FORGERY.

GENERAL REMARKS.

"To forge is metaphorically taken from the smith who beateth upon his anvil, and forgeth what fashion and shape he will; the offence is called *crimen falsi*, and the offender *falsarius*, and the Latin word, to forge, is *falsare* or *fabricare*": Coke, 3 Inst. 169.

"Forgery is the fraudulent making or alteration of a writing, to the prejudice of another's right": 4 Blacks. 247.

"Forgery is the false making of an instrument with intent to prejudice any public or private right": 3rd Rep. Crim. Law Comm. 10th June, 1847, p. 34; ss. 421, 422, *post*.

"Forgery is the fraudulent making of a false writing which, if genuine, would be apparently of some legal efficacy": Bishop, 2 Cr. L. 523.

"The characteristic of the crime of forgery is the false making of some written or other instrument for the purpose of obtaining credit by deception. The relation this offence bears to the general system may be thus briefly established. In most affairs of importance the intentions, assurances, or directions of men are notified and authenticated by means of written instruments. Upon the authenticity of such instruments the security of many civil rights, especially the right of property, frequently depends; it is, therefore, of the highest importance to society to exclude the numerous frauds and injuries which may obviously be perpetrated by procuring a false and counterfeited written instrument, to be taken and acted on as genuine. In reference to frauds of this description it is by no means essential that punishment should be confined to cases of actually accomplished fraud; the very act of falsely making and

constructing such an instrument with the intention to defraud is sufficient, according to the acknowledged principles of criminal jurisprudence, to constitute a crime,—being in itself part of the endeavour to defraud, and the existence of the criminal intent is clearly manifested by an act done in furtherance and in part execution of that intention. The limits of the offence are immediately deducible from the general principle already adverted to. As regards the subject matter, the offence extends to every writing used for the purpose of authentication.

"The crime is not confined to the falsification of mere writings; it plainly extends to seals, stamps, and all other visible marks of distinction by which the truth of any fact is authenticated, or the quality or genuineness of any article is warranted, and, consequently, where a party may be deceived and defrauded, from having been by false signs induced to give credit where none was due. With respect to the false making of any such instrument the offence extends to every instance where the instrument is, under the circumstances, so constructed as to induce a party to give credit to it as genuine and authentic in a point where it is false and deceptive. And in this respect a forged instrument differs from one which is merely false and untrue in stating facts which are false. Where the instrument is forged, as where a certificate purporting to be signed by an authorized officer was not, in truth, signed by him, a party to whom it is shown is deceived in being induced to suppose that the fact certified is accredited by the officer whose certificate it purports to be, and he is deceived in that respect whether the fact certified be true or false. If, on the other hand, such a certificate be in truth signed by the officer whose name it bears, the instrument is not forged although the fact certified be falsely certified, for here the party receiving the certificate is deceived, not by being falsely induced to believe that the officer had accredited the instrument by his signature, but from the officer having

falsely certified the fact. The instrument may, therefore, be forged although the fact authenticated be true. The instrument may be genuine although the fact stated be false. Where money or other property is obtained by an instrument of the latter description, that is, where it is false merely as containing a false statement or representation, the offence belongs to the class of obtaining money or other property by false pretenses": 5th Rep. Crim. Law Comm. 22nd of April, 1840.

"Consistently with the principles which govern the offence of forgery an instrument may be falsely made although it be signed or executed by the party by whom it purports to be signed or executed. This happens where a party is fraudulently induced to execute a will, a material alteration having been made, without his knowledge, in the writing; for, in such a case, although the signature be genuine the instrument is false, because it does not truly indicate the testator's intentions, and it is the forgery of him who so fraudulently caused such will to be signed, for he made it to be the false instrument which it really is:" Cr. Law Comm. Rep. *loc. cit.*

This passage of the Criminal Law Commissioners seems to be based on a very old case, cited in Noy's Reports, 101, Combes's Case; but in a more recent case, R. v. Collins, 2 M. & Rob. 461, it was held that fraudulently to induce a person to execute an instrument, on a misrepresentation of its contents, is not a forgery; and, in a case of R. v. Chadwick, 2 M. & Rob. 545, that to procure the signature of a person to a document, the contents of which have been altered without his knowledge, is not a forgery: *see* Stephen's Cr. L. Art. 356, illustrations, 10, 11.

The report (*loc. cit.*) of the criminal law commissioners continues as follows: "Upon similar grounds, an offender may be guilty of a false making of an instrument although he sign or execute it in his own name, in case it be false in any material part, and calculated to induce another to give

credit to it as genuine and authentic where it is false and deceptive. This happens where one, having conveyed land, afterwards, for the purpose of fraud, executes an instrument purporting to be a prior conveyance of the same land; here, again, the instrument is designed to obtain credit by deception, as purporting to have been made at a time earlier than the true time of its execution."

This doctrine was approved of in a case, in England, of R. v. Ritson, 11 Cox, 352, and it was there held, upon a case reserved, that a man may be guilty of forgery by making a false deed in his own name. Kelly, C.B., delivering the judgment of the court, said: "I certainly entertained some doubt at one time upon this case, because most of the authorities are of an ancient date, and long before the passing of the statutes of 11 Geo. IV. and 1 Will. IV., and 24 & 25 V. However, looking at the ancient authorities and the text books of the highest repute, such as Com. Dig., Bacon's Abr., 3 Co. Inst., and Foster's C. L. 117, they are all uniformly to the effect, not that every instrument containing a false statement is a forgery, but that every instrument which is false in a material part, and which purports to be that which it is not, or to be executed by a person who is not the real person, or which purports to be dated on a day which is not the real day whereby a false operation is given to it, is forgery."

"Forgery, *at common law*, was an offence in falsely and fraudulently making and altering any matter of record or any other authentic matter of a public nature, as a parish register or any deed or will, and punishable by fine and imprisonment. But the mischiefs of this kind increasing it was found necessary to guard against them by more sanguinary laws. Hence we have several Acts of Parliament declaring what offences amount to forgery, and which inflict severer punishments than there were at the common law": Bacon's Abr. vol. 3, 277. Curwood, 1 Hawk. 263, is of opinion that this last definition is wholly inapplicable

to the crime of forgery *at common law*, as, even at *common law*, it was forgery to make false "*private*" writings.

"The notion of forgery does not seem so much to consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is in no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation which in truth and justice it ought not to have": 1 Hawk. 264.

The definitions containing only the words "with intent to defraud" without the words "with intent to deceive" seem defective. In fact, there are many acts held to be forgery where no intent to defraud, as this expression is commonly understood, exists in the mind of the person committing the act; as, for instance, if the person, forging a note, means to take it up, and even has taken it up, so as not to defraud any one, this is clearly forgery if he issued it, and got money or credit or anything upon it: R. v. Hill, 2 Moo. 30; R. v. Geach, 9 C. & P. 499; or forging a bill payable to the prisoner's own order, and uttering it without indorsement: R. v. Birkett, R. & R. 86; or if one, while knowingly passing a forged bank note, agrees to receive it again should it prove not to be genuine, or if a creditor executes a forgery of the debtor's name to get from the proceeds payment of a sum of money due him: R. v. Wilson, 1 Den. 284; or if a party forges a deposition to be used in court, stating merely what is true, to enforce a just claim. All these acts are forgery; yet where is the intent to defraud in these cases? It may be said that the law infers it. But why make the law infer the existence of what does not exist? Why not say that "forgery is the false making of an instrument with intent to defraud or *deceive*." *See* now s. 422, *post*. The word "*deceive*" would cover all the

cases above cited; in each of these cases, the intent of the forger is that the instrument forged should be used as good, should be taken and received as signed and made by the person whose name is forged, in consequence, to deceive *quoad hoc*, and for this, though he did not intend to defraud, though no one could possibly be defrauded by his act, he is in law guilty of forgery: *see* 2 Russ. 774.

It is true that the court of Crown cases reserved, in England, held in R. v. Hodgson, Dears. & B. 3, that, upon an indictment for forgery at common law, it is necessary to prove, not only an intent to defraud, but also an intent to defraud a particular person, though, when this case was decided, the statute in England (14 & 15 V. c. 100, s. 8,) enacted that it was not necessary in indictments for forgery to allege an intent to defraud any particular person: s. 613, *post*. In this Hodgson's case the prisoner had forged and uttered a diploma of the college of surgeons; the jury found that the prisoner forged the document with the general intent to induce the belief that it was genuine, and that he was a member of the college, and that he showed it to certain persons with intent to induce such belief in them, but that he had no intent, in forging or uttering it, to commit any particular fraud or specific wrong to any individual.

Though the offence charged in this case was under the common law, it must be remembered that s. 8, of 14 & 15 V. c. 100, applied to indictments under the common law as well as to indictments under the statutes, as now also do s. 44 of the English Forgery Act and ss. 422, s-s. 3 and 613, *post*.

Greaves remarks on the decision in this case:—

"As the clause of which this is a re-enactment, 44 of the English Act, was considered in R. v. Hodgson, and as that case appears to me to have been erroneously decided, it may be right to notice it here. The prisoner was indicted at common law for forging and uttering a diploma of the

college of surgeons, and the indictment was in the common form. The college of surgeons has no power of conferring any degree or qualification, but before admitting persons to its membership it examines them as to their surgical knowledge, and, if satisfied therewith, admits them, and issues a document called a diploma, which states the membership. The prisoner had forged one of these diplomas. He procured one actually issued by the college of surgeons, erased the name of the person mentioned in it, and substituted his own. He hung it up in his sitting-room, and, on being asked by two medical practitioners whether he was qualified, he said he was, and produced this document to prove his assertion. When a candidate for an appointment as vaccinating officer he stated he had his qualification, and would show it if the clerk of the guardians, who were to appoint to the office, would go to his gig; he did not, however, then produce or show it. The prisoner was found guilty, the fact to be taken to be, that he forged the document with the general intent to induce a belief that it was genuine, and that he was a member of the college of surgeons, and that he showed it to two persons with the particular intent to induce such belief in these two persons, but that he had no intent in forging or in altering, to commit any particular fraud, or any specific wrong to any individual. And upon a case reserved it was held that the 14 & 15 V. c. 100, s. 8, altered the form of pleading only, and did not alter the character of the offence charged, and that the law as to that is the same as if the statute had not been passed; and that, in order to make out the offence of forgery at common law, there must have been, at the time the instrument was forged, an intention to defraud some particular person. Now, this judgment is clearly erroneous. The 14 & 15 V. c. 100, s. 8, does, in express terms, alter the law as well as the form of the indictment, for it expressly enacts, '*that on the trial* of any of the offences in this section mentioned (*forging, uttering, disposing of or putting off any instrument whatsoever*) it shall not be necessary to *prove* that

the defendant did the act charged with an intent to defraud.' The judgment, therefore, and the clause in the Act are directly in contradiction to each other, and, consequently, the former cannot be right. The clause was introduced advisedly for the very purpose of altering the law. *See my note to Lord Campbell's Acts, page 13.* It is a fallacy to suppose that there must have been an intent to defraud any particular person at the time of forging the document. In Tatlock v. Harris, 3 T. R. 176, that great lawyer, Shepherd, said in argument, 'it is no answer to a charge of forgery to say that there was no *special* intent to defraud any *particular* person, because a *general intent* to defraud is sufficient to constitute the crime;' and this position was not denied by that great lawyer, Wood, who argued on the other side, and was apparently adopted by the court. It is cited in 1 Leach, 216, *note* (*a*); 3 Chit. Cr. L. 1036; and, as far as we are aware, was never doubted before this case. Indeed, in R. v. Tylney, 1 Den. 319, it seems to have been assumed on all hands to be the law. There the prisoners forged a will, but there was no evidence to show that any one existed who could have been defrauded by it, and the judges were equally divided whether a count for forgery with intent to defraud some person unknown could, under such circumstances, be supported. It is obvious that this assumed that if there had been evidence that there was any one who might have been defrauded, though there was no evidence that the prisoners even knew of the existence of any such person, the offence would have been forgery. Indeed it would be very startling to suppose that a man who forged a will, intending to defraud the next of kin, whoever they might happen to be, was not guilty of forgery because he had only that general intent."

"The point is too obvious to have escaped that able criminal lawyer, Mr. Prendergast, and, as he did not take it, he clearly thought it wholly untenable, and so, also, must the judges who heard the case. *See* also the observations

of Cresswell, J., in R. v. Marcus, 2 C. & K. 356. In R. v. Nash, 2 Den. 493, Maule, J., expressed a very strong opinion that it was not necessary, in order to prove an intent to defraud, that there should be any person who could be defrauded, and this opinion was not dissented from by any of the other judges."

"It has long been settled that making any instrument, which is the subject of forgery, in the name of a non-existing person is forgery, and in Wilks' Case, 2 East, P. C. 957, all the judges were of opinion that a bill of exchange drawn in fictitious names was a forged bill. Now, every one knows that, at the time when such documents are forged, the forger has no intent to defraud any particular person, but only an intent to defraud any person whom he may afterwards meet with, and induce to cash the bill; and no suggestion has ever been made in any of these cases that that offence was not forgery. The ground of the present judgment seems to have been that formerly the particular person who was intended to be defrauded must have been named in the indictment; no doubt it is a general rule of criminal pleading that the names of persons should be stated, but this rule is subject to the exception that, wherever the stating the name of any person in an indictment is highly inconvenient or impracticable, the name need not be stated, for *lex neminem cogit ad vana seu impossibilia.* Therefore, the names of inhabitants of counties, hundreds and parishes need never be stated; so, too, where there is a conspiracy to defraud tradesmen in general the names need not be stated. So, where there is a conspiracy to raise the funds, it is not necessary to state the names of the persons who shall afterwards become purchasers of stock, 'for the defendants could not, except by a spirit of prophecy, divine who would be the purchasers on a subsequent day'; *per* Lord Ellenborough, C.J., in R. v. De Berenger, 3 M. & S. 73; which reason is equally applicable to the case where, at the time of forging an instrument, there is no

intent to defraud any particular person. Indeed, it is now clearly settled that, where a conspiracy is to defraud indefinite individuals, it is unnecessary to name any individuals: R. v. Peck, 9 A. & E. 686; R. v. King, 7 Q. B. 782. This may be taken to be a general rule of criminal pleading, and it has long been applied to forgery. In R. v. Birch, 1 Leach, 79, the prisoners were convicted of forging a will, and one count alleged the intent to be 'to defraud the person or persons who would by law be entitled to the messuages' whereof the testator died seized. And it has been the regular course in indictments for forging wills, at least ever since that case, to insert counts with intent to defraud *the heir-at-law* and the *next of kin*, generally: 3 Chit. Cr. L. 1069. It is true that in general there have also been counts specifying the heir-at-law or the next of kin by name. But in R. v. Tylney, 1 Den. 319, there was no such count. No objection seems ever to have been taken to any such general count. So, also, in any forgery with intent to defraud the inhabitants of a county, hundred or parish the inhabitants may be generally described. These instances clearly show that it is not necessary in forgery any more than in other cases to name individuals where there is either great inconvenience or impracticability in doing so. A conviction for conspiracy to negotiate a bill of exchange, the drawers of which were a fictitious firm, and thereby fraudulently to obtain goods from the *King's subjects*, although it did not appear that any particular person to be defrauded was contemplated at the time of the conspiracy, has been held good: R. v. Hevey, 2 East, P. C. 858, note (*a*); and this case bears considerably on the present question. If a person forged a bill of exchange with intent to defraud any one whom he might afterwards induce to cash it, and he uttered it to A. B., it cannot be doubted that he would be guilty of uttering with intent to defraud A. B., and it would indeed be strange to hold that he was guilty of uttering, but not of forging, the bill. No doubt the offence of forgery consists in the intent to deceive or de-

fraud; but a general intent to defraud is just as criminal as to defraud any particular individual. In each case there is a wrongful act done with a criminal intent, which, according to R. v. Higgins, 2 East, 5, is sufficient to constitute an indictable offence. In the course of the argument Erle, J., said: "Would it not have been enough to allege an intent to deceive divers persons to the jurors unknown, to wit, all the patients of his late master?" This approaches very nearly to the correct view, viz., that it would have been enough before the 14 & 15 V. c. 100, s. 8, to have alleged and proved an intent to deceive any persons who should afterwards become his patients. Wightman, J., during the argument said: "The question is, whom did he intend to deceive when the forgery was committed?" And Jervis, C.J., said: "The intent must not be a roving intent but a specific intent." Now, if these remarks are confined to a count for forging they are correct, though, in Bolland's Case, 1 Leach, 83, the prisoner was executed for forging an indorsement in the name of a non-existing person, with intent to defraud a person whom he does not even seem to have known when he forged the indorsement."

