PART XXXVII.

MISCHIEF.

481. Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed to have caused it wilfully for the purposes of this part.

2. Nothing shall be an offence under any provision contained in this part unless it is done without legal justification or excuse, and without colour of right.

3. Where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, and if total, shall not prevent his act being an offence, if done with intent to defraud. R. S. C. c. 168, ss. 60 & 61 (*Amended*). 24-25 V. c. 97, ss. 58 & 59 (Imp.).

"Part xxxiv. (xxxvii. of this code), is founded on the provisions of 24 & 25 V. c. 97 (c. 168, R. S. C.), in which the word 'maliciously' very frequently occurs. Section 381 (481) is meant to give what we believe to be the legal effect of that word. The first portion of the section is intended to meet such state of facts as that in the case of R. v. Child, L. R. 1 C. C. R. 307, 12 Cox, 64, Warb. Lead. Cas. 193, where a man, who out of malice to a fellow lodger, made a bonfire of her furniture on the floor of her room, not meaning that his landlord's house should catch fire, escaped punishment.

Under the proviso a tenant for years burning his landlord's house commits an offence, though in so doing he burns his own leasehold, and a freeholder burning his own house commits an offence, if he does so with intent to defraud the insurers. The rest of this part re-enacts 24 & 25 V. c. 97, with little substantial alteration."—Imp. Comm. Rep.

Greaves says on the section corresponding to s-s. 3, s. 481: "This clause is new and a very important amendment. It extends every clause of the Act not already so extended to persons in possession of the property injured, provided they intend to injure or defraud any other person. It therefore brings tenants within the provisions of the Act, whenever they injure the demised premises, or anything growing on or annexed to them, with intent to injure their landlords."

By s. 613, *post*, in any indictment, it is sufficient to allege that the person accused did the act with intent to defraud, as the case may be, without alleging an intent to defraud any particular person, and no count shall be deemed objectionable on the ground that it does not contain the name of the person injured, or attempted, or intended to be injured.

ARSON.

482. Every one is guilty of the indictable offence of arson and liable to imprisonment for life who wilfully sets fire to any building or structure *whether such building, erection or structure is completed or not*, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine or any well of oil or other combustible substance, or to any ship or vessel, whether completed or not, or to any timber or materials placed in any shipyard for building or repairing or fitting out any ship, or to any of Her Majesty's stores or munitions of war. R. S. C. c. 168, ss. 2 to 8, 19, 28, 46 & 47 (*Amended*). 24-25 V. c. 97, ss. 1 to 6, 17, 26, 42 & 43 (Imp.).

The words in italics settle a mooted point.

Indictment.— that A. B., on at unlawfully and wilfully, without legal justification or excuse, and without colour of right did set fire to a certain building, to wit, a dwelling-house of C. D.: *see* R. v. Turner, 1 Moo. 239; R. v. Lewis, 2 Russ. 1067.

The definition of arson at common law is as follows: arson is the malicious and wilful burning the house of another, and to constitute the offence there must be an actual burning of some part of the house, though it is not necessary that any flames should appear: 3 Burn, 768. But now the words of the statute are *set fire to*, merely; and, therefore, it is not necessary in an indictment to aver that the house was burnt, nor need it be proved that the house was actually consumed. But under the statute, as well as at common law, there must be an actual burning of some part of the house; a bare intent or attempt to do it is not sufficient. But the burning or consuming of any part of the house, however trifling, is sufficient, although the fire be afterwards extinguished. Where on an indictment it was proved that the floor of a room was scorched; that it was charred in a trifling way; that it had been at a

red heat but not in a blaze, this was held a sufficient burning to support the indictment. But where a small faggot having been set on fire on the boarded floor of a room, the boards were thereby scorched black but not burnt, and no part of the wood was consumed, this was held not sufficient.

The time stated in the indictment need not be proved as laid; if the offence be proved to have been committed at any time before or after, provided it be some day before the finding of the indictment by the grand jury, it is sufficient. Where the indictment alleged the offence to have been committed in the night time and it was proved to have been committed in the day time, the judges held the difference to be immaterial. The parish is material, for it is stated as part of the description of the house burnt. Wherefore, if the house be proved to be situate in another parish the defendant must be acquitted, unless the variance be amended: *see* now ss. 611, 613, *post*. If a man intending to commit a felony, by accident set fire to another's house, this, it should seem, would be arson. If intending to set fire to the house of A. he accidentally set fire to that of B., it is felony. Even if a man by wilfully setting fire to his own house, burns also the house of one of his neighbours it will be felony; for the law in such a case implies malice, particularly if the party's house were so situate that the probable consequence of its taking fire was that the fire would communicate to the houses in its neighbourhood. And generally if the act be proved to have been done wilfully, it may be inferred to have been done maliciously, unless the contrary be proved: Archbold, 625; R. v. Tivey, 1 C. & K. 704; R. v. Philp, 1 Moo. 263.

It is seldom that the wilful burning by the defendant can be made out by direct proof; the jury, in general, have to adjudicate on circumstantial evidence. Where a house was robbed and burned, the defendant being found in possession of some of the goods which were in the house

at the time it was burnt, was admitted as evidence tending to prove him guilty of the arson. So where the question is whether the burning was accidental or wilful, evidence is admissible to show that on another occasion, the defendant was in such a situation as to render it probable that he was then engaged in the commission of the like offence against the same property. But on a charge of arson, where the question was as to the identity of the prisoner, evidence that a few days previous to the fire in question, another building of the prosecutor's was on fire and that the prisoner was then standing by with a demeanour which showed indifference or gratification, was rejected.

Upon an indictment for any offence mentioned in this part the jury may, under s. 711, convict the prisoner of an attempt to commit the same, and thereupon he may be punished in the same manner as if he had been convicted on an indictment for such attempt: ss. 528, 529.

See R. v. Newboult, 12 Cox, 148, and R. v. Farrington, 1 R. & R. 207, as to intent.

It is immaterial whether the building, house, etc., be that of a third person or of the defendant himself; but in the latter case, the intent to defraud cannot be inferred from the act itself, but it must be alleged and proved by other evidence. In R. v. Kitson, Dears. 187, the prisoner was indicted for arson, in setting fire to his own house with intent to defraud an insurance office. Notice to produce the policy was served too late on the defendant, and it was held that secondary evidence of the policy was not admissible. "But it must not, however, be understood, said Jervis, C.J., "that it is absolutely necessary in all cases to produce the policy, but the intent to defraud alleged in the indictment must be proved by proper evidence."

Defendant was charged with having set fire to a building, the property of one J. H., "with intent to defraud." The case opened by the Crown was that the prisoner in-

tended to defraud several insurance companies, but the legal proof of the policies was wanting, and an amendment was allowed by striking out the words "with intent to defraud." The evidence showed that several persons were interested as mortgagees of the building, a large hotel, and J. H. as owner of the equity of redemption. It was left to the jury to say whether the prisoner intended to injure any of those interested. They found a verdict of guilty. *Held*, that the amendment was authorized and proper, and the conviction was warranted by the evidence. The indictment in such a case is sufficient without alleging any intent, there being no such averment in the statutory form; but an intent to injure or defraud must be shown on the trial: R. v. Cronin, 36 U. C. Q. B. 342.

An indictment for setting fire to a stack of beans, R. v. Woodward, 1 Moo. 323; or barley, R. v. Swatkins, 4 C. & P. 548, is good; for the court will take notice that beans are pulse, and barley, corn: s. 487, *post*. A stack composed of the flax-plant with the seed or grain in it, the jury finding that the flax-seed is a grain, was held to be a stack of grain: R. v. Spencer, Dears. & B. 131. The prisoner was indicted for setting fire to a stack of wood, and it appeared that the wood set fire to consisted of a score of faggots heaped on each other in a temporary loft over the gateway. *Held*, this not to be a stack of wood: R. v. Aris, 6 C. & P. 348. Where the defendant set fire to a summer-house in a wood, and the fire was thence communicated to the wood, he was held to be properly convicted on an indictment charging him with setting fire to the wood: R. v. Price, 9 C. & P. 729. An indictment for setting fire to a cock of hay cannot be sustained under a statute making it an offence to set fire to a stack of hay: R. v. McKeever, 5 Ir. R. C. L. 86. A quantity of straw, packed on a lory, in course of transmission to market, and left for the night in the yard of an inn, is not a stack of straw within 24 & 25 V. c. 97, s. 17 (Imp.), (19 of our repealed

statute), and the setting fire thereto wilfully and maliciously is not felony: R. v. Satchwell, 12 Cox, 449; s. 487 *post*.

Section 19 of repealed statute did not apply to manufactured lumber; R. v. Berthé, 16 C. L. J. 251.

It is equally an offence within this section to set fire to a mine in the possession of the party himself, provided it is proved to be done with intent to injure or defraud any other person. The mine may be laid as the property of the person in possession of or working it, though only as agent: R. v. Jones, 2 Moo. 293.

As to setting fire to ships.—A pleasure boat, eighteen feet long, was set fire to and Patteson, J.; inclined to think that it was a vessel within the meaning of the Act, but the prisoner was acquitted on the merits, and no decided opinion was given: R. v. Bowyer, 4 C. & P. 559. Upon an indictment for firing a barge, Alderson, J., seemed to doubt if a barge was within the meaning of the statute: R. v. Smith, 4 C. & P. 569. The burning of a ship of which the defendant was a part owner is within the statute: R. v. Wallace, 2 Moo. 200.

In R. v. Philp, 1 Moo. 263, there was no proof of malice against the owners, and the ship was insured for more than its value, but the court thought that the defendant must be taken to contemplate the consequences of his act, and held that, as to this point, the conviction was right: *see* R. v. Newill, 1 Moo. 458. The destruction of a vessel by a part-owner shows an intent to prejudice the other part-owners, though he has insured the whole ship and promised that the other part-owners should have the benefit thereof: R. v. Philp, 1 Moo. 263. The underwriters on a policy of goods fraudulently made are within the statute, though no goods be put on board: *Idem*. If the intent be laid to prejudice the underwriters then prove the policy, and that the ship sailed on her voyage: R. v. Gilson, R. & R. 138.

A sailor goes on a ship to steal rum. While tapping the casks a lighted match held by him set the rum on fire, and a conflagration ensued which destroyed the vessel. *Held*, that a conviction for arson of the ship could not be upheld: R. v. Faulkner, 13 Cox, 550.

ATTEMPT.

483. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who *wilfully* attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceding section is likely to catch fire therefrom. R. S. C. c. 168, ss. 9, 10, 20, 29 & 48 (*Amended*). 24-25 V. c. 97, ss. 7, 8, 18, 27 & 44 (Imp.).

See R. v. Child, Warb. Lead. Cas. 193, and cases there cited.

"Wilfully attempt" in this section is not a happy expression. Can any one be said to *not wilfully attempt?*

Indictment.— at unlawfully and wilfully did attempt, without legal justification or excuse and without colour of right, to set fire to a certain dwelling-house (building) of F. N.

Where the prisoners were indicted for setting fire to letters in a post-office, divers persons being in the house, it was held that there was no evidence of any intent, but it was what is vulgarly called a lark, and even if the house had been burned they would not have been guilty: R. v. Batstone, 10 Cox, 20.

A person maliciously sets fire to goods in a house with intent to injure the owner of the goods, but he had no malicious intention to burn the house, or to injure the owner of it. The house did not take fire but would have done so if the fire had not been extinguished: *Held*, that if the house had thereby caught fire, the setting fire to it would not have been within this section, as, under the circumstances, it would not have amounted to felony: R. v. Nattrass, 15 Cox, 73; R. v. Harris, 15 Cox, 75. But *see* now s. 481.

It is not necessary in a count in an indictment laid under this section to allege an intent to defraud, and it is

sufficient to follow the words of the section without substantively setting out the particular circumstances relied on as constituting the offence. Evidence of experiments made subsequently to the fire is admissible in order to show the way in which the building was set fire to: R. v. Heseltine, 12 Cox, 404.

The words "with intent to injure or defraud" have been left out of these sections.

Lighting a match by the side of a stack with intent to set fire to it is an attempt to set fire to it, because it is an act immediately and directly tending to the execution of the crime: R. v. Taylor, 1 F. & F. 511. On an indictment against two prisoners for attempting to set fire, one prisoner had not assisted in the attempt, but had counselled and encouraged the other; both were convicted: R. v. Clayton, 1 C. & K. 128.

See R. v. Goodman, 22 U. C. C. P. 338.

SETTING FIRE TO CROPS, TREES, LUMBER.

484. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully sets fire to—

(*a*) any crop, whether standing or cut down, or any wood, forest, coppice or plantation, or any heath, gorse, furze or fern; or

(*b*) any tree, lumber, timber, logs, or floats, boom, dam or slide, and thereby injures or destroys the same. R. S. C. c. 168, ss. 18 & 12 (*Amended*). 24-25 V. c. 97, s. 16 (Imp.).

Indictment under s. 12 of repealed statute quashed, for want of the words "so as to injure or to destroy": R. v. Berthé, 16 C. L. J. 251. Such an indictment bad, even after verdict: R. v. Bleau, 7 R. L. 571.

See form of indictment under s. 482, to which add for an offence under s-s. (*b*) "and thereby injured (*or destroyed*) the same," or "injured *and* destroyed the same."

ATTEMPT.

485. Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceding section

is likely to catch fire therefrom. R. S. C. c. 168, s. 20 (*Amended*). 24-25 V. c. 97, s. 18 (Imp.).

See remarks under the last three sections.

SETTING FIRE TO FORESTS, ETC.

486. Every one is guilty of an indictable offence and liable to two years' imprisonment who, by such negligence as shows him to be reckless or wantonly regardless of consequences, or in violation of a provincial or municipal law of the locality, sets fire to any forest, tree, manufactured lumber, square timber, logs or floats, boom, dam or slide on the Crown domain, or land leased or lawfully held for the purpose of cutting timber, or on private property, on any creek or river, or rollway, beach or wharf, so that the same is injured or destroyed.

2. The magistrate investigating any such charge may, in his discretion, if the consequences have not been serious, dispose of the matter summarily, without sending the offender for trial, by imposing a fine not exceeding fifty dollars, and in default of payment by the committal of the offender to prison for any term not exceeding six months, with or without hard labour. R. S. C. c. 168, s. 11.

Fine, s. 958.

Indictment.— that A. B. on at acting with reckless negligence and wantonly regardless of consequences (*or in violation of a provincial* " or " *a municipal law*) did unlawfully set fire to a forest then and there situate on the Crown domain, so that the said forest was injured (*or destroyed.*)

THREATS TO BURN.

487. Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any building, or any rick or stack of grain, hay or straw or other agricultural produce, or any grain, hay or straw or other agricultural produce in or under any building, or any ship or vessel. R. S. C. c. 173, s. 8. 24-25 V. c. 97, s. 50 (Imp.).

See remarks under ss. 233 & 482, *ante.*

A threat to burn standing corn is not within the statute: R. v. Hill, 5 Cox, 233; *See* R. v. Jepson, 2 East, P. C. 1115, *note* (*a*), as to what constitutes a threat. *See* s. 959 *post*, as to articles of the peace.

ATTEMPT TO DAMAGE BY EXPLOSIVES.

488. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully places or throws any explosive substance

into or near any building or ship with intent to destroy or damage the same or any machinery, working tools, or chattels whatever, whether or not any explosion takes place. R. S. C. c. 168, ss. 14 & 49. 24-25 V. c. 97, ss. 10-45 (Imp.).

"Explosives" defined, s. 3.

