and terminer or gaol delivery, shall require to be or shall be backed by any justice in England. 15

The following officers in the Channel Islands may exercise, each in his own local jurisdiction, the powers herein-before given; that is to say, the bailiffs of Jersey and Guernsey respectively, or in their absence the lieutenant bailiffs, the judge of Alderney, or in his absence any jurat of such island, the seneschal of Sark, or in his absence his deputy. 20

### SECTION 302.

25

JUSTICE BACKING A WARRANT IN ENGLAND MAY ORDER DEFENDANT TO BE BROUGHT BEFORE HIM.

If the prosecutor or any of the witnesses upon the part of the prosecution are in the district where the person against whom the warrant is issued is apprehended, the officer or other person who apprehends such person may, if so directed by the justice backing the warrant, take him before such justice or before some other justice of the same district; and such justice may thereupon proceed in every respect in the manner herein-after directed with respect to persons charged before a justice of the peace with an offence alleged to have been committed in a district other than that in which such persons have been apprehended. 30 35

SECTION 303.

PERSON SUMMARILY ARRESTED.

Any person who is entitled to arrest any other person without warrant, may arrest him, or cause him to be arrested, in any part of  
5 England where he may happen to be at the time of such arrest, and may take him before any justice for the district in which he is so arrested.

SECTION 304.

ORDER TO CHANGE PLACE AND MODE OF TRIAL.

10 The High Court, or any judge thereof, may make any of the orders herein-after mentioned upon the application of any defendant who has been committed for trial for any indictable offence, or who has received notice as herein-after mentioned, of the intention of any  
15 person to prefer an indictment against him, or on the application of any person bound over to prosecute or prefer an indictment against any person; that is to say,

(a.) An order that the defendant shall be indicted or tried (both or either) before the High Court or any other competent court  
20 other than the court before which but for such order he would have been tried.

(b.) An order that any such case shall be tried by a special jury.

(c.) An order that any such case shall be tried as a civil action.

No order for changing the place of trial shall be made unless the  
court is of opinion that an impartial trial cannot be had otherwise,  
25 or that some question of law of more than usual difficulty and importance is likely to arise at the trial which can be more properly decided if the order is made than would otherwise be possible, or that the change would be convenient for the public or for the witnesses or the parties.

30 Every order for changing the place of trial shall specify the county or jurisdiction in which the case is to be tried, and it shall be tried in all respects as if the indictment or inquisition had been found in that county or jurisdiction.

The party by whom or at whose instance any such order is made  
35 shall forthwith give notice thereof to the other party, and to every person bound over to prosecute or give evidence, and to every person

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who has given bail for the appearance of the defendant, and to the person who at the time when the order is made is in possession of the depositions and other documents herein-after mentioned relating to the case. Such notice may be given by serving an office copy of the order on the person to whom it is to be given. 5

If it is ordered that any case shall be tried by a special jury, all the enactments in force for the time being as to the qualifications, the attendance, the drawing up of the panel, and the striking of special juries in civil cases, shall apply to the special juries and jurors to be summoned under this provision. 10

No order shall be made for the trial of any indictment as if it were a civil action, except in the following cases :—

- i. If the defendant is charged with a common assault, a defamatory libel, or a common nuisance.
- ii. If the court or judge making the order is of opinion that the principal object for which the indictment is preferred is to decide some matter of law or private dispute. 15

If any such last-mentioned order is made, all enactments or other rules of law relating to challenging jurors, or to the competency of witnesses, the admissibility of evidence, the taking of evidence, new trials, appeals, and costs shall apply to the trial of such indictments, notwithstanding anything in this Act contained; but nothing herein contained shall affect in any other way the power of the court to pass any sentence or do any other thing which it might have passed or done if no such order had been made. 25

Whenever any order is made under this section the court or judge making it may impose such terms as may seem reasonable on the person at whose instance it is made as to bail, the payment of any costs incurred in consequence of the order, or any other matter.

An appeal shall lie from any order of any judge under this section to a division of the high court. Such appeal must be brought within two days after the order is made, and the decision of the divisional court shall be final. 30

*From the passing of this Act* no writ of certiorari shall be issued in order to effect any purpose which can be effected by the provisions herein contained. 35

Provided that this section shall not affect in any way any indictment or inquisition charging any peer, or person claiming the privilege of peerage, with any offence not now lawfully triable by a superior court. 40

**SECTION 305.**

POWER TO CHANGE PLACE OF TRIAL FROM COUNTY CORPORATE TO ADJOINING  
COUNTY AT LARGE.

A superior court sitting in and for any county of a city or town  
5 corporate or other franchise, except the county of the city of  
London, may, upon the prayer of the defendant, direct any indict-  
ment found by the grand jury, or any inquisition taken before the  
coroner thereof, to be tried before any superior court in and for the  
next adjoining county. York shall be considered to be the next  
10 adjoining county to Kingston-upon-Hull, and Northumberland as  
the next adjoining county to Newcastle-upon-Tyne for the purposes  
of this section.

**SECTION 306.**

COURT AFFECTED BY ORDER TO TAKE JUDICIAL NOTICE OF IT, AND NO PROOF  
15 TO BE REQUIRED.

When any of the orders provided for in the last two preceding  
sections is made the court whose procedure is affected by it shall  
upon its production act upon it, unless it has reason to doubt  
whether it is genuine, in which case it shall satisfy itself as to its  
20 authenticity by any means which it thinks proper, but neither the  
prosecutor nor the defendant shall be entitled to require proof of any  
such order or to dispute or bring in question its existence at any  
stage of the proceedings or at any subsequent time.

**CHAPTER XLI.**

25 **PROCEEDINGS TO COMPEL APPEARANCE. ARREST  
WITHOUT WARRANT. INFORMATION.  
SUMMONS. WARRANT.**

**SECTION 307.**

SUMMARY ARREST OF PERSONS FOUND COMMITTING OFFENCES.

30 Any person who is found committing any indictable offence may  
be apprehended by any person whatsoever without warrant, if the  
person making such arrest has reasonable grounds to believe that  
the offender may escape punishment or may complete the commis-  
sion of the offence if he is not so apprehended.

A.D. 1878.

**SECTION 308.**

SUMMARY ARREST OF PERSONS SUSPECTED OF HAVING COMMITTED OFFENCES.

Any justice of the peace, sheriff, coroner, police constable, or peace officer may without warrant arrest any person whom he suspects on reasonable grounds of having committed any indictable 5 offence upon a conviction for which the offender would be liable to be sentenced to death, or to penal servitude, or to be imprisoned and kept to hard labour for two years.

Any person whatever may without warrant arrest any such person if such an offence has actually been committed, or if the person 10 arrested is being pursued by hue and cry, but not otherwise.

Any constable or peace officer may arrest without warrant any person whom he finds lying or loitering anywhere between *nine o'clock at night and six o'clock in the morning* whom he suspects on reasonable grounds of having committed or of being about to 15 commit any indictable offence against the person or the property of any person.

Any person to whom any property is offered to be sold, pawned, or delivered, and who has reasonable ground to suspect that any offence has been or is about to be committed on or with respect to 20 such property, may, and if he can shall, without warrant apprehend the person offering the same, and take possession of the property so offered.

Any person who finds any person in possession of any property which he upon reasonable grounds suspects to have been obtained 25 by any indictable offence may arrest such last-mentioned person without any warrant and take possession of the property.

**SECTION 309.**

DISPOSAL OF PERSONS ARRESTED UNDER PRECEDING SECTIONS.

Every person who arrests any person under any of the provisions 30 herein-before contained shall (if the person making the arrest is not himself a peace officer) deliver the person so arrested to some constable or other peace officer, in order to his being conveyed as soon as reasonably may be before a justice of the peace, to be by him dealt with as herein-after mentioned, or himself convey him before 35 a justice of the peace as soon as reasonably may be.

**SECTION 310.**

INFORMATION.

Any person who believes upon reasonable and probable cause that an indictable offence has been committed by any person may make 40

a complaint or give information thereof to a justice of the peace having local jurisdiction according to the provisions herein-before contained. A.D. 1878.

**SECTION 311.**

SUMMONS OR WARRANT.

5

The justice may, upon receiving such complaint or information, issue, as he thinks fit, either a summons or a warrant to compel the attendance before him of the defendant: Any summons or warrant may be issued on Sunday.

10 If a warrant is issued in the first instance, the information shall be in writing in the form (A.) given in the first schedule hereto, or to the like effect, and shall be made upon oath either by the prosecutor, or by a witness or witnesses. If a summons is issued in the first instance, the information may be by words spoken and  
15 without oath.

The validity of any proceedings herein-after mentioned shall not be affected either by any defect in the information, or by the fact that a summons or warrant was issued without information.

20 Whenever any person has given to any justice of the peace an information in writing and upon oath as aforesaid, he may, if the justice refuses to issue either a summons or a warrant under the provisions herein contained, require such justice to give to the informant a written certificate of his refusal, which may be in the form (B.) in the first schedule hereto, or to the like effect, and  
25 the informant may apply to the High Court, or to any judge thereof, for an order directing such justice to issue a summons or warrant accordingly.

**SECTION 312.**

CONTENTS OF WARRANT.