"But it cannot be doubted that a man may be guilty of intending to defraud divers persons at different times by the same instrument, as where he tries to utter a forged note to several persons one after another, in which case he may be convicted of uttering with intent to defraud each of them. Thus much has been said, because it is very important that the law on the subjects discussed in this note should not be left in uncertainty, and it is much to be regretted that R. v. Hodgson, Dears. & B. 3, was ever decided as it was, as it may encourage ignorant pretenders to fabricate diplomas, and thereby not only to defraud the poor of their money, but to injure their health": Greaves, Cons. Acts, 303.

In R. v. Nash, 2 Den. 493, Maule, J., said: "The recorder seems to have thought, that in order to prove an

intent to defraud there should have been some person defrauded or who might possibly have been defrauded. But I do not think that at all necessary. A man may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers, and a friend, with his knowledge, forges his name to a cheque, either to try his credit, or to imitate his handwriting, there would be no intent to defraud though there would be parties who might be defrauded. But where another person has no account at his bankers, but a man supposes that he has, and on that supposition forges his name, there would be an intent to defraud in that case although no person could be defrauded."

And in R. v. Mazagora, R. & R. 291, it has been holden that the jury ought to infer an intent to defraud the person who would have to pay the instrument if it were genuine, although from the manner of executing the forgery, or from that person's ordinary caution, it would not be likely to impose upon him; and although the object was general to defraud whoever might take the instrument, and the intention of defrauding, in particular, the person who would have to pay the instrument, if genuine, did not enter into the prisoner's contemplation. *See* R. v. Crooke, 2 Str. 901; R. v. Goate, 1 Ld. Raym. 737; R. v. Holden, R. & R. 154. And even if the party to whom the forged instrument is uttered believes that the defendant did not intend to defraud him, and swears it, this will not repel the presumption of an intention to defraud: R. v. Sheppard, R. & R. 169; R. v. Trenfield, 1 F. & F. 43, is wretchedly reported, and cannot be relied upon: 2 Russ. 790, *note* by Greaves; *see* also R. v. Crowther, 5 C. & P. 316, and R. v. James, 7 C. & P. 553, on the question of the necessary intent to defraud, in forgery; and R. v. Boardman, 2 M. & Rob. 147; R. v. Todd, 1 Cox, 57. It has been held, in R. v. Powner, 12 Cox, 235, that, in all cases, an intent to defraud must be alleged. This doctrine seems to have been since repudiated

by Martin, B., in R. v. Asplin, 12 Cox, 391; *see* R. v. Cronin, 36 U. C. Q. B. 342.

It should be observed that the offence of forgery may be complete though there be no publication or uttering of the forged instrument, for the very making with a fraudulent intention, and without lawful authority, of any instrument which, at common law or by statute, is the subject of forgery, is of itself a sufficient completion of the offence before publication, and though the publication of the instrument be the medium by which the intent is usually made manifest yet it may be proved as plainly by other evidence: 2 East, P. C. 855. Thus in a case where the note which the prisoner was charged with having forged was never published, but was found in his possession at the time he was apprehended, the prisoner was found guilty, and no one even thought of raising the objection that the note had never been published: R. v. Elliot, 1 Leach, 175. At the present time most of the statutes which relate to forgery make the publication of the forged instrument, with knowledge of the fact, a substantive felony.

Not only the fabrication and false making of the whole of a written instrument, but a fraudulent insertion, alteration, or erasure, even of a letter, in *any material part* of a true instrument, and even if it be afterwards executed by another person, he not knowing of the deceit, or the fraudulent application of a true signature to a false instrument for which it was not intended, or *vice versâ*, are as much forgeries as if the whole instrument had been fabricated. As by altering the date of a bill of exchange after acceptance whereby the payment was accelerated: 2 East, P. C. 855.

Even where a man, upon obtaining discount of a bill, indorsed it in a fictitious name, when he might have obtained the money as readily by indorsing it in his own name, it was holden to be a forgery: R. v. Taft, 1 Leach, 172; R. v.

Taylor, 1 Leach, 214; R. v. Marshall, R. & R. 75; R. v. Whiley, R. & R. 90; R. v. Francis, R. & R. 209.

It is a forgery for a person having authority to fill up a blank acceptance or a cheque for a certain sum, to fill up the bill or cheque for a larger sum: R. v. Hart, 1 Moo. 486; In *re* Hoke, 15 R. L. 92; (ss. 421, 422, *post*); and the circumstance of the prisoner alleging a claim on his master for the greater sum, as salary then due, is immaterial even if true: R. v. Wilson, 1 Den. 284.

A forgery must be of some document or writing; therefore the putting an artist's name in the corner of a picture, in order falsely to pass it off as an original picture by that artist, is not a forgery; R. v. Closs, Dears. & B. 460; though it may be a cheat at common law, s. 419, *post*.

The false signature *by a mark* is forgery: R. v. Dunn, 1 Leach, 57.

When the writing is invalid on its face it cannot be the subject of forgery, because it has no legal tendency to effect a fraud. It is not indictable, for example, to forge a will attested by a less number of witnesses than the law requires: R. v. Wall, 2 East, P.C. 953; R. v. Martin, 14 Cox, 375, Warb. Lead. Cas. 188; R. v. Harper, 14 Cox, 574; R. v. Moffat, 1 Leach, 431.

But a man may be indicted for forging an instrument which, if genuine, could not be made available by reason of some circumstance not appearing upon the face of the instrument, but to be made out by extrinsic evidence: R. v. Macintosh, 2 Leach, 883. So, a man may be indicted for forging a deed, though not made in pursuance of the provisions of particular statutes requiring it to be in a particular form: R. v. Lyon, R. & R. 255. Signing a name of a non-existing person is a forgery: R. v. White, cited in R. v. Martin, Warb. Lead. Cas. 188.

And a man may be convicted of forging an unstamped instrument though such instrument can have no operation in law: R. v. Hawkeswood, 1 Leach, 257; *see* s. 422,

s-s. 4, *post*. This question, a few years afterwards, again underwent considerable discussion, and was decided the same way, though, in the meantime, the law with regard to the procuring of bills and notes to be subsequently stamped, upon which in R. v. Hawkeswood the judges appear in some degree to have relied, had been repealed. The prisoner was indicted for knowingly uttering a forged promissory note. Being convicted the case was argued before the judges, and for the prisoner it was urged that the 31 Geo. III. c. 25, s. 19, which prohibits the stamps from being afterwards affixed, distinguished the case from R. v. Hawkeswood. Though two or three of the judges doubted at first the propriety of the latter case if the matter were *res integra*, yet they all agreed that, being an authority in point, they must be governed by it; and they held that the statute 31 Geo. III. made no difference in the question. Most of them maintained the principle in R. v. Hawkeswood to be well founded, for the Acts of Parliament referred to were mere revenue laws, meant to make no alteration in the crime of forgery but only to provide that the instrument should not be available for recovering upon it in a court of justice, though it might be evidence for a collateral purpose; that it was not necessary to constitute forgery that the instrument should be available; that the stamp itself might be forged, and it would be a strange defence to admit, in a court of justice, that because the man had forged the stamp he ought to be excused for having forged the note itself, which would be setting up one fraud in order to protect him from the punishment due to another: R. v. Morton, 2 East, P. C. 955. The same principle was again recognized in R. v. Roberts and R. v. Davies, 2 East, P. C. 956, and in R. v. Teague, 2 East, P. C. 979, where it was holden that, supposing the instrument forged to be such on the face of it as would be valid, provided it had a proper stamp, the offence was complete.

As to the uttering.—These words, *utter, uttering*, occur frequently in the law of forgery, counterfeiting and the like;

meaning, substantially, to offer. *See* s. 424 *post*, where the word utter is dropped. In ss. 431, 435, 437, 438 however it is used. If one offers another a thing, as, for instance, a forged instrument or a piece of counterfeit coin, intending it shall be received as good, he utters it, whether the thing offered be accepted or not. It is said that the offer need not go so far as a tender: R. v. Welch, 2 Den. 78; R. v. Ion., 2 Den. 475. But, to constitute an uttering, there must be a complete attempt to do the particular act the law forbids, though there may be a complete conditional uttering, as well as any other, which will be criminal. The words "pay," "put off," in a statute are not satisfied by a mere uttering or by a tender; there must be an acceptance also: Bishop, Stat. Cr. 306.

Showing a man an instrument, the uttering of which would be criminal, though with an intent of raising a false idea in him of the party's substance, is not an uttering. Nor will the leaving it, afterwards, sealed up, with the person to whom it was shown, under cover, that he may take charge of it as being too valuable to be carried about, be an uttering: R. v. Shukard, R. & R. 200. But the showing of a forged receipt to a person with whom the defendant is claiming credit for it was held to be an offering or uttering, though the defendant refused to part with the possession of it: R. v. Radford, 1 Den. 59.

Giving a forged note to an innocent agent or an accomplice that he may pass it is a disposing of and putting it away: R. v. Giles, 1 Moo. 166. So, if a person knowingly deliver a forged bank note to another, who knowingly utters it accordingly, the prisoner who delivered such note to be put off may be convicted of having disposed of and put away the same: R. v. Palmer, R. & R. 72.

On the charge of uttering the guilty knowledge is a material part of the evidence. *Actus non facit reum nisi mens sit rea.* If there is no guilty knowledge, if the person who utters a forged instrument really thinks it

genuine, there is no *mens rea* with him; he commits no offence. Therefore the prosecutor must prove this guilty knowledge by the defendant to obtain a conviction. S. 424, *post.*

This is not capable of direct proof. It is in nearly all cases proved by evidence of facts from which the jury may presume it: Archbold, 570 And by a laxity of the general rules of evidence, which has long prevailed in the English Courts, the proof of collateral facts is admitted to prove the guilty knowledge of the defendant. Thus, on an indictment for knowingly uttering a forged instrument, or a counterfeit bank note, or counterfeit coin, proof of the possession, or of the prior or *subsequent* utterance, either to the prosecutor himself *or to other persons*, of other false documents or notes, or bad money, *though of a different description*, and though themselves *the subjects of separate indictments*, is admissible as material to the question of *guilty knowledge* or intent: Taylor, Evid., 1 vol. par. 322; R. v. Aston, 2 Russ. 841; R. v. Lewis, 2 Russ. 841; R. v. Oddy, 2 Den. 264. But in these cases it is essential to prove distinctly that the instruments offered in evidence of guilty knowledge were themselves forged: Taylor, *loc. cit*: R. v. Bent, 10 O. R. 557.

It seems also, that though the prosecutor may prove the uttering of other forged notes by the prisoner, and his conduct at the time of uttering them, he cannot proceed to show what the prisoner said or did at another time with respect to such uttering; for these are collateral facts, too remote for any reasonable presumption of guilt to be founded upon them, and such as the prisoner cannot by any possibility be prepared to contradict: Taylor, *loc. cit.*; R. v. Phillips, 1 Lewin, 105; R. v. Cooke, 8 C. & P. 586. In Phillips' case the judge said: "That the prosecutor could not give in evidence anything that was said by the prisoner at a time collateral to a former uttering in order to show that what he said at the time of such former

uttering was false, because the prisoner could not be prepared to answer or explain evidence of that description; that the prisoner is called upon to answer all the circumstances of a case under consideration, but not the circumstances of a case which is not under consideration; that the prosecutor is at liberty to show other cases of the prisoner having uttered forged notes, and likewise his conduct at the time of uttering them; but that what he said or did *at another time collateral to such other utterings* could not be given in evidence, as it was impossible that the prisoner could be prepared to combat it." *See* R. v. Brown, 2 F. & F. 559, and remarks of Crompton, J., therein on R. v. Cooke, cited *ante*, and R. v. Forbes 7 C. & P. 224. The rule, in such cases, seems to be that you cannot bring collateral evidence of a collateral fact, or that you cannot bring evidence of a collateral circumstance of a collateral fact.

The prosecutor must also prove that the uttering was accompanied by an intent to defraud, as to which *see* remarks, *ante*, on the necessity of this intent in forgery, generally. Baron Alderson told the jury, in R. v. Hill 2 Moo. 30, that if they were satisfied that the prisoner uttered the bill as true, knowing at the time that it was forged, and meaning that the person to whom he offered it should believe it to be genuine, they were bound to infer that he intended to defraud this person, and this ruling was held right by all the judges. And in R. v. Todd, 1 Cox, 57, Coleridge, J., after consulting Cresswell, J., said: "If a person forge another person's name, and utter any bill, note, or other instrument with such signature, knowing it not to be the signature of the person whose signature he represents it to be, but intending it to be taken to be such by the party to whom it is given, the inference, as well in point of fact as of law, is strong enough to establish the intent to defraud, and the party so acting becomes responsible for the legal consequences of his act, whatever may have been

his motives. The natural, as well as the legal, consequence is that this money is obtained, for which the party obtaining it professes to give but cannot give a discharge to the party giving up the money on the faith of it. Supposing a person in temporary distress puts another's name to a bill, intending to take it up when it becomes due but cannot perform it, the consequence is that he has put another under the legal liability of his own act, supposing the signature to pass for genuine": *see* R. v. Vaughan, 8 C. & P. 276; R. v. Cooke, 8 C. & P. 582; R. v. Geach, 9 C. & P. 499.