Indictment for throwing gunpowder into a house with intent, etc.— at unlawfully and wilfully did throw into the dwelling-house of J. N., a large quantity, to wit, two pounds of a certain explosive substance, that is to say, gunpowder, with intent thereby then to destroy the said dwelling-house. (*Add counts varying the statement of the act, and also stating the intent to be to damage the house.*)

Indictment under s. 99 for destroying by explosion part of a dwelling-house, so as to endanger life.— wilfully and unlawfully did, by the explosion of a certain explosive substance, that is to say gunpowder, destroy a certain part of the dwelling-house of J. N., situate one A. N., then being in the said dwelling-house, so as to endanger the life of the said A. N. (*Add counts for throwing down and damaging part of the dwelling-house,*) under s. 488: *See* R. v. McGrath, 14 Cox, 598; and ss. 99, 100, 247, 248 & 499, which also provide for offences by explosives.

Prove that the defendant by himself or with others destroyed or was present aiding and abetting in the destruction of some part of the dwelling-house in question, by the explosion of gunpowder or other explosive substance mentioned in the indictment: R. v. Howell, 9 C. & P. 437. It has been held that firing a gun loaded with powder through the keyhole of the door of a house, in which were several persons, and by which the lock of the door was blown to pieces, is not within this section: R. v. Brown, 3 F. & F. 821. But Greaves is of opinion that this case would bear reconsideration: 2 Russ. 1045 *note*. Prove that it was the dwelling-house of J. N., and situate as described in the indictment. Prove that the act was done maliciously, that is, wilfully and not by accident. Prove also

upon an indictment as *ante* under s. 99 that A. N. was in the house at the time. No intent need be laid or proved. In R. v. Sheppard, 11 Cox, 302, it was held that, in order to support an indictment under this section, it is not enough to show simply that gunpowder or other explosive substance was thrown against the house, but it must also be shown that the substance was in a condition to explode at the time it was thrown, although no actual explosion did result.

MISCHIEF ON RAILWAYS.

489. Every one is guilty of an indictable offence and liable to five years' imprisonment who, *in manner likely to cause danger to valuable property, without endangering life or person*—

(*a*) places any obstruction upon any railway, or takes up, removes, displaces, breaks or injures any rail, sleeper or other matter or thing belonging to any railway; or

(*b*) shoots or throws anything at an engine or other railway vehicle; or

(*c*) interferes without authority with the points, signals or other appliances upon any railway; or

(*d*) makes any false signal on or near any railway; or

(*e*) wilfully omits to do any act which it is his duty to do; or

(*f*) does any other unlawful act.

2. Every one who does any of the acts above mentioned *with intent to cause such danger* is liable to imprisonment for life. R. S. C. c. 168, ss. 37 & 38 (*Amended*). 24-25 V. c. 97, s. 35.

490. Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any act or wilful omission obstructs or interrupts, or causes to be obstructed or interrupted, the construction, maintenance or free use of any railway or any part thereof, or any matter or thing appertaining thereto or connected therewith. R. S. C. c. 168, ss. 38 & 39 (*Amended*). 24-25 V. c. 97, s. 36 (Imp.).

491. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the goods or liquors so destroyed or damaged, or to one month's imprisonment, with or without hard labour, or to both, who—

(*a*) wilfully destroys or damages anything containing any goods or liquors in or about any railway station or building or any vehicle of any kind on any railway, or in any warehouse, ship or vessel, with intent to steal or otherwise unlawfully to obtain or to injure the contents, or any part thereof; or,

(*b*) unlawfully drinks or wilfully spills or allows to run to waste any such liquors, or any part thereof. R. S. C. c. 38, s. 62. 51 V. c. 29, s. 297.

Section 489 is clumsily worded.

See s. 711 as to a verdict of attempt to commit the offence charged in certain cases.

The prisoners were indicted in several counts for wilfully and maliciously placing a stone upon the North Woolwich Railway, with intent to damage, injure, and obstruct the carriages travelling upon it.

It appeared that the prisoners, who were respectively aged thirteen and fourteen, had placed a stone on the railway in such a way as to interfere with the machinery of the points, and prevent them from acting properly, so that if a train had come up while the stone remained as placed by the prisoners it would have been thrown off the line, and a serious accident must have been the consequence. Gutteridge held up the points whilst Upton dropped in the stone.

Wightman, J., told the jury that in order to convict the prisoners it was necessary, in the first place, to prove that they had wilfully placed the stone in the position stated upon the railway: and secondly, that it was done maliciously, and with the purpose of causing mischief. It was his duty to inform them that it was not necessary that the prisoners should have entertained any feelings of malice against the railway company, or against any person travelling upon it; it was quite enough to support the charge if the act was done with a view to some mischievous consequence or other, and if that fact was made out the jury would be justified in finding the prisoners guilty, notwithstanding their youth. They were undoubtedly very young, but persons of their age were just as well competent to form an opinion of the consequences of an act of this description as an adult person. *Verdict*, guilty upon the counts charging an intent to obstruct the engine: R. v. Upton (*Greaves Lord Campbell's Acts, Appendix*).

Indictment under s-s. 1.— unlawfully did put and place a piece of wood upon a certain railway called in with intent thereby then to obstruct, upset, over-

throw, and injure a certain engine and certain carriages using the said railway, and in manner likely to cause danger to such engine and carriages. (*The intent may be laid in different ways, in different counts, if necessary*).

Prove that the defendant placed the piece of wood upon or across the railroad as described in the indictment, or was present aiding and assisting in doing so. The intent may be inferred from circumstances from which the jury may presume it. In general, the act being done wilfully, and its being likely to obstruct or upset the railway train, would be sufficient *prima facie* evidence of an intent to do so.

Upon an indictment under s. 489 the defendant may be convicted of the offence under s. 490, if the evidence warrants it: R. v. Bradford, Bell, 268. A line of railway constructed under an Act of Parliament, but not yet opened for public traffic, and used only for the carriage of materials and workmen, is within the statute: *Idem*. A drunken man got upon the railway and altered the signals and thereby caused a luggage train to pull up and proceed at a very slow pace: *Held*, upon a case reserved, that this was a causing of an engine and a carriage using a railway to be obstructed: R. v. Hadfield, 11 Cox, 574, Warb. Lead. Cas. 87. A person improperly went upon a line of railway and purposely attempted to stop a train approaching by placing himself on the space between two lines of rails, and holding up his arms in the mode adopted by inspectors of the line when desirous of stopping a train: *Held*, that this amounted to the offence of unlawfully obstructing an engine or carriage using a railway: R. v. Hardy, 11 Cox, 656.

INJURIES TO TELEGRAPHS.

492. Every one is guilty of an indictable offence and liable to *two years'* imprisonment who wilfully—

(*a*) destroys, removes or damages anything which forms part of, or is used or employed in or about any electric or magnetic telegraph, electric light, telephone or fire-alarm, or in the working thereof, or for the transmission of electricity for other lawful purposes; or

(*b*) prevents or obstructs the sending, conveyance or delivery of any communication by any such telegraph, telephone or fire-alarm, or the transmission of electricity for any such electric light or for any such purpose as aforesaid.

2. Every one who wilfully, by any overt act, attempts to commit any such offence is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour. R. S. C. c. 168, ss. 40 & 41 (*Amended*). 24-25 V. c. 97, ss. 37 & 38 (Imp.).

Fine, s. 958. A verdict for attempt to commit the offence charged may be given upon an indictment under (*a*) & (*b*); s. 711.

WRECKING.

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

(*a*) casts away or destroys any ship, whether complete or unfinished; or

(*b*) does any act tending to the immediate loss or destruction of any ship in distress; or

(*c*) interferes with any marine signal, or exhibits any false signal, with intent to bring a ship or boat into danger. R. S. C. c. 168, ss. 46 & 51 (*Amended*). 24-25 V. c. 97, ss. 42 & 47 (Imp.).

494. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who attempts to cast away or destroy any ship, whether complete or unfinished. R. S. C. c. 168, s. 48 (*Amended*).

Upon an indictment under s. 493 (*a*) a verdict may be given for the offence covered by s. 494; s. 711.

See R. v. Tower, 4 P. & B. (N. B.) 168.

Indictment for exhibiting false signals.— that before and at the time of committing the offence hereinafter mentioned, a certain ship, the property of some person or persons to the jurors aforesaid unknown, was sailing on a certain river called near unto and that J. S. on well knowing the premises, whilst the said ship was so sailing on near unto the said parish as aforesaid, wilfully and unlawfully did exhibit a false light, with intent thereby to bring the said ship into danger.

MARINE SIGNALS, BUOYS.

495. Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully alters, removes or conceals, or attempts to alter, remove or conceal, any signal, buoy or other sea mark used for the purposes of navigation.

2. Every one who makes fast any vessel or boat to any such signal, buoy, or sea mark is liable, on summary conviction, to a penalty not exceeding ten dollars, and in default of payment to one month's imprisonment. R. S. C. c. 168, ss. 52 & 53 (*Amended*). 24-25 V. c. 97, s. 48.

No intent need be charged in the indictment. This section includes the offence and the attempt to commit the offence.

Indictment.— that J. S., on upon the river called unlawfully did wilfully remove a certain buoy then used for the purposes of navigation.

Verdict of attempt may be given if the evidence warrants it; s. 711.

PREVENTING SAVING OF WRECK.

496. Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully prevents or impedes, or endeavours to prevent or impede—

(*a*) the saving of any vessel that is wrecked, stranded, abandoned or in distress; or

(*b*) any person in his endeavour to save such vessel.

2. Every one who wilfully prevents or impedes, or endeavours to prevent or impede, the saving of any wreck is guilty of an indictable offence and liable, on conviction on indictment, to two years' imprisonment, and on summary conviction before two justices of the peace, to a fine of four hundred dollars or six months' imprisonment, with or without hard labour. R. S. C. c. 81, ss. 36 (*b*) & 37 (*c*).

"Wreck" defined, s. 3.

INJURIES TO RAFTS, ETC.

497. Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully—

(*a*) breaks, injures, cuts, loosens, removes or destroys, in whole or in part, any dam, pier, slide, boom or other such work, or any chain or other fastening attached thereto, or any raft, crib of timber or saw-logs; or

(*b*) impedes or blocks up any channel or passage intended for the transmission of timber. R. S. C. c. 168, s. 54.

Fine, s. 958.

Indictment.— that A. B. on in unlawfully and wilfully, without legal justification or excuse and without colour of right, did cut a certain boom then and there lying on the river called the said boom being then and there the property of J. S., of .

MISCHIEF TO MINES.

498. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to injure a mine or oil well, or obstruct the working thereof—

(*a*) causes any water, earth, rubbish or other substance to be conveyed into the mine or oil well or any subterranean channel communicating with such mine or well; or

(*b*) damages any shaft or any passage of the mine or well; or

(*c*) damages, with intent to render useless, any apparatus, building, erection, bridge or road belonging to the mine or well, whether the object damaged be complete or not; or

(*d*) hinders the working of any such apparatus; or

(*e*) damages or unfastens, with intent to render useless, any rope, chain or tackle used in any mine or well or upon any way or work connected therewith. R. S. C. c. 168, ss. 30 & 31 (*Amended*). 24-25 V. c. 97, ss. 28 & 29 (Imp.).

Indictment under (*a*).— unlawfully and without legal justification or excuse and without colour of right, did cause a quantity of water to be conveyed into a certain mine of J. N., situate with intent thereby then to injure the said mine and obstruct the working thereof.

Acts causing the damages mentioned in this section done in the *bona fide* exercise of a supposed right and without a wicked mind are not indictable: R. v. Matthews, 14 Cox, 5; R. v. Jones, 2 Moo. 293; R. v. Fisher, Warb. Lead. Cas. 195.

Indictment under (*e*). a certain steam engine, the property of J. N. for the draining and working of a certain mine of the said J. N. and belonging to the said mine, unlawfully did, without legal justification or excuse, and without colour of right, damage with intent to render it useless and to injure the said mine and obstruct the working thereof.

See s. 711 as to a verdict for attempt to commit the offence charged in certain cases.

Prove that the defendant pulled down or destroyed the engine, as alleged. A scaffold erected at some distance above the bottom of a mine for the purpose of working a vein of coal on a level with the scaffold was holden to be an *erection* used in conducting the business of the mine,

within the meaning of the statute: R. v. Whittingham, 9 C. & P. 234. Wrongfully setting a steam-engine in motion, without its proper machinery attached to it, and thereby damaging it and rendering it useless, is within the section: R. v. Norris, 9 C. & P. 241. A trunk of wood used to convey water to wash the earth from the ore was held to be an erection used in conducting the business of a mine within the meaning of the statute: Barwell v. Winterstoke, 14 Q. B. 704.

The intent must be alleged in the indictment: R. v. Smith, 4 C. & P. 569.

MISCHIEF.

499. Every one is guilty of the indictable offence of mischief who wilfully destroys or damages any of the property hereinafter mentioned, and is liable to the punishments hereinafter specified:—

(*A*) to imprisonment for life if the object damaged be—

(*a*) a dwelling-house, ship or boat, and the damage be caused by an explosion, and any person be in such dwelling-house, ship or boat, and the damage causes actual danger to life; or

(*b*) a bank, dyke or wall of the sea, or of any inland water, natural or artificial, or any work in, on, or belonging to any port, harbour, dock or inland water, natural or artificial, and the damage causes actual danger or inundation; or

(*c*) any bridge (whether over any stream of water or not) or any viaduct, or aqueduct, over or under which bridge, viaduct or aqueduct any highway, railway or canal passes, and the damage is done with intent and so as to render such bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous and impassable; or

(*d*) a railway damaged with the intent of rendering and so as to render such railway dangerous or impassable. R. S. C. c. 168, ss. 13, 32 & 49; c. 32, s. 213.

(*B*) to fourteen years' imprisonment if the object damaged be—

(*a*) a ship in distress or wrecked, or any goods, merchandise or articles belonging thereto; or

(*b*) any cattle or the young thereof, and the damage be caused by killing, maiming, poisoning or wounding.

(*C*) to seven years' imprisonment if the object damaged be—

(*a*) a ship damaged with intent to destroy or render useless such ship; or

(*b*) a signal or mark used for purposes of navigation; or

(*c*) a bank, dyke or wall of the sea or of any inland water or canal, or any materials fixed in the ground for securing the same, or any work belonging to any port, harbour, dock, or inland water or canal; or

(*d*) a navigable river or canal damaged by interference with the flood gates or sluices thereof or otherwise, with intent and so as to obstruct the navigation thereof ; or

(*e*) the flood gate or sluice of any private water with intent to take or destroy, or so as to cause the loss or destruction of, the fish therein ; or

(*f*) a private fishery or salmon river damaged by lime or other noxious material put into the water with intent to destroy fish then being or to be put therein ; or

(*g*) the flood gate of any mill-pond, reservoir or pool cut through or destroyed ; or

(*h*) goods in process of manufacture damaged with intent to render them useless ; or

(*i*) agricultural or manufacturing machines, or manufacturing implements, damaged with intent to render them useless ; or

(*j*) a hop bind growing in a plantation of hops, or a grape vine growing in a vineyard. R. S. C. c. 168, ss. 16, 17, 21, 33, 34, 50 & 52.

(*D*) to five years' imprisonment if the object damaged be—

(*a*) a tree, shrub or underwood growing in a park, pleasure ground or garden, or in any land adjoining or belonging to a dwelling-house, injured to an extent exceeding in value five dollars ; or

(*b*) a post letter bag or post letter ; or

(*c*) any street letter box, pillar box or other receptacle established by authority of the Postmaster-General for the deposit of letters or other mailable matter ; or

(*d*) any parcel sent by parcel post, any packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any printed vote or proceeding, newspaper, printed paper or book or other mailable matter, not being a post letter, sent by mail ; or

(*e*) any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged *by night* to the value of twenty dollars. R. S. C. c. 168, ss. 22, 23, 38 & 58 ; c. 35, ss. 79, 91, 96 & 107. 53 V. c. 37, s. 17.