30 The warrant shall require the persons to whom it is directed to apprehend the defendant and to bring him before any justice or justices having local jurisdiction to be dealt with according to law. It may be in the form (C.) given in the first schedule hereto, or to the like effect; or if the offence was committed on the high seas  
35 or abroad in the form (D.) in the said schedule, or to the like effect.

Every such warrant shall be under the hand and seal of every justice issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other place within which it is to be executed, without naming  
40 him, or to such constable and all other constables or peace officers in the district or other district within which any justice issuing

A.D. 1878. such warrant has jurisdiction, or generally to all the constables or peace officers within such last-mentioned district. It shall state shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him 5 before the justice or justices issuing the warrant, or before some other justice or justices of the peace for the same district, to answer to the charge contained in the said information, and to be further dealt with according to law. It shall not be necessary to make such warrant returnable at any particular time, but it shall remain 10 in force until it is executed.

### SECTION 313.

#### IRREGULARITIES IN THE WARRANT IMMATERIAL.

No irregularity or defect in substance or in form in the warrant, and no variance between it and the evidence adduced on the part of 15 the prosecution at the preliminary inquiry herein-after mentioned, shall prevent any justice from proceeding with such hearing or affect the validity of any proceedings thereat or subsequent thereto, but if any such variance appears to such justice or court to be such that the defendant has been thereby deceived or misled, such justice may 20 at the request of the defendant adjourn the hearing of the case to some future day, and in the meantime remand the party so charged, or admit him to bail; in manner herein-after mentioned.

### SECTION 314.

#### CONTENTS OF SUMMONS. SERVICE OF SUMMONS.

The summons shall be directed to the defendant, and shall require him to appear before a justice or justices having local jurisdiction at a time and place to be therein mentioned. It may be in the form (F.) given in the first schedule hereto, or to the like effect. 25

Every such summons shall be served by a constable or other 30 peace officer upon the person to whom it is directed, either by delivering it to him personally, or by leaving it with some person for him at his last or most usual place of abode.

The person by whom the summons is served as aforesaid shall attend at the time and place specified therein for the appearance of 35 the person summoned, in order if necessary to prove its service.

### SECTION 315.

#### IF PERSON SUMMONED DOES NOT APPEAR—WARRANT.

If the person charged does not appear at the time and place appointed, any justice having local jurisdiction may issue his warrant 40

to apprehend the defendant, and to cause him to be brought before him. The provisions herein-before contained as to warrants shall apply to every such warrant. It may be in the form (G.) in the first schedule hereto, or to the like effect. A.D. 1878.

5

CHAPTER XLII.

OF PRELIMINARY INQUIRIES BEFORE JUSTICES.

SECTION 316.

JUSTICE TO HOLD PRELIMINARY INQUIRY.

Whenever any charge of an indictable offence has been made  
10 against any person, a preliminary inquiry shall be held according to the provisions herein-after contained, either by one justice or by more justices than one locally competent.

SECTION 317.

PROCEEDINGS ON APPEARANCE OF DEFENDANT.

15 When the defendant appears or is brought before the justice, the justice shall take the evidence of the witnesses called in support of the charge offered on the part of the prosecution.

The evidence of the said witnesses shall be given upon oath and in the presence of the defendant, and he, his counsel or solicitor,  
20 shall be entitled to cross-examine them upon facts relevant to the charge, but not unless the justice thinks it necessary or desirable to matters relevant only as affecting their credit.

As the evidence is given, the substance of it shall be taken down in writing in the form of a narrative in the first person,  
25 provided that the whole or any part of it may be taken down if the justice thinks fit in the form of question and answer. The evidence so taken down is herein-after called a deposition, and shall be in the form (H.) in the first schedule hereto, or to the like effect.

SECTION 318.

30

CALLING ON THE PERSON CHARGED FOR HIS DEFENCE.

As soon as the justice considers that evidence of the guilt of the defendant sufficient to justify his committal has been given, he shall declare that his intention is to commit the defendant for trial unless he shows cause why he should not be committed.



A.D. 1878.

## SECTION 319.

## EVIDENCE TO BE READ TO THE DEFENDANT.

When the justice has expressed such conditional intention to commit the defendant as aforesaid, he shall read over or cause to be read over to the defendant the depositions of the witnesses, the witnesses being 5 present or not as may be most convenient. When the depositions have been read over to the defendant he shall be addressed by the justice in these words or to the like effect:

“Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but 10 whatever you do say will be taken down in writing and may be given in evidence against you at your trial.”

Whatever the defendant then says in answer thereto shall be taken down in writing in the form (I.) in the first schedule hereto, or to the like effect, and shall be signed by the justices and kept 15 with the depositions of the witnesses and dealt with as herein-after mentioned.

The defendant, or his counsel or solicitor, may then show cause why the justices should not commit him for trial.

## SECTION 320.

20

## CALLING WITNESSES FOR THE DEFENCE.

After the proceedings required by the last preceding section are complete, the defendant shall be asked if he wishes to call any witnesses. Every witness whom he may call who testifies to any 25 fact relevant to the case shall be heard, and his deposition shall be taken in the same manner as the depositions of the witnesses for the prosecution, provided that the defendant shall not be entitled to call witnesses before the justice to prove any matter of excuse, the burden of proving which is upon him, nor to justify the publication 30 of what is alleged to be a defamatory libel.

## SECTION 321.

## DISCRETIONARY POWERS OF THE JUSTICE.

The justice may in his discretion,—

(a.) Permit or refuse permission to the prosecutor, his counsel or attorney, to address him in support of the charge either by way of 35 opening or summing up the case, or by way of reply upon any evidence which may be produced by the person charged;

(b.) Receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the defendant;

(c.) Adjourn the hearing of the matter from time to time and place to place, if from the absence of witnesses, the inability of a witness who is ill to attend at the place where the justice usually sits, or any other reasonable cause, it appears desirable to do so, provided  
5 that no such adjournment shall be for more than eight clear days, the day following that on which the adjournment is made being counted as the first day ;

(d.) Order that no person shall have access to or remain in the room or building in which the inquiry is held (which shall not be  
10 an open court) if it appears to him that the ends of justice will be best answered by so doing ;

(e.) Regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of this Act.

15

**SECTION 322.****COMMITTAL OR DISCHARGE.**

When all the witnesses on the part of the prosecution who are offered or whom the court thinks it necessary to hear, and when all the witnesses produced by the defendant who know any fact or cir-  
20 cumstance relevant to the case have been heard respectively, the justice shall either discharge the defendant, if he is of opinion that the evidence given is not sufficient to put him upon his trial, or if he thinks that it is, he shall commit him for trial in the manner herein-after more particularly mentioned ; provided that if a defen-  
25 dant is brought before a justice (whether upon a warrant issued by him or upon a warrant backed by him, or otherwise) charged with an offence committed out of the district in which the inquiry is held, but in England, and if the justice thinks the evidence produced before him insufficient to put the defendant upon his trial, the  
30 justice shall not discharge the defendant, but shall order him to be taken before some justice in the district and near to the place where the offence is alleged to have been committed, by a person to whom he shall give a warrant for that purpose in the form (J.) in the first schedule hereto, or to the like effect. The justice shall deliver to the  
35 said person the information and complaint, depositions and recognizances, taken by him under the provisions of this Act, to be by him delivered to the justice before whom the defendant is to be taken, and such depositions and recognizances shall be deemed to have been taken in the case, and shall be dealt with in the manner  
40 herein-after provided for as to other depositions and recognizances ;

[178.]

A.D. 1878. provided also that the fact that a defendant has been discharged upon a preliminary inquiry shall not prevent any justice from holding another such inquiry if he sees cause to do so.

### SECTION 323.

#### COMMITTALS FOR FALSE EVIDENCE.

5

Any court herein-after mentioned to which it appears that any person has given false evidence in any proceeding before it, may either commit such person for trial at the next sitting of any superior court for the district in which such false evidence was given or in which such court sits, or admit him to bail as herein-after 10 mentioned.

Every such court shall in such cases bind over some person to prosecute such offender, and may bind over any person to give evidence against such offender, in the manner herein-after provided for in other cases of persons committed by a justice for an indictable 15 offence.

Whenever any person is bound over to prosecute under this section, the court by which he is so bound over shall give him a certificate that he was directed to prosecute as aforesaid, and upon the production of such certificate he shall be entitled to his costs as 20 herein-after mentioned.

Every such court may also direct any such offender to be taken into custody and to be taken before a justice, and such justice shall thereupon deal with the case in all respects in the same manner as if such offender had been brought before him otherwise. 25

The word "court" in this section includes all the superior courts, civil and criminal, and every division and judge thereof, all courts of quarter session, commissioners of bankruptcy, judges and deputy judges of county courts and courts of record, justices of the peace in special or petty sessions, sheriffs and their lawful deputies, before 30 whom any writ of inquiry or writ of trial from any superior courts are executed.

## CHAPTER XLIII.

### PREPARATION OF EVIDENCE FOR THE TRIAL.

#### SECTION 324.

35

#### PROCURING ATTENDANCE OF WITNESSES.

If it is proved by the oath of one witness before any justice by whom a preliminary examination is held or is to be held, that any

person is likely to give material evidence either for the prosecution or for the defendant, and will not voluntarily appear for the purpose of being examined, the justice shall issue his summons to such person, under his hand and seal, requiring such person to  
 5 appear before him at a time and place mentioned therein to give his evidence respecting the charge; such summons may be in the form (K.) in the first schedule hereto or to the like effect.