At common law any one convicted of forgery was incompetent as a witness, but now no one is incompetent by reason of interest or crime: *The Canada Evidence Act, 1893*, s. 3.

Indictment.— that A. B. on unlawfully did forge, knowing it to be false, a certain (*here name the document*) which said forged document is as follows that is to say (*here set out the document verbatim*) with intent thereby to defraud, and with intent that the said document should be used as genuine (*or acted upon as genuine*) to the prejudice of (*name, as the case may be*) or of any one who would accept, take, or deal with the said forged document.

And the jurors aforesaid do further present, that the said J. S. afterwards, to wit, on the day and year aforesaid, unlawfully and knowingly did forge a certain other (*state the instrument forged by any name or designation by which it is usually known*), with intent thereby then to defraud; and that the said document should be used as genuine (*or acted upon as genuine*) to the prejudice of any one who thereafter would accept, take or deal with or come by the said forged document.

And the jurors aforesaid do further present, that the said J. S. afterwards, to wit, on the day and year aforesaid, unlawfully did utter, offer, dispose of, and put off, as if it

were genuine (*use, deal with, or attempt to use, etc.*, s. 424), a certain forged document, which said forged document is as follows, that is to say (*here set out the instrument verbatim*), with intent thereby then to defraud, he, the said J. S., at the time he so uttered, offered, disposed of, and put off the said last-mentioned forged document as aforesaid, well knowing the same to be forged.

See R. v. Brewer, 6 C. & P. 363, and s. 613, *post*, as to indictments, and s. 569 as to search warrant.

The evidence of a single witness is not sufficient if not corroborated; s. 684, *post*. The repealed s. 218, c. 174, R. S. C. applied only to an interested witness: R. v. Selby, 16 O. R. 255; R. v. Rhodes, 22 O. R. 480; 10 & 11 V. c. 9, s. 21; Bank Prosecutions, R. & R. 378.

At common law forgery is a misdemeanour, punishable by fine or imprisonment, or both, at the discretion of the court. The court of Quarter Sessions now has jurisdiction in cases of forgery, s. 539, *post*.

But a provincial Act authorizing police magistrates to try cases of forgery is unconstitutional: R. v. Toland, 22 O. R. 505; *see* R. v. Levinger, 22 O. R. 690. A prisoner extradited from the United States on a charge of forgery may, upon an indictment for forgery, be found guilty of a criminal uttering: R. v. Paxton, 8 L. C. L. J. 117. Making false entries in a book does not constitute the crime of forgery: *Ex parte* Lamirande, 10 L. C. J. 280; *see* R. v. Blackstone, 4 Man. L. R. 296, and *Ex parte* Eno, 10 Q. L. R. 194. Definition of the term *forgery* considered, *Re* Smith, 4 P. R. (Ont.) 215; R. v. Gould, 20 U. C. C. P. 154.

Where the prisoner was indicted for forging a note for $500, having changed a note of which he was the maker from $500 to $2,500: *Held*, a forgery of a note for $500, though the only fraud committed was on the endorser: R. v. McNevin, 2 R. L. 711.

In consideration of law, every *alteration* of an instrument amounts to a forgery of the whole, and an indictment for *forgery* will be supported by proof of a *fraudulent alteration*, though, in cases where a genuine instrument has been altered, it is perhaps better to allege the *alteration* in one count of the indictment: s. 422, s-s. 2. *post*.

If several concur in employing another to make a forged instrument, knowing its nature, they are all guilty of the forgery: R. v. Mazeau, 9 C. & P. 676; R. v. Dade, 1 Moo. 307. All are now principals in forgery, as in all other offences, by s. 61.

A joint and several bond was executed by prisoner under an assumed name for a fraudulent purpose. There was no proof whether the other signatures were forged or not. An indictment that prisoner had forged the bond was sustained: R. v. Deegan, 6 Man. L. R. 81; *see* s. 459.

PART XXXI.

FORGERY.

Document Defined.

419. A document means in this part any paper, parchment, or other material used for writing or printing, marked with matter capable of being read, but does not include trade marks on articles of commerce, or inscriptions on stone or metal or other like material.

Bank Note, Etc., Defined.

420. "Bank note" includes all negotiable instruments issued by or on behalf of any person, body corporate, or company carrying on the business of banking in any part of the world, or issued by the authority of the Parliament of Canada or of any foreign prince, or state, or government, or any governor or other authority lawfully authorized thereto in any of Her Majesty's dominions, and intended to be used as equivalent to money, either immediately upon their issue or at some time subsequent thereto, and all bank bills and bank post bills;

(*a*) "Exchequer bill" includes exchequer bonds, notes, debentures and other securities issued under the authority of the Parliament of Canada, or under the authority of any legislature of any province forming part of Canada, whether before or after such province so became a part of Canada.

Section 129 of c. 174, R. S. C., as to description of bank notes in indictments, has not been re-enacted.

FALSE DOCUMENT, ETC. DEFINED.

421. The expression "false document" means—

(*a*) a document the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof, or which, though made by, or by the authority of, the person who purports to make it is falsely dated as to time or place of making, where either is material; or

(*b*) a document the whole or some material part of which purports to be made by or on behalf of some person who did not in fact exist; or

(*c*) a document which is made in the name of an existing person, either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it.

2. It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence.

FORGERY DEFINED.

422. Forgery is the making of a false document, knowing it to be false with the intention that it shall in any way be used or acted upon as genuine, to the prejudice of any one, whether within Canada or not, or that some person should be induced, by the belief that it is genuine, to do or refrain from doing anything, whether within Canada or not.

2. Making a false document includes altering a genuine document in any material part, and making any material addition to it or adding to it any false date, attestation, seal or other thing which is material, or by making any material alteration in it, either by erasure, obliteration, removal or otherwise.

3. Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced, by the belief that it is genuine, to do or refrain from doing anything.

4. Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made as, and is such as to indicate that it was intended, to be acted on as genuine.

"The crime of forgery was an offence at common law, the punishment of which was only fine and imprisonment. It is not possible to say precisely what are the documents the false making of which is forgery at common law. But by a great many different enactments, passed at different times, a great

many forgeries have been made felonies, and as such, punishable with great severity. The statute law was, for the most part, consolidated by the 24 & 25 V. c. 98. Like the other consolidation Acts the Forgery Act assumes that the common law definition of forgery is known. This definition, however, is a somewhat intricate matter, involving various questions as to the extent of falsification implied in forgery, the character of the intent to defraud essential to it, and the circumstances essential to the completion of the crime. These matters are dealt with in ss. 318 to 317 (*ss. 419 to 422, ante*), both inclusive.—Imp. Comm. Rep.

PUNISHMENT

423. Every one who commits forgery of the documents hereinafter mentioned is guilty of an indictable offence and liable to the following punishment:—

(*A*) To imprisonment for life if the document forged purports to be, or was intended by the offender to be understood to be or to be used as—

(*a*) any document having impressed thereon or affixed thereto any public seal of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of Her Majesty: R. S. C. c. 165, s. 4; or

(*b*) any document bearing the signature of the Governor-General, or of any administrator, or of any deputy of the Governor, or of any Lieutenant-Governor, or any one at any time administering the government of any province of Canada: R. S. C. c. 165, s. 5; or

(*c*) any document containing evidence of, or forming the title or any part of the title to, any land or hereditament, or to any interest in or to any charge upon any land or hereditament, or evidence of the creation, transfer or extinction of any such interest or charge; or

(*d*) any entry in any register or book, or any memorial or other document made, issued, kept or lodged under any Act for or relating to the registering of deeds or other instruments respecting or concerning the title to or any claim upon any land or the recording or declaring of titles to land: R. S. C. c. 165, s. 38; or

(*e*) any document required for the purpose of procuring the registering of any such deed or instrument or the recording or declaring of any such title: R. S. C. c. 165, s. 38; or

(*f*) any document which is made, under any Act, evidence of the registering or recording or declaring of any such deed, instrument or title: R. S. C. c. 165, s. 38; or

(*g*) *any document which is made by any Act evidence affecting the title to land;* or

(*h*) any notarial act or document or authenticated copy, or any *procès-verbal* of a surveyor or authenticated copy thereof: R. S. C. c. 165, s. 38; or

(*i*) any register of births, baptisms, marriages, deaths or burials authorized or required by law to be kept, or any certified copy of any entry in or extract from any such register : R. S. C. c. 165, s. 43 ; (*see post*, s. 436) ; or

(*j*) any copy of any such register required by law to be transmitted by or to any registrar or other officer : R. S. C. c. 165, s. 44 ; or

(*k*) any will, codicil or other testamentary document, either of a dead or living person, or any probate or letters of administration, whether with or without the will annexed : R. S. C. c. 165, s. 27 ; or

(*l*) any transfer or assignment of any share or interest in any stock, annuity or public fund of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of Her Majesty, or of any foreign state or country, or receipt or certificate for interest accruing thereon : R. S. C. c. 165, ss. 8 & 25 ; or

(*m*) any transfer or assignment of any share or interest in the debt of any public body, company or society, British, Canadian or foreign, or of any share or interest in the capital stock of any such company or society, or receipt or certificate for interest accruing thereon : R. S. C. c. 165, s. 8 ; or

(*n*) any transfer or assignment of any share or interest in any claim to a grant of land from the Crown, or to any scrip or other payment or allowance in lieu of any such grant of land : R. S. C. c. 165, s. 8 ; or

(*o*) any power of attorney or other authority to transfer any interest or share hereinbefore mentioned, or to receive any dividend or money payable in respect of any such share or interest : R. S. C. c. 165, s. 8 ; or

(*p*) any entry in any book or register, or any certificate, coupon, share, warrant or other document which by any law or any recognized practice is evidence of the title of any person to any such stock, interest or share, or to any dividend or interest payable in respect thereof : R. S. C. c. 165, s. 11 ; or

(*q*) any exchequer bill or endorsement thereof, or receipt or certificate for interest accruing thereon : R. S. C. c. 165, s. 13 ; or

(*r*) any bank note or bill of exchange, promissory note or cheque, or any acceptance, endorsement or assignment thereof : R. S. C. c. 165, ss. 18, 25 & 28 ; or

(*s*) any scrip in lieu of land : R. S. C. c. 165, s. 13 ; or

(*t*) any document which is evidence of title to any portion of the debt of any dominion, colony, or possession of Her Majesty, or of any foreign state, or any transfer or assignment thereof : or

(*u*) any deed, bond, debenture, or writing obligatory, or any warrant, order, or other security for money or payment of money, whether negotiable or not, or endorsement or assignment thereof : R. S. C. c. 165, ss. 26 & 32 ; or

(*v*) any accountable receipt or acknowledgment of the deposit, receipt, or delivery of money or goods, or endorsement or assignment thereof : R. S. C. c. 165, s. 29 ; or

(*w*) *any bill of lading, charter-party, policy of insurance, or any shipping document accompanying a bill of lading, or any endorsement or assignment thereof* ; or

(*x*) *any warehouse receipt, dock warrant, dock-keeper's certificate, delivery order, or warrant for the delivery of goods, or of any valuable thing, or any endorsement or assignment thereof;* or

(*y*) *any other document used in the ordinary course of business as proof of the possession or control of goods, or as authorizing, either on endorsement or delivery, the possessor of such document to transfer or receive any goods.*

FOURTEEN YEARS.

(*B*) To fourteen years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as—

(*a*) any entry or document made, issued, kept or lodged under any Act for or relating to the registry of any instrument respecting or concerning the title to, or any claim upon, any personal property : R. S. C. c. 165, s. 38.

(*b*) any public register or book not hereinbefore mentioned appointed by law to be made or kept, or any entry therein : R. S. C. c. 165, s. 7.

SEVEN YEARS.

(*C*) To seven years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as—

(*a*) any record of any court of justice, or any document whatever belonging to or issuing from any court of justice, or being or forming part of any proceeding therein. (*a. b. c. d. e. are an extension of the law,* s. 34, c. 165, R. S. C.); or

(*b*) any certificate, office copy, or certified copy or other document which, by any statute in force for the time being, is admissible in evidence ; or

(*c*) any document made or issued by any judge, officer or clerk of any court of justice, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act ; or

(*d*) any document which any magistrate is authorized or required by law to make or issue ; or

(*e*) any entry in any register or book kept, under the provisions of any law, in or under the authority of any court of justice or magistrate acting as such ; or

(*f*) any copy of any letters patent, or of the enrolment or enregistration of letters patent, or of any certificates thereof : R. S. C. c. 165, s. 6 ; or

(*g*) any license or certificate for or of marriage : R. S. C. c. 165, s. 42 ; or

(*h*) *any contract or document which, either by itself or with others, amounts to a contract, or is evidence of a contract ;* or

(*i*) *any power or letter of attorney or mandate ;* or

(*j*) any authority or request for the payment of money, or for the delivery of goods, or of any note, bill, or valuable security : R. S. C. c. 165, s. 29 ; or

(*k*) any acquittance or discharge, or any voucher of having received any goods, money, note, bill or valuable security, or any instrument which is evidence of any such receipt : R. S. C. c. 165, s. 29 ; or

(*l*) *any document to be given in evidence as a genuine document in any judicial proceeding ;* or

(*m*) any ticket or order for a free or paid passage on any carriage, tramway or railway, or on any steam or other vessel: R. S. C. c. 165, s. 33; or

(*n*) any document other than those above mentioned: R. S. C. c. 165, s. 76.

The words in italics are additions to the enumeration contained in the repealed statute. The punishments have been altered in some cases. Ss. 86 & 87, c. 35, R. S. C., provide for the forgery of stamps, money orders, etc., and s. 100, c. 8, for the forgery of ballot papers at elections. Upon the trial of any forgery the jury may, if the evidence warrants it, convict the prisoner of an attempt to commit the same; s. 711. The punishment then, where none is specially provided, falls under ss. 528 or 529.