(*E*) To two years' imprisonment if the object damaged be—

(*a*) any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged to the value of twenty dollars. R. S. C. c. 168, ss. 36, 42 & 58. 53 V. c. 37, s. 17 (*Amended*).

The punishments are altered in some of these cases. "Night" and "cattle" defined, s. 3. The words "by night" in (*D*) (*e*) are new.

The Imperial Act on malicious injuries is 24 & 25 V. c. 97; also, 39 V. c. 13, as to poisoning cattle.

Indictment for damaging a river bank (*A*) (*b*).—

a certain part of the bank of a certain river, called the river situate unlawfully and wilfully,

without legal justification or excuse, and without colour of right, did cut down and break down, by means whereof certain lands were then overflowed and damaged (*or were in actual danger of being inundated*). As to verdict for an attempt to commit the offence charged upon an indictment for the offence itself, in certain cases, *see* s. 711.

INJURIES TO BRIDGES, ETC. (*A*) (*c*).

This clause by the words *whether over any stream of water or not* does away with the difficulties raised in R. v. Oxfordshire, 1 B. & Ad. 289, and R. v. Derbyshire, 2 Q. B. 745.

Indictment for destroying a bridge.— a certain bridge, situate unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy, with intent, and so as to render the said bridge impassable.

Indictment for damaging a bridge.— unlawfully and wilfully, without legal justification or excuse, and without colour of right, did damage a certain bridge, situate with intent, and so as to thereby render the said bridge dangerous and impassable.

KILLING OR WOUNDING CATTLE. (*B*) (*b*).

Indictment for killing, or wounding, a horse.— one horse of the goods and chattels of J. N. unlawfully and wilfully, without legal justification or excuse, and without colour of right, did kill (*or wound*).

A verdict for the attempt, punishable under next section, may be given if the evidence warrants it, s. 711.

The particular species of cattle killed, maimed, wounded or poisoned must be specified; an allegation that the prisoner maimed certain cattle is not sufficient: R. v. Chalkley, R. & R. 258. "Cattle" defined, s. 3 *ante*.

No malice against the owner is necessary. The words "or injured" as to cattle were in the repealed clause. Other acts of administering poison to cattle are admissible

in evidence to show the intent with which the drug is administered: R. v. Mogg, 4 C. & P. 364. The word *wound* is contradistinguished from a permanent injury, such as maiming, and a *wounding* need not be of a permanent nature: R. v. Haywood, 2 East, P. C. 1076, R. & R. 16.

In R. v. Jeans, 1 C. & K. 539, it was held that where part of the tongue of a horse was torn off there was no offence against the statute, because no instrument was used. But, under the present statute, the same act was held to be a wounding within this section: R. v. Bullock, 11 Cox, 125. Upon a case reserved, in R. v. Owens, 1 Moo. 205, it was held that pouring acid into the eye of a mare, and thereby blinding her, is a maiming; setting fire to a building with a cow in it, and thereby *burning the cow* to death, is a killing within the statute: R. v. Haughton, 5 C. & P. 555.

The prisoner by a reckless and cruel act caused the death of a mare. The jury found that he did not intend to kill, maim or wound the mare, but that he knew that what he did would or might kill, maim or wound the mare, and that he nevertheless did the act recklessly, and not caring whether the mare was injured or not. *Held*, that there was sufficient malice to support the conviction: R. v. Welch, 13 Cox, 121.

Indictment for breaking down the flood-gate of a fish pond (B) (e).— the flood-gate of a certain private fish-pond of one J. N., situate unlawfully and wilfully, without legal justification or excuse, and without colour of right, did break down, damage and destroy with intent thereby then to take and destroy the fish in the said pond then being.

Indictment for putting lime into a salmon river (B) (f).— unlawfully and wilfully, without legal justification or excuse and without colour of right, did by putting a large quantity, to wit, ten bushels of lime into it, damage a certain salmon river, situate with intent thereby then to destroy the fish in the said river then being.

INJURIES TO MANUFACTURING MACHINES, ETC. *(C) (i).*

Taking away part of a frame and thereby rendering it useless, R. v. Tacey, R. & R. 452, and screwing up parts of an engine and reversing the plug of the pump, thereby rendering it useless and liable to burst: R. v. Fisher, 10 Cox, 146, Warb. Lead Cas. 195, are damaging within the Act, although no actual permanent injury be done. If a threshing machine be taken to pieces and separated by the owner the destruction of any part of it is within the statute: R. v. Mackerel, 4 C. & P. 448. So is the destruction of a water-wheel by which a threshing machine is worked: R. v. Fidler, 4 C. & P. 449. So though the sideboards of the machine be wanting, without which it will act but not perfectly, it is within the statute. But if the machine be taken to pieces, and in part destroyed by the owner from fear, the remaining parts do not constitute a machine within the statute: R. v. West, 2 Russ. 1087. It is not necessary that any part of the machine should be broken; a dislocation or disarrangement is sufficient: R. v. Foster, 6 Cox, 25.

Indictment under (D) (a). two elm trees, the property of J. N., then growing in a certain park of the said J. N., situate in unlawfully and wilfully, without legal justification or excuse and without colour of right, did cut and damage, thereby then doing injury to the said J. N. to an amount exceeding the sum of five dollars, to wit, the amount of ten dollars. (*A count may be added for cutting with intent to steal the trees, under s. 336.*

Indictment under (D) (e). ten elm trees, the property of J. N., then growing in a certain close of the said J. N., situate unlawfully and wilfully, without legal justification or excuse and without colour of right, did cut and damage by night, thereby then doing injury to the said J. N. to an amount exceeding the sum of twenty dollars, to wit, the sum of twenty-five dollars. (*Add a count under s. 336.*)

See s. 711, as to a verdict for an attempt to commit the offence charged upon an indictment for the offence, in certain cases. A variance in the number of trees is not material. It must be proved, under (*D*) (*a*), that the tree was growing in a park, and that the damage done exceeds five dollars.

Under (*D*) (*e*) the damage must not be less than twenty dollars and must have been done by night. The amount of injury done means the actual injury done to the trees by the defendant's act; it is not sufficient to bring the case within the statute that, although the amount of such actual injury is less than twenty dollars, the amount of *consequential* damage would exceed twenty dollars: R. v. Whiteman Dears. 353; *see* R. v. Lewis, 2 Russ. 1067, as to indictment; R. v. Williams, 9 Cox, 338; R. v. Thoman, 12 Cox, 54.

Defendant was indicted for unlawfully and maliciously committing damage upon a window in the house of the prosecutor. Defendant, who had been fighting with other persons in the street after being turned out of a public house, went across the street, and picked up a stone which he threw at them. The stone missed them, passed over their heads, and broke a window in the house. The jury found that he intended to hit one or more of the persons he had been fighting with, and did not intend to break the window: *Held*, that upon this finding the prisoner was not guilty of the charge within this section; to support a conviction of this nature there must be a wilful and intentional doing of an unlawful act in relation to the property damaged: R. v. Pembliton, 12 Cox, 607; *see* on this last case R. v. Welsh, 13 Cox, 121; R. v. Faulkner, 13 Cox, 550, and R. v. Latimer, 16 Cox, 70.

The words "real or personal property" mean actual, tangible property, not a mere legal right: Laws v. Eltringham, 15 Cox, 22, 8 Q. B. D. 283.

Two indictments were preferred against defendants for feloniously destroying the fruit trees respectively of M. and C. The offences charged were proved to have been committed on the same night, and the injury complained of was done in the same manner in both cases. Defendants were put on trial on the charge of destroying the trees of M. and evidence relative to the offence charged in the other indictment was admitted as showing that the offences had been committed by the same persons.

Held, that such evidence was properly received: R. v. McDonald, 10 O. R. 553.

ATTEMPTS TO KILL, ETC., CATTLE.

500. Every one is guilty of an indictable offence and liable to *two years'* imprisonment who wilfully—

(*a*) attempts to kill, maim, wound, poison or injure any cattle, or the young thereof; or

(*b*) places poison in such a position as to be easily partaken of by any such animal. R. S. C. c. 168, s. 44.

"Cattle" defined, s. 3; fine, s. 958. *See* remarks under preceding section. The punishment was not defined in the repealed clause.

As to attempts generally *see* remarks under s. 64. This s. 500 has no other effect than to reduce the punishment, which, without it, would be seven years under ss. 499-528.

INJURIES TO OTHER ANIMALS.

501. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars over and above the amount of injury done, or to three months' imprisonment with or without hard labour, who wilfully kills, maims, wounds, poisons or injures any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, *or kept for any lawful purpose.*

2. Every one who, having been convicted of any such offence, afterwards commits any offence under this section, is guilty of an indictable offence, and liable to a fine or imprisonment, or both, in the discretion of the court. 53 V. c. 37, s. 16. R. S. C. c. 168, s. 45 (*Amended*).

The punishment under s-s. 2 is provided for by s. 951.

Greaves says: "This clause is new, and is a great improvement of the law, as it will protect domestic animals

from malicious injuries. It includes any beast or animal, not being cattle, which is the subject of larceny at common law. It also includes birds which are the subject of larceny at common law, such as all kinds of poultry and, under certain circumstances, swans and pigeons. So also it includes any bird, beast or other animal ordinarily kept in a state of confinement, though not the subject of larceny, such as parrots and ferrets; and it is to be observed that the words *ordinarily kept in a state of confinement*, are a description of the mode in which the animals are usually kept, and do not render it necessary to prove that the bird or animal was confined at the time when it was injured. Lastly the clause includes any bird or animal kept for any domestic purpose, which clearly embraces cats."

As to a verdict of attempt to commit the offence charged in certain cases *see* s. 711.

The words *or kept for any lawful purpose* cover all animals kept in a circus, menagerie, etc.

THREATS TO INJURE CATTLE.

502. Every one is guilty of an indictable offence and liable to *two* years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill, maim, wound, poison, or injure any cattle. R. S. C. c. 173, s. 8. 24-25 V. c. 97, s. 50 (Imp.).

See ante, under s. 487.

Fine, s. 958. "Cattle" defined, s. 3.

The punishment was *ten* years by the repealed clause. It is still *ten* years, under s. 487, for sending a letter threatening to burn any building, stack of grain, etc. Why it should be *two* years under this section and *ten* under s. 487 is not clear.

INJURIES TO POLL-BOOKS, ETC.

503. Every one is guilty of an indictable offence and liable to *seven years'* imprisonment who wilfully—

(*a*) destroys, injures or obliterates, or causes to be destroyed, injured or obliterated; or

(*b*) makes or causes to be made any erasure, addition of names or interlineation of names in or upon—

any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, or any document, *ballot* or paper made, prepared or drawn out according to any law in regard to *Dominion*, provincial, municipal or civic elections. R. S. c. 168, s. 55 (*Amended*).

The words "Dominion" and "ballot" are new. They were not required; s. 102 of c. 8, R. S. C. fully covers them.

See under s. 551, *post*, a reference to the above section.

Indictment.— that A. B. at on unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy (*injure or obliterate*) a certain writ of election (*describe*) prepared and drawn out according to a law of the Dominion of Canada, to wit, the Act (*as the case may be*).

To destroy any ballot *or* paper is by the above section punishable by *seven* years. To destroy any *ballot paper*, or a ballot box, or a packet of ballot papers is, by s. 100, c. 8, R. S. C., punishable by any term not exceeding *six* months!

INJURIES BY TENANTS.

504. Every one is guilty of an indictable offence and liable to *five years'* imprisonment who, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building *which is built on lands subject to a mortgage* or which is held for any term of years or other less term, or at will, or held over after the termination of any tenancy, wilfully *and to the prejudice of the mortgagee* or owner—

(*a*) pulls down or demolishes, or begins to pull down or demolish the same or any part thereof, or removes or begins to remove the same or any part thereof from the premises on which it is erected; or

(*b*) pulls down or severs from the freehold any fixture fixed in or to such dwelling-house or building, or part of such dwelling-house or building. R. S. C. c. 168, s. 15 (*Extended*). 24-25 V. c. 97, s. 13 (Imp.).

The words in italics are new.

Fine, s. 958.

Indictment.— that on A. B. was possessed of a certain dwelling-house, situate then held by him as tenant for a term of years then unexpired; and that the said A. B., being so possessed as aforesaid, on the day and year aforesaid, did wilfully, to the prejudice of C. D., the owner, without legal justification or excuse, and without colour of right, pull down and demolish the said dwelling-

house (*or begin to pull down "or" demolish the said dwelling-house or any part thereof.*)

INJURIES TO LAND MARKS.

505. Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully pulls down, defaces, alters or removes any mound, land mark, post or monument lawfully erected, planted or placed to mark or determine the boundaries of any province, county, city, town, township, parish or other municipal division. R. S. C. c. 168, s. 56.

506. Every one is guilty of an indictable offence and liable to *five years'* imprisonment who wilfully defaces, alters or removes any mound, land mark, post or monument lawfully placed *by any land surveyor* to mark any limit, boundary or angle of any concession, range, lot or parcel of land.

2. It is not an offence for any land surveyor in his operations to take up such posts or other boundary marks when necessary, if he carefully replaces them as they were before. R. S. C. c. 168, s. 57.

The words "*pulls down*" in s. 505 are omitted from s. 506. "So are the words *erected or planted.*"

The words "*by any land surveyors*" in s. 506 are not in s. 505.

The offence mentioned in s. 506 can only be committed in relation to boundaries or land marks which have been *legally* placed by a land surveyor: R. v. Austin, 11 Q. L. R. 76.

The punishment for the offence covered by s. 506 was three months' imprisonment, or a fine of one hundred dollars, or both, by the repealed clause.

INJURIES TO FENCES, STILES, ETC.

507. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, who wilfully destroys or damages any fence, or any wall, stile or gate, or any part thereof respectively, *or any post or stake planted or set upon any land, marsh, swamp or land covered by water, on or as the boundary or part of the boundary line thereof, or in lieu of a fence thereto.*

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. R. S. C. c. 168, s. 27. 53 V. c. 38, s. 15. 24-25 V. c. 97, s. 25 (Imp.).

The words in italics are not in the English Act.

The act must have been done *maliciously* (wilfully) to be punishable under this clause: R. v. Bradshaw, 38 U. C. Q. B. 564; *see* s. 481, *ante.*

INJURIES TO HARBOURS.

507a. Every one is guilty of an offence, and liable, on summary conviction, to a penalty not exceeding fifty dollars, who wilfully and without the permission of the Minister of Marine and Fisheries (the burden of proving which permission shall lie on the accused) removes any stone, wood, earth or other material, forming a natural bar necessary to the existence of a public harbour, or forming a natural protection to such bar. (Amendment of 1893).

INJURIES TO TREES, 25 CENTS.

508. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding *twenty-five* dollars over and above the amount of injury done, or to *two* months' imprisonment with or without hard labour, who wilfully destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same is growing, the injury done being to the amount of twenty-five cents, at the least.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to a penalty not exceeding *fifty* dollars over and above the amount of the injury done, or to *four* months' imprisonment with hard labour.

3. Every one who, having been twice convicted of any such offence, afterwards commits any such offence, is guilty of an indictable offence and liable to two years' imprisonment. R. S. C. c. 168, s. 24. 24-25 V. c. 97, s. 22 (Imp.).

The punishments are altered.

If the injury does not amount to twenty-five cents the defendant may be punished under s. 511, *post*.

See s. 907, *post*, where it has been forgotten that the words "cut, break, root up" of the repealed clause have been left out in s. 508.