A.D. 1878.

**SECTION 325.**

## SUMMONS HOW SERVED.

10 Every such summons shall be served upon the person to whom it is addressed either personally or by leaving the same for him with some person at his last or most usual place of abode.

**SECTION 326.**

## WARRANT IF WITNESS FAIL TO APPEAR, WARRANT IN FIRST INSTANCE.

15 If any person so summoned neglects or refuses to appear at the time and place appointed by the said summons, and no just excuse is offered for such neglect or refusal, then (after proof upon oath of such summons having been served as aforesaid) the justice before whom such person ought to have appeared, may issue a warrant  
 20 under his hand and seal to bring such person at a time and place to be therein mentioned before him or any other justice in order to testify as aforesaid. The warrant may be in the form (L.) in the first schedule hereto, or to the like effect. If the justice is satisfied by evidence upon oath that it is probable that any person will not  
 25 attend to give evidence without being compelled so to do, then, instead of issuing a summons, he may issue a warrant in the first instance. Such warrant may be in the form (M.) in the first schedule, or to the like effect. All provisions herein-before contained as to  
 30 the execution and backing of warrants for the arrest of defendants shall apply to every such warrant.

**SECTION 327.**

## WITNESS REFUSING TO BE EXAMINED.

If any person being before any such justice refuses to be examined according to law, or to answer such questions concerning the charge  
 35 as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having jurisdiction, may by warrant under his hand and seal (which may be in the form (N.) in the first schedule hereto, or to the like effect), commit

[178.]

A.D. 1878. the person so refusing to the prison for the county or place where such person is for any time not exceeding *seven days*, unless he shall in the meantime consent to be examined and to answer.

### SECTION 328.

#### DEPOSITIONS TO BE READ TO WITNESSES.

5

The deposition of every witness called either for the prosecution or by the defendant shall be read over to and signed by the witness and by the justice, or one of the justices before whom the evidence was taken, the defendant, the witness, and the justice by whom the deposition is signed being all present together at the time of such reading and signing. 10

### SECTION 329.

#### WHEN DEPOSITIONS MAY BE GIVEN IN EVIDENCE.

Every document produced to the court before which the trial is had by or from the custody of the proper officer as a deposition shall be presumed to be one, and if it purports to have been taken upon oath, and to have been taken by or before the justice by whom it purports to have been signed, and to have been signed by the justice or one of the justices before whom it purports to have been taken, it shall be presumed to have been so taken, read, and signed, and to have been duly read over to the witness in the presence of the person charged until the contrary is proved, although it may not have been signed by the witness. 15 20

If it is proved at the trial to the satisfaction of the court that any witness whose deposition purports to have been taken on oath and to have been signed by the justice or one of the justices by or before whom it purports to have been taken is dead, or is so ill or in such a state of mind as not to be able to testify (although there may be a prospect of his recovery), or that he is kept out of the way by the defendant, or that he is absent from the United Kingdom; and if it is proved that the deposition was taken in the presence of the defendant, and that he, his counsel, or solicitor, had a full opportunity of cross-examining the witness, the deposition may be read in evidence, unless it is proved that it was not taken on oath, or that it was not taken or signed by or before the justice by or before whom it purports to have been taken or signed, or that it was not read over to the witness in the presence of the justice by whom it purports to be signed and of the person accused. 25 30 35

A deposition shall not be inadmissible in evidence only because it is not signed by the witness by whom it was made. A.D. 1878.

The defendant's statement and examination may be given in evidence at the trial either by the prosecution or by the defendant if it is proved to have been taken in accordance with the provisions of this Act, or if it purports to have been so taken and is not proved not to have been so taken.

### SECTION 330.

#### COPY OF DEPOSITIONS.

- 10 Every person who has been charged with any offence shall upon the completion of the preliminary inquiry be entitled to have from the officer who has custody thereof, on payment of a reasonable sum not exceeding three half-pence for each folio of 90 words, copies—
- 15 (a.) Of the depositions.  
 (b.) Of the defendant's statement and examination.  
 (c.) Of any documents which may have been put in in evidence at the preliminary inquiry.

### SECTION 331.

- 20 PROSECUTOR AND WITNESSES TO BE BOUND OVER TO PROSECUTE AND GIVE EVIDENCE.

When any person is committed for trial, the justice who holds the preliminary inquiry shall bind over the person by whom the complaint was made or information given, or any other person who is willing so to be bound over to prosecute. The justice shall also bind over every witness examined before him, either for the prosecution or for the defence, to give evidence at the court before which the defendant is to be indicted; provided that the evidence given by such witnesses is material to the case, and tends to prove the guilt or innocence of the defendant, and is not evidence to character only.

Every such recognizance shall contain the matters stated in form (O.) in the first schedule hereto, or to the like effect, and shall be acknowledged by the person entering into the same, and shall be subscribed by the justice or one at least of the justices before whom it is acknowledged, and a notice thereof signed by such justice shall at the same time be given to the person bound thereby, which may be in the form (P.) in the first schedule hereto, or to the like effect.

40 Every such recognizance shall bind the person entering into it to prosecute or give evidence (both or either), as the case may be,

A.D. 1878. not only before the court before which the defendant is directed to be indicted by the justice, but before any court before which the trial may be directed to be had by competent authority, and not only at the trial so had, but also at any subsequent trial had under any of the provisions herein-after contained, provided that notice is given 5 to such prosecutors or witnesses of any such other or further trial.

In the case of offences against Chapter XXV., and offences consisting in the infliction upon persons under sixteen years of age of bodily injuries, for which the offender might be sentenced to two years imprisonment and hard labour, penal servitude, or death, the 10 clerk to the guardians of the union in which the offence is committed, or if there are no guardians, one of the overseers of the poor of that place may be bound over to prosecute upon the following conditions: -

Two justices of the peace or one stipendiary magistrate before 15 whom the preliminary inquiry took place, must certify under their hands that it is necessary for the purposes of public justice that the prosecution should be conducted by the guardians or overseers, as the case may be.

Such certificate, or a duplicate thereof, must be personally served 20 on the clerk to the board of guardians or on one of the overseers.

The person bound over to prosecute shall conduct the prosecution and pay the costs thereof out of the common fund of the union or the fund in the hands of the guardians or overseers, as the case may be. Such costs may be repaid to them in the manner herein- 25 after provided for.

### SECTION 332.

#### TRANSMISSION OF DOCUMENTS.

The following documents shall be transmitted to the officer of the court before which any person committed for trial is to be tried, that 30 is to say, the information if any, the depositions or examination of witnesses, the defendant's statement and examination, all recognizances entered into by the defendant, his sureties, the witnesses, or the prosecutor, the indictment (if found), and all other documents relating to the offence, and in cases in which the place of trial has 35 been changed after an indictment or inquisition has been found such indictment or inquisition. The said documents shall be transmitted by the justice before whom the preliminary examination is held, or if the place of trial is changed by lawful authority after such transmission is made then by the person who at the time when 40 the order is made is in possession of them. When any order changing

the place of trial is made the person applying for it shall serve it, or an office copy of it, upon the person then in possession of the said documents, who shall thereupon transmit them accordingly. A.D. 1878.

## SECTION 333.

5 WITNESS REFUSING TO BE BOUND OVER MAY BE IMPRISONED.

Any witness who refuses to enter into or acknowledge any such recognizance as aforesaid may be committed by the justice by a warrant in the form (Q.) given in the first schedule hereto, or to the like effect to the prison for the place where the trial is to be had, there  
10 to be kept until after the trial of the person accused, or until the witness enters into such a recognizance as aforesaid before a justice of the peace having jurisdiction in the place where the prison is situated, provided that if the accused person is discharged any justice having local jurisdiction may order any such witness to be discharged  
15 by an order which may be in the form (R.) given in the said schedule, or to the like effect.

## SECTION 334.

TAKING DEPOSITION OF WITNESS WHO IS ILL, &c.

If it is proved upon oath before any justice of the peace in or  
20 for any district in the United Kingdom, that any person in any district in or for which such justice may act is in the opinion of some registered medical practitioner dangerously ill, not likely to recover, and unable to travel, and that such person is able and willing to give material information as to any indictable offence with which any  
25 defendant has been charged before any justice in England (whether the preliminary inquiry has or has not been held or is in progress, but not after the defendant has been discharged), the first-mentioned justice may take the deposition of such person in the manner hereinbefore prescribed, and shall, after taking it, sign it, adding to it by  
30 way of heading a statement of his reason for taking it and of the day and place on and at which it was taken, and of the names of the persons, if any, present at the taking thereof.

If such deposition relates to an indictable offence the preliminary inquiry into which has ended, the justice taking it shall send it to  
35 the officer of the court before which the trial is to be had. If it relates to an offence with which some person has been charged, and as to which a preliminary inquiry is in progress, the justice who takes the deposition shall send it to the justice before whom such inquiry is being carried on, by whom it shall be forwarded to the  
40 officer of the court before which the trial is to take place.



A.D. 1878.