Under the above s. 423, by s-s. (*A.u.*,) forging a warrant or order for money or payment of money is punishable by a life imprisonment, whilst, s-s. (*C.j.*), forging any authority or request for the payment of money is punishable by seven years. What is the difference between these documents? Why that great difference in the punishment? Then by s-s. (*A.v.*) forging any accountable receipt or acknowledgment of the deposit, receipt or delivery of money or goods is punishable by a life imprisonment, whilst s-s. (*C.k.*,) forging any acquittance or discharge, or any voucher of having received any goods or money, or any instrument which is evidence of any such receipt, is punishable by *seven* years!

The punishment for forging a railway ticket is *seven* years; for forging a custom house mark or brand, s. 210, c. 32, R. S. C., two hundred dollars, on summary conviction; for forging any other custom house document, five years' penitentiary; s. 211, c. 32, R. S. C.; for forging election ballot papers, six months; s. 100, c. 8, R. S. C.; for forging a post office stamp, imprisonment for life; s. 86, c. 35, R. S. C.; but for forging an inland revenue stamp only fourteen years; s. 485, post. It is only five years, however, for criminally receiving a stolen post letter, whilst

it is fourteen for receiving any other stolen property; ss. 314, 315, *ante*.

(*A.*) (*i.*)—FORGERY OF MARRIAGE REGISTER.

In R. v. Asplin, 12 Cox, 391, it was held by Martin, B., that upon an indictment for making a false entry in a marriage register it is not necessary that the entry should be made with intent to defraud, and that it is no defence that the marriage solemnized was null and void, being bigamous; also that, if a person knowing his name to be A,, signs another name without authority, he is guilty, and it is immaterial that he is a third witness, the Marriage Act only requiring two.

(*A.*) (*k.*)—FORGERY OF WILLS.

The judges were equally divided upon the question whether, in the absence of the existence of some person who could have been defrauded by the forged will, a count for forging it with intent to defraud a person or persons unknown could be supported: R. v. Tylney, 1 Den. 319.

Forgery may be committed by the false making of the will of a living person, or of a non-existing person: R. v. Murphy, 2 East, P. C. 949; Wilks's case, 2 East P. C. 957; R. v. Sterling, 1 Leach, 99; R. v. Coogan, 1 Leach 449; R. v. Avery, 8 C. & P. 596. So, though it be signed by the wrong christian name of the person whose will it purports to be: R. v. Fitzgerald, 1 Leach 20; ss. 421, 422, *ante*.

(*A.*) (*r.*)—BANK NOTES, BILLS OF EXCHANGE, PROMISSORY NOTES.

A bill payable ten days after sight, purporting to have been drawn upon the Commissioners of the Navy by a lieutenant, for the amount of certain pay due to him, has been holden to be a bill of exchange: R. v. Chisholm, R. & R. 297. So a note promising to pay A. & B., "stewardesses" of a certain benefit society, or their "successors," a certain sum of money on demand, has been holden to be a

promissory note within the meaning of the Act. It is not necessary that the note should be negotiable: R. v. Box, R. & R. 300. An instrument drawn by A. on B., requiring him to pay to the administrators of C. a certain sum, at a certain time "without acceptance," is a bill of exchange: R. v. Kinnear, 2 M. & Rob. 117. So, though there be no person named as drawee, the defendant may be indicted for uttering a forged acceptance on a bill of exchange: R. v. Hawkes, 2 Moo. 60. For the act of putting the acceptance is a sort of estoppel to say it was not a bill of exchange, but, without acceptance, this instrument is not a bill of exchange: R. v. Curry, 2 Moo. 218.

In R. v. Mopsey, 11 Cox, 143, the acceptance to what purported to be a bill of exchange was forged, but at the time it was so forged the document had not been signed by the drawer, and it was held that, in consequence, the document was not a bill of exchange. And a document in the ordinary form of a bill of exchange, but requiring the drawee to pay to his own order, and purporting to be indorsed by the drawer, and accepted by the drawer, cannot, in an indictment for forgery or uttering, be treated as a bill of exchange: R. v. Bartlett, 2 M. & Rob. 362. But an instrument payable to the order of A., and directed "At Messrs. P. & Co., bankers," was held to be properly described as a bill of exchange: R. v. Smith, 2 Moo. 295. A nurseryman and seedsman got his foreman to accept two bills, the acceptance having no addition, description or address, and afterwards, without the acceptor's knowledge, he added to the direction a false address but no description, and represented in one case that the acceptance was that of a customer, and in the other case that it was that of a seedsman, there being in fact no such person at the supposed false address: *held*, that in the one case, the former, he was not guilty of forgery of the acceptance, but that, in the other case, he was: R. v. Epps, 4 F. & F. 81. A bill of exchange was made payable to A, B, C, D, or other

forged executrixes. The indictment charged that the prisoner forged on the back of the bill a certain indorsement, which indorsement was as follows (naming one of the executrixes); *Held*, a forged indorsement, and indictment sufficient: R. v. Winterbottom, 1 Den. 41. Putting off a bill of exchange of A. an existing person, as the bill of exchange of A. a fictitious person, is a felonious uttering of the bill of a fictitious drawer: R. v. Nisbett, 6 Cox, 320. If there are two persons of the same name, but of different descriptions or additions, and one signs his name with the description or addition of the other for the purpose of fraud, it is forgery: R. v. Webb, cited in Bayley on Bills, 432.

There can be no conviction for forgery of an indorsement of a bill of exchange under the above section if the bill of exchange itself is not a complete instrument as such: R. v. Harper, 14 Cox, 574.

W. a bailiff had an execution against prisoner and H. M. and to settle same it was arranged to give a note made by A. M. and indorsed by A. D. M. A note was drawn up payable to the order of A. D. M., and prisoner took it away and brought it back with the name A. D. M. indorsed. It was then signed by A. M. and given to the bailiff. The indorsement was a forgery, and prisoner was indicted for forging an indorsement on a promissory note, and convicted. *Held*, following R. v. Butterwick, 2 M. & Rob. 196; R. v. Mopsey, 11 Cox, 143; and R. v. Harper, 7 Q. B. D. 78, that the conviction could not be sustained on the indictment as framed as the instrument, for want of the maker's name at the time of the forgery, was not a promissory note; nor could it stand on the count for uttering as after it was signed it was never in prisoner's possession: R. v. McFee, 18 O. R. 8.

Held, that the alteration of a $2 Dominion note to one of the denomination of $20, such alteration consisting in the addition of a cypher after the figure 2, wherever that figure occurred in the margin of the note, was forgery, and

the prisoner was rightly convicted therefor: R. v. Bail, 7 O. R. 228.

Where in an instrument, in form of a promissory note, a blank is left for payee's name it is not a completed note so as to support a conviction for forgery, or for forging indorsement, nor is it a document, writing or instrument within c. 165, ss. 46, 47 or 50.

Semble, it might be forgery at common law: R. v. Cormack, 21 O. R. 213.

An indictment need not state, in the counts for uttering, to whom the note was disposed of: R. v. Holden, R. & R. 154. The intent to defraud any particular person need not be alleged or proved.

Under the counts for uttering evidence may be given that the defendant offered or tendered the note in payment, or that he actually passed it, or otherwise disposed of it to another person. Where it appeared that the defendant sold a forged note to an agent employed by the bank to procure it from him the judges held this to be within the Act, although it was objected that the prisoner had been solicited to commit the act proved against him by the bank themselves, by means of their agents: R. v. Holden, R. & R. 154. So where A. gave B. a forged note to pass for him, and upon B.'s tendering it in payment of some goods it was stopped; the majority of the judges held that A., by giving the note to B., was guilty of disposing of and putting away the note within the meaning of the Act: R. v. Palmer, R. & R. 72; R. v. Soares, R. & R. 25; R. v. Stewart, R. & R. 363; and R. v. Giles, 1 Moo. 166, where it was held that giving a forged note to an innocent agent, or an accomplice, that he may pass it is a disposing of, and putting it away, within the meaning of the statute.

(*A*) (*u*) WARRANT, ORDER FOR PAYMENT, ETC.

A draft upon a banker, although it be post-dated, is a warrant and order for the payment of money: R. v. Taylor, 1 C. & K. 213; R. v. Willoughby, 2 East, P. C. 944. So is

even a bill of exchange: R. v. Sheppard, 1 Leach, 226; R. v. Smith, 1 Den. 79. An order by a foreman to his employer to pay a specific sum falls under the statute: R. v. Bowen, M. L. R. 7 Q. B. 468. An order need not specify any particular sum to fall under the statute: R. v. McIntosh, 2 East, P. C. 942. A writing in the form of a bill of exchange, but without any drawee's name, cannot be charged as an order for the payment of money; at least, unless shown by averments to be such: R. v. Curry, 2 Moo. 218. In R. v. Howie, 11 Cox, 320, it was held that a seaman's advance note was not an order for payment of money. It would seem, however, to be an *undertaking* for the payment of money within the statute: R. v. Bamfield, 1 Moo. 416; R. v. Anderson, 2 M. & Rob. 469; R. v. Reed, 2 Moo. 62; R. v. Joyce, L. & C. 576. The statute applies as well to a written promise for the payment of money by a third person as by the supposed party to the instrument: R. v. Stone, 1 Den. 181. An instrument, professing to be a scrip certificate of a railway company, is not an undertaking within the statute: R. v. West, 1 Den. 258. But perhaps the present section would cover this case.

In R. v. Rogers, 9 C. & P. 41, it was held that a warrant for the payment of money need not be addressed to any particular person: *see* R. v. Snelling, Dears. 219.

As to what is a warrant or order for the delivery of goods the following cases may be cited: A pawnbroker's ticket is a warrant for the delivery of goods: R. v. Morrison, Bell, 158. At the London docks a person bringing a "tasting order" from a merchant having wine there is not allowed to taste until the order has across it the signature of a clerk of the company; the defendant uttered a tasting order with the merchant's name forged to it by presenting it to the company's clerk for his signature across it, which the clerk refused; it was held to be, in this state, a forged order for the delivery of goods within the statute: R. v. Illidge, 1 Den. 404. A request for the delivery of

goods need not be addressed to any one; s. 423 (*C*) (*j*): R. v. Carney, 1 Moo. 351; R. v. Cullen, 1 Moo. 300; R. v. Pulbrook, 9 C. & P. 37. Nor need it be signed by a person who can compel a performance of it, or who has any authority over or interest in the goods: R. v. Thomas, 2 Moo. 16; R. v. Thorn, 2 Moo. 210. Formerly, if upon an indictment for the misdemeanour of obtaining goods under false pretenses a felonious forgery were proved, the judge had to direct an acquittal: R. v. Evans, 5 C. & P. 553. But, by the abolition of the distinction between felonies and misdemeanours, it would seem that the judge may, under the same circumstances, take a verdict for the offence charged.

As to what is a receipt under this section 423, (A) (*v*), the additions in the present clause render many of the cases on the subject of no practical importance. A turnpike toll-gate ticket is a receipt for money within this section: R. v. Fitch, R. v. Howley, L. & C. 159. If a person with intent to defraud, and to cause it to be supposed, contrary to the fact, that he has paid a certain sum into a bank, make in a book, purporting to be a pass-book of the bank, a false entry which denotes that the bank has received the sum, he is guilty of forging an accountable receipt for money: R. v. Moody, L. & C. 173; R. v. Smith, L. & C. 168. A document called a "clearance" issued to members of the Ancient Order of Foresters' Friendly Society certified that the member had paid all his dues and demands, and authorized any Court of the Order to accept the bearer as a clearance member: *Held*, that this was not a receipt for money under this section: R. v. French, 11 Cox, 472. An ordinary railway ticket is not an acquittance, or receipt, within this section: R. v. Gooden, 11 Cox, 672; but now, by s. 423, (C) (*m*), forging a railway ticket is a distinct offence. The prisoner being pressed by a creditor for the payment of £35 obtained further time by giving an I. O. U. for £35 signed by himself, and also purporting to be signed by W.; W.'s name was a forgery: *Held*, that the

instrument was a security for the payment of money by W: R. v. Chambers, 12 Cox, 109.

An indictment for forging a receipt 423, (*A*) (*v*), must allege a receipt either of money or of goods: R. v. McCorkill, 8 L. C. J. 283. But the intent to defraud any particular person need not be alleged: R. v. Hathaway, 8 L. C. J. 285; *see In re* Debaun, 11 L. N. 328.

The evidence of the uttering of a forged *indorsement* of a negotiable check or order is insufficient to sustain a conviction for uttering *a forged order* or check: R. v. Cunningham, Cassel's Dig. 107.

The prisoner was indicted for forging a request for the payment of money, s. 423 (*C*) (*j*) the said request consisting of a forged telegram upon which he obtained $85: *Held*, a forgery as charged: R. v. Stewart, 25 U. C. C. P. 440.

UTTERING, ETC.

424. Every one is guilty of an indictable offence who, knowing a document to be forged, uses, deals with, or acts upon it, or attempts to use, deal with, or act upon it, or causes or attempts to cause any person to use, deal with, or act upon it, as if it were genuine, and is liable to the same punishment as if he had forged the document.

2. It is immaterial where the document was forged.

The word "utter" has been left out of this clause, though retained in ss. 431, 435, 437, 438 and in the sections relating to the coin, s. 460, *et seq.*

COUNTERFEITING SEALS.

425. Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully makes or counterfeits any public seal of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of Her Majesty, or the impression of any such seal, or uses any such seal or impression, knowing the same to be so counterfeited. R. S. C. c. 165, s. 4 *(Amended)*. 24-25 V. c. 98, s. 1 (Imp.).

No intent to defraud necessary.

Indictment.— that A. B., on the seal of the Dominion of Canada, falsely and unlawfully did counterfeit.

(*Add a count for uttering, using, dealing with or . . . knowing the same to be so counterfeit.*)

COUNTERFEITING SEAL OF COURT.

426. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully makes or counterfeits any seal of a court of justice, or any seal of or belonging to any registry office or burial board, or the impression of any such seal, or uses any such seal or impression knowing the same to be counterfeited. R. S. C. c. 165, ss. 35, 38 & 43 (*Amended*). 24-25 V. c. 98, ss. 28, 31 & 36 (Imp.).

See under preceding section.

UNLAWFULLY PRINTING PROCLAMATION.

427. Every one is guilty of an indictable offence and liable to seven years' imprisonment who prints any proclamation, order, regulation or appointment, or notice thereof, and causes the same falsely to purport to have been printed by the Queen's Printer for Canada, or the Government Printer for any province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment which falsely purports to have been printed as aforesaid, knowing that the same was not so printed. R. S. C. c. 165, s. 37.

The repealed clause provided also for the forgery of any certificate of any proclamation, etc.: *see* s. 423, (*C*) (*l*). *ante*. The *Canada Evidence Act of 1893* provides for the proof of proclamations, etc.