Indictment after two previous convictions for cutting or damaging trees to the value of twenty-five cents wheresoever growing.— that J. S., on one elm tree, the property of J. N., then growing on a certain land of the said J. N. in the unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy and damage, thereby then doing injury to the said J. N., to the amount of forty cents. And the jurors aforesaid do say, that heretofore and before the committing of the offence hereinbefore mentioned (*stating the two previous convictions and concluding as in form p. 379, ante*). *See* ss. 628 and 676 as to indictments and procedure in indictable offences committed after previous convictions, and for

which a greater punishment may be inflicted on that account.

If, in answer to a charge under this section, the defendant sets up a *bona fide* claim of right the justices of the peace have no jurisdiction: R. v. O'Brien, 5 Q. L. R. 161.

DESTROYING VEGETABLES.

509. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, or to three months' imprisonment with or without hard labour, who wilfully destroys, or damages with intent to destroy, any vegetable production growing in any garden, orchard, nursery ground, house, hot-house, green-house or conservatory.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence, and liable to two years' imprisonment. R. S. C. c. 168, s. 25. 24-25 V. c. 97, s. 23 (Imp.).

510. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five dollars over and above the amount of the injury done, or to one month's imprisonment with or without hard labour, who wilfully destroys, or damages with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. R. S. C. c. 168, s. 26. 24-25 V. c. 97, s. 24 (Imp.).

Indictment under s. 509 for destroying plants after a previous conviction.— that J. S., on one dozen heads of celery, the property of J. N., in a certain garden of the said J. N., situate then growing, unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy. And the jurors aforesaid do say that heretofore and before the committing of the offence hereinbefore mentioned (*state the previous conviction*). And so, the jurors aforesaid, do say that the said J. S. on the day and year first aforesaid, one dozen heads of celery, the property of J. N., in a certain garden of the said J. N., situate then growing, unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy.

OTHER INJURIES.

511. Every one who wilfully commits any damage, injury or spoil to or upon any real or personal property *either corporeal or incorporeal*, and either of a public or private nature, for which no punishment is hereinbefore provided, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars, and such further sum, not exceeding twenty dollars, as appears to the justice to be a reasonable compensation for the damage, injury or spoil so committed,—which last mentioned sum of money shall, in the case of private property, be paid to the person aggrieved; and if such sums of money, together with the costs, if ordered, are not paid, either immediately after the conviction, or within such period as the justice at the time of the conviction appoints, the justice may cause the offender to be imprisoned for any term not exceeding two months, with or without hard labour.

2. Nothing herein extends to—

(*a*) any case where the person acted under a fair and reasonable supposition that he had a right to do the act complained of; or

(*b*) any trespass, not being wilful and malicious, committed in hunting or fishing or in the pursuit of game. R. S. C. c. 168, s. 59. 53 V. c. 37, s. 18. 24-25 V. c. 97, s. 52 (Imp.).

The words in italics were introduced by the Act of 1890.

The proviso in s-s. 3 of the repealed clause extending this enactment in express terms to trees, etc., where the damage is less than twenty-five cents has not been re-enacted: *see* R. v. Dodson, 9 A. & E. 704, and Charter v. Greame, 13 Q. B. 216.

The word "herein" is s-s. 2, would apply to the whole Act, and not merely to this section by R. S. C. c. 1, s. 7, s-s 5. It is clear, however, that here it applies only to this section.

W. was summoned before the justices under this clause. He was in the employment of D., and by his order he forcibly entered a garden belonging to and in the occupation of F. accompanied by thirteen other men, and cut a small ditch, from forty to fifty yards in length, through the soil. F. and his predecessors in title had occupied the garden for thirty-six years, and during the whole time there had been no ditch upon the site of part of that cut by D. For the defence D. was called, who stated that, fifteen years before, there had been an open ditch in the land which

received the drainage from the highway, and that he gave directions for the ditch to be cut by W. in the exercise of what he considered to be a public right. The justices found that W. had no fair and reasonable supposition that he had a right to do the act complained of, and accordingly convicted him: *Held*, that by the express words of the section and proviso the jurisdiction of the justices was not ousted by the mere *bona fide* belief of W. that his act was legal, and that there was evidence on which they might properly find that he did not act under the fair and reasonable supposition required by the statute: White v. Feast, L. R. 7 Q. B. 353.

A conviction by justices under s. 52, c. 97, 24 & 25 V. (s. 511, *ante*), cannot be brought up by *certiorari*, on the ground that they had no jurisdiction inasmuch as the defendant had set up a *bona fide* claim of right, but the exemption is impliedly restricted to cases where the justices are reasonably satisfied of the fair and reasonable character of the claim: R. v. Mussett, 26 L. T. 429.

See R. v. Prestney, 3 Cox, 505; Butler v. Turley, 2 C. & P. 585; Gardner v. Mansbridge, 16 Cox, 281, 19 Q. B. D. 217.

PART XXXVIII.

CRUELTY TO ANIMALS.

Section 7 of c. 172 R. S. C. is unrepealed. All prosecutions under this part are subject to three months limitation; s. 551. See remarks under next section.

512. Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months' imprisonment with or without hard labour, or to both, who—

(*a*) wantonly, cruelly or unnecessarily beats, binds, ill-treats, abuses, overdrives or tortures any cattle, poultry, dog, domestic animal or bird; or

(*b*) while driving any cattle or other animal is, by negligence or ill-usage in the driving thereof, the means whereby any mischief, damage or injury is done *by* any cattle or other animal; or

(*c*) in any manner encourages, aids or assists at the fighting or baiting of any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature. R. S. C. c. 172, s. 2.

The Imperial Act on cruelty to animals is 12 & 13 V. c. 92, amended by 17 & 18 V. c. 60, and 39 & 40 V. c. 77: *see* Elliott v. Osborn, 17 Cox, 346. As to dishorning cattle *see* Ford v. Wiley, 16 Cox, 683, 23 Q. B. D. 203; Callaghan v. The Society, 16 Cox, 101; and R. v. McDonagh, 28 L. R. Ir. 204.

513. Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who builds, makes, maintains or keeps a cock-pit on premises belonging to or occupied by him, or allows a cock-pit to be built, made, maintained or kept on premises belonging to or occupied by him.

2. All cocks found in any such cock-pit, or on the premises wherein such cock-pit is, shall be confiscated and sold for the benefit of the municipality in which such cock-pit is situated. R. S. C. c. 172, s. 3.

Sections 4 & 5 of c. 172. R. S. C. have not been re-enacted. *See* s. 552, s-s. 2, as to arrest without warrant for offences against this and the preceding section.

514. No railway company within Canada whose railway forms any part of a line of road over which cattle are conveyed from one province to another province, or from the United States to or through any province, or from any part of a province to another part of the same, and no owner or master of any vessel carrying or transporting cattle from one province to another province, or within any province, or from the United States through or to any province,

shall confine the same in any car, or vessel of any description, for a longer period than twenty-eight hours without unlading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unlading and furnishing water and food by storm or other unavoidable cause, or by necessary delay or detention in the crossing of trains.

2. In reckoning the period of confinement the time during which the cattle have been confined without such rest, and without the furnishing of food and water, on any connecting railways or vessels from which they are received, whether in the United States or in Canada, shall be included.

3. The foregoing provisions as to cattle being unladen shall not apply when cattle are carried in any car or vessel in which they have proper space and opportunity for rest, and proper food and water.

4. Cattle so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof or, in case of his default in so doing, by the railway company, or owner or master of the vessel transporting the same, at the expense of the owner or person in custody thereof; and such company, owner or master shall in such case have a lien upon such cattle for food, care and custody furnished and shall not be liable for any detention of such cattle.

5. Where cattle are unladen from cars for the purpose of receiving food, water and rest, the railway company then having charge of the cars in which they have been transported shall, except during a period of frost, clear the floors of such cars, and litter the same properly with clean saw-dust or sand before reloading them with live stock.

6. Every railway company, or owner or master of a vessel, having cattle in transit, or the owner or person having the custody of such cattle, as aforesaid, who knowingly and wilfully fails to comply with the foregoing provisions of this section, is liable for every such failure on summary conviction to a penalty not exceeding one hundred dollars. R. S. C. c. 172, ss. 8, 9, 10 & 11.

515. Any peace officer or constable may, at all times, enter any premises where he has reasonable grounds for supposing that any car, truck or vehicle, in respect whereof any company or person has failed to comply with the provisions of the next preceding section, is to be found, or enter on board any vessel in respect whereof he has reasonable grounds for supposing that any company or person has, on any occasion, so failed.

2. Every one who refuses admission to such peace officer or constable is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars and not less than five dollars, and costs, and in default of payment to thirty day's imprisonment. R. S. C. c. 171, s. 12.

Ch. 171 cited under this section is an Act respecting Seamen.

PART XXXIX.

OFFENCES CONNECTED WITH TRADE AND BREACHES OF CONTRACT.

Conspiracy—Combinations.

516. A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.

The "Trade Unions' Act" is c. 131, R. S. C. S. 12, s-s. 5 of c. 173, R. S. C., and ss. 4 & 5 of 52 V. c. 41 remain unrepealed. As to conspiracies generally *see post*, under s. 527.

517. The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the next preceding section. R. S. C. c. 131, s. 22.

For the Imperial Statutes *see* Archbold, 20th edition, p. 1006. *See also* R. v. Gibson, 16 O. R. 704.

518. No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute. 53 V. c. 37, s. 19.

519. The expression "trade combination" means any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman in or in respect of his business or employment, or contract of employment or service; and the expression "act" includes a default, breach or omission. R. S. C. c. 173, s. 13.

520. Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, and if a corporation is liable to a penalty not exceeding ten thousand dollars and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, unlawfully—

(*a*) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

(*b*) to restrain or injure trade or commerce in relation to any such article or commodity; or

(*c*) to unduly prevent, limit or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(*d*) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property. 52 V. c. 41, s. 1.

Not triable at quarter sessions; s. 540.

Criminal Breach of Contract.

521. Every one is guilty of an indictable offence and liable on indictment, or on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars or to three months' imprisonment, with or without hard labour, who—

(*a*) wilfully breaks any contract made by him knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury; or

(*b*) being, under any contract made by him with any municipal corporation or authority, or with any company, bound, agreeing or assuming to supply any city or any other place, or any part thereof, *with electric light or power*, gas or water, wilfully breaks such contract knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of power, light, gas or water; or

(*c*) being, under any contract made by him with a railway company, bound, agreeing or assuming to carry Her Majesty's mails, or to carry passengers or freight, or with Her Majesty, or any one on behalf of Her Majesty, in connection with a Government railway on which Her Majesty's mails, or passengers or freight are carried, wilfully breaks such contract knowing, or having reason to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to delay or prevent the running of any locomotive engine, or tender, or freight or passenger train or car, on the railway.

2. Every municipal corporation or authority or company which, being bound, agreeing or assuming to supply any city, or any other place, or any part thereof, with *electric light or power*, gas or water, wilfully breaks any contract made by such municipal corporation, authority, or company, knowing or having reason to believe that the probable consequences of its so doing will be to deprive the inhabitants of that city or place or part thereof wholly, or to a great extent, of their supply of *electric light or power*, gas or water, is liable to a penalty not exceeding *one thousand dollars*.

3. Every railway company which, being bound, agreeing or assuming to carry Her Majesty's mails, or to carry passengers or freight, wilfully breaks any contract made by such railway company, knowing or having reason to believe that the probable consequences of its so doing will be to delay or prevent the running of any locomotive engine or tender, or freight or passenger train or car on the railway is liable to a penalty not exceeding one hundred dollars.

4. It is not material whether any offence defined in this section is committed from malice conceived against the person, corporation, authority or

company with which the contract is made or otherwise. R. S. C. c. 173, ss. 15, 16, 17 & 18. 38-39 V. c. 86 (Imp.).

The words in italics are new.

522. Every such municipal corporation, authority, or company, shall cause to be posted up at the *electrical works*, gas works, or water-works, or railway stations, as the case may be, belonging to such corporation, authority or company, a printed copy of this and the preceding section in some conspicuous place, where the same may be conveniently read by the public; and as often as such copy becomes defaced, obliterated or destroyed shall cause it to be renewed with all reasonable despatch.

2. Every such municipal corporation, authority or company which makes default in complying with such duty is liable to a penalty not exceeding twenty dollars for every day during which such default continues.

3. Every person unlawfully injuring, defacing or covering up any such copy so posted up is liable, on summary conviction, to a penalty not exceeding ten dollars. R. S. C. c. 173, s. 19.

INTIMIDATION.

523. Every one is guilty of an indictable offence and liable, on indictment or on summary conviction before two justices of the peace, to a fine not exceeding one hundred dollars or to three months' imprisonment with or without hard labour who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain—

(*a*) uses violence to such other person, or his wife or children, or injures his property; or

(*b*) intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or

(*c*) persistently follows such other person about from place to place; or

(*d*) hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or

(*e*) with one or more other persons follows such other person, in a disorderly manner, in or through any street or road; or

(*f*) besets or watches the house or other place where such other person resides or works, or carries on business or happens to be. R. S. C. c. 173, s. 12.

Sub-section 5 of s. 12, c. 173, R. S. C. is unrepealed,

This is a re-enactment of 38 & 39 V. c. 86, s. 7, (Imp.). *See* Smith v. Thomasson, 16 Cox, 740, Warb. Lead. Cas. 205, and cases there cited, and Connor v. Kent, 17 Cox, 354.

Indictment for picketting.— that A. B., C. D., and E. F., unlawfully and wickedly, and unjustly devising, contriving, and intending to injure and aggrieve one G. H.

and I. J., carrying on business as (*stating the business*) and obstruct them in the business of their lawful calling and business, did on the day of conspire to molest and obstruct the said G. H. and I. J., then being such (*stating the business*), in their lawful calling, by watching and besetting the house where the said G. H. and I. J. carried on their said business, situate as aforesaid, with a view to cause them to dismiss and cease to employ divers workmen, to wit (*naming them*).

Second count. . . that the said A. B., C. D., and E. F., unlawfully contriving and intending to injure and aggrieve the workmen then being employed by the said G. H. and I. J., and obstruct them in the pursuit of their lawful calling, unlawfully did on the day and at the place aforesaid conspire to molest and obstruct K. L. and other workmen in their lawful calling, by watching and besetting the house and place of business situate as aforesaid wherein the said G. H. and I. J. then carried on their said business, wherein the said K. L. and other workmen happened to be, with a view to coerce the said K. L. and other workmen, and induce them to quit their said employment.

INTIMIDATION OF WORKMEN.

Indictment.— that heretofore, before and at the time of committing the offence hereinafter in this count mentioned, A. B. carried on trade and business as a (*stating his trade*) at in the county of , and that C. D. and E. F. were workmen, and were hired and employed by and worked as workmen for the said A. B. in his said trade and business. And the jurors aforesaid do further present that (*naming all the defendants*) on the day of did unlawfully by threats and intimidation endeavour to force one C. D. and E. F., then being workmen hired and employed by and working for the said A. B. in his said trade and business as aforesaid, to depart from their said hiring, employment and work.

Second count. . . and the jurors aforesaid, do further present that heretofore and at the time of the committing the offence hereinafter in this count mentioned the said A. B. carried on his said trade and business (*state his trade*) aforesaid, in the county aforesaid, and that the said C. D. and E. F. were workmen, and were hired and employed by and worked as workmen for the said A. B. in his said trade and business as aforesaid. And the jurors aforesaid, do further present that the said (*naming the defendants*) on the day and year aforesaid, did by unlawfully molesting and obstructing the said C. D. and E. F., endeavour to force the said C. D. and E. F., so being such workmen hired and employed by and working for the said A. B., in his said trade and business as aforesaid, to depart from their said hiring, employment, and work.

In a conviction for following in a disorderly manner with a view to compel any other person to abstain from doing any act which he has a legal right to do, the acts which the defendant attempted to obstruct must be specified: R. v. McKenzie, [1892] 2 Q. B. 519, 17 Cox, 542.