Every deposition so taken shall be a deposition taken in the case to which it relates, and shall be admissible in evidence on the same conditions as other depositions, provided that if any such deposition relates to an offence committed by any defendant who has been committed for trial, it shall be admissible against him, although it 5 may have been taken in his absence, and may not have been read over to the witness in his presence, and although neither he nor his counsel nor his solicitor had an opportunity of cross-examining the witness, if it is proved that the defendant, having such notice as is herein-after provided for, that such deposition was about to be 10 taken, refused or neglected to be present, or to cause his counsel or solicitor to be present when it was taken.

Whenever it is intended to take any such deposition as aforesaid, reasonable notice that it is intended to take it must, if the defendant is in prison, be served upon him, and if he is on bail, must be either 15 served upon him, or left at his last or most usual place of abode. The notice may be in the form (EE.) in the first schedule hereto, or to the like effect. If the defendant is not in prison, the prosecutor must, if required, pay the defendant reasonable travelling expenses to the place where the evidence is to be taken, and every such pay- 20 ment shall be part of the costs of the prosecution. If the defendant is in prison, the judge or justice by whom the prisoner was committed, or any visiting justice of the prison in which he is confined, may by an order in writing direct the gaoler having the custody 25 of the defendant to convey the defendant, or cause him to be conveyed, to the place where the deposition is to be taken, for the purpose of being present when the same is taken, and to take him back to prison when it has been taken, but no such defendant shall be taken to any such place for such a purpose without his consent. The expenses of such conveyance shall be paid out of the funds 30 applicable to the expenses of the prison from which the defendant is taken.

### SECTION 335.

#### POWER TO TAKE EVIDENCE BY COMMISSION.

Any judge of the High Court may, in any criminal case in which 35 it appears necessary for the purposes of justice to do so, make any order for the examination upon oath before any officer of the court, or any other person or persons, and at any place either within the United Kingdom or any other part of Her Majesty's dominions or without, of any witness or person, and may order any deposition so 40 taken to be filed in the court, and may empower either the prosecutor or the prisoner to give such deposition in evidence on such

terms as such judge may direct. An appeal shall lie from any order made by any judge under this section to the High Court, but the decision of any division of the said court shall be final. A.D. 1878.

## SECTION 336.

5

## SEARCH WARRANTS.

Any justice may issue a warrant under his hand and seal authorising the person to whom it is addressed to search any building, place, or thing whatever for anything on or in respect of which any indictable offence has been or is suspected to have been committed, or which there is reasonable ground to suspect is intended to be used for the purpose of committing any indictable offence, and to seize any such thing and carry it before the justice issuing the warrant, or some other justice of the district, to be by him dealt with according to law; provided that before issuing any such warrant the justice issuing it must be satisfied by the oath of some informant that there is reasonable ground to suspect that the thing to be searched for exists, and that it is in the building, place, or thing which the warrant authorises to be searched.

Any such warrant may, in the discretion of the justice who issues it, authorise the person to whom it is addressed to execute it either between the hours of six in the morning and nine at night only, or at any hour.

If under any such warrant there is brought before any justice any forged document or anything of which the use or possession is unlawful, in the absence of some lawful excuse to be proved by the person in possession thereof, such justice may cause such thing to be defaced or destroyed, although no person may be committed for trial in respect thereof.

If under any such warrant any counterfeit coin or other thing is brought before any justice, the possession of which with knowledge of its nature, or without lawful excuse, to be proved by the person in possession thereof, is an offence under the provisions of Chapter XXXV. of this Act, every such thing shall be delivered up to the officers of Her Majesty's Mint or to the solicitors of Her Majesty's Treasury, or to any person authorised by them respectively to receive the same, as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be so produced.

If the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have every power and protection which are given by any Act of Parliament in force for the time being to any person

A.D. 1878. lawfully authorised to search for any such thing, and for any purpose, both as to the manner in which such things are to be disposed of and otherwise.

CHAPTER XLIV.  
OF THE CUSTODY OF DEFENDANTS.

5

SECTION 337.

DEFENDANT TO BE COMMITTED, BAILED, OR DISCHARGED.

Every defendant who appears or is brought before a justice on a charge of having committed an indictable offence shall, unless and until he is discharged, be either committed to prison or bailed, or set at liberty on his own recognizances, according to the provisions herein-after contained. 10

SECTION 338.

WHEN TAKING BAIL IS AND IS NOT DISCRETIONARY.

Every defendant who can find sureties sufficient in the opinion of the justice to secure his appearance when it is required shall be entitled to be bailed at every stage in the proceedings against him until he appears before the court by which he is to be tried, if he is charged with an offence for which he may be sentenced to simple imprisonment, and for which he cannot be sentenced to death or to penal servitude. 15

Every such defendant may, if he is charged with any other offence, except high treason, be bailed at any stage of the proceedings, if in his discretion the justice thinks proper to bail him.

No defendant charged with high treason shall be admitted to bail at any stage of the proceedings, except by order of one of Her Majesty's Secretaries of State or one of the judges of the High Court. Any defendant charged with any offence other than high treason may be admitted to bail by order of a judge of the High Court. 25

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SECTION 339.

AT WHAT STAGES OF THE PROCEEDINGS BAIL MAY BE TAKEN.

Any court before which any defendant charged with an indictable offence is tried, and any justice before whom he appears may admit such person to bail, or to be at large on his own recognizance at each of the times and on the conditions following, that is to say— 35

(a.) Whenever the preliminary inquiry or trial is for any reason adjourned or interrupted, or if any thing happens which makes or may make it necessary that a new trial should take place, the defen-

defendant may be admitted to bail or be set at liberty on his own recognizance on condition to appear at the time to which the inquiry or trial is adjourned, or till the new trial takes place. If he fails to appear before a justice any justice before whom he ought to have appeared may endorse on his recognizance a certificate of non-appearance. The certificate of non-appearance may be in the form (T.) in the first schedule hereto, or of the like effect, and shall be *prima facie* evidence of his not having appeared.

(b.) When the preliminary inquiry is finished, the defendant may be admitted to bail or set at liberty on his own recognizance on condition to appear at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave.

Every such recognizance shall bind the person who enters into it, that the defendant shall do what is required of him not only at the place mentioned in the recognizance, but at any other place at which he may be ordered to be tried.

(c.) When the defendant has been convicted, and the court thinks proper not to pass judgment till a future time, or to suspend the execution of its judgment until any matter is decided by the Court of Appeal, the defendant may be admitted to bail or set at liberty on his own recognizance.

In such cases the condition of the recognizance of the defendant and his sureties shall be that the defendant, if permitted to appeal, shall prosecute the appeal with effect, and that in any event he shall personally appear in court on the day on which judgment is given in the said Court of Appeal, and also, if ordered by the court or a judge thereof, on the day and at the time appointed for any proceeding in the said appeal, and so from day to day, and not to depart that court without leave, and to render the defendant to prison or otherwise obey any order of the court upon the said appeal:

Provided that the defendant shall not be required to attend on any other day than the day when judgment is given, unless four days' notice of the order for his attendance is given either to the defendant or to his solicitor or to the bail personally, or by leaving the same at his or their last known place of abode; Provided also that every such defendant shall be entitled to be bailed if the offence of which he is convicted is one for which he was so entitled to be bailed at every stage of the proceeding against him before trial.

If the defendant is upon his conviction admitted to bail or set at liberty on his own recognizance, the recognizances shall be taken by the court which tried him, and shall be by it transmitted to the

AD. 1878. Court of Appeal in criminal cases. If the defendant is not then admitted to bail, or set at liberty as aforesaid, the recognizances may be taken before a judge of the High Court, or a commissioner appointed to take special bail in actions before the High Court, and every such recognizance shall be filed in the Crown Office according to the practice thereof. When such recognizances are duly filed, the Master of the Crown Office shall make out and deliver to the defendant or his solicitor a certificate thereof in writing under his hand.

The recognizances to be taken may be in the forms (S.) (V.) given in the first schedule hereto, or to the like effect, and whenever any such recognizance is taken notice shall be given to the defendant and to his bail of what they are bound to do in a form similar to the examples given in the forms (U.) (W.) in the first schedule hereto, or to the like effect.

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### SECTION 340.

#### IN WHAT CASES AND HOW THE DEFENDANT MAY BE COMMITTED TO PRISON.

Any defendant who is not admitted to bail under the provisions of the last preceding section shall be committed to prison for safe custody for the time for which he might have been bailed, and by the court or justice by which or by whom he might have been bailed, subject, in the case of persons so committed by a justice, to the following provisions:

If the justice adjourns the preliminary inquiry under the provisions herein-before contained he may by his warrant (which may be in the form (X.) in the first schedule hereto, or to the like effect) remand the defendant to the prison for the district in which he acts, provided that if any such adjournment is for any period not exceeding three clear days, the justice may, if he thinks fit, give a verbal order to the constable or other person who has the defendant in custody, or to any other constable or person, to continue to keep the defendant in his custody till his next sitting, and to bring him before him at the time appointed for continuing the inquiry.

The justice may, whilst the defendant is under remand and before the expiration of the period for which he has been remanded, order the defendant to be brought before him, and the gaoler or officer in whose custody he then is shall obey the order.

If an order has been made for changing the place of trial, the court before which the defendant is tried may in such cases commit him to the prison in which persons committed for trial before it are confined.