SENDING TELEGRAMS IN FALSE NAME. (*New*).

428. Every one is guilty of an indictable offence who, with intent to defraud, causes or procures any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority, with intent that such telegram should be acted on as being sent by that person's authority, and is liable, upon conviction thereof, to the same punishment as if he had forged a document to the same effect as that of a telegram.

Indictment.— that A. B., at on unlawfully, with intent to defraud, did cause a telegram purporting to be an order for money, to be sent to as being sent by the authority of one C. D., knowing that it was not sent by the authority of the said C. D., with intent that such telegram should be acted on as being sent by the said C. D.

See R. v. Stewart, p. 521 *ante*.

SENDING FALSE TELEGRAMS OR LETTERS. (*New*).

429. Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to injure or alarm any person, sends, causes, or procures to be sent any telegram or letter or other message containing matter which he knows to be false.

Fine, s. 958.

Indictment.— that A. B., on at unlawfully did send (*cause or procure to be sent*) a telegram to one C. D. containing matter which he, the said A. B., knew to be false, with intent to injure (*or alarm*) the said C. D. (*Add another count giving the telegram in full if possible*).

The clause seems to cover the case of a telegram or letter sent to one person with intent to injure or alarm any other person, as well as the person to whom it is sent.

POSSESSION OF FORGED BANK NOTES.

430. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse (the proof whereof shall lie on him), purchases or receives from any person, or has in his custody or possession, any forged bank note, or forged blank bank note, whether complete or not, knowing it to be forged. R. S. C. c. 165, s. 19 (*Amended*). 24-25 V. c. 98, s. 13 (Imp.).

As to what constitutes a criminal possession *see* s. 3.

Indictment.—The Jurors for Our Lady the Queen present, that A. B. on unlawfully and without lawful authority or excuse, had in his custody and possession five forged bank notes for the payment of ten dollars each, the said A. B. then well knowing the said several bank notes and each and every of them respectively to be forged.

In R. v. Rowley, R. & R. 110, it was held that every uttering included having in custody and possession, and, by some of the judges, that without actual possession, if the notes had been put in any place under the prisoner's control, and by his direction, it was a sufficient possession within the statute.

Upon the trial for an offence of purchasing forged notes under this section the jury may, if the evidence warrants it, under s. 711, convict the prisoner of an attempt to commit the same.

DRAWING DOCUMENTS PER PROCURATION WITHOUT AUTHORITY.

431. Every one is guilty of an indictable offence who, with intent to defraud and without lawful authority or excuse, makes or executes, draws, signs, accepts or endorses, in the name or on the account of another person, by procuration or otherwise, *any document*, or makes use of or utters any such

document knowing it to be so made, executed, signed, accepted or endorsed, and is liable to the same punishment as if he had forged such document. R. S. C. c. 165, s. 30 (*Amended*). 24-25 V. c. 98, s. 24 (Imp.).

Greaves says: "This clause is framed in order to make persons punishable who, without authority, make, accept or endorse bills "per procuration."

The words "any document" instead of the enumeration contained in the repealed clause are an extension: *see* R. v. Kay, 11 Cox, 529, L. R. 1 C. C. R. 257. "Document" defined, s. 419; R. v. White, 1 Den. 208 cannot now be followed.

DEMANDING PROPERTY UPON FORGED INSTRUMENTS.

432. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who—

(*a*) demands, receives, obtains or causes, or procures to be delivered or paid to any person, anything under, upon, or by virtue of any forged instrument knowing the same to be forged, or under, upon, or by virtue of any probate or letters of administration, knowing the will, codicil, or testamentary writing on which such probate or letters of administration were obtained to be forged, or knowing the probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit; or

(*b*) attempts to do any such thing as aforesaid. R. S. C. c. 165, s. 45. 24-25 V. c. 98, s. 38 (Imp.).

The words "with intent to defraud" were in the repealed section.

Greaves says: "This clause is new. It is intended to embrace every case of demanding, etc., any property whatsoever upon forged instruments, and to include bringing an action on any forged bill of exchange, note, or other security for money. The words 'procures to be delivered or paid to any person' were inserted to include cases where one person by means of a forged instrument causes money to be paid to another person, and to avoid the difficulty which had arisen in the cases as to obtaining money by false pretenses: R. v. Wavell, 1 Moo. 224; R. v. Garrett, Dears. 232."

In R. v. Adams, 1 Den. 38, the prisoner had obtained goods at a store with a forged order; this was held not to be larceny; it would now fall under this clause.

The clause covers the attempt to commit the offence, as well as the offence itself, and under s. 711, on an indictment for the offence, a verdict for the attempt to commit it may be given if the evidence warrants it.

PART XXXII.

PREPARATION FOR FORGERY AND OFFENCES RESEMBLING FORGERY.

Interpretation of Terms.

433. In this part the following expressions are used in the following senses:—

(*a*) "Exchequer bill paper" means any paper provided by the proper authority for the purpose of being used as exchequer bills, exchequer bonds, notes, debentures, or other securities mentioned in section four hundred and twenty;

(*b*) "Revenue paper" means any paper provided by the proper authority for the purpose of being used for stamps, licenses, or permits, or for any other purpose connected with the public revenue.

Instruments of Forgery and Counterfeiting.

434. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse (the proof whereof shall lie on him)—

(*a*) makes, begins to make, uses or knowingly has in his possession, any machinery or instrument or material for making exchequer bill paper, revenue paper or paper intended to resemble the bill paper of any firm or body corporate, or person carrying on the business of banking: R. S. C. c. 165, ss. 14, 16, 20 & 24; or

(*b*) engraves, or makes upon any plate or material anything purporting to be, or apparently intended to resemble, the whole or any part of any exchequer bill or bank note: R. S. C. c. 165, ss. 20, 22 & 24; or

(*c*) uses any such plate or material for printing any part of any such exchequer bill or bank note: R. S. C. c. 165, ss. 22 & 23; or

(*d*) knowingly has in his possession any such plate or material as aforesaid: R. S. C. c. 165, ss. 22 & 23; or

(*e*) makes, uses or knowingly has in his possession any exchequer bill paper, revenue paper, or any paper intended to resemble any bill paper of any firm, body corporate, company, or person, carrying on the business of banking,

or any paper upon which is written or printed the whole or any part of any exchequer bill, or of any bank note: R. S. C. c. 165, ss. 15, 16, 20 & 24.

(*f*) engraves or makes upon any plate or material anything intended to resemble the whole or any distinguishing part of any bond or undertaking for the payment of money used by any dominion, colony or possession of Her Majesty, or by any foreign prince or state, or by any body corporate, or other body of the like nature, whether within Her Majesty's dominions or without: R. S. C. c. 165, s. 25; or

(*g*) uses any such plate or other material for printing the whole or any part of such bond or undertaking: R. S. C. c. 165, s. 25; or

(*h*) knowingly offers, disposes of, or has in his possession any paper upon which such bond or undertaking, or any part thereof, has been printed: R. S. C. c. 165, s. 25 (*Amended*). 24-25 V. c. 98, ss. 9 & 19 (Imp.).

"Having in possession" defined, s. 3; *see* R. v. Brackenridge, 11 Cox, 96; R. v. Keith, Dears. 486, and Greaves' *note* on it in 2 Russ. 874; R. v. Warshaner, 1 Moo. 466; R. v. Rinaldi, L. & C. 330. A verdict of attempt may be given, if the evidence warrants it, s. 711.

COUNTERFEITING STAMPS.

435. Every one is guilty of an indictable offence and liable to *fourteen years'* imprisonment who—

(*a*) fraudulently counterfeits any stamp, whether impressed or adhesive, used for the purposes of revenue by the Government of the United Kingdom or of Canada, or by the Government of any province of Canada, or of any possession or colony of Her Majesty, or by any foreign prince or state; or

(*b*) knowingly sells or exposes for sale, or utters or uses any such counterfeit stamp; or

(*c*) without lawful excuse (the proof whereof shall lie on him) makes, or has knowingly in his possession, any die or instrument capable of making the impression of any such stamp as aforesaid, or any part thereof; or

(*d*) fraudulently cuts, tears or in any way removes from any material any such stamp, with intent that any use should be made of such stamp or of any part thereof; or

(*e*) fraudulently mutilates any such stamp with intent that any use would be made of any part of such stamp; or

(*f*) fraudulently fixes or places upon any material, or upon any such stamp, as aforesaid, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any other way removed from any other material or out of or from any other stamp; or

(*g*) fraudulently erases, or otherwise, either really or apparently, removes, from any stamped material any name, sum, date, or other matter or thing thereon written, with the intent that any use should be made of the stamp upon such material;

(*h*) knowingly and without lawful excuse (the proof whereof shall lie upon him) has in his possession any stamp or part of a stamp which has been

fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise, either really or apparently, removed: R. S. C. c. 165, s. 17 (*Amended.*) 32-33 V. c. 49. 33-34 V. c. 58 (Imp.); or

(*i*) without lawful authority makes or counterfeits any mark or brand used by the Government of the United Kingdom of Great Britain and Ireland, the Government of Canada, or the Government of any province of Canada, or by any department or officer of any such Government for any purpose in connection with the service or business of such Government, or the impression of any such mark or brand, or sells or exposes for sale or has in his possession any goods having thereon a counterfeit of any such mark or brand knowing the same to be a counterfeit, or affixes any such mark or brand to any goods required by law to be marked or branded other than those to which such mark or brand was originally affixed.

Sub-section (*h*) is an extension of the repealed statute.

Section 210, c. 32, R. S. C., as to counterfeiting custom-house brands, etc., is unrepealed.

As to indictment *see* s. 622.

See R. S. C. c. 35, s. 86, as to forgery of postal stamps.

As to what constitutes a criminal possession *see ante*, s. 3.

See R. v. Collicott, R. & R. 212, and R. v. Field, 1 Leach, 383, and general remarks on forgery. The words "with intent to defraud" are not necessary in the indictment since the statute does not contain them: R. v. Asplin, 12 Cox, 391.

It was held, in R. v. Ogden, 6 C. & P. 631, under a similar statute, that a fraudulent intent was not necessary, but in a case of R. v. Allday, 8 C. & P. 136, Lord Abinger ruled the contrary: "The Act of Parliament, he said, does not say that an intent to deceive or defraud is essential to constitute this offence, but it is a serious question whether a person doing this thing innocently, and intending to pay the stamp duty, is liable to be transported. I am of opinion, and I hope I shall not be found to be wrong, that to constitute this offence there must be a guilty mind. It is a maxim older than the law of England that a man is not guilty unless his mind be guilty."

Lord Abinger, in R. v. Page, 8 C. & P. 122, held, upon the same principle, that giving counterfeit coin in charity, knowing it to be such, is not criminal, though in the statute

there are no words with respect to defrauding. But this is overruled, as stated by Baron Alderson, in R. v. Ion, 2 Den. 475; and Greaves well remarks (on R. v. Page): "As every person is taken to intend the probable consequence of his act, and as the probable consequence of giving a piece of bad money to a beggar is that that beggar will pass it to some one else, and thereby defraud that person, *quære*, whether this case rests upon satisfactory grounds? In any case a party *may* not be defrauded by taking base coin, as he *may* pass it again, but still the probability is that he will be defrauded, and that is sufficient: 1 Russ. 126, note (*z*).

And are there not cases where a party, receiving a counterfeit coin or a false note, not only *may* not be defrauded but will *certainly not* be defrauded. As for example, suppose that during an election any one buys an elector's vote, and pays it with a forged bill,—is the uttering of this bill, with guilty knowledge, not criminal? Yet, the whole bargain is a nullity; the seller has no right to sell; the buyer has no right to buy; if he buys, and does not pay, the seller has no legal or equitable claim against him, though *he* may have fulfilled his part of the bargain. If the buyer does not pay he *does not* defraud the seller; he *cannot* defraud him, since he does not owe him anything; it, then, cannot be said that he defrauds him in giving him in payment a forged note. Why see in this a fraud, and no fraud in giving a counterfeit note, in charity, to a beggar? Nothing is due to this beggar, and he is not defrauded of anything by receiving this forged bill, nor is that elector, who has sold his vote, defrauded of anything, since nothing was due to him; they are both *deceived* but not *defrauded*. In the general remarks on forgery, *ante*, an opinion was expressed that forgery would be better described as "a false making with the intent to defraud or *deceive*." When the statute makes no mention of the intention does it not make the act prohibited a crime in itself, apart from the intention? Of course, it is a maxim of law that "*actus non facit reum*

nisi mens sit rea" or as said in other words, by Starkie, 1 Cr. Pl. 177, that, "to render a party criminally responsible, a vicious will must concur with a wrongful act." "But," continues Starkie, "though it be universally true, that a man cannot become a criminal unless his mind be in fault, it is not so general a rule that the guilty intention must be averred upon the face of the indictment." And then, for example, does not the man who forges a stamp, or, *scienter*, utters it, do wilfully an unlawful act? Does not the law say that this act, by itself, is criminal? Has parliament not the right to say: "The forging, false-making a stamp, or knowingly uttering it, is a felony, by itself, whether the person who does it means wrong, or whether he means right, or whether he means nothing at all?" And this is exactly what it has said with regard to stamps, the Great Seal, records of the courts of justice, etc. It has said of these: "They shall be sacred, inviolable; you shall not deface them, imitate them, falsify, or alter them in any way or manner whatsoever, and if you do, you will be a felon." And to show that, as regards these documents, the intent to defraud was not to be a material element of the offence, it has expressly, in all the other clauses of the statute, where it *did* require this intent to make the act criminal, inserted the words "with intent to defraud," and left them out in these clauses. And no one would be prepared to say, that the maxim, "*la fin justifie les moyens*," has found its introduction into the English criminal law; and that, for instance, a clerk of a court of justice is not guilty of a criminal act, if he alters a record, provided that the alteration is done with a *good intent*, and to put the record as *he* thinks it ought to be, and should, in fact, be. Is it not better to say that, in such cases, the guilty mind, the evil intent, the *mens rea*, consist in the wilful disobedience to a positive law, in the infraction of the enactments of the legislative authority? (From 2nd Edit.).

As to intention and "*mens rea*," *see* 2 Steph. Hist. 110, and cases under s. 14, p. 11 *ante*.

"What the law says shall not be done, it becomes illegal to do, and is therefore the subject matter of an indictment, without the addition of any corrupt motives": R. v. Sainsbury, 4 T. R. 451.

The definition in s. 422 of this Code does not make an intent to defraud an ingredient of the offence: and, under it, one who buys a vote with a forged bank bill is undoubtedly guilty of forgery or of a criminal uttering: *see* R. v. , 1 Cox, 250.

DESTROYING, ETC., REGISTERS.