INTIMIDATION—ASSAULT.

524. Every one is guilty of an indictable offence and liable to *two* years imprisonment who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, or, *in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person with a view to hinder him from working or being employed at such trade, business or manufacture.* R. S. C. c. 173, s. 9.

Fine, s. 958.

The words in *italics* are not in the English Act, 24 & 25 V. c. 100, s. 41, from which the enactment was first re-produced in Canada. They cover any violence or threat of violence with a view to hinder any person from working or being employed at a trade, business or manufacture, in pursuance of a combination or conspiracy respecting such trade, business or manufacture.

Indictment for an assault in pursuance of a conspiracy to raise wages.— that J. S., J. W., and E. W., on did amongst themselves conspire, combine, confederate, and agree together to raise the rate of wages then usually paid to workmen and labourers in the art, mystery and business of cotton spinners; and that the said (*defendants*) in pursuance of the said conspiracy, on the day and year aforesaid, in and upon one J. N., unlawfully did make an assault, and him the said J. N., did then beat, wound and ill-treat, and other wrongs to the said J. N., did, to the great damage of the said J. N. (*Add a count stating that the defendants assaulted J. N., "in pursuance of a certain conspiracy before then entered into by the said (defendants) to raise the rate of wages of workmen and labourers in the art, mystery and business of cotton-spinners;" also a count for a common assault.*)

For a number of workmen to combine to go in a body to a master and say that they will leave the works, if he does not discharge two fellow workmen in his employ, was an unlawful combination by threats to force the prosecutor to limit the description of his workmen: Walsby v. Anley, 3 E. & E. 516. And a combination to endeavour to force workmen to depart from their work by such a threat as that they would be considered as blacks, and that other workmen would strike against them all over London, was unlawful: In *re* Perham, 5 H. & N. 30. So also was a combination with a similar object to threaten a workman by saying to him that he must either leave his master's employ, or lose the benefit of belonging to a particular club and have his name sent round all over the country: O'Neill v. Longman, 4 B. & S. 376. But those cases are not now law. An indictment or commitment alleging the offence to be a conspiracy to force workmen to depart from their work by threats need not set out the threats: In *re* Perham, *supra*; *see* ss. 611, 613, *post*.

See R. v. Rowlands, 2 Den. 364.

INTIMIDATION, ETC., OTHER CASES.

525. Every one is guilty *of an indictable offence* and liable, on indictment or on summary conviction before two justices of the peace, *to a fine not exceeding one hundred dollars*, or to three months' imprisonment with or without hard labour, who—

(*a*) beats or uses any violence or threat of violence to any person with intent to deter or hinder him from buying, selling or otherwise disposing of any wheat or other grain, flour, meal, malt or potatoes or other produce or goods, in any market or other place; or

(*b*) beats or uses any such violence or threat to any person having the charge or care of any wheat or other grain, flour, meal, malt or potatoes, while on the way to or from any city, market, town or other place with intent to stop the conveyance of the same; or

(*c*) by force or threats of violence, or *by any form of intimidation whatsoever*, hinders or prevents or *attempts to hinder or prevent* any seaman, stevedore, ship carpenter, *ship labourer* or other person employed to *work at or on board any ship or vessel or to do any work connected with the loading or unloading thereof*, from working at or exercising any lawful trade, business, calling or occupation in or for which he is so employed; *or with intent so to hinder or prevent, besets or watches such ship, vessel or employee*; or

(*d*) beats or uses any violence to, or makes any threat of violence against, any such person with intent to hinder or prevent him from working at or exercising the same, *or on account of his having worked at or exercised the same*. R. S. C. c. 173, s. 10. 50-51 V. c. 49.

526. Every person is guilty of an indictable offence and liable to a fine not exceeding four hundred dollars, or to two years' imprisonment, or to both, who, before or at the time of the public sale of any Indian lands, or public lands of Canada, or of any province of Canada, by intimidation, or illegal combination, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale. R. S. C. c. 173, s. 14.

The words in italics in s. 525 are partly additions made to the Revised Statute c. 173, s. 11 by the Act, 50 & 51 V. c. 49. The words "or unfair management" were in the section for which s. 526 is substituted.

PART XL.

ATTEMPTS—CONSPIRACIES—ACCESSORIES.

CONSPIRACIES. (*New*).

527. Every one is guilty of an indictable offence and liable to *seven* years' imprisonment who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence.

See R. v. Rowlands, 8 Den. 364, and R. v. Whitchurch, 16 Cox, 743, for forms of indictment.

Treasonable conspiracies are provided for by ss. 66 & 69; conspiracies to intimidate a legislature, by s. 70; seditious conspiracies, by s. 123; conspiracies to bring false accusations, by s. 152; conspiracies to defile women, by s. 188; conspiracies to murder, by s. 234; conspiracies to defraud, by s. 394; conspiracies in restraint of trade with assault or threats of violence, by s. 524.

Conspiracies to commit any of the offences which are not triable at quarter sessions are themselves not triable at quarter sessions; s. 540.

The result of this enactment of s. 527 is that, in a number of instances, the conspiracy to commit an offence, whether that offence was committed or not, is more severely punished than the offence itself would be. To obtain passage on a railway by a false ticket for instance, is punishable by *six months*' (s. 362), but the conspiracy by two or more persons to do so is punishable by *seven years*' imprisonment.

Conspiracy is a combination of two or more persons to accomplish some unlawful purpose, or a lawful purpose by unlawful means. This is the definition of conspiracy as given by Lord Denman in R. v. Seward, 1 A. & E. 706; and though questioned by the learned judge himself in R. v. Peck, 9 A. & E. 686, as an antithetical definition, and in R. v. King, 7 Q. B. 782, as not sufficiently compre-

hensive, it seems to be so far adopted as the most correct definition of this offence: R. v. Jones, 4 B. & Ad. 345; 3 Russ. 116. Bishop 2 Cr. L. 171, has in clear and concise terms said "Conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end." *See also* R. v. Bunn, 12 Cox, 316; R. v. Fellowes, 19 U. C. Q. B. 48; Mogul S. S. Co. v. McGregor, 23 Q. B. D. 598; Connor v. Kent, 17 Cox, 354, and R. v. de Kromme, 17 Cox, 492; R. v. McGreevy, 17 Q. L. R. 196.

But the word "unlawful" used in these definitions of conspiracy does not mean "indictable" or "criminal" only. The combining to injure another by fraud, or to do a civil wrong or injury to another, is an indictable conspiracy. So in a case where the prisoner and L. were in partnership, and there being notice of dissolution prisoner conspired with W. & P. in order to cheat L. on a division of assets at the dissolution, by making it appear by entries in the books that P. was a creditor of the firm, and by reason thereof partnership property was to be abstracted for the alleged object of satisfying P., it was held that this was an indictable conspiracy: R. v. Warburton, 11 Cox, 584; *see* R. v. Aspinall, 13 Cox, 231 and 563; R. v. Orman, 14 Cox, 381, Warb. Lead. Cas. 81.

Mr. Justice Drummond, in R. v. Roy, 11 L. C. J. 89, has given the following definition of conspiracy: "A conspiracy is an agreement by two persons (not being husband and wife), or more, to do or cause to be done an act prohibited by penal law, or to prevent the doing of an act ordered under legal sanction by any means whatsoever, or to do or cause to be done an act whether lawful or not by means prohibited by penal law:" R. v. Boulton, 12 Cox, 87; R. v. Parnell, 14 Cox, 508; R. v. Taylor, 15 Cox, 265, 268.

On an indictment for conspiracy to defraud by obtaining goods on false pretenses the false pretenses need not

be set up: R. v. Gill, 2 B. & Ald. 204; Thayer v. R., 5 L. N. 162; *see* s. 616.

An indictment for conspiracy with intent to defraud,—declared insufficient: R. v. Sternberg, 8 L. N. 122.

What are the necessary allegations in an indictment for conspiracy: R. v. Downie, 13 R. L. 429; *see* also Defoy v. R., Ramsay's App. Cas. 193.

Acts done to coerce others to quit their employment in pursuance of a conspiracy are indictable: R. v. Hibbert, 13 Cox, 82; R. v. Bauld, 13 Cox, 282.

Where two persons are indicted for conspiring together, and they are tried together, both must be acquitted or both convicted: R. v. Manning, 12 Q. B. D. 241, Warb. Lead. Cas. 84.

ATTEMPTS TO COMMIT OFFENCES. (*New*).

528. Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts, in any case not hereinbefore provided for, to commit *any indictable* offence for which the punishment is imprisonment for life, or for fourteen years, or for any term longer than fourteen years.

529. Every one who attempts to commit *any indictable* offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made by law for the punishment of such attempt, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence attempted to be committed may be sentenced.

530. Every one is guilty of an indictable offence and liable to one year's imprisonment who attempts to commit *any offence* under any statute for the time being in force and not inconsistent with this Act, or *incites* or *attempts to incite* any person to commit *any such offence*, and for the punishment of which no express provision is made by such statute.

See s. 64, *ante*, and ss. 711 and 712, *post*, and notes thereunder.

As to a fine in certain cases *see* s. 958.

Attempts to commit offences punishable under the code by summary convictions are not covered by these sections. Neither is the inciting to commit any indictable offence. Section 530 makes it an *indictable* offence to attempt to commit, or to incite, or attempt to incite any one to com-

mit an offence punishable *under summary conviction* under any other statute: s. 536.

When an offence is not triable at quarter sessions the attempt to commit that offence is likewise not triable at quarter sessions: s. 540.

Indictment at common law for inciting to commit an offence.— that A. B. on falsely, wickedly and unlawfully did solicit and incite one C. D. unlawfully to steal of the goods and chattels of E. F.

See R. v. Gregory, 10 Cox, 459, and R. v. Ransford, 13 Cox, 9, and cases there cited. The punishment falls under s. 951, *post*.

Inciting to murder is covered by s. 234, and inciting to mutiny by s. 72.

"What is an attempt to commit an offence? This is a question much easier to ask than to answer, and, as far as I am competent to judge, no general rule can be laid down upon the subject, but each case must depend upon its own particular circumstances. As the means by which, and the modes in which crimes may be committed are innumerable, so the modes in which attempts to commit crimes may be made must be innumerable also; and not only so, but the nature of one attempt to commit a crime may totally vary from the nature of another attempt to commit the same crime. Thus, a murder may be committed by a single stab, and so an attempt to murder may be made by a single stab; whilst, on the other hand, a murder may be committed by administering small doses of poison at intervals during a considerable space of time, in such a manner that the death is the result of the combined effects of all the poisonings, and would not have been caused by one or even the greater part of them. In such a case, if death has not ensued, although the poisoner might well be convicted of an administration of poison with *intent* to murder, by proof even of one administration of poison, yet a single administration could not, perhaps, be considered a proof of an attempt to murder, both because the murder was not intended to be committed by it, and because it could not be committed by it.

"These supposed cases may serve to show under what varied circumstances attempts to commit offences may have to be considered, and yet these cases are confined to acts which would have actually been the means of committing the crime if it had been effected. It seems, however, to be clear that whenever the act, or acts, done are such that, if they produced their intended effect, the crime would have been completed, an attempt to commit that crime is proved; and consequently, upon every charge of an attempt to commit an offence, the primary consideration would seem to be, whether the acts done by the prisoner could have effected the crime intended." Greaves' attempts to commit crimes.

ACCESSORIES AFTER THE FACT. (*New*).

531. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case where no express provision is made by this Act for the punishment of an accessory, is accessory after the fact to any indictable offence for which the punishment is, on a first conviction, imprisonment for life, or for fourteen years, or for any term longer than fourteen years.

532. Every one who is accessory after the fact to any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made for the punishment of such accessory, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence to which he is accessory may be sentenced.

As to a fine in certain cases: s. 958.

When an offence is not triable at quarter sessions the offence of being an accessory after the fact to that offence is likewise not triable at quarter sessions: s. 540. *See* s. 63, *ante*, for definition: as to indictments, s. 627, *post*.

Indictment against an accessory after the fact with the principal. After stating the offence of the principal.—And the jurors aforesaid do further present that C. D. well knowing the said A. B. to have done and committed the said offence in form aforesaid, afterwards to wit, on the day and year aforesaid, him the said A. B. unlawfully did receive, harbour, comfort and assist in order to enable him the said A. B. to escape.

Indictment against an accessory after the fact, the principal being convicted. After stating the offence of the principal

and the conviction, charge the accessory thus.— And the jurors aforesaid do further present that C. D. well knowing the said A. B. to have done and committed the said offence after the same was committed as aforesaid, to wit, on the day and year aforesaid, him the said A. B. did unlawfully receive, harbour, comfort and assist in order to enable him the said A. B. to escape.

Against an accessory after the fact when the principal is unknown.

The jurors present that some person or persons to the jurors aforesaid unknown, on unlawfully did steal of the goods and chattels of E. F. And the jurors aforesaid do further present that C. D. well knowing the said person to have done and committed the said offence, afterwards did unlawfully receive, harbour, comfort and assist the said person in order to enable him to escape.

See R. v. Blackson, 8 C. & P. 43; R. v. Pulham, 9 C. & P. 280.

When the principal is, as allowed by ss. 711 & 713, found guilty of another offence than the one directly charged, the accessories after the fact jointly tried with him may also be found guilty of being accessories to the offence so found against the principal: R. v. Richards, 13 Cox, 611.

On an indictment charging a man as a principal offender only he cannot be convicted of being an accessory after the fact: R. v. Fallon, L. & C. 217; the two offences are separate and distinct: R. v. Brannon, 14 Cox, 394.

The accessory may always controvert the guilt of the principal: 1 Russ. 75. But when the principal has been convicted the record of the conviction throws upon the defendant the burden of proving the principal's innocence: 1 Chit. Cr. L. 273; 2 Bish. Cr. Proc. c. 12; R. v. Turner 1 Moo. 347.

TITLE VII.

PROCEDURE.

PART XLI.

GENERAL PROVISIONS.

Power to Make Rules.

533. Every superior court of criminal jurisdiction may at any time, with the concurrence of a majority of the judges thereof present at any meeting held for the purpose, make rules of court, not inconsistent with any statute of Canada, which shall apply to all proceedings relating to any prosecution, proceeding or action instituted in relation to any matter of a criminal nature, or resulting from or incidental to any such matter, and in particular for all or any of the purposes following :—

(*a*) For regulating the sittings of the court or of any division thereof, or of any judge of the court sitting in chambers, except in so far as the same are already regulated by law.

(*b*) For regulating in criminal matters the pleading, practice and procedure in the court, including the subjects of *mandamus*, *certiorari*, *habeas corpus*, prohibition, *quo warranto*, bail and costs, and the proceedings under section nine hundred of this Act.

(*c*) Generally for regulating the duties of the officers of the court and every other matter deemed expedient for better attaining the ends of justice and carrying the provisions of the law into effect.

2. Copies of all rules made under the authority of this section shall be laid before both houses of Parliament at the session next after the making thereof, and shall also be published in the *Canada Gazette*. 52 V. c. 40.

Civil Remedy—Effect of Criminal Offence on.

534. After the commencement of this Act no civil remedy for any act or omission shall be suspended or affected by reason that such act or omission amounts to a criminal offence.

"This seems to be the existing law."—Imp. Comm. Rep.

See Wells v. Abrahams, L. R. 7 Q. B. 554, Warb. Lead. Cas. 261; Osborn v. Gillett, L. R. 8 Ex. 88; S. v. S. 16 Cox, 566; Schohl v. Kay, 5 Allen (N.B.), 244; Livingstone v. Massey, 28 U. C. Q. B. 156; Appleby v. Franklin, 17 Q.B.D. 93; Taylor v. McCullough, 8 O. R. 309; Tremblay v. Bernier, 21 S. C. R. 309.