**SECTION 341.**

## COMMITTAL OF THE DEFENDANT.

When the justice has determined to commit for trial any defendant who is not admitted to bail, he shall, by a warrant, which may  
5 be in the form (Y.) in the first schedule hereto, or to the like effect, commit him to the prison for the district in or for which he is acting, to be there safely kept until he shall be delivered thence by due course of law.

**SECTION 342.**

## CONVEYING PERSON COMMITTED TO PRISON.

10 The constable or other person to whom the warrant of commitment is directed shall convey the defendant to the prison mentioned in such warrant, and shall there deliver him together with such warrant to the keeper or governor of such prison, who shall thereupon give such  
15 constable or other person a receipt for such prisoner, which may be in the form (Z.) in the first schedule hereto, or to the like effect, and which shall set forth the condition in which such prisoner was when he was delivered into the custody of such keeper or governor.

**SECTION 343.**

## 20 BAIL OF PERSONS UNABLE TO PROCURE BAIL ON COMMITTAL.

If any defendant entitled to be admitted to bail, or any defendant whom the justice has power to bail, and who in his opinion ought to be bailed, is committed to prison only because he does not at the  
25 time of his committal procure sufficient sureties, the justice shall certify on the back of the warrant of commitment (in the form (AA.) in the first schedule hereto, or to the like effect) his consent to the defendant being bailed, and shall state the amount of bail which ought to be required, and any justice of the peace who is at the  
30 prison in which such defendant is confined shall admit such defendant to bail accordingly, in the manner herein-before provided.

If it is inconvenient for the surety or sureties to attend at the prison to join with the defendant in the recognizance of bail, the justice may make a duplicate of the certificate aforesaid, which may  
35 be in the form (BB.) in the first schedule hereto, or to the like effect, and upon the production of the same to any justice locally competent, such justice may take the recognizance of the surety or sureties in conformity with such certificate. When such recognizance is transmitted to the keeper of such prison, and produced, together with the certificate on the warrant of commitment as aforesaid to any justice of the peace at such prison, such justice shall take  
40

A.D. 1878. — the recognizance of the defendant, and shall order him to be discharged out of custody as to that commitment, as herein-after mentioned.

### SECTION 344.

#### RECOGNIZANCES TO BE TRANSMITTED TO COURT.

5

Whenever under the provisions herein-before contained any defendant is admitted to bail after being committed to prison, the justice who admits him to bail shall forthwith transmit the recognizance or recognizances of bail to the justice, or one of the justices by whom he was committed, to be by him transmitted to the proper officer of the court before which the trial is to be had. 10

### SECTION 345.

#### WARRANT OF DELIVERANCE WHEN DEFENDANT BAILED AFTER COMMITTAL.

Whenever a justice of the peace admits to bail any defendant who is then in prison, such justice shall send to or cause to be lodged with the keeper of such prison a warrant of deliverance, which may be in the form (CC.) in the first schedule hereto, or to the like effect, under his hand and seal, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper he shall forthwith obey the same. 15 20

### SECTION 346.

#### CUSTODY OF DEFENDANT IN CASE OF CHANGE OF PLACE OF TRIAL.

If an order is made for changing the place at which any defendant is to be tried 25

(a.) He shall (if in custody) remain in the custody in which he is till the beginning of the sittings at which he is to be tried. He shall then be taken to the prison in which other prisoners who are to be tried before that court are confined till their trial, and shall be confined there in the same way, and shall be subject to the same liabilities in all respects, and shall be brought before and removed from the court in the same manner as such prisoners. If he is convicted, the court before which he is tried shall have power to direct that the sentence of the court shall be executed upon him either at the place at which it would have been carried out if no order for changing the place of trial had been made; or at the place at which sentences passed upon other persons convicted by the court by which he was tried are executed, and such order shall be carried out. 30 35

Every defendant whose place of trial has been changed shall be in lawful custody as long as he is under the charge of the keeper of the 40

prison to which he was originally committed, or of any person duly authorised by him, or under the charge of the keeper of the prison to which he is removed, or of any person duly authorised by him wherever he may be, whilst every part of the provisions herein-  
 5 before contained is being carried out, and whilst he is being moved from place to place for that purpose, or whilst he is under confinement in any prison, or in any county or place through which he is being removed for the purpose of any reasonable delay in his journey.

10

**SECTION 347.****ESTREATING RECOGNIZANCES.**

The officer of every court before which indictable offences are tried, shall make a list in writing specifying the name of every person making default in performing the conditions of any recognizance by  
 15 which he may be bound to do anything relating to any trial before such court.

The list shall specify the name of every person so making default, the nature of the offence in respect of which every such defaulter or his surety was bound; the residence, trade, profession, or calling of  
 20 every such defaulter and his sureties: and it shall state the causes (if known) why every such person has not appeared, and whether by reason of his non-appearance the ends of justice have been defeated or delayed.

Every such list shall be laid before a judge, or in the case of a  
 25 court of quarter session for a county, before the chairman or two justices who have attended before the court. The person before whom the list is laid shall examine it, and make such order as to estreating or putting in process any such recognizance as he thinks just, and no officer of any such court shall estreat or put in process  
 30 any such recognizance without the written order of such person.

**CHAPTER XLV.****ACCUSATION.—NOTICE OF INDICTMENT.—PROCESS ON INDICTMENT.****SECTION 348.**

35

**NO ONE TO BE TRIED TILL HE IS ACCUSED.**

No person shall be put upon his trial for any indictable offence, although he may have been committed for trial as herein-before mentioned, unless and until he has been accused thereof, —



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(a.) By an indictment duly found against him by a competent grand jury, or

(b.) By an information filed by the Attorney-General or by the Master of the Crown Office on the order of the High Court, or

(c.) By an inquisition taken before a coroner. 5

Every such indictment, information and inquisition shall be in the form herein-after provided for, and shall be subject to the provisions as to amendment and otherwise herein-after contained.

No grand jury shall henceforth present that any person has committed an indictable offence of their own knowledge only and without 10 any evidence given on an indictment sent before them.

Any member of any grand jury, who either is or on that occasion acts as foreman thereof, may administer an oath to every person appearing before such grand jury to give evidence in support of any indictment, and no witness need be previously sworn in open court. 15 Giving evidence before a grand jury is giving evidence in a judicial proceeding within the meaning of the provisions herein-before contained as to the offence of giving false evidence. If any person is indicted for giving false evidence before any grand jury, any member of the grand jury shall be competent and may be compelled to give 20 evidence as to what was said by such person.

### SECTION 349.

#### WHO MAY SEND A BILL BEFORE A GRAND JURY.

Any one may present to a grand jury locally competent under the provisions herein-before contained, an indictment against any per- 25 son for any indictable offence, subject to the following provisions :

No indictment shall be preferred for any offence before any grand jury against any person who has not been committed for trial in the manner herein-before provided for, unless the prosecutor of the indictment does the following things, at least one month before he 30 presents the indictment.

(a.) He must serve or cause to be served upon the defendant personally (except in the cases herein-after excepted) the following documents, that is to say:—

(i.) A notice that he intends to prefer such indictment, which 35 notice must be in the form (DD.) given in the first schedule hereto, or to the like effect ;

(ii.) A copy of the indictment which he intends to prefer ; and

(iii.) Affidavits made by the witnesses whom he intends to call in support of the said indictment, setting forth the substance of 40 the evidence which they are prepared to give in support thereof.

It shall not be lawful for any person to prefer any bill of indictment against any person who is not in England or cannot be found without leave for that purpose obtained upon a motion made in open court from the High Court or a division thereof. Such  
5 leave shall not be granted unless the Court is of opinion that such a course is conducive to the ends of justice, nor unless it is shown that the person whom it is intended to indict cannot be proceeded against for the offence which he is alleged to have committed in the place where he then is. If such leave is given the court shall  
10 impose upon the person to whom it is given such terms as in its opinion are sufficient to secure the service of the said documents on the person intended to be indicted, and shall name the grand jury before which the bill of indictment is to be preferred, and the time within which it is to be preferred, and the grand jury so named shall  
15 be competent to inquire into the facts.

(b.) The prosecutor must prove before a justice acting in or for the district in which the court sits before which the indictment is to be tried, that he has given or caused to be given, or otherwise  
20 duly served such notices as aforesaid, or complied with the terms so imposed upon him by the court as aforesaid, and he must also deliver to such justice copies of such documents, and unless he is or is acting on behalf of the Attorney-General, or is or is acting on behalf of some other public officer, must require the justice to bind him over in his own recognizance to prosecute such indictment, which  
25 the justice shall thereupon do. The justice shall forward such documents and recognizance to the proper officer of the court before which the indictment is to be tried.

(c.) The person against whom the indictment is to be preferred may apply to any judge of a superior court to require any such  
30 prosecutor acting in a private capacity to give security that he will pay any costs which he may be ordered to pay by the court before which the trial is had; and if such prosecutor is required to give such security he shall not be permitted to present any such indictment as aforesaid until he has done so.

35 (d.) No witness shall be sent before any grand jury in support of any such indictment as aforesaid unless the conditions herein-before prescribed as to the affidavits herein-before mentioned have been complied with with respect to him.