436. Every one is guilty of an indictable offence and liable to *fourteen years'* imprisonment, who

(*a*) unlawfully destroys, defaces or injures any register of births, baptisms, marriages, deaths or burials required or authorized by law to be kept in Canada, or any part thereof, or any copy of such register, or any part thereof required by law to be transmitted to any registrar or other officer; or

(*b*) unlawfully inserts in any such register, or any such copy thereof, any entry, known by him to be false, of any matter relating to any birth, baptism, marriage, death or burial, or erases from any such register or document any material part thereof. R. S. C. c. 165, ss. 43 & 44 (*Amended*). 24-25 V. c. 98, ss. 36 & 37 (Imp.).

See next section.

Indictment.— that A. B., on at unlawfully did destroy, deface and injure a certain register of which said register was then and there kept as the register of marriages of the parish of and as such was then and there in the lawful custody of : R. v. Bowen, 1 Den. 22; *see* R. v. Asplin, 12 Cox, 391; R. v. Mason, 2 C. & K. 622.

FALSE EXTRACTS FROM REGISTERS.

437. Every one is guilty of an indictable offence and liable to *ten* years imprisonment, who—

(*a*) *being a person authorized or required by law* to give any certified copy of any entry in any such register as in the last preceding section mentioned, certifies any writing to be a true copy or extract, knowing it to be false, or knowingly utters any such certificate;

(*b*) unlawfully and for any fraudulent purpose takes any such register or certified copy from its place of deposit or conceals it;

(*c*) *being a person having the custody* of any such register or certified copy, permits it to be so taken or concealed as aforesaid. R. S. C. c. 165, s. 44 (*Amended*). 24-25 V. c. 98, s. 37 (Imp.).

UTTERING FALSE CERTIFICATES.

438. Every one is guilty of an indictable offence and liable to seven years' imprisonment, who—

(*a*) being by law required to certify that any entry has been made in any such register as in the two last preceding sections mentioned makes such certificate knowing that such entry has not been made; or

(*b*) being by law required to make a certificate or declaration concerning any particular required for the purpose of making entries in such register knowingly makes such certificate or declaration containing a falsehood; or

(*c*) being an officer having custody of the records of any court, or being the deputy of any such officer, *wilfully* utters a false copy or certificate of any record; or

(*d*) not being such officer or deputy *fraudulently* signs or certifies any copy or certificate of any record, or any copy of any certificate, as if he were such officer or deputy. R. S. C. c. 165, ss. 35 & 43 (*Amended*). 24-25 V. c. 98, ss. 28 & 36 (Imp.).

See R. v. Powner, 12 Cox, 235.

The words "wilfully" appears only in s-s. (*c*), and "fraudulently" only in s-s. (*d*).

FORGING CERTIFICATES.

439. Every one is guilty of an indictable offence and liable to *two* years' imprisonment, who

(*a*) being an officer required or authorized by law to make or issue any certified copy of any document or of any extract from any document *wilfully* certifies, as a true copy of any document or of any extract from any such document, any writing which he knows to be untrue in any material particular; or

(*b*) not being such officer as aforesaid fraudulently signs or certifies any copy of any document, or of any extract from any document, as if he were such officer. R. S. C. c. 165, s. 35 (*Amended*). 24-25 V. c. 98, ss. 28 & 29 (Imp.).

FALSE ENTRIES IN PUBLIC REGISTERS.

440. Every one is guilty of an indictable offence and liable to *fourteen* years' imprisonment who, with intent to defraud—

(*a*) makes any untrue entry or any alteration in any book of account kept by the Government of Canada, or of any province of Canada, or by any bank for any such Government, in which books are kept the accounts of the owners of any stock, annuity or other public fund transferable for the time being in any such books, or who, in any manner, wilfully falsifies any of the said books; or

(*b*) makes any transfer of any share or interest of or in any stock, annuity or public fund, transferable for the time being at any of the said banks, in the name of any person other than the owner of such share or interest. R. S. C. c. 165, s. 11 (*Amended*). 24-25 V. c. 98, s. 5 (Imp.).

Indictment for making false entries of stock.— unlawfully did wilfully alter certain words and figures, that is to say (*here set out the words and figures, as they were before the alteration*) in a certain book of account kept by , in which said book the accounts of the owners of certain stock, annuities and other public funds, to wit, the (*state the stock*) which were then transferable at were then kept and entered, by (*set out the alteration and the state of the account or item when so altered*) with intent thereby then to defraud.

Indictment for making a transfer of stock in the name of a person not the owner.— unlawfully did wilfully make a transfer of a certain share and interest of and in certain stock and annuities, which were then transferable at the bank of , to wit, the share and interest of in the (*state the amount and nature of the stock*), in the name of one C. D., he the said C. D., not being then the true and lawful owner of the said share and interest of and in the said stock and annuities, or any part thereof, with intent thereby then to defraud.

Where a bank clerk made certain false entries in the bank books under his control, for the purpose of enabling him to obtain the money of the bank improperly.

Held, that he was not guilty of forgery: R. v. Blackstone, 4 Man. L. R. 296.

FALSE DIVIDEND WARRANTS.

441. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being in the employment of the Government of Canada, or of any province of Canada, or of any bank in which any books of account mentioned in the last preceding section are kept, with intent to defraud, makes out or delivers any dividend warrant, or any warrant for the payment of any annuity, interest or money payable at any of the said banks, for an amount greater or less than that to which the person on whose account such warrant is made out is entitled. R. S. C. c. 165, s. 12. 24-25 V. c. 98, s. 6 (Imp.).

Indictment.— then being a clerk of and employed and intrusted by the said unlawfully did knowingly make out and deliver to one J. N. a certain

dividend warrant for a greater amount than the said J. N. was then entitled to, to wit, for the sum of five hundred dollars; whereas, in truth and in fact, the said J. N. was then entitled to the sum of one hundred dollars only, with intent thereby then to defraud.

CIRCULARS IN LIKENESS OF NOTES.

442. Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a fine of one hundred dollars or three months' imprisonment, or both, who designs, engraves, prints or in any manner makes, executes, utters, issues, distributes, circulates or uses any business or professional card, notice, placard, circular, hand-bill or advertisement in the likeness or similitude of any bank note, or any obligation or security of any Government or any bank. 53 V. c. 31, s. 3.

Summary conviction.—S. 3 of 53 V. c. 31 cited under this section is the section enacting to what banks the Banking Act applies. S. 63 is the one that ought to have been cited.

PART XXXIII.

FORGERY OF TRADE MARKS—FRAUDULENT MARKING OF MERCHANDISE.

443. In this part—

(*a*) The expression "trade mark" means a trade mark or industrial design registered in accordance with *The Trade Mark and Design Act* and the registration whereof is in force under the provisions of the said Act, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of section one hundred and three of the Act of the United Kingdom, known as *The Patents, Designs, and Trade Marks Act*, 1883, are, in accordance with the provisions of the said Act, for the time being applicable;

(*b*) The expression "trade description" means any description, statement, or other indication, direct or indirect—

(i) as to the number, quantity, measure, gauge or weight of any goods;

(ii) as to the place or country in which any goods are made or produced;

(iii) as to the mode of manufacturing or producing any goods;

(iv) as to the material of which any goods are composed;

(v) as to any goods being the subject of an existing patent, privilege or copyright;

And the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, is a trade description within the meaning of this part;

(*c*) The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect; and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this part;

(*d*) The expression "goods" means anything which is merchandise or the subject of trade or manufacture;

(*e*) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression "label" includes any band or ticket;

(*f*) The expressions "person, manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate;

(*g*) The expression "name" includes any abbreviation of a name.

2. The provisions of this part respecting the application of a false trade description to goods extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

3. The provisions of this part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and the expression "false name or initials" means, as applied to any goods, any name or initials of a person which—

(*a*) are not a trade mark, or part of a trade mark;

(*b*) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials;

(*c*) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods. 51 V. c. 41, s. 2. 25-26 V. c. 88 (Imp.).

This part is a re-enactment of 50 & 51 V. c. 28 (Imp.). *See* Wood v. Burgess, 16 Cox, 729; Starey v. The Chilworth Mfg. Co., 17 Cox, 55; Budd v. Lucas, 17 Cox, 248. Ss. 15,

16, 18, 22, 23 of 51 V. c. 41 (*as amended in 1893*) are unrepealed; sched. 2. Limitation of 3 years for any offence under Part XXXIII., s. 551: *see* s. 710 as to evidence.

444. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no such description, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this part, and the provision of this part with respect to goods to which a false description has been applied, and with respect to selling or exposing, or having in possession, for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly; and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case. 51 V. c. 41, s. 11.

445. Every one is deemed to forge a trade mark who either—

(*a*) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling it as to be calculated to deceive; or

(*b*) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

2. And any trade mark or mark so made or falsified is, in this part, referred to as a forged trade mark. 51 V. c. 41, s. 3.

446. Every one is deemed to apply a trade mark, or mark, or trade description to goods who—

(*a*) applies it to the goods themselves; or

(*b*) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or

(*c*) places, incloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture in, with or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(*d*) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

2. A trade mark or mark or trade description is deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed or affixed to, the goods, or to any covering, label, reel or other thing.

3. Every one is deemed to falsely apply to goods a trade mark or mark who, without the assent of the proprietor of the trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive. 51 V. c. 41, s. 4.

447. Every one is guilty of an indictable offence who, with intent to defraud—

(*a*) forges any trade mark: or

(*b*) falsely applies to any goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(*c*) makes any die, block, machine or other instrument, for the purpose of orging) or being used for forging, a trade mark; or

(*d*) applies any false trade description to goods; or

(*e*) disposes of, or has in his possession, any die, block, machine or other nstrument, for the purpose of forging a trade mark; or

(*f*) causes any of such things to be done. 51 V. c. 41, s. 6.

Punishment, under s. 450.

Indictment.— that A. B. on with intent to defraud unlawfully did forge a certain trade mark, to wit (*or unlawfully did falsely apply to certain goods to wit*) (*any goods*) a certain trade mark to wit (*or a mark so nearly resembling a certain trade mark, to wit*) as to be calculated to deceive. (*Add a count charging "did cause to be forged or, falsely applied)*" (*as the case may be*).

448. Every one is guilty of an indictable offence who sells or exposes, or has in his possession, for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, unless he proves—

(*a*) that having taken all reasonable precaution against committing such an offence he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and

(*b*) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; and

(*c*) that otherwise he had acted innocently. 51 V. c. 41, s. 6.

Punishment under s. 450.

449. Every one is guilty of an indictable offence who sells, or exposes or offers for sale, or traffics in, bottles marked with a trade mark, blown or stamped or otherwise permanently affixed thereon, without the assent of the proprietor of such trade mark. 51 V. c. 41, s. 7.

Punishment under s. 450.

450. Every one guilty of any offence defined in this part is liable—

(*a*) on conviction on indictment to two years' imprisonment, with or without hard labour, or to fine, or to both imprisonment and fine; and

(*b*) on summary conviction, to four months' imprisonment, with or without hard labour, or to a fine not exceeding one hundred dollars; and in

case of a second or subsequent conviction to six months' imprisonment, with or without hard labour, or to a fine not exceeding two hundred and fifty dollars.

2. In any case every chattel, article, instrument or thing, by means of, or in relation to which, the offence has been committed shall be forfeited. 51 V. c. 41, s. 8.

451. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars who falsely represents that any goods are made by a person holding a royal warrant, or for the service of Her Majesty or any of the royal family, or any Government department of the United Kingdom or of Canada. 51 V. c. 41, s. 21.

452. Every one is guilty of an offence and liable, on summary conviction, to a penalty of not more than five hundred dollars nor less than two hundred dollars who imports or attempts to import any goods which, if sold, would be forfeited under the provisions of this part, or any goods manufactured in any foreign state or country which bear any name or trade mark which is or purports to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or in Canada, unless such name or trade mark is accompanied by a definite indication of the foreign state or country in which the goods were made or produced; and such goods shall be forfeited. 51 V. c. 41, s. 22.

453. Any one who is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines or other instruments for making or being used in making trade marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Canada, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(*b*) that he took reasonable precaution against committing the offence charged; and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and

(*d*) that he gave to the prosecutor all the information in his power with respect to the person by or on whose behalf the trade mark, mark or description was applied;—

Shall be discharged from the prosecution, but is liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence. 51 V. c. 41, s. 5.

454. No servant of a master, resident in Canada, who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on

behalf of the prosecutor, gives full information as to his master, is liable to any prosecution or punishment for any offence defined in this part. 51 V. c. 41, s. 20.

455. The provisions of this part with respect to false trade descriptions do not apply to any trade description which, on the 22nd day of May, 1888, was lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods: Provided, that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, such provisions shall apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there. 51 V. c. 41, s. 19.

PART XXXIV.

PERSONATION. (*New*).

456. Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment who, with intent fraudulently to obtain any property, personates any person, *living or dead*, or administrator, wife, widow, next of kin or relation of any person. 37-38 V. c. 36 (Imp.).

"Property" defined, s. 3.

Indictment.— unlawfully, falsely, and deceitfully did personate one J. N. with intent fraudulently to obtain . . . .

See 2 Russ. 1011: R. v. Martin and R. v. Cramp. R. & R. 324, 327.

PERSONATION AT EXAMINATIONS. (*New*).

457. Every one is guilty of an *indictable* offence, and liable on indictment *or summary conviction* to one year's imprisonment, or to a fine of one hundred dollars, who falsely, with intent to gain some advantage for himself or some other person, personates a candidate at any competitive or qualifying examination, held under the authority of any law or statute or in connection with any university or college, or who procures himself or any other person to be personated at any such examination, or who knowingly avails himself of the results of such personation.

See under next section.

PERSONATING OWNERS OF STOCK.

458. Every one is guilty of an indictable offence and liable to *fourteen* years' imprisonment who falsely and deceitfully personates—

(*a*) any owner of any share or interest of or in any stock, annuity, or other public fund transferable in any book of account kept by the Government of Canada or of any province thereof, or by any bank for any such Government; or

(*b*) any owner of any share or interest of or in the debt of any public body, or of or in the debt or capital stock of any body corporate, company, or society; or

(*c*) any owner of any dividend, coupon, certificate or money payable in respect of any such share or interest as aforesaid; or

(*d*) any owner of any share or interest in any claim for a grant of land from the Crown, or for any scrip or other payment or allowance in lieu of such grant of land; or

(*e*) any person duly authorized by any power of attorney to transfer any such share, or interest, or to receive any dividend, coupon, certificate or money, on behalf of the person entitled thereto—

and thereby transfers or endeavours to transfer any share or interest belonging to such owner, or thereby obtains or endeavours to obtain, as if he were the true and lawful owner or were the person so authorized by such power of attorney, any money due to any such owner or payable to the person so authorized, or any certificate, coupon, or share warrant, grant of land, or scrip, or allowance in lieu thereof, or other document which, by any law in force, or any usage existing at the time, is deliverable to the owner of any such stock or fund, or to the person authorized by any such power of attorney. R. S. C. c. 165, ss. 9 & 10 (*Amended*). 24-25 V. c. 98, ss. 3 & 4 (Imp.), and 33-34 V. c. 58 (Imp.).