ABOLITION OF DISTINCTION BETWEEN FELONY AND MISDEMEANOUR. (*New*).

535. After the commencement of this Act the distinction between felony and misdemeanour shall be abolished, and proceedings in respect of all indictable offences (except so far as they are herein varied) shall be conducted in the same manner.

"The distinction between felony and misdemeanour was, in early times, nearly though not absolutely identical with the distinction between crimes punishable with death and crimes not so punishable.

"For a long time past this has ceased to be the case. Most felonies are no longer punishable with death; and many misdemeanours are now punished more severely than many felonies. The great changes which have taken place in our criminal law have made the distinction nearly, if not altogether, unmeaning. It is impossible to say on what principle embezzlement should be a felony, and the fraudulent appropriation of money by an agent, or the obtaining of goods by false pretenses, a misdemeanour; why bigamy should be a felony, and perjury a misdemeanour; why child-stealing should be a felony, and abduction a misdemeanour. The result of this arbitrary classification is, that the right to be bailed, the liability to be arrested without warrant, and, to a certain extent, the right of the court to order the payment of the costs of prosecutions, vary in a manner equally arbitrary and unreasonable."—Imp. Comm. Rep.

CONSTRUCTION OF ACTS. (*New*).

536. Every Act shall be hereafter read and construed as if any offence for which the offender may be prosecuted by indictment (howsoever such offence may be therein described or referred to), were described or referred to as an "indictable offence"; and as if any offence punishable on summary conviction were described or referred to as an "offence"; and all provisions of this Act relating to "indictable offences" or "offences" (as the case may be) shall apply to every such offence.

2. Every commission, proclamation, warrant or other document relating to criminal procedure, in which offences which are indictable offences or offences (as the case may be) as defined by this Act are described or referred to by any names whatsoever, shall be hereafter read and construed as if such offences were therein described and referred to as indictable offences or offences (as the case may be).

CONSTRUCTION OF CERTAIN OTHER ACTS. (*New*).

537. In any Act in which reference is made to *The Speedy Trials Act* the same shall be construed, unless the context requires otherwise, as if such

reference were to Part LIV. of this Act; any Act referring to *The Summary Trials Act* shall be construed, unless the context forbids it, as if such reference were to Part LV. of this Act; and every Act referring to *The Summary Convictions Act* shall be construed, unless the context forbids it, as if such reference were to Part LVIII. of this Act.

PART XLII.

JURISDICTION.

Superior Courts.

538. Every Superior Court of criminal jurisdiction and every judge of such court sitting as a court for the trial of criminal causes, and every Court of Oyer and Terminer and General Gaol Delivery has power to try any indictable offence. R. S. C. c. 174, s. 3.

"Superior Courts" defined, s. 3.

Sessions of the Peace and Other Courts.

539. Every Court of General or Quarter Sessions of the Peace, (when presided over by a Superior Court judge, or a County or District Court judge,) or in the cities of Montreal and Quebec by a recorder or judge of the Sessions of the Peace; and in the province of New Brunswick every County Court judge has power to try any indictable offence except as hereinafter provided. R. S. C. c. 174, s. 4 (*Amended*).

See remarks under next section.

Offences in the Exclusive Jurisdiction of Superior Courts.

(*Amended*)

540. No such court as mentioned in the next preceding section has power to try any offence under the following sections, that is to say:

Part IV. Sections sixty-five, treason; sixty-seven, accessories after the fact to treason; sixty-eight, sixty-nine and seventy, treasonable offences; seventy-one, assault on the Queen; seventy-two, inciting to mutiny; seventy-seven, unlawfully obtaining and communicating official information; seventy-eight, communicating information acquired by holding office.

Part VII. Sections one hundred and twenty, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and twenty-one, administering, taking or procuring the taking of other unlawful oaths; one hundred and twenty-four, seditious offences; one hundred and twenty-five, libels on foreign sovereigns; one hundred and twenty-six, spreading false news.

Part VIII. Piracy; any of the sections in this part.

Part IX.—Sections one hundred and thirty-one, judicial corruption; one hundred and thirty-two, corruption of officers employed in prosecuting offenders; one hundred and thirty-three, frauds upon the Government; one hundred and thirty-five, breach of trust by a public officer; one hundred and thirty-six, corrupt practices in municipal affairs; one hundred and thirty-seven (*a*), selling and purchasing offices.

Part XI.—Escapes and rescues; any of the sections in this part.

Part XVIII.—Sections two hundred and thirty-one, murder; two hundred and thirty-two, attempts to murder; two hundred and thirty-three, threats to murder; two hundred and thirty-four, conspiracy to murder; two hundred and thirty-five, accessory after the fact to murder.

Part XXI.—Sections two hundred and sixty-seven, rape; two hundred and sixty-eight, attempt to commit rape.

Part XXIII.—Defamatory libel; any of the sections in this part.

Part XXXIX.—Section five hundred and twenty, combinations in restraint of trade.

Part XL.—Conspiring or attempting to commit, or being accessory after the fact to any of the foregoing offences.

Are not triable at quarter sessions, the offences under ss. 65, 67, 68, 69, 70, 71, 72, 77, 78, 120, 121, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 135, 136, 137*a*, 159 to 169, both inclusive, 231, 232, 233, 234, 235, 267, 268, 285, to 302, both inclusive, 520, and conspiracies, attempts or being accessory after the fact to any of the foregoing offences. The principal change in this section, coupled with s. 539, are the additions to the courts of quarter sessions' jurisdiction of manslaughter, perjury, subornation of perjury, forgery, counterfeiting coin, offences under ss. 247, 248, and of blasphemous libel.

The terms of s. 539 are so wide that s. 116 of c. 8, R. S. C., stands virtually repealed, and that consequently bribery at elections is now triable at quarter sessions. Every offence whatever is now so triable, except those specially mentioned in s. 540. This may have been an oversight of the law-giver, but in the law-giver alone lies the right to remedy its consequences: Lane v. Bennett, 1 M. & W. 70.

EXERCISING POWERS OF TWO JUSTICES.

541. The judge of the Sessions of the Peace for the city of Quebec, the judge of the Sessions of the Peace for the city of Montreal, and every *recorder*, police magistrate, district magistrate or stipendiary magistrate appointed for

any territorial division, and every magistrate authorized by the law of the province in which he acts to perform acts usually required to be done by two or more justices of the peace, may do alone whatever is authorized by this Act to be done by any two or more justices of the peace, and the several forms in this Act contained may be varied so far as necessary to render them applicable to such case. R. S. C. c. 174, s. 7.

The word *recorder* is new.

PART XLIII.

PROCEDURE IN PARTICULAR CASES.

OFFENCES WITHIN THE JURISDICTION OF THE ADMIRALTY. (*New*).

542. Proceedings for the trial and punishment of a person *who is not a subject of Her Majesty*, and who is charged with any offence committed within the jurisdiction of the Admiralty of England shall not be instituted in any court in Canada except with the leave of the Governor General and on his certificate that it is expedient that such proceedings should be instituted.

See s. 560 as to warrant of arrest.

The courts of Canada have no jurisdiction over a foreigner who commits an offence on a foreign ship on the high seas outside of one marine league from the coast: R. v. Serva, 1 Den. 104, R. v. Lewis, Dears. & B. 182; R. v. Keyn, 13 Cox, 403; R. v. Kinsman, James (N.S.), 62. But if such an offence is committed within one marine league of the coast then they have jurisdiction in virtue of the *Territorial Waters Jurisdiction Act of 1878*, 41 & 42 V. c. 73 (Imp.), by which it is enacted that an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea, within the territorial waters of Her Majesty's dominions, that is within one marine league from the shore, is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried and punished accordingly.

It is further enacted by that Act that, in Canada, (in any of Her Majesty's dominions) proceedings for the trial of a foreigner for a crime committed on board a foreign ship, within one marine league of the coast shall not be instituted except with the leave of the Governor-General (or officer for the time being administering the government, 52 & 53 V. c. 63 Imp.) in which such proceedings are to be instituted, and on his certificate that it is expedient that such proceedings should be instituted, and that, on the trial, it shall not be necessary to aver, in any indictment or information, that such consent or certificate of the Governor-General has been given, and the fact of the same having been given shall be presumed unless disputed by the defendant at the trial, and the certificate of the Governor shall be sufficient evidence of such consent, as required by the said Act. It is also enacted that proceedings before the magistrate to bring the offender to trial may be had before the consent of the Governor-General is given.

The 12 & 13 V. c. 96, s. 1 (Imp.), enacts that all offences committed upon the sea, or within the jurisdiction of the Admiralty shall, in any colony where the prisoner is charged with the offence or brought there for trial, be dealt with as if the offence had been committed upon any water situate within the limits of the colony and within the limits of the local jurisdiction of the courts of criminal jurisdiction of such colony.

And s. 3 of the same Act enacts that: when any person shall die in any colony of any stroke, poisoning or hurt, such person having been feloniously stricken, poisoned or hurt upon the sea or within the limits of the admiralty, *or at any place out of the colony*, every offence committed in respect of any such case may be dealt with, inquired of tried, determined and punished in such colony in the same manner in all respects as if such offence had been wholly committed in that colony, and if any person in any colony, shall be charged with any such offence as aforesaid in

respect of the death of any person who having been feloniously stricken, poisoned or hurt, shall have died of such stroke, poisoning or hurt upon the sea, or any where within the limits of the Admiralty, such offence shall be held for the purposes of the Act to have been wholly committed upon the sea.

The 17 & 18 V. c. 104, s. 267, Imp., enacts that all offences against property or person committed in, or at any place, either ashore or afloat, out of Her Majesty's dominions by any master, seaman, or apprentice who at the time when the offence is committed is or within three months previously has been, employed in any British ship are deemed to be offences of the same nature respectively, and are liable to the same punishments respectively, and may be inquired of, heard, tried, and determined and adjudged in the same manner, and by the same courts in the same places, as if such offences had been committed within the jurisdiction of the Admiralty of England; *see* R. v. Dudley, 14 Q. B. D. 273.

The 18 & 19 V. c. 91, s. 21, Imp., enacts that if any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or harbour, or, if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in Her Majesty's dominions which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits. Then, it is enacted that nothing contained in that section shall affect the 12 & 13 V. c. 96, (*ubi supra*).

By the Imperial *Merchant Shipping Amendment Act*, 30 & 31 V. c. 124, s. 11, it is enacted that:

"If any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any court of justice in Her Majesty's Dominions, which would have had cognizance of such crime or offence if committed on board a British ship within the limits of the ordinary jurisdiction of such court shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid."

See R. v. Armstrong, 13 Cox, 184.

A crime committed by a British subject on board a foreign ship to which he belongs, does not fall under this clause.

By 28 & 29 V. c. 63 (Imp.), any colonial law repugnant to an Act of the Imperial Parliament is, to the extent of such repugnancy, void. And by the *Courts (Colonial) Jurisdiction Act*, 1874, 37 V. c. 27 (Imp.), it is provided for the punishment of offences tried in a colony but committed elsewhere.

The words used in statutes "dealt with" apply to justices of the peace; "inquired of" to the grand jury; "tried" to the petit jury and "determined and punished" to the court; by Lord Wensleydale in R. v. Ruck, note (*y*), 1 Russ. 757.

A prisoner is "found," within the meaning of s. 21, of 18 & 19 V. c. 91, *ubi supra*, wherever he is actually present, and the court, where he is present, under that Act, has jurisdiction to try him, even if he has been brought there by force as a prisoner: R. v. Lopez, R. v. Sattler, Dears. & B. 525.

On jurisdiction as to offences committed within the limits of the Admiralty *see* Archbold, 33; 1 Russ. 762; 1 Burn, 42, and R. v. Keyn, 13 Cox, 403; R. v. Carr, 15 Cox, 129; R. v. Anderson, 11 Cox, 198.

By 41 & 42 V. c. 73 (Imp.), *The Territorial Waters Jurisdiction Act* of 1878, above mentioned, the decision in R. v. Keyn, *ubi supra*, is not now to be followed. The large inland lakes of Ontario are within the jurisdiction of the Admiralty: R. v. Sharp, 5 P. R. Ont. 135.

Where a person dies in this Province from ill-treatment received on board a British ship at sea, the trial for manslaughter against the person who ill-treated him must take place in the district where the man died, not where he was apprehended: R. v. Moore, 2 Dor. Q. B. R. 52; but *see* now s. 640, *post*. On an indictment for an offence committed on board a British ship upon the high seas, it is not necessary in order to prove the nationality of the ship to produce its register, but the fact that she sailed under the British flag is sufficient: R. v. Moore, 2 Dor. Q. B. R. 52; *see* R. v. Bjornsen, 10 Cox, 74, and R. v. Sven Seberg, 11 Cox, 520.

In an indictment for a larceny committed on board a British vessel, it is sufficient to say *upon the sea*, without saying upon the *high seas*: R. v. Sprungli, 4 Q. L. R. 110.

As to offences committed by British subjects in foreign countries, "the laws of Great Britain affect her own subjects everywhere," says Dr. Lushington, in the Zollverein, 1 Sw. Adm. Rep, 96; and "an offence may be cognizable triable and justiciable in two places, *e.g.*, a murder by a British subject in a foreign country. A British subject who commits a murder in the United States of America may be tried and punished here by our municipal law, which is made to extend to its citizens in every part of the world." *Per* Cockburn, C.J., *Re* Tivnan, 5 B. & S. 679.

Special statutory authority, however, is required to empower any court to exercise jurisdiction over such offences as, without such special authority, a court has jurisdiction only over offences committed within the limits of its territorial jurisdiction. By s. 9, 24 & 45 V. c. 100, for instance, it is expressly enacted that any murder or

manslaughter committed *any where on land* out of the kingdom, *whether within* the Queen's dominions or not, and whether the person killed were a subject of Her Majesty or not, may be tried in any county in England in which the offender shall be apprehended. It would consequently appear, singular though it be, that a murder committed in the United States by a Canadian is triable in England if the offender can be apprehended there, but that it is not triable in Canada. It follows probably from the decision of the Privy Council in the case of Macleod v. Attorney-General, 17 Cox, 341 [1891], A. C. 455, that a colonial legislature has not the same right in this respect as the Imperial Parliament has. "For," said Turner, L.J., in Low v. Routledge, 1 Ch. App. 47, L. R. 3 H. L. 100, the law of a colony cannot extend beyond its territorial limits." However, the Parliament of Canada has never, it would seem, without special authority from the Imperial Parliament, legislated over crimes committed abroad; (*see*, however, ss. 127, 128, *ante*). On the contrary, apparently to keep within its territorial limits, it has restricted the exercise of its jurisdiction over bigamy, committed out of Canada, by s-s. 4, of s. 275 of this Code, as it had by its previous legislation, over British subjects resident in Canada leaving Canada with intent to commit bigamy: R. v. Brierly, 14 O. R. 525. And the Imperial Act, 23 & 24 V. c. 122, which empowers the colonial legislatures to pass an enactment similar to the one that was contained in s. 9 of the Procedure Act c. 174, R. S. C. (*now repealed*) for the trial in the colony of a murder committed abroad, when the person murdered died in the colony, and *vice versa*, was passed, as said in the preamble, because doubts had been entertained of the power of a colonial legislature to pass such a law.