#### SECTION 350.

40 ON ACQUITTAL OR THROWING OUT OF BILL, DEFENDANT TO HAVE COSTS.

If any indictment presented under the provisions lastly herein-before contained is thrown out by the grand jury to which it is

A.D. 1878. presented, or is quashed by the court under the provisions hereinafter contained, or if any person against whom such an indictment is presented is acquitted on his trial, the prosecutor shall, unless it is otherwise ordered by the court before which the trial takes place, or would have taken place, if a bill had been found, pay the defendant's costs, to be taxed by the proper officer of the said court and the defendant shall have the same remedies for the recovery thereof as if he had been successful in a civil action. 5

### SECTION 351.

#### WHAT ORDERS DEFENDANTS MAY OBTAIN BEFORE TRIAL. 10

Any defendant who has been committed for trial for any offence except high treason, or being an accessory after the fact to high treason, may apply to any judge of the High Court for an order upon any person bound over to prosecute him for a copy of the indictment which it is intended to present against him. 15

Any defendant who has a copy of any indictment which it is intended to present against him may apply to any judge of the High Court to have it amended.

The indictment presented to the grand jury must correspond with the copy so delivered and amended. 20

Any defendant to whom any prosecutor has given copies of the affidavits of persons intended to be called as witnesses in support of any indictment intended to be presented against him may apply to any judge of the High Court for an order for further and better particulars of the evidence intended to be given by them, or for an order that their depositions may be taken before a justice of the peace. 25

The judge to whom any such application is made may, in his discretion, make or refuse to make any such order as to any such witness, and if any such order is made, the judge who makes it shall have power to direct before whom such deposition shall be taken, and the deposition shall be taken, and when taken shall be dealt with in all respects in the manner herein-before provided for with respect to depositions taken at preliminary inquiries. 30

### SECTION 352.

#### IF NO COPY OF INDICTMENT BEFORE BILL FOUND. 35

If no copy of the indictment has been given to the defendant under any of the provisions herein-before contained, the defendant shall be entitled to have a copy of the indictment from the officer of the court, as soon as the indictment is drawn, reasonable notice being given to the officer that such copy will be required. 40

## SECTION 353.

A.D. 1878.

## SPECIAL PROVISIONS IN THE CASE OF TREASON.

When any defendant is indicted for high treason, or for being accessory after the fact to high treason, the following documents shall be delivered to him after the indictment has been found, and at least ten days before his arraignment; that is to say,

- (i.) A copy of the indictment.
- (ii.) A list of the witnesses to be produced on the trial to prove the indictment.
- 10 (iii.) A copy of the panel of the jurors who are to try him returned by the sheriff.

The lists of the witnesses and the copy of the panel of the jurors must mention the names, profession, and places of abode of the said witnesses and jurors.

- 15 The said documents must all be given to the defendant at the same time and in the presence of two witnesses.

Provided that this section shall not apply to cases of high treason, or being accessory after the fact to high treason, if the overt act of high treason which the defendant is charged with, or to which he is charged with being accessory, are those which are defined in section 34, subsections (a) and (b) of this Act, but the other provisions herein-before contained shall apply thereto.

## SECTION 354.

## CRIMINAL INFORMATION.

- 25 Any person may be charged upon a criminal information filed by the Attorney-General or the Master of the Crown Office with any offence other than an offence for which he might on conviction be sentenced to death or penal servitude, and for no other. No person shall be put upon his trial on any such information unless at a reasonable time before such trial he was served with a copy of the information and with affidavits of the witnesses by whom it is intended to prove the case against him showing the substance of the evidence which they are prepared to give.

Every one against whom an information is exhibited in the High Court by the Attorney-General must within four days of its service upon him plead to it, by delivering a written plea to the proper officer of the court. If no such plea is pleaded judgment may be entered against the defendant for want of a plea, unless the court or a judge thereof allows further time to plead.

- 40 If any prosecution upon a criminal information is not brought to trial within *twelve calendar months* from the pleading of the plea,

A.D. 1878. the court may, upon an application on behalf of the defendant, and if it sees fit, authorise the defendant to bring on the trial of such prosecution unless the proceedings are stayed by the Attorney-General. *Twenty days'* notice of his intention to make such application must be given by or on behalf of the defendant to the Attorney-General or Solicitor General.

### SECTION 355.

#### CORONERS' INQUESTS.

No person shall be tried upon any coroners' inquisition, except for murder or manslaughter, or being accessory after the fact to 10 murder or manslaughter, or for concealing treasure. Any person committed for trial by any coroner for any such offence shall be entitled upon requesting the same to a copy of the inquisition and of the depositions of the witnesses upon whose evidence it was taken upon payment of a fee for the same not exceeding three halfpence for 15 every folio of 90 words.

### SECTION 356.

#### BENCH WARRANT AND CERTIFICATE.

When any person against whom an indictment has been found, and who is then at large, does not appear to plead to such indict- 20 ment, whether he is under recognizances to appear or not, the following consequences shall follow:

(a.) The court or any two justices forming part of the court before which the defendant ought to have been tried may issue a warrant for his apprehension which shall be subject to all the pro- 25 visions respecting other warrants herein-before contained, except that it may be executed in every part of England without being backed.

(b.) The officer of the court at which the said indictment is found, or if the place of trial has been changed the officer of the court before which it ought to have been tried, if such order had not been made, 30 shall at any time after the end of the sessions at which the indictment is found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of *one shilling*, if the defendant has not pleaded to such indictment, grant to the prosecutor a certificate of such indictment having been found. The certificate 35 may be in the form (FF.) in the first schedule hereto, or to the like effect. Upon production of such certificate to any justice for the district in which the indictment was found, or in which the defendant is or resides or is suspected to reside or be, such justice shall issue his warrant to apprehend the defendant, and to cause him to 40 be brought before him, or before any other justice for the same

district, to be dealt with according to law. The warrant may be in the form (GG.) in the first schedule hereto, or to the like effect. If the defendant is thereupon apprehended and brought before any such justice, and if it is proved upon oath before him that the person so apprehended is the defendant charged and named in such indictment, the justice shall, without further inquiry or examination, commit him for trial by a warrant which may be in the form (HFi.) in the first schedule hereto, or to the like effect, or admit him to bail. If any such defendant is confined in any prison for any other offence than that charged in the said indictment at the time of such application and production of the said certificate as aforesaid, and if it is proved before the justice upon oath that the person so indicted and the person so confined in prison are one and the same person, he shall issue his warrant directed to the keeper of the prison in which the defendant is then confined as aforesaid, commanding him to detain such person in his custody until by Her Majesty's writ of habeas corpus he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law. Such warrant may be in the form (II.) in the first schedule hereto, or to the like effect.

## SECTION 357.

## ABSCONDING FROM JUSTICE ACT OF BANKRUPTCY.

*Upon the passing of this Act* all proceedings to outlawry in criminal cases shall be abolished.

Every person against whom any indictment is found for any indictable offence, and who cannot be apprehended upon any process issued for his apprehension, and who withdraws himself from justice, either by concealing himself in Her Majesty's dominions, or by leaving them, or who escapes after his conviction, or who having been admitted to bail during his trial, or upon his conviction does not surrender to his recognizances and cannot be apprehended, shall commit an act of bankruptcy thereby, but he shall not be adjudicated a bankrupt in respect only of any such act of bankruptcy except as herein-after mentioned.

The Attorney-General, or any person authorised by him, may, upon obtaining leave from the High Court, upon a motion to be made by either the Attorney-General or the Solicitor-General personally present a petition to any court having jurisdiction in bankruptcy under the law in force for the time being, that the person so withdrawing himself from justice be adjudged a bankrupt; provided that at least *one month* before any such motion is made notice in writing that it is intended to be made shall be left at the

A.D. 1878. last or most usual place of abode of the defendant, and the said notice shall also be published as an advertisement three times in the "London Gazette," and also three times in at least one daily newspaper published in London, and in one other newspaper circulating in the place where the defendant resides, and every such publication shall be made at least one month before the motion herein-before mentioned. 5

If such adjudication is made, Her Majesty shall be entitled to any surplus remaining after payment of the creditors of the bankrupt, and of the costs, charges, and expenses of the bankruptcy, 10 provided that if the bankrupt shall, within such time after the adjudication of bankruptcy as shall be fixed by the court making it (which time shall not be less than one year), surrender himself to the court before which he ought to have appeared to take his trial, he shall be entitled to have any such surplus as aforesaid returned 15 to him.

## CHAPTER XLVI.

### TRIAL OF INDICTABLE OFFENCES.

#### SECTION 358.

##### ARRAIGNMENT.

When a prisoner has been accused of an indictable offence in the manner herein-before mentioned, and when the time for his trial has come, he shall be called to the bar of the court before which he is to be tried, and the nature of the charge against him shall be stated to him by the proper officer, and he shall, if he requires it, and if he has not had a copy of the indictment, be permitted to read or to have read to him the indictment against him. 20 25

Provided that if the case is ordered to be tried as a civil action, or in other cases in which the court so orders, the defendant need not appear or plead in person, but may deliver a plea in writing to the officer of the court at such time after his accusation and before his trial as the High Court directs, either specially or by any general rule made under the powers herein-before contained. 30

If any person against whom any indictment is found is at the time of his trial in the prison belonging to the jurisdiction of the court by which he is to be tried under a warrant of commitment, or under sentence for some other offence, the court may by order in writing direct the governor of the prison to bring up the body of such person in order that he may be so arraigned without writ of habeas corpus, and the governor shall obey such order. 35 40

## SECTION 359.

A.D. 1878.