Indictment.— unlawfully did, falsely and deceitfully personate one J. N., the said J. N. then being the owner of a certain share and interest in certain stock and annuities, which were then transferable at the bank of , to wit, (*state the amount and nature of the stock;*) and that the said A. B. thereby did then transfer the said share and interest of the said J. N. in the said stock annuities, as if he, the said A. B., were then the true and lawful owner thereof.

Upon the trial of any indictment for any offence under this section the jury may, if the evidence warrants it, under s. 711, convict the prisoner of an attempt to commit the same.

ACKNOWLEDGING INSTRUMENT IN FALSE NAME.

459. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority or excuse (the proof of which shall lie on him) acknowledges, in the name of any other person, before any court, judge or other person lawfully authorized in that behalf, any recognizance of bail, or any *cognovit actionem*, or *consent for judgment*, or judgment or any deed or other instrument. R. S. C. c. 165, s. 41 (*Amended*). 24-25 V. c. 98, s. 34 (Imp.).

Indictment.— on did without lawful authority or excuse, before (*the said then being lawfully authorized in that behalf*) unlawfully acknowledge fraudulently a certain recognizance of bail in the name of in a certain cause then pending in wherein A. B. was plaintiff and C. D. defendant.

PART XXXV.

OFFENCES RELATING TO THE COIN.

Sections 26, 29, 30, 31, 32, 33 & 34 of c. 167, R. S. C., are unrepealed. Sections 692, 718 & 721 post apply to offences against this part.

460. In this part, unless the context otherwise requires, the following words and expressions are used in the following senses :—

(*a*) "Current gold or silver coin," includes any gold or silver coin coined in any of Her Majesty's mints, or gold or silver coin of any foreign prince or state or country, or other coin lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's dominions.

(*b*) "Current copper coin," includes copper 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.

(*c*) "Copper coin," includes any coin of bronze or mixed metal and every other kind of coin other than gold or silver.

(*d*) "Counterfeit" means false, not genuine.

(i) Any genuine coin prepared or altered so as to resemble or pass for any current coin of a higher denomination is a counterfeit coin.

(ii) A coin fraudulently filed or cut at the edges so as to remove the milling, and on which a new milling has been added to restore the appearance of the coin, is a counterfeit coin.

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

(*f*) "Utter" includes "tender" and "put off." R. S. C. c. 167, s. 1. 24-25 V. c. 99, s. 1 (Imp.).

When Offence Complete.

461. Every offence of making any counterfeit coin, or of buying, selling, receiving, paying, tendering, uttering, or putting off, or of offering to buy, sell, receive, pay, utter or put off, any counterfeit coin is deemed to be complete, although the coin so made or counterfeited, or bought, sold, received, paid, tendered, uttered or put off, or offered to be bought, sold, received, paid, *tendered*, uttered or put off, was not in a fit state to be uttered, or the counterfeiting thereof was not finished or perfected. R. S. C. c. 167, s. 27. 24-25 V. c. 99, s. 30 (Imp.).

The word in *italic* is not in the Imperial Act. *See* R. v. Bradford 2 C. & D. 41.

COUNTERFEITING COINS, ETC.

462. Every one is guilty of an indictable offence and liable to imprisonment for life who—

(*a*) makes or begins to make any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or

(*b*) gilds or silvers any coin resembling or apparently intended to resemble or pass for, any current gold or silver coin; or

(*c*) gilds or silvers any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or

(*d*) gilds any current silver coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold coin; or

(*e*) gilds or silvers any current copper coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold or silver coin. R. S. C. c. 167, ss. 3 & 4. 24-25 V. c. 99, ss. 2 & 3 (Imp.).

Indictment.— that J. S., on ten pieces of false and counterfeit coin, each piece thereof resembling and apparently intended to resemble and pass for a piece of current gold coin, called a sovereign, falsely and unlawfully did make and counterfeit.

It is rarely the case that the counterfeiting can be proved directly by positive evidence; it is usually made out by circumstantial evidence, such as finding the necessary coining tools in the defendant's house, together with some pieces of the counterfeit money in a finished, some in an unfinished state, or such other circumstances as may fairly warrant the jury in presuming that the defendant either counterfeited or caused to be counterfeited, or was present aiding and abetting in counterfeiting the coin in question. Before the modern statutes which reduced the offence of coining from treason to felony, if several conspired to counterfeit the Queen's coin, and one of them actually did so in pursuance of the conspiracy, it was treason in all, and they might all have been indicted for counterfeiting the Queen's coin generally: 1 Hale, 214; they may, likewise, now all be indicted as principals under s. 61 *ante*.

A variance between the indictment and the evidence in the number of the pieces of coin, alleged to be counterfeited, is immaterial; but a variance as to the denomination of such coin, as guineas, sovereigns, shillings, would be fatal, unless amended. By the old law the counterfeit coin produced in evidence must have appeared to have that degree of resemblance to the real coin that it would be likely to be received as the coin for which it was intended to pass by persons using the caution customary in taking money. In R. v. Varley, 1 East, P. C. 164, the defendant had counterfeited the semblance of a half-guinea upon a piece of gold previously hammered, but it was not round, nor would it pass in the condition in which it then was, and the judges held that the offence was incomplete. So, in R. v. Harris, 1 Leach, 135, where the defendants were taken in the very act of coining shillings, but the shillings coined by them were taken in an imperfect state, it being requisite that they should undergo another process, namely immersion in diluted *aqua fortis*, before they could pass as shillings, the judges held that the offence was incomplete; but now by s. 461 the offence of counterfeiting shall be deemed complete although the coin made or counterfeited shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected.

Any credible witness may prove the coin to be counterfeit, and it is not necessary for this purpose to produce any moneyer or other officer from the mint: s. 692. If it become a question whether the coin, which the counterfeit money was intended to imitate, be current coin, it is not necessary to produce the proclamation to prove its legitimation; it is a mere question of fact to be left to the jury upon evidence of usage, reputation, etc.: 1 Hale, 196, 212, 213. It is not necessary to prove that the counterfeit coin was uttered or attempted to be uttered: R. v. Robinson, 10 Cox, 107; R. v. Connell, 1 C. & K. 190; R. v. Byrne, 6 Cox, 475.

By s. 711, if upon the trial it appears that the defendant did not complete the offence charged, but was only guilty of an attempt to commit the same, a verdict may be given of guilty of the attempt.

DEALING IN, IMPORTING COUNTERFEIT COIN.

463. Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him—

(*a*) buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, at or for a lower rate or value than the same imports, or was apparently intended to import, any counterfeit coin resembling or apparently intended to resemble or pass for any current gold or silver coin; or

(*b*) imports or receives into Canada any counterfeit coin resembling or apparently intended to resemble or pass for, any current gold or silver coin knowing the same to be counterfeit. R. S. C. c. 167, ss. 7 & 8. 24-25 V. c. 99, ss. 6 & 7 (Imp.).

Indictment under (*a*).— ten pieces of counterfeit coin, each piece thereof resembling a piece of the current gold coin, called a sovereign, falsely, deceitfully and unlawfully, and without lawful authority or excuse did put off to one J. N. at and for a lower rate and value than the same did then import.

Prove that the defendant put off the counterfeit coin as mentioned in the indictment. In R. v. Wooldridge, 1 Leach, 307, it was holden that the putting off must be complete and accepted. But the words "offer to buy, sell," etc., in the above clause would now make the acceptation immaterial.

If the names of the persons to whom the money was put off can be ascertained, they ought to be mentioned and laid severally in the indictment; but if they cannot be ascertained the same rule will apply which prevails in the case of stealing the property of persons unknown: 1 Russ. 135.

Indictment under (*b*).— ten thousand pieces of counterfeit coin, each piece thereof resembling a piece of the current silver coin called a shilling, falsely, deceitfully and unlawfully, and without lawful authority or excuse, did

import into Canada,—he the said J. S. at the said time when he so imported the said pieces of counterfeit coin, well knowing the same to be counterfeit.

The guilty knowledge of the defendant must be averred in the indictment and proved.

COPPER COIN.

464. Every one who manufactures in Canada any copper coin, or imports into Canada any copper coin, other than current copper coin, with the intention of putting the same into circulation as current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars for every pound Troy of the weight thereof; and all such copper coin so manufactured or imported shall be forfeited to Her Majesty. R. S. C. c. 167, s. 28.

The repealed section said copper "or brass" coin.

EXPORTATION.

465. Every one is guilty of an indictable offence and liable to *two years'* imprisonment who, without lawful authority or excuse the proof whereof shall lie on him, exports or puts on board any ship, vessel or boat, *or on any railway or carriage or vehicle of any description whatsoever*, for the purpose of being exported from Canada, any counterfeit coin resembling or apparently intended to resemble or pass for any current coin *or for any foreign coin of any prince, country or state*, knowing the same to be counterfeit. R. S. C. c. 167, s. 9. 24-25 V. c. 99, s. 8 (Imp.).

Fine, s. 958.

The words in italics are not in the Imperial Act.

The clause covers the attempt to export in certain cases. Sections 529 & 711 would cover other cases of attempts.

Indictment.— one hundred pieces of counterfeit coin, each piece thereof resembling a piece of the current coin called a sovereign, falsely, deceitfully and unlawfully, without lawful authority or excuse, did export from Canada, he the said C. D. at the time when he so exported the said pieces of counterfeit coin, then well knowing the same to be counterfeit.

MAKING INSTRUMENTS FOR COINING.

466. Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession—

(*a*) any puncheon, counter puncheon, matrix, stamp, die, pattern or mould, in or upon which there is made or impressed, or which will make or impress, or which is adapted and intended to make or impress, the figure, stamp or apparent resemblance of both or either of the sides of any current gold or silver coin, or of any coin of any foreign prince, state or country, or any part or parts of both or either of such sides; or

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

(*c*) any press for coinage, or any cutting engine for cutting, by force of a screw or of any other contrivance, round blanks out of gold, silver or other metal or mixture of metals, or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin. R. S. C. c. 167, s. 24. 24-25 V. c. 99, s. 24 (Imp.).

Indictment for making a puncheon for coining.—

one puncheon, in and upon which there was then made and impressed the figure of one of the sides, that is to say, the head side of a piece of the current silver coin, commonly called a shilling, knowingly, falsely, deceitfully and unlawfully, and without lawful authority or excuse, did make.

Prove that the defendant made a puncheon, as stated in the indictment; and prove that the instrument in question is a puncheon included in the statute. The words in the statute "upon which there is made or impressed" apply to the puncheon which being convex bears upon it the figure of the coin; and the words "which will make or impress" apply to the counter puncheon, which being concave will make and impress. However, although it is more accurate to describe the instruments according to their actual use, they may be described either way: R. v. Lennard, 1 Leach, 90. It is not necessary that the instrument should be capable of making an impression of the whole of one side of the coin, for the words "or any part or parts" are introduced into this statute, and, consequently the difficulty in R. v. Sutton, 2 Str. 1074, where the instrument was capable of making the sceptre only cannot now occur: *see* R. v. Heath, R. & R. 184.

And on an indictment for making a mould "intended to make and impress the figure and apparent resemblance of the obverse side" of a shilling, it is sufficient to prove that the prisoner made the mould and a part of the impression, though he had not completed the entire impression: R. v. Foster, 7 C. & P. 495. It is not necessary to prove under this branch of the statute the *intent* of the defendant: the mere similitude is treated by the Legislature as evidence of the intent; neither is it essential to show that money was actually made with the instrument in question: R. v. Ridgeley, 1 East, P. C. 171. The proof of lawful authority or excuse, if any, lies on the defendant. Where the defendant employed a die sinker to make, for a pretended innocent purpose, a die calculated to make shillings; and the die-sinker, suspecting fraud, informed the authorities at the mint, and under their directions made the die for the purpose of detecting prisoner; it was held that the die-sinker was an innocent agent and the defendant was rightly convicted as a principal: R. v. Bannen, 2 Moo. 309.

The *making* and *procuring* dies and other materials, with intent to use them in coining Peruvian half-dollars in England, not in order to utter them here, but by way of trying whether the apparatus would answer, before sending it out to Peru, to be there used in making the counterfeit coin for circulation in that country, was held to be an indictable misdemeanour at common law: R. v. Roberts, Dears. 539; 1 Russ. 100. A galvanic battery is a machine within the section: R. v. Gover, 9 Cox, 282.

Indictment for having a puncheon in possession.—one puncheon in and upon which there was then made and impressed the figure of one of the sides, that is to say, the head side of a piece of the current silver coin commonly called a shilling, knowingly, falsely, deceitfully and unlawfully, and without lawful authority or excuse, had in his custody and possession.

An indictment which charged that the defendant feloniously had in his possession a mould "upon which said mould was made and impressed the figure and apparent resemblance" of the obverse side of a sixpence, was held bad on demurrer, as not sufficiently showing that the impression was on the mould at the time when he had it in his possession: R. v. Richmond, 1 C. & K. 240.

As to evidence of possession *see* s. 3, *ante*; R. v. Rogers, 2 Moo. 85. The prisoner had occupied a house for about a month before the police entered it, and found two men and two women there, one of whom was the wife of the prisoner. The men attacked the police, and the women threw something into the fire. The police succeeded, however, in preserving part of what the women threw away, which proved to be fragments of a plaster-of-Paris mould of a half-crown. The prisoner came in shortly afterwards, and, on searching the house, a quantity of plaster-of-Paris was found up-stairs. An iron ladle and some fragments of plaster-of-Paris moulds were also found. It was proved that the prisoner, thirteen days before the day in question, had passed a bad half-crown, but there was no evidence that it had been made in the mould found by the police. He was afterwards tried and convicted for uttering the base half-crown. It was held that there was sufficient evidence to justify the conviction, and that, on a trial for felony, other substantive felonies which have a tendency to establish the scienter of the defendant may be proved for that purpose: R. v. Weeks, L. & C. 18. In R. v. Harvey, 11 Cox, 662, it was *held:* 1. That an indictment under this section is sufficient if it charges possession without lawful excuse, as excuse would include authority; 2. That the words "the proof whereof shall lie on the accused" only shift the burden of proof, and do not alter the character of the offence; 3. That the fact that the Mint authorities, upon information forwarded to them, gave authority to the die maker to make the die, and that the police gave permission

to him to give the die to the prisoner, who ordered him to make it, did not constitute lawful authority or excuse for prisoner's possession of the die; 4. That, to complete the offence, a felonious intent is not necessary; and, upon a case reserved, the conviction was affirmed.