For statutes, commentaries and cases on the question, *see* R. v. Sawyer, R. & R. 294; R. v. Azzopardi, 2 Moo. 288; 5 Geo. IV. c. 114, s. 10; 6 & 7 V. c. 94 (Imp.); 24 & 25 V.

c. 100, ss. 9, 57 (Imp.); 33 & 34 V. c. 90, s. 4; The Apollon, 9 Wheat. 360; 1 Bishop's Cr. L. 109, 115, 128, Stat. Cr. 141, 587; Hutchinson's Case, note, 1 Leach, 135; Wheaton Intern. Law, 3rd English Edit., page 178; R. v. Zulueta, 1 C. & K. 215; 22 American Jur. 381, "on the extent of the Criminal Law"; Jefferys v. Boosey, 4 H. L. Cas. 815; Story, Conflict of Laws, par. 620; Fœlix, *dr. intern. privé*, par. 548.

PREVIOUS CONSENT OF ATTORNEY-GENERAL OR MINISTER OF MARINE REQUIRED FOR PROSECUTIONS UNDER CERTAIN SECTIONS.

543. No person shall be prosecuted for the offence of unlawfully obtaining and communicating official information, as defined in sections seventy-seven and seventy-eight, without the consent of the Attorney-General or of the Attorney-General of Canada. 23 V. c. 10, s. 4.

544. No one holding any judicial office shall be prosecuted for the offence of judicial corruption, as defined in section one hundred and thirty-one, without the leave of the Attorney-General of Canada.

545. If any person is charged before a justice of the peace with the offence of making or having explosive substances, as defined in section one hundred, no further proceeding shall be taken against such person without the consent of the Attorney-General except such as the justice of the peace thinks necessary, by remand or otherwise, to secure the safe custody of such person. R. S. C. c. 150, s. 5.

546. No person shall be prosecuted for any offence under section two hundred and fifty six or two hundred and fifty-seven, without the consent of the Minister of Marine and Fisheries. 52 V. c. 22 s. 3, (*as amended in 1893*).

547. No proceeding or prosecution against a trustee for a criminal breach of trust, as defined in section three hundred and sixty-three, shall be commenced without the sanction of the Attorney-General. R. S. C. c. 164, s. 65.

548. No prosecution for concealing deeds and encumbrances, as defined in section three hundred and seventy, shall be commenced without the consent of the Attorney-General, given after previous notice to the person intended to be prosecuted of the application to the Attorney-General for leave to prosecute. R. S. C. c. 164, s. 91.

549. No proceeding or prosecution for the offence of uttering defaced coin, as defined in section four hundred and seventy-six, shall be taken without the consent of the Attorney-General. R. S. C. c. 167, s. 18.

The words "Attorney-General" mean the Attorney-General or the Solicitor-General of the Province, s. 3.

Where the previous consent of the Attorney-General or some other officer is required for a prosecution, that

applies to the preliminary proceedings before the magistrate.

See R. v. Allison, 16 Cox, 559; Knowlden v. R., 9 Cox, 483; Boaler v. R., 16 Cox, 488; R. v. Barnett, 17 O. R. 649. By s. 613, as amended in 1893, it is not necessary to aver such consent in the indictment.

Section 549 requires the consent of the Attorney-General for a prosecution under the summary convictions clauses.

The power to give the consent in question in these sections cannot be delegated: Abrahams v. The Queen, 6 S. C. R. 10.

TRIALS OF OFFENDERS UNDER 16. (*New*).

550. The trials of all persons apparently under the age of sixteen years shall, so far as it appears expedient and practicable, take place without publicity, and separately and apart from that of other accused persons and at suitable times to be designated and appointed for that purpose.

This is a directory enactment, and entirely left to the discretion of the court. It is not to be found in the Imperial draft Code of 1879.

LIMITATION OF TIME. (*Amended*).

551. No prosecution for an offence against this Act, or action for penalties or forfeiture, shall be commenced—

(*a*) After the expiration of three years from the time of its commission if such offence be—

(i) treason, except treason by killing Her Majesty or where the overt act alleged is an attempt to injure the person of Her Majesty (Part IV., section sixty-five);

(ii) treasonable offences (Part IV., section sixty-nine);

(iii) any offence against Part XXXIII., relating to the fraudulent marking of merchandise; nor

(*b*) After the expiration of two years from its commission if such offence be—

(i) a fraud upon the Government (Part IX., section one hundred and thirty-three);

(ii) a corrupt practice in municipal affairs (Part IX., section one hundred and thirty-six);

(iii) unlawfully solemnizing marriage (Part XXII., section two hundred and seventy-nine); nor

(*c*) After the expiration of one year from its commission if such offence be—

(i) opposing reading of Riot Act and assembling after proclamation (Part V., section eighty-three);

(ii) refusing to deliver weapon to justice (Part VI., section one hundred and thirteen);

(iii) coming armed near public meeting (section one hundred and fourteen);

(iv) lying in wait near public meeting (section one hundred and fifteen);

(v) seduction of girl under sixteen (Part XIII,, section one hundred and eighty-one);

(vi) seduction under promise of marriage (section one hundred and eighty-two);

(vii) seduction of a ward, etc. (section one hundred and eighty-three);

(viii) unlawfully defiling women (section one hundred and eighty-five);

(ix) parent or guardian procuring defilement of girl (section one hundred and eighty-six);

(x) householders permitting defilement of girls on their premises (section one hundred and eighty-seven); nor

(*d*) After the expiration of six months from its commission if the offence be—

(i) unlawful drilling (Part V., section eighty-seven);

(ii) being unlawfully drilled (section eighty-eight);

(iii) having possession of arms for purposes dangerous to the public peace (Part VI., section one hundred and two);

(iv) proprietor of newspaper publishing advertisement offering reward for recovery of stolen property (Part X., section one hundred and fifty-seven, paragraph *d*); nor

(*e*) After the expiration of three months from its commission if the offence be cruelty to animals under sections five hundred and twelve and five hundred and thirteen, Part XXXVIII.; nor

(ii) railways violating provisions relating to conveyance of cattle (Part XXXIX., section five hundred and fourteen);

(iii) refusing peace officer admission to car, etc. (section five hundred and fifteen);

(*f*) After the expiration of one month from its commission if the offence be—

(i) improper use of offensive weapons (Part VI., sections one hundred and three, and one hundred and five to one hundred and eleven inclusive).

2. No person shall be prosecuted, under the provisions of section sixty-five or section sixty-nine of this Act, for any overt act of treason expressed or declared by open and advised speaking unless information of such overt act, and of the words by which the same was expressed or declared, is given upon oath to a justice within six days after the words are spoken and a warrant for the apprehension of the offender is issued within ten days after such information is given.

The laying of the information and subsequent proceedings are the commencement of the prosecution. So, if a statute enacts that an offence must be prosecuted within a certain time, the information must be within that time, but not necessarily the indictment: R. v. Barret, 1 Salk. 383; R. v. Austin, 1 C. & K. 621; R. v. Kerr, 26 U. C. C. P. 214, and cases there cited: R. v. Casbolt, 11 Cox, 385; R. v. Brooks, 1 Den. 217; R. v. Smith, L. & C. 131; *see* R. v. Carbray, 14 Q. L. R. 223.

In criminal cases it is not necessary for a defendant relying on a statute of limitation to plead it in bar: sec. 631 It devolves upon the prosecuting power to show by legal evidence that the prosecution was commenced within the statutory period, if the indictment appears to have been found after the expiration of that period; Bish. Stat. Cr. par. 264; R. v. Phillips, R. & R. 369; 1 Chit. 283, 385; even where the enactment limiting the time is contained in a clause separate from the clause creating the offence.

In a case of The People v. Santvoord, 9 Cowen 655, the Supreme Court of New York held that though the crime appears by the indictment itself to be barred by the statute of limitation, this is no ground for arresting judgment. That decision cannot be supported where the statute is absolute and without restrictions.

Section 117 of c. 8 R. S. C. which limits to one year the time to prosecute *any indictable* offence under that Act does not affect prosecutions under ss. 329 & 503 *ante*, though they are mere re-enactments of s. 102 of said c. 8. Under s. 933 *post*, the prosecution may be brought under either of these Acts. So that if brought under c. 8, the limitation is one year. If under the Code, there is no limitation. The punishment is also not the same in s. 329 as it is s. 102 of c. 8. *See* remarks under s. 503.

The same for battery committed on a polling day, s-s (*e*), s. 263, *ante*, and s. 77 of c. 8, R. S. C. If indicted under the latter the punishment is five years, s. 951, *post*, and

limitation of time, one year; if under the former, the punishment is two years, and there is no limitation of time.

ARREST WITHOUT WARRANT. (*Amended*).

552. Any one found committing any of the offences mentioned in the following sections, may be arrested without warrant by any one, that is to say:

Part IV.—Sections sixty-five, treason; sixty-seven, accessories after the fact to treason; sixty-eight, sixty-nine and seventy, treasonable offences; seventy-one, assaults on the Queen; seventy-two, inciting to mutiny.

Part V.—Sections eighty-three, offences respecting the reading of the Riot Act; eighty-five, riotous destruction of buildings; eighty-six, riotous damage to buildings.

Part VII.—Sections one hundred and twenty, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and twenty-one, administering, taking or procuring the taking of other unlawful oaths.

Part VIII.—Sections one hundred and twenty-seven, piracy; one hundred and twenty-eight, piratical acts; one hundred and twenty-nine, piracy with violence.

Part XI.—Sections one hundred and fifty-nine, being at large while under sentence of imprisonment; one hundred and sixty-one, breaking prison; one hundred and sixty-three, escape from custody or from prison; one hundred and sixty-four, escape from lawful custody.

Part XIII.—Section one hundred and seventy-four, unnatural offence.

Part XVIII.—Sections two hundred and thirty-one, murder; two hundred and thirty-two, attempt to murder; two hundred and thirty-five, being accessory after the fact to murder; two hundred and thirty-six, manslaughter; two hundred and thirty-eight, attempt to commit suicide.

Part XIX.—Sections two hundred and forty one, wounding with intent to do bodily harm; two hundred and forty-two, wounding; two hundred and forty-four, stupefying in order to commit an indictable offence; two hundred and forty-seven and two hundred and forty-eight, injuring or attempting to injure by explosive substances; two hundred and fifty, intentionally endangering persons on railways; two hundred and fifty-one, wantonly endangering persons on railways; two hundred and fifty-four, preventing escape from wreck.

Part XXI.—Sections two hundred and sixty-seven, rape; two hundred and sixty-eight, attempt to commit rape; two hundred and sixty-nine, defiling children under fourteen.

Part XXII.—Section two hundred and eighty-one, abduction of a woman.

Part XXV.—Section three hundred and fourteen, receiving property dishonestly obtained.

Part XXVI.—Sections three hundred and twenty, theft by agent, etc.; three hundred and fifty-five, bringing into Canada things stolen.

Part XXIX.—Sections three hundred and ninety-eight, aggravated robbery; three hundred and ninety-nine, robbery; four hundred, assault with intent to rob; four hundred and one, stopping the mail; four hundred and

two, compelling execution of documents by force; four hundred and three, sending letter demanding with menaces; four hundred and four, demanding with intent to steal; four hundred and five, extortion by certain threats.

Part XXX.—Sections four hundred and eight, breaking place of worship and committing an indictable offence; four hundred and nine, breaking place of worship with intent to commit an indictable offence; four hundred and ten, burglary; four hundred and eleven, housebreaking and committing an indictable offence; four hundred and twelve, housebreaking with intent to commit an indictable offence: four hundred and thirteen, breaking shop and committing an indictable offence; four hundred and fourteen, breaking shop with intent to commit an indictable offence; four hundred and fifteen, being found in a dwelling house by night; four hundred and sixteen, being armed, with intent to break a dwelling house; four hundred and seventeen, being disguised or in possession of housebreaking instruments.

Part XXXI.—Sections four hundred and twenty-three, forgery; four hundred and twenty-four, uttering forged documents; four hundred and twenty-five, counterfeiting seals; four hundred and thirty, possessing forged bank notes; four hundred and thirty-two, using probate obtained by forgery or perjury.

Part XXXII.—Sections four hundred and thirty-four, making, having or using instrument for forgery or uttering forged bond or undertaking; four hundred and thirty-five, counterfeiting stamps; four hundred and thirty-six, falsifying registers.

Part XXXIV.—Section four hundred and fifty-eight, personation of certain persons.

Part XXXV.—Sections four hundred and sixty-two, counterfeiting gold and silver coin; four hundred and sixty-six, making instruments for coining; four hundred and sixty-eight, clipping current coin; four hundred and seventy, possessing clipping of current coin; four hundred and seventy-two, counterfeiting copper coin; four hundred and seventy-three, counterfeiting foreign gold and silver coin; four hundred and seventy-seven, uttering counterfeit current coin.

Part XXXVII.—Sections four hundred and eighty-two, arson; four hundred and eighty-three, attempt to commit arson; four hundred and eighty-four, setting fire to crops; four hundred and eighty-five, attempting to set fire to crops: four hundred and eighty-eight, attempt to damage by explosives; four hundred and eighty-nine, mischief on railways; four hundred and ninety-two, injuries to electric telegraphs, etc., four hundred and ninety-three, wrecking; four hundred and ninety-four, attempting to wreck; four hundred and ninety-five, interfering with marine signals; four hundred and ninety-eight, mischief to mines; four hundred and ninety-nine, mischief.

2. Any one found committing any of the offences mentioned in the following sections, may be arrested without warrant by a peace officer:

Part XXVII.—Sections three hundred and fifty-nine, obtaining by false pretense; three hundred and sixty, obtaining execution of valuable securities by false pretense.

Part XXXV.—Sections four hundred and sixty-five, exporting counterfeit coin; four hundred and seventy-one, possessing counterfeit current coin; four

hundred and seventy-three, paragraph (*b*), possessing counterfeit foreign gold or silver coin; four hundred and seventy-three, paragraph (*d*), counterfeiting foreign copper coin.

Part XXXVII.—Sections four hundred and ninety-seven, cutting booms, or breaking loose rafts or cribs of timber or saw-logs; five hundred, attempting to injure or poison cattle.

Part XXXVIII.—Sections five hundred and twelve, cruelty to animals; five hundred and thirteen, keeping cock-pit.

3. A peace officer may arrest, without warrant, any one whom he finds committing any offence *against this Act*, and any person may arrest, without warrant, any one whom he finds by night committing any offence *against this Act*. R. S. C. c. 174, s. 27.

4. Any one may arrest, without warrant, a person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from, and to be freshly pursued by, those whom the person arresting, on reasonable and probable grounds, believes to have lawful authority to arrest such person.

5. The owner of any property on or in respect to which any person is found committing an offence *against this Act*, or any person authorized by such owner, may arrest without warrant the person so found, who shall forthwith be taken before a justice of the peace to be dealt with according to law. R. S. C. c. 174, s. 24.

6. Any officer in Her Majesty's service, any warrant or petty officer in the navy, and any non-commissioned officer of marines may arrest without warrant any person found committing any of the offences mentioned in section one hundred and nineteen of this Act.

7. Any peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard or other place during the night, and whom he has good cause to suspect of having committed, or being about to commit, any indictable offence, and may detain such person until he can be brought before a justice of the peace, to be dealt with according to law;

(*a*) No person who has been so apprehended shall be detained after noon of the following day without being brought before a justice of the peace. R. S. C. c. 174. s. 28.

Section 26, R. S. C. c. 174, has not been re-enacted. It authorized any one to arrest any person offering stolen property for sale. The insertion of the words "against this Act" in s-ss. 3 & 5 is a gross error. S-s. 2 is a redundant enactment; it is covered by s-s. 3. This Code is silent as to the cases where a peace officer, or any one, *is bound* to arrest an offender.

Sections 16 to 44, *ante*, are enactments concerning arrests generally. "Night" and "peace officer" defined, s. 3.

Prisoner arrested and detained upon a telegram from persons in France and England: Kolligs, *in re*, 6 R. L. 213; *see* R. v. McHolme, 8 P. R. (Ont.) 452.