## WHAT DEFENDANT MAY REQUIRE BEFORE PLEADING.

Any defendant who has not been committed for trial by a justice, and who is not accused by a criminal information or a coroner's  
5 inquisition, may before he pleads require the prosecutor to prove that he has been duly served with the documents herein-before mentioned, and that the prosecutor (if he was bound to be so) was duly bound over to prosecute, and (if he was required to do so) that he gave such security for costs as he was required to give, and if the pro-  
10 secutor fails to give such proof the indictment shall be quashed.

## SECTION 360.

## TIME TO PLEAD.

When any defendant is called upon to plead he may apply to the court for further time to plead, and the court if it sees fit may  
15 allow such time upon such terms as it thinks proper.

## SECTION 361.

## PLEAS IN ABATEMENT AND OTHER SPECIAL PLEAS. MOTIONS TO QUASH THE INDICTMENT.

When the defendant is called upon to plead, he may plead any  
20 such plea in abatement, or special plea in bar, as is specified in the provisions relating to pleading in criminal cases herein-after contained, in which case such proceedings shall be had thereupon as are herein-after provided for.

If the defendant pleads guilty the court shall proceed as if he  
25 had been convicted by the verdict of the jury. If the defendant pleads not guilty the court shall proceed in the manner herein-after prescribed.

If the defendant refuses to plead the court shall proceed in the same manner as if he had pleaded not guilty.

30 If the defendant stands mute the court shall cause a jury composed of any twelve men who happen to be present to be sworn to inquire for what cause the defendant stands mute, and whether he can understand or be made to understand the charge against him, and make or be enabled to make his answer to it.

35 If the jury find that the defendant wilfully abstains from pleading, and that he can understand the charge against him, and his answer to it, the court shall proceed as if he had pleaded not guilty.

If the jury find that the defendant stands mute because he does not understand the charge made against him, or because he is  
40 unable to make his answer to it, but that he can be made to understand it, or be enabled to make his answer to it either by means of



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an interpreter or otherwise, the court shall adjourn the case until means are provided to enable the prisoner to plead and to make his answer to the charge, and shall either commit the prisoner to custody or admit him to bail until such provision is made, provided that if it is found impossible to provide such means it shall be lawful 5. for Her Majesty, if she thinks fit, to direct through one of Her Secretaries of State that the prisoner shall be discharged upon bail upon such terms as may be thought proper, or without bail.

If the jury find that the defendant does not understand the charge, and that he cannot at that time by reason of his state of 10 mind be made to understand it, or that he is not in a fit state of mind to make his defence, he shall be dealt with in the manner herein-after prescribed for dealing with insane prisoners.

### SECTION 362.

IF THE PRISONER PLEADS NOT GUILTY, JURY TO BE SWORN. 15

If the prisoner pleads not guilty, a jury shall be impanelled to try him in the following manner:—

The officer of the court shall inform the prisoner that he is about to call over the names of the jury who are to try him, and that if he has any objection to make to any of the jury he 20 may make it as the jurymen come to the book to be sworn, and before they are sworn, and he shall be heard.

This communication may be made to any number of defendants at the same time, and may, if necessary, be repeated to the same defen- 25 dants or some of them as often as occasion may require.

### SECTION 363.

CHALLENGES TO THE ARRAY.

When the officer of the court has addressed the defendant as lastly herein-before mentioned, either the defendant or the prosecutor may make any objection which he is by law entitled to make to the 30 array of the petty jurors. The objection shall be made in writing, and may be in the form (K.K.) in the first schedule hereto, or to the like effect. The court shall hear and decide upon the objection, and if it is of opinion that the objection is good in law, and if the party who has not challenged the array denies that the ground of 35 challenge is true in fact, the court shall appoint any two indifferent persons to try whether the alleged ground of challenge is true in fact, or not. If the triers find that the alleged ground of challenge is true in fact, or if they are unable after what the court considers a reasonable time to agree on their verdict, or if the party who has not 40

challenged the array admits that the ground of challenge is true in fact, the court shall direct a new panel to be returned, and shall adjourn the trial until it is returned. A.D. 1878.

### SECTION 364.

5 IF NO CHALLENGE TO ARRAY PANEL TO BE CALLED.

If no objection is made to the panel of jurors, the officer of the court shall proceed to call the names of the jurors in any order, or in any manner which the court may direct, in order to secure impartiality, and the jurors who are not sitting on any other jury shall appear. The twelve jurors who first appear shall be sworn or  
10 make affirmation according to law, unless they are challenged or directed to stand by as herein-after mentioned, or unless either the prosecutor or the defendant requires the whole panel to be called over before any jurors are called in order to be sworn, so that he  
15 may know what jurors are present, in which case no juror shall be called in order to be sworn till all the jurors present have answered to their names.

### SECTION 365.

#### CHALLENGES.

20 Every person indicted for high treason shall be entitled to challenge thirty-five jurors peremptorily.

Every person indicted for any offence other than high treason for which he might, upon conviction, be sentenced to death, shall be entitled to challenge twenty jurors peremptorily.

25 Every person indicted for any other indictable offence shall be entitled to challenge six jurors peremptorily, unless the indictment is directed to be tried as a civil action, in which case the person indicted shall not be allowed to make any peremptory challenge.

Every defendant and every prosecutor shall be entitled to challenge  
30 any number of jurors for any cause which according to law is a sufficient reason why they should not try the indictment against the defendant, or on the ground that they are not indifferent between the Queen and the defendant.

If any such challenge is made, the jurors already sworn, or if no  
35 jurors have then been sworn then any two persons present whom the court may appoint for that purpose shall be sworn, to try, as the case may be, whether such cause exists, or whether the juror objected to stands indifferent between the Queen and the defendant. If they find that such cause does not exist, or that the juror does stand  
40 indifferent, he shall be sworn. If they find that such cause does exist, or that the juror does not stand indifferent, or if they

A.D. 1878. are unable after what in the opinion of the court is a reasonable time in that behalf to agree upon their verdict, he shall not be sworn.

The prosecutor shall have no power to challenge any juror peremptorily, but he may direct any number of jurors not peremptorily challenged by the defendant to stand by until all the jurors have 5 been called who at the time when they are so called are available for the purpose of trying that indictment. If twelve such jurors are not found when all the jurors available have been called, the jurors who were ordered to stand by shall be recalled in any order, or in any manner which the court may direct, in order to secure impar- 10 tiality, and shall be sworn, unless the prosecutor can show cause to the contrary.

If after all the jurors have been once called, and whilst the prosecutor is showing or when he is about to show cause why any juror directed to stand by should not be sworn, other jurors become available 15 for the purpose of trying the indictment, the prosecutor may direct the juror against whom he is showing cause, and other jurors previously directed to stand by, to stand by again until the names of the jurymen who have so become available have been called.

The defendant may be called upon to declare whether he chal- 20 lenges any juror peremptorily, or otherwise, before the prosecutor is called upon to declare whether he challenges such juror or requires him to stand by.

If when all challenges have been made twelve jurors do not remain, the court shall adjourn the trial till a new panel is returned, 25 or till such other time as it thinks proper, and shall in its discretion recommit the defendant to custody or admit him to bail until the time to which the trial is adjourned.

### SECTION 366.

#### GIVING IN CHARGE.

30

When the jury are sworn the officer of the court may give the defendant in charge to the jury in the manner now usual in cases of felony, provided that if he omits to do so the omission shall have no effect upon the subsequent proceedings. The proclamations now usual may be made before and during the trial, but their omission 35 shall have no effect on the validity of the proceedings.

### SECTION 367.

#### THE CASE FOR THE PROSECUTION.

After the defendant has been given in charge to the jury, or when the jury have been sworn, the counsel for the prosecution, if there 40 is one, may open the case against the defendant, and give evidence in

support of the charge. If there is no counsel for the prosecution the witnesses shall be called and examined as the court may direct. If no such evidence is given the defendant shall be acquitted.

If the defendant or any one of several defendants is defended by  
5 counsel, such counsel shall at the end of the case for the prosecution, declare whether he intends to give evidence or not for the defendant for whom he appears, and if every such counsel declares that it is not his intention to do so the counsel for the prosecution may address  
10 the jury a second time in support of the charge. If no defendant is defended by counsel, the counsel for the prosecution shall not be permitted to address the jury a second time in support of the charge, unless he is entitled to a reply under the provisions herein-after contained.

## SECTION 368.

## 15 EXAMINATION OF THE DEFENDANT.

When the case for the prosecution is ended, the court shall inform the defendant, whether he is defended by counsel or not, that he may make any statement he pleases as to the charge against  
20 him, and that if he does so he will after he has made it be questioned by the counsel for the prosecution, or, if there is no counsel for the prosecution, as the court may direct.

The defendant may either make a statement, or if he is defended by counsel he may be examined by his counsel as a witness is examined in chief.