Indictment for making a collar.— one collar adapted and intended for the marking of coin round the edges with grainings apparently resembling those on the edges of a piece of the current gold coin called a sovereign, falsely, deceitfully and unlawfully, without lawful authority or excuse, did make, he the said J. S. then well knowing the same to be so adapted and intended as aforesaid.

It must be proved, upon this indictment that the defendant knew the instrument to be adapted and intended for the marking of coin round the edges.

It must be remarked that the said clause expressly applies to tools for marking foreign coin, as well as current coin.

BRINGING INSTRUMENTS INTO CANADA.

467. Every one is guilty of an indictable offence and liable to imprisonment or life who, without lawful authority or excuse the proof whereof shall lie on him, knowingly conveys out of any of Her Majesty's mints into Canada, any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press or engine, used or employed in or about the coining of coin, or any useful part of any of the several articles aforesaid, or any coin, bullion, metal or mixture of metals. R. S. C. c. 167, s. 25. 24-25 V. c. 99, s. 25 (Imp.).

CLIPPING CURRENT GOLD OR SILVER COIN.

468. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who impairs, diminishes or lightens any current gold or silver coin with intent that the coin so impaired, diminished, or lightened may pass for current gold or silver coin. R. S. C. c. 167, s. 5. 24-25 V. c. 99, s. 4 (Imp.).

Indictment.— ten pieces of current gold coin, called sovereigns, falsely, deceitfully and unlawfully did impair, with intent that each of the ten pieces so impaired might pass for a piece of current gold coin, called a sovereign.

The act of impairing must be shown, either by direct evidence of persons who saw the prisoner engaged in it, or by presumptive evidence, such as the possession of filings and of impaired coin, or of instruments for filing, etc. The intent to pass off the impaired coin must then appear. This may be done by showing that the prisoner attempted to pass the coin so impaired, or that he carried it about his person, which would raise a presumption that he intended to pass it. And if the coin were not so defaced by the process by impairing, as apparently to affect its currency, it would, under the circumstances, without further evidence, be a question for the jury, whether the diminished coin was intended to be passed: Roscoe on Coining, 19.

DEFACING CURRENT COIN.

469. Every one is guilty of an indictable offence and liable to one year's imprisonment who defaces any current gold, silver or copper coin by stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened, and afterwards tenders the same. R. S. C. c. 167, s. 17. 24-25 V. c. 99, s. 16 (Imp.).

Fine, s. 958.

Indictment for defacing coin.— one piece of the current silver coin, called a half-crown, unlawfully did deface, by then stamping thereon certain names and words, to wit . . . .

Prove that the defendant defaced the coin in question, by stamping on it any names or words, or both. It is not necessary to prove that the coin was thereby diminished or lightened.

POSSESSING CLIPPINGS, ETC.

470. Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully has in his custody or possession any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution or otherwise, which have been produced or obtained by impairing, diminishing or lightening any current gold or silver coin, knowing the same to have been so produced or obtained. R. S. C. c. 167, s. 6. 24-25 V. c. 99, s. 5 (Imp.).

"Having in possession" defined, s. 3.

Greaves remarks: "This clause is new. It has frequently happened that filings and clippings, and gold dust

have been found under such circumstances as to leave no doubt that they were produced by impairing coin but there has been no evidence to prove that any particular coin had been impaired. This clause is intended to meet such cases."

POSSESSING COUNTERFEIT COIN.

471. Every one is guilty of an indictable offence and liable to three years' imprisonment who has in his custody or possession, knowing the same to be counterfeit, and with intent to utter the same or any of them—

(*a*) any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or

(*b*) three or more pieces of counterfeit coin resembling, or apparently intended to resemble or pass for, any current copper coin. R. S. C. c. 167, ss. 12 & 16. 24-25 V. c. 99, ss. 11 & 15 (Imp.).

"Having in possession" defined, s. 3.

Fine, s. 958. Search warrant, s. 569.

The punishment under (*b*) was only one year by the repealed Act.

Indictment for having in possession counterfeit gold or silver coin with intent, etc. unlawfully, falsely and deceitfully had in his custody and possession four pieces of counterfeit coin, resembling the current silver coin called with intent to utter the said pieces of counterfeit coin, he the said J. S. then well knowing the said pieces of counterfeit coin to be counterfeit.

See R. v. Hermann, 4 Q. B. D. 284, 14 Cox, 279, Warb. Lead. Cas. 77.

OFFENCES RESPECTING COPPER COIN.

472. Every one is guilty of an indictable offence and liable to *three years'* imprisonment who—

(*a*) makes, or begins to make, any counterfeit coin resembling, or apparently intended to resemble or pass for any current copper coin; or

(*b*) without lawful authority or excuse, the proof of which shall lie on him, knowingly—

(i) makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession, any instrument, tool or engine adapted and intended for counterfeiting any current copper coin;

(ii) buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any counterfeit coin resembling, or apparently intended to resemble or pass for, any current copper coin, at or for a lower rate of value

than the same imports, or was apparently intended to import. R. S. C. c. 167, s. 15. 24-25 V. c. 99, s. 14 (Imp.).

Fine, s. 958. The punishment was seven years under the repealed Act. *See* s. 463 *ante*.

FOREIGN COINS.

473. Every one is guilty of an indictable offence and liable to *three* years' imprisonment who—

(*a*) makes, or begins to make, any counterfeit coin or silver coin resembling, or apparently intended to resemble or pass for, any gold or silver coin of any foreign prince, state or country, not being current coin;

(*b*) without lawful authority or excuse, the proof of which shall lie on him—

(i) brings into or receives in Canada any such counterfeit coin, knowing the same to be counterfeit;

(ii) has in his custody or possession any such counterfeit coin knowing the same to be counterfeit, and with intent to put off the same; or

(*c*) utters any such counterfeit coin; or

(*d*) makes any counterfeit coin resembling, or apparently intended to resemble or pass for, any copper coin of any foreign prince, state or country, not being current coin. R. S. C. c. 167, ss. 19, 20, 21, 22 & 23. 24-25 V. c. 99, s. 18, *et seq.* (Imp.).

Fine, s. 958. "Having in possession" defined, s. 3. *See* R. v. Tierney, 29 U. C. Q. B. 181.

UTTERING COUNTERFEIT COIN.

474. Every one is guilty of an indictable offence and liable to *fourteen* years' imprisonment who utters any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin, knowing the same to be counterfeit. R. S. C. c. 167, s. 10. 24-25 V. c. 99, s. 9 (Imp.).

Under the Imperial Act the imprisonment is *one* year.

Indictment.— one piece of counterfeit coin resembling a piece of the current gold coin, called a sovereign, unlawfully, falsely and deceitfully did utter to one J. N. he the said then well knowing the same to be counterfeit.

Prove the tendering, uttering or putting off the sovereign in question, and prove it to be a base and counterfeit sovereign. Where a good shilling was given to a Jew boy for fruit, and he put it into his mouth under pretense of trying whether it were good, and then taking a bad shilling out of his mouth instead of it, returned it to the prosecutor,

saying that it was not good; this (which is called *ringing the changes*) was holden to be an uttering, indictable as such: R. v. Franks, 2 Leach, 644. The giving of a piece of counterfeit money in charity is not an uttering, although the person may know it to be counterfeit; as in cases of this kind, there must be some intention to defraud: R. v. Page, 8 C. & P. 122. But this case has been overruled: R. v. Ion, 2 Den. 475; 1 Russ. 126; *see* R. v. ——— 1 Cox, 250.

A prisoner went into a shop, asked for some coffee and sugar, and in payment put down on the counter a counterfeit shilling: the prosecutor said that the shilling was a bad one, whereupon the prisoner quitted the shop, leaving the shilling and also the coffee and sugar: held that this was an uttering and putting off within the statute: R. v. Welch, 2 Den. 78. The prisoner and J. were indicted for a misdemeanour in uttering counterfeit coin. The uttering was effected by J. in the absence of the prisoner, but the jury found that they were both engaged on the evening on which the uttering took place in the common purpose of uttering counterfeit shillings, and that in pursuance of that common purpose J. uttered the coin in question: *Held*, that the prisoner was rightly convicted as a principal, there being no accessories in a misdemeanour: R. v. Greenwood, 2 Den. 453. If two jointly prepare counterfeit coin, and utter it in different shops apart from each other but in concert, intending to share the proceeds, the utterings of each are the joint utterings of both, and they may be convicted jointly: R. v. Hurse, 2 M. & Rob. 360; *see* R. v. Hermann, 4 Q. B. D. 284, Warb. Lead Cas. 77.

Husband and wife were jointly indicted for uttering counterfeit coin: *Held*, that the wife was entitled to an acquittal, as it appeared that she uttered the money in the presence of her husband: R. v. Price, 8 C. & P. 19; *see* now s. 13, *ante*.

Proof of the guilty knowledge by the defendant must be given. This of course must be done by circumstantial

evidence. If, for instance, it be proved that he uttered, either on the same day or at other times, whether before or after the uttering charged, base money, either of the same or of a different denomination, to the same or to a different person, or had other pieces of base money about him when he uttered the counterfeit money in question; this will be evidence from which the jury may presume a guilty knowledge: 1 Russ. 127.

UTTERING LIGHT COINS.

475. Every one is guilty of an indictable offence and liable to *three* years' imprisonment who—

(*a*) utters, as being current, any gold or silver coin of less than its lawful weight, knowing such coin to have been impaired, diminished or lightened, otherwise than by lawful wear; or

(*b*) with intent to defraud utters, as or for any current gold or silver coin, any coin not being such current gold or silver coin, or any medal, or piece of metal or mixed metals, resembling, in size, figure and colour, the current coin as or for which the same is so uttered, such coin, medal or piece of metal or mixed metals so uttered being of less value than the current coin as or for which the same is so uttered; or

(*c*) utters any counterfeit coin resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be counterfeit. R. S. C. c. 167, ss. 11, 14 & 16. 24-25 V. c. 99, ss. 10, 13 & 15 (Imp.).

Fine, s. 958.

A person was convicted, under the above section, of putting off, as and for a half sovereign, a medal of the same size and colour, which had on the obverse side a head similar to that of the Queen, but surrounded by the inscription "Victoria, Queen of Great Britain," instead of "Victoria Dei Gratia," and a round guerling and not square, and no evidence was given as to the appearance of the reverse side, nor was the coin produced to the jury; it was held that there was sufficient evidence that the medal resembled, in figure, as well as size and colour, a half sovereign: R. v. Robinson, L. & C. 604; the medal was produced, but, in the course of his evidence, one of the witnesses accidentally dropped it, and it rolled on the floor; strict search was made for it for more than half an hour, but it could not be found.

UTTERING DEFACED COIN.

476. Every one who utters any coin defaced by having stamped thereon any names or words, is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding ten dollars. R. S. C. c. 167, s. 18.

See s. 469, *ante*.

No prosecution without the consent of the Attorney-General; s. 549.

UTTERING UNCURRENT COPPER COIN.

477. Every one who utters, or offers in payment, any copper coin, other than current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty of double the nominal value thereof, and in default of payment of such penalty to eight days' imprisonment. R. S. C. c. 167, s. 33.

PUNISHMENT AFTER PREVIOUS CONVICTION.

478. Every one who, after a previous conviction of any offence *relating to the coin under this or any other Act*, is convicted of any offence *specified in this part* is liable to the following punishment:—

(*a*) to imprisonment for life, if otherwise fourteen years would have been the longest term of imprisonment to which he would have been liable;

(*b*) to fourteen years' imprisonment, if otherwise seven years would have been the longest term of imprisonment to which he would have been liable;

(*c*) to seven years' imprisonment, if otherwise he would not have been liable to seven years' imprisonment. R. S. C. c. 167, s. 13 (*Amended*). 24-25 V. c. 99, s. 12 (Imp.).

The words in italics are new.

The punishments are altered.

See R. v. Thomas, 13 Cox, 52.

See ss. 628 and 676 as to procedure when a previous offence is charged, corresponding to s. 116 of the Imperial Larceny Act, and s. 37 of the Imperial Coin Act: R. v. Martin, 11 Cox, 343.

This enactment is intended to provide for a subsequent *indictable* offence after a previous conviction for an *indictable* offence. Unfortunately, the section does not say what it means, and any one convicted, for instance, of uttering defaced coin under s. 476 and fined ten dollars, is liable to *seven* years imprisonment on a subsequent conviction for any offence specified in this part, s. 536.

PART XXXVI.

ADVERTISING COUNTERFEIT MONEY.

479. In this part the expression "counterfeit token of value" means any spurious or counterfeit coin, paper money, inland revenue stamp, postage stamp, or other evidence of value, by whatever technical, trivial or deceptive designation the same may be described. 51 V. c. 40, s. 1.

480. Every one is guilty of an indictable offence and liable to five years' imprisonment who—

(*a*) prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, handbill or any written or printed matter advertising, or offering or purporting to advertise or offer for sale, loan, exchange, gift or distribution, or to furnish, procure or distribute, any counterfeit token of value, or what purports to be a counterfeit token of value, or giving or purporting to give, either directly or indirectly, information where, how, of whom, or by what means any counterfeit token of value, or what purports to be a counterfeit token of value, may be procured or had; or

(*b*) purchases, exchanges, accepts, takes possession of or in any way uses, or offers to purchase, exchange, accept, take possession of or in any way use, or negotiates or offers to negotiate with a view of purchasing or obtaining or using any such counterfeit token of value, or what purports so to be; or

(*c*) in executing, operating, promoting or carrying on any scheme or device to defraud, by the use or by means of any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution or exchange of counterfeit tokens of value, uses any fictitious, false or assumed name or address, or any name or address other than his own right, proper and lawful name; or

(*d*) in the execution, operating, promoting or carrying on, of any scheme or device offering for sale, loan, gift or distribution, or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, knowingly receives or takes from the mails, or from the post office, any letter or package addressed to any such fictitious, false or assumed name or address, or name other than his own right, proper or lawful name. 51 V. c. 40, ss. 2 & 3.

See s. 693 as to evidence.

On indictment for offering to purchase counterfeit tokens of value prisoner cannot be convicted on evidence that notes which he offered to purchase were not counterfeit but genuine bank notes unsigned, though he offered to purchase in belief that they were counterfeit: R. v. Attwood, 20 O. R. 574.