"At common law, if a constable or peace officer sees any person committing a felony, he not only *may*, but he *must* and is *bound* to apprehend the offender. And not only a constable or peace officer, but "*all persons* who are present when a felony is committed, or a dangerous wound given, are *bound* to apprehend the offender, on pain of being fined and imprisoned for their neglect, unless they were under age at the time: (2 Hawk. 115); and it is *the duty* of *all* persons to arrest without warrant any person *attempting* to commit a felony; (R. v. Hunt, 1 Moo. 93; R. v. Howarth, 1 Moo. 207). So any person may arrest another for the purpose of putting a stop to a breach of the peace committed in his presence: 2 Hawk. P. C. 115; 1 Burn, 295, 299). A peace officer may arrest any person without warrant, on a reasonable *suspicion of felony*, though that doctrine does not extend to misdemeanours. And even a private person has that right. But there is a distinction between a private person and a constable as to the power to arrest any one upon suspicion of having committed a felony, which is thus stated by Lord Tenterden, C.J., in Beckwith v. Philby, 6 B. & C. 635."

"In order to justify a private person in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has been actually committed: (*see* Ashley v. Dundas, 5 O. S. (Ont.) 749); whereas a constable, having reasonable ground to suspect that a felony has been committed, is authorized to detain the party suspected until inquiry can be made by the proper authorities: (*see* McKenzie v. Gibson, 8 U. C. Q. B. 100.) This distinction is perfectly settled. The rule as to private persons was so stated by Genney, in the Year Book, 9 Edw. IV. already mentioned, and has been fully settled ever since the case of Ledwith v. Catchpole,

(Cald. 291, A. D. 1783);" Greaves, on arrest without warrant: *see* Murphy v. Eills, 2 Han. (N. B.) 347.

It has been contended that at common law any private person may also arrest a person found committing a misdemeanour. This doctrine having been denied, in England, by a correspondent of the *Times*, Mr. Greaves published, on the question, an article, (*Appendix to Greaves' Crim. Acts*) too long for insertion here, but from which the following extracts give fully the author's views on the question :—

"On these authorities it seems to be perfectly clear that any private person may lawfully apprehend any person whom he may catch in the attempt to commit any felony, and take him before a justice to be dealt with according to law."

"I have now adduced abundantly sufficient authorities to prove that the general assertion in the paper (in the *Times*), that 'a private individual is not justified in arresting without a warrant a person found committing a misdemeanour' cannot be supported. On the contrary, those authorities very strongly tend to show that any private individual may arrest any person whom he catches committing any misdemeanour. It is quite true that I have been unable to find any express authority which goes to that extent; but it must be remembered that where the question turns on some common law rule, there never can have been any authority to lay down any general rule; each case must necessarily be a single instance of a particular class; and, as in larceny, notwithstanding the vast number of cases which have been decided, no complete definition of the offence has ever yet been given by any binding authority, so in the present case we must not be surprised if we find no general rule established."

"But when we find that all misdemeanours are of the same class; that it is impossible to distinguish in any satisfactory way between one and another, and that in the only case (Fox v. Gaunt) where such a distinction was

attempted, the court at once repudiated it; and when, on the question whether a party indicted for a misdemeanour was entitled to be discharged on *habeas corpus*, Lord Tenterden, C.J., said, in delivering the judgment of the court, 'I do not know how for this purpose, to distinguish between one class of crimes and another. It has been urged that the same principle will warrant an arrest in the case of a common assault. That certainly will follow: *Ex parte* Scott, 9 B. & C. 446. And when, above all, the same broad principle that it is for the common good that all offenders should be arrested, applies to every misdemeanour, and that principle has been the foundation of the decision from the earliest times, and was the ground on which Timothy v. Simpson was decided; the only reasonable conclusion seems to be that the power to arrest applies to all misdemeanours alike, wherever the defendant is caught in the act."

It has been held that where a statute gives a power to arrest a person *found committing an offence*, he must be taken in the act, or in such continuous pursuit that from the finding until the apprehension, the circumstances constitute one transaction: R. v. Howarth, 1 Moo. 207; Roberts v. Orchard, 2 H. & C. 769; and therefore, if he was found in the next field with property in his possession suspected to be stolen out of the adjoining one, it is not sufficient: R. v. Curran, 3 C. & P. 397; but if seen committing the offence it is enough, if the apprehension is on quick pursuit: Hanway v. Boultbee, 4 C. & P. 350. The person must be immediately apprehended; therefore, probably, the next day would not be soon enough, though the lapse of time necessary to send for assistance would be allowable: Morris v. Wise, 2 F. & F. 51; but an interval of three hours between the commission of the offence and the discovery and commencement of pursuit is too long to justify an arrest without warrant under these statutes: Downing v. Capel, 36 L. J. M. C. 97.

The person must be forthwith taken before a neighbouring justice, and, therefore, it is not complying with the statute to take him to the prosecutor's house first, though only half a mile out of the way: Morris v. Wise, 2 F. & F. 51; unless, indeed, it were in the night time, and then he might probably be kept in such a place until the morning: R. v. Hunt, 1 Moo. 93.

But no person can, in general, be apprehended without warrant for a mere misdemeanour not attended with a breach of the peace, as perjury or libel: King v. Poe, 30 J. P. 178; and a private individual cannot arrest another, without warrant, on the ground of suspicion of his having been guilty of a misdemeanour; nor can, in this case, constables and peace officers: Mathews v. Biddulph, 4 Scott, N. R. 54; Fox v. Gaunt, 3 B. & Ad. 798; Griffin v. Coleman, 4 H. & N. 265. Neither can any person, not even a constable, arrest a person without a warrant on a charge of misdemeanour; R. v. Curvan, 1 Moo. 132; R. v. Phelps, Car. & M. 180; R. v. Chapman, 12 Cox, 4; Codd v. Cabe, 13 Cox, 202; except when such person is *found* committing the offence by the person making the arrest in the cases, as *ante*, where the statute specially authorizes him to do so. And though *any* person can make an arrest to prevent a breach of the peace, or put down a riot or an affray, yet, after the offence is over, even a constable cannot apprehend any person guilty of it, unless there is danger of its renewal: Price v. Seeley, 10 C. & F. 28; Baynes v. Brewster, 2 Q. B. 375; Derecourt v. Corbishley, 5 E. & B. 188; Timothy v. Simpson, 1 C. M. & R. 757: R. v. Walker, Dears. 358. In R. v. Light, Dears. & B. 332, it appeared that the constable, while standing outside the defendant's house, saw him take up a shovel and hold it in a threatening attitude over his wife's head, and heard him at the time say, "If it was not for the policeman outside I would split your head open;" that in about twenty minutes afterwards the defendant left his house, after saying that he would

leave his wife altogether, and was taken into custody by the constable, who had no warrant, when he had proceeded a short distance in the direction of his father's residence; the prisoner resisted and assaulted the constable, for which he was tried and found guilty, and, upon a case reserved, the judges held that the conviction was right, and that the constable had the right to apprehend the defendant. "A constable, as conservator of the peace," said Williams, J., "has authority, equally with all the rest of Her Majesty's subjects, to apprehend a man where there is reasonable ground to believe that a breach of the peace will be committed; and it is quite settled that where he has witnessed an assault he may apprehend as soon after as he conveniently can. He had a right to apprehend the prisoner and detain him until he was taken before justices, to be dealt with according to law. He had a right to take him, not only to prevent a further breach of the peace, but also that he might be dealt with according to law in respect of the assault which he had so recently seen him commit."

Arrest, without warrant, for contempt of court.—Judges of courts of record have power to commit to the custody of their officer, *sedente curia*, by oral command, without any warrant made at the time: Kemp v. Neville, 10 C. B. N. S. 523. This proceeds upon the ground that there is in contemplation of law a record of such commitment, which record may be drawn up when necessary: Watson v. Bodell, 14 M. & W. 57; 1 Burn, 293; for the like reason no warrant is required for the execution of sentence of death: 2 Hale, 408. If a contempt be committed in the face of a court, as by rude and contumelious behaviour, by obstinacy, perverseness, or prevarication, by breach of the peace or any wilful disturbance whatever, the judge may order the offender to be instantly, without any warrant, apprehended and imprisoned, at his, the judge's, discretion, without any further proof or examination: 2 Hawk. 221; Cropper v. Horton, 8 D. & R. 166; R. v. James, 1 D. & R. 559;

but the commitment must be for a time certain, and if by a justice of the peace, for a contempt of himself in his office, it must be by warrant in writing: Mayhew v. Locke, 2 Marsh. 377, 7 Taun. 63; and the jurisdiction with regard to contempt, which belongs to *inferior courts*, and in particular to the county court, is confined to contempts committed in the court itself: *Ex parte* Joliffe, 42 L. J. Q. B. 121. This last case rests principally on the 9 & 10 V. c. 96 (Imp.), which gives to county courts power to commit for contempt committed in face of the court, but is silent as to contempt committed out of court: *see* 4 Stephens' Com. 341; R. v. Lefroy, L. R. 8 Q. B. 134.

Time, place and manner of arrest.—A person charged on a criminal account may be apprehended at any time in the day or night. The 29 Car. 2, c. 7, s. 6, prohibited arrests on Sundays, except in cases of treasons, felonies and breaches of the peace, but now warrant of arrest for any indictable offence may be executed on a Sunday: *see* s. 564, *post.* No place affords protection to offenders against the criminal law, and they may be arrested anywhere, and wherever they may be: Bacon's Abr. Verb. Trespass.

As to the manner of arresting without warrant by a private person, he is bound, previously to the arrest, to notify to the party the cause for which he arrests, and to require him to submit; but such notification is not necessary where the party is in the actual commission of the offence, or where fresh pursuit is made after any such offender, who, being disturbed, makes his escape; so a constable arresting without warrant is bound to notify his authority for such arrest, unless the offender be otherwise acquainted with it, except, as in the case of private individuals, where the offender is arrested in the actual commission of the offence, or on fresh pursuit: R. v. Howarth, 1 Moo. 207.

If a felony be committed, or a felon fly from justice, or a dangerous wound be given, it is the duty of every man

to use his best endeavours for preventing an escape, and if, in the pursuit, the felon be killed *where he cannot be otherwise overtaken*, the homicide is justifiable. This rule is not confined to those who are present so as to have ocular proof of the fact, or to those who first come to the knowledge of it, for if in these cases fresh pursuit be made the persons who join in aid of those who began the pursuit are under the same protection of the law. But if he may be taken in any case without such severity, it is, at least, manslaughter in him who kills, and the jury ought to inquire whether it were done of necessity or not: 1 East, P. C. 298; but this is not extended to cases of misdemeanour or arrest in civil proceedings, though in a case of riot or affray, if a person interposing to part the combatants, giving notice to them of his friendly intention, should be assaulted by them or either of them and in the struggle should happen to kill, this will be justifiable homicide: Fost. 272. However, supposing a felony to have been actually committed, but not by the person suspected and pursued, the law does not afford the same indemnity to such as of their own accord, or upon mistaken information that a felony had been committed, engage in the pursuit, how probable soever the suspicion may be; but constables acting on reasonable suspicion of felony are justified in proceeding to such extremities when a private person may not be; but the constable must know, or at least have reasonable ground for suspecting, that a felony has been committed; for a constable was convicted of shooting at a man, with intent to do him some grievous bodily harm, whom he saw carrying wood out of a copse which he had been employed to watch, and who, by running away, would have escaped if he had not fired, for unless the man had been previously summarily convicted for the same offence he had not committed a felony, and though he had been so previously convicted the constable was not aware of it. And the conviction was affirmed by the court of crown cases reserved. "We all think the conviction right," said

Pollock, C.B., "the prisoner was not justified in firing at Waters, because the fact that Waters was committing a felony was not known to the prisoner at the time: R. v. Dadson, 2 Den. 35.

What was an "immediate arrest" under ss. 24 & 25 of the repealed statute, was a question for the jury: Griffith v. Taylor, 2 C. P. D. 194.

On the clause corresponding to s. 26, of the repealed statute, Greaves says:

"As to what constitutes a reasonable cause, in such cases, depends very much on the particular facts and circumstances in each instance; the general rule being that the grounds must be such that any reasonable person, acting without passion or prejudice, would fairly have suspected the party arrested of being the person who committed the offence, though the words of the statute seem to authorize the apprehension of the person offering, whether *he* be suspected or not: Allen v. Wright, 8 C. & P. 522. A bare surmise or suspicion is plainly insufficient: Leete v. Hart, 37 L. J. C. P. 157; Davis v. Russell, 5 Bing. 354."

These cases apply to s-s. 4 of s. 552.

PART XLIV.

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICE. (*Amended.*)

553. For the purposes *of this Act*, the following provisions shall have effect with respect to the jurisdiction of justices:

(*a*) Where the offence is committed in any water, tidal or other, between two or more magisterial jurisdictions, such offence may be considered as having been committed in either of such jurisdictions. R. S. C. c. 174, s. 11.

(*b*) Where the offence is committed on the boundary of two or more magisterial jurisdictions, or within the distance of *five hundred yards* from any such boundary, or is begun within one magisterial jurisdiction and completed within another, such offence may be considered as having been committed in any one of such jurisdictions. R. S. C. c. 174, s. 10;

(*c*) Where the offence is committed on or in respect to a mail, or a person conveying a post letter bag, post letter or anything sent by post, or on any person, or in respect of any property, in or upon any vehicle employed in a journey, or on board any vessel employed on any navigable river, canal or other inland navigation, the person accused shall be considered as having committed such offence in any magisterial jurisdiction through which such vehicle or vessel passed in the course of the journey or voyage during which the offence was committed; and where the centre or other part of the road, or any navigable river, canal or other inland navigation along which the vehicle or vessel passed in the course of such journey or voyage, is the boundary of two or more magisterial jurisdictions, the person accused of having committed the offence may be considered as having committed it in any one of such jurisdictions. R. S. C. c. 174, ss. 11-12, and c. 35, s. 110.

Sub-section (*b*) is taken from the 7 Geo. IV., c. 64, s. 12 of the Imperial Acts, with the substitution of five hundred yards for one mile.

That distance is to be measured in a direct line from the border, and not by the nearest road: R. v. Wood, 5 Jur. 225.

This clause does not enable the prosecutor to *lay* the offence in one county and *try* it in the other, but only to lay *and* try it in either: R. v. Mitchell, 2 Q. B. 636. *See* also on this clause: R. v. Jones, 1 Den. 551; R. v. Leech, Dears. 642.

Murder, like all other offences, must regularly, according to the common law, be inquired of in the county in

which it was committed. It appears, however, to have been a matter of doubt at the common law whether, when a man died in one county of a stroke received in another, the offence could be considered as having been completely committed in either county; but by the 2 & 3 Edw. VI. c. 24, s. 2, it was enacted that the trial should be in the county where the death happened.

Under the said s-s. (*b*), where the blow is given in one county, and the death takes place in another, the trial may be in either of these counties: 1 Russ. 753. This applies to coroners, when a felony has been committed, but not when the death is the result of an accident: R. v. Great Western Railway Company, 3 Q. B. 833 and note by Greaves, 1 Russ. 754; R. v. Grand Junction R. Co., 11 A. & E. 128.

Sub-section (*c*) is taken from the 7 Geo. IV. c. 64, s. 13, of the Imperial Statutes.

This enactment is not confined in its operation to the carriages of common carriers or to public conveyances, but if property is stolen from any carriage employed on any journey the offender may, by virtue of the above section, be tried in any county through any part whereof such carriage shall have passed in the course of the journey during which such offence shall have been committed: R. v. Sharpe, Dears. 415.

As to the effect of the words "in or upon" in this section, *see* R. v. Sharpe, 2 Lewin 233.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A., or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted under the above section, the case must go to the jury, who are to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards: R. v. Pierce, 6 Cox, 117.