25 After he has been so examined, or after he has made a statement, the counsel for the prosecution may ask him questions in the same manner as if he were a witness under cross-examination, provided that such questions shall be confined to the matter in issue and matters relevant thereto, and shall not be directed to matters  
30 affecting the defendant's credit or character. Both the court and the jury (with the permission of the court) may ask the defendant any questions which they might ask of a witness.

After the examination of the defendant is ended, his counsel, if he is defended by counsel, may ask him any questions by way of re-  
35 examination. If he is not defended by counsel he shall be allowed to make any explanation he pleases of the statement made or answers given by him, and the court and the jury (with the permission of the court), but not the counsel for the prosecution, may ask him questions thereon.

40 The defendant shall not be sworn as a witness, nor be liable to any punishment for making false statements, either before or during or after his examination.

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**SECTION 369.**

## CASE FOR THE DEFENDANT.

When the case for the prosecution is ended, the defendant or his counsel may address the jury in his defence, and may call witnesses in answer to the charge; after which either the defendant or his 5 counsel may address the jury a second time in answer to the charge.

**SECTION 370.**

## REPLY.

The counsel for the prosecution shall be entitled to a reply if any evidence is given in behalf of the defendant or of any one of several 10 defendants, but not otherwise, provided that the Attorney-General or Solicitor-General, or any other counsel instructed by their directions or appearing in their place, shall in all cases be entitled to a reply, whether evidence is given on behalf of the defendant or not.

**SECTION 371.**

15

## NOTICE TO BE GIVEN OF EVIDENCE TO THE OPPOSITE SIDE.

No witness shall be called by the prosecutor at any trial for any indictable offence, unless the prosecutor gives the defendant reasonable notice in writing of his intention to call him, which notice must state the witness's name and address, and the substance of the evidence 20 which he intends to give. The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the party intending to call the witness became acquainted with the nature of the witness's evidence, and determined to call him as a witness. No such notice need be given if the pro- 25 secutor first became aware of the evidence which the witness could give on the day on which he is called.

**SECTION 372.**

## COURT MAY DIRECT THE ATTENDANCE OF WITNESSES.

If the court is of opinion that any witness who is not called ought 30 to be called, it may compel him to attend, and if it thinks proper, adjourn the further hearing of the case until he attends, and may examine or cause him to be examined at any stage of the proceedings, and in any way which it thinks conducive to the ends of justice, and may make such order as it thinks proper as to his cross- 35 examination, and as to addresses to be made to the jury on his evidence.

SECTION 373.

A.D. 1878.

ADMISSIONS NOT TO BE TAKEN ON TRIAL OF INDICTABLE OFFENCES.

It shall not be competent to any defendant on his trial for any indictable offence or to his counsel or solicitor to admit any fact  
5 alleged against him so as to dispense with proof thereof, otherwise than by pleading guilty; provided that nothing herein contained shall prevent any statement made by the defendant relevant to the matter in issue from being proved as it might have been proved if this Act had not been passed.

10

SECTION 374.

SUMMING UP.

When the case for the defendant is ended, the judge shall, if necessary, sum up.

SECTION 375.

15

JURY TO CONSIDER THEIR VERDICT.

After the summing up of the judge the jury shall consider their verdict. If they desire to leave the court in order to consider it, they shall be kept in some private place under the charge of an officer of the court, where they shall be allowed to have the use of  
20 fire and lights, and with the consent of the judge to have reasonable refreshment at their own expense; but no jurymen shall be allowed to withdraw himself from the others, and no person shall be permitted to speak or to communicate in any other way with any jurymen without the leave of the court, provided that the  
25 officer of the court who has charge of them may ask them if they are agreed upon their verdict.

SECTION 376.

HOW IF THE JURY CANNOT AGREE.

If the jury are unable to agree upon their verdict, and if the judge  
30 is satisfied that it is necessary that they should be discharged, he may discharge them.

SECTION 377.

VERDICT MAY BE GENERAL OR SPECIAL.—EFFECT.

The jury may in their discretion find either that the defendant  
35 is guilty, or that he is not guilty, or they may find a special verdict, which shall be drawn up in the manner herein-after provided for.

A.D. 1878.

**SECTION 378.**

## VERDICT OF NOT GUILTY.

If the jury find the prisoner not guilty he shall be immediately discharged from custody, unless he is found not guilty on the ground of insanity, provided that if the grand jury are at that time sitting, the judge may, if he thinks fit, direct that the defendant shall be further detained till the grand jury are discharged.

**SECTION 379.**

## MOTION IN ARREST OF JUDGMENT ON VERDICT OF GUILTY.

If the jury find the prisoner guilty, the officer of the court shall ask him whether he has anything to say why judgment should not be passed upon him according to law.

The defendant may move in arrest of judgment either on the ground that the indictment does not (after any amendment which the court is willing to and has power to make) state any indictable offence, or on the ground that any irregularity has taken place at the trial, by which he has been actually prejudiced, but on no other ground.

Every such motion shall be made in writing, if the defendant is defended by counsel, and if he is not defended may, if the court thinks it necessary, be put into writing as the court may direct, and shall be in either case entered on the record.

The court may in its discretion either hear and determine the matter, or adjourn the hearing thereof till a time to be fixed for that purpose. If the defendant has nothing to say, or if after hearing what he has to say the court is of opinion that judgment should be passed upon him notwithstanding, the court may either proceed to pass sentence upon him according to law, or may postpone the passing of such sentence to a future time; or may discharge him on his own recognizance, or on his own recognizance and that of such other persons as the court thinks fit, to appear and receive judgment when called upon.

**SECTION 380.**

## MOTION IN ARREST OF EXECUTION.

If judgment of death is given against any woman she may move in arrest of execution on the ground that she is pregnant. If such a motion is made the court shall empanel a jury of three registered medical practitioners to examine the woman in some private place.

and to inquire whether she is pregnant or not. If they find that she is pregnant execution shall be arrested till after the birth of her child. A.D. 1878.

## SECTION 381.

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## ADJOURNMENTS.

From the time when the jury have been sworn the trial shall proceed continuously, unless for some sufficient reason the court thinks proper to adjourn it. During every such adjournment the court may, if it thinks fit, direct that the jury shall be kept together 10 during the adjournment, and that during such adjournment proper provision shall be made for preventing them from holding communication with any person on the subject of the trial.

If the court makes any such order all reasonable conveniences shall be provided for the jury at the expense of the sheriff, who 15 shall be repaid the same by the Commissioners of Her Majesty's Treasury.

## SECTION 382.

## WHEN JURY MAY BE DISCHARGED.

In any of the following cases or in any similar case the jury shall, 20 or may in the discretion of the court as herein-after mentioned, be discharged without giving a verdict, and a new trial shall be had, that is to say,

(a.) If the judge who is trying the case becomes incapable of trying it.

25 (b.) If the counsel for the prosecution or for the defence, or any or either of them, becomes incapable in the course of the trial of continuing to perform his duty therein;

(c.) If in the course of the trial any of the jury become incapable of continuing to perform their duty or misconduct themselves.

30 (d.) If the defendant in the course of the trial becomes incapable of understanding or attending to the proceedings or of defending himself,

(e.) If by reason of any accident or tumult or other similar cause it becomes unsafe or improper to proceed with the trial.

35 (f.) If any material witness becomes incapable of giving evidence, or refuses to give evidence, or absconds, or is kept out of the way either by the prosecution or by the defence.

In case (a) the jury shall be discharged by any other judge or person entitled to act as a judge in the court, or if there is no such 40 person then by the officer of the court, provided that if more judges than one are present at the trial the remaining judge or judges may if they think proper, proceed with the trial.



A.D. 1878.

In cases (*b*), (*c*), and (*f*) it shall be in the discretion of the court whether the jury shall be discharged or not.

In case (*e*) it shall be in the discretion of the court whether the jury shall be discharged or whether the trial shall proceed. If the court directs the trial to proceed it shall discharge any jurymen who have become incapable or misconducted himself, and the remaining jurymen shall have all the powers of a full jury, provided that if more than three of the jury are incapacitated or misconduct themselves the jury shall be discharged.

In case (*d*) the jury shall be discharged, unless the defendant becomes incapable as aforesaid after making his defence, or unless he is defended by counsel, in each of which cases the court shall have a discretion to discharge the jury or not.

In cases not herein-before specifically provided for, but similar to those which are so provided for, the court shall have a discretion to discharge the jury or not.

### SECTION 383.

#### PRESENCE OF THE DEFENDANT.

Every defendant shall be entitled to be present in court during the whole of his trial, so long as he conducts himself properly. If he conducts himself improperly the court may in its discretion direct him to be removed and proceed with the trial in his absence, making such provision as in its discretion appears sufficient for his being informed of what passes at the trial and for the making of his defence.

The court may, if it thinks proper, permit the defendant to be out of court during the whole or any part of any trial on such terms as it thinks proper.

### SECTION 384.

#### VIEW.

The court may, if it appears expedient for the ends of justice, direct that the jury shall have a view of any place, thing, or person referred to on the proceedings in any trial, and shall give directions as to the manner in which and the persons by whom the place, thing, or person shall be shown to such jurors.

### SECTION 385.

#### PROCEEDINGS ON SUNDAY.

It shall be lawful for the court to receive the verdict of the jury, and to take such proceedings as are subsequent thereto, as well on Sundays as on other days.