TITLE II.

OFFENCES AGAINST PUBLIC ORDER, INTERNAL AND EXTERNAL.

PART IV.

TREASON AND OTHER OFFENCES AGAINST THE QUEEN'S AUTHORITY AND PERSON.

65. Treason is—

(*a*) The act of killing Her Majesty, or doing her any bodily harm tending to death or destruction, maim or wounding, and the act of imprisoning or restraining her; or

(*b*) The forming and manifesting by an overt act an intention to kill Her Majesty, or to do her any bodily harm tending to death or destruction, maim or wounding, or to imprison or to restrain her; or

(*c*) The act of killing the eldest son and heir apparent of Her Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(*d*) The forming and manifesting, by an overt act, an intention to kill the eldest son and heir apparent of Her Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(*e*) Conspiring with any person to kill Her Majesty, or to do her any bodily harm tending to death or destruction, maim or wounding, or conspiring with any person to imprison or restrain her; or

(*f*) Levying war against Her Majesty either—

(i) With intent to depose Her Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of Her Majesty's dominions or countries;

(ii) In order, by force or constraint, to compel Her Majesty to change her measures or counsels, or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or

(*g*) Conspiring to levy war against Her Majesty with any such intent or for any such purpose as aforesaid; or

(*h*) Instigating any foreigner with force to invade the said United Kingdom or Canada or any other of the dominions of Her Majesty; or

(*i*) Assisting any public enemy at war with Her Majesty in such war by any means whatsoever; or

(*j*) Violating, whether with her consent or not, a Queen consort, or the wife of the eldest son and heir apparent, for the time being, of the King or Queen regnant.

2. Every one who commits treason is guilty of an indictable offence and liable to suffer death.

66. In every case in which it is treason to conspire with any person for any purpose the act of so conspiring, and every overt act of any such conspiracy, is an overt act of treason. 25 Edw. III, st. 5, c 2.

Limitation, three years, section 551*a*, and see sub-section 2 of section 551. Not triable at quarter sessions, section 540. Compulsion by threats no excuse, section 12.

Requisites of indictment section 614.

Special provisions as to trial for treason, section 658.

Evidence of one witness must be corroborated, section 684. Sections 6 and 7 of chapter 146 Rev. Stat. stand unrepealed.

See Archbold, 755; Stephen's Crim. L. 32; Sir John Kelyng's Crown Cases, p. 7, and a treatise on treason printed therein; Foster's Cr. Law, discourse on High Treason, 183.

Also, R. v. Gallagher, 15 Cox, 291, Warb. Lead. Cas. 39; R. v. Deasy, 15 Cox, 334; Mulcahy v. R. L. R. 3 H. L. 306; R. v. Riel, 16 Cox, 48, 10 App. Cas. 675; R. v. Davitt, 11 Cox, 676.

ACCESSORIES AFTER THE FACT.—(*New*).

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

(*a*) Becomes an accessory after the fact to treason; or

(*b*) Knowing that any person is about to commit treason does not, with all reasonable despatch, give information thereof to a justice of the peace, or use other reasonable endeavours to prevent the commission of the same.

Not triable at quarter sessions, section 540. Requisites of indictment, section 614. Special provisions for trial, section 658. This section covers the common law offence of misprision of treason.

LEVYING WAR, ETC., ETC.

68. Every subject or citizen of any foreign state or country at peace with Her Majesty, who—

(*a*) Is or continues in arms against Her Majesty within Canada; or

(*b*) Commits any act of hostility therein; or

(*c*) Enters Canada with intent to levy war against Her Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death; and

Every subject of Her Majesty within Canada who—

(*d*) Levies war against Her Majesty in company with any of the subjects or citizens of any foreign state or country at peace with Her Majesty; or

(*e*) Enters Canada in company with any such subjects or citizens with intent to levy war against Her Majesty, or to commit any such offence therein; or

(*f*) With intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against Her Majesty, or to commit any such offence therein—is guilty of an indictable offence and liable to suffer death. R. S. C. c. 146, ss. 6 & 7.

Not triable at quarter sessions, section 540. Special provisions as to indictment, section 614. Sections 6 and 7 of chapter 146, Revised Statutes, stand unrepealed. They cover the same offences as the above section 68, but the punishment is discretionary, and they may be tried by court-martial. Every subject of Her Majesty *within* Canada who enters Canada with any foreigner with intent to commit any capital offence is, by this enactment, liable to suffer death.

TREASONABLE OFFENCES.

69. Every one is guilty of an indictable offence and liable to imprisonment for life who forms any of the intentions hereinafter mentioned, and manifests any such intention by conspiring with any person to carry it into effect, or by any other overt act, or by publishing any printing or writing; that is to say—

(*a*) An intention to depose Her Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland, or of any other of Her Majesty's dominions or countries;

(*b*) An intention to levy war against Her Majesty within any part of the said United Kingdom, or of Canada, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe both Houses, or either House of Parliament of the United Kingdom or of Canada;

(*c*) An intention to move or stir any foreigner or stranger with force to invade the said United Kingdom, or Canada, or any other of Her Majesty's dominions or countries under the authority of Her Majesty. R. S. C. c. 146, s. 3; 11-12 V. c. 12, (Imp.).

Not triable at quarter sessions, section 540. Limitation, 3 years, section 551. *See* sub-section 2 of section 551. Special provisions, section 614. *See* annotation under section 65, *ante*.

CONSPIRACY TO INTIMIDATE LEGISLATURE.

70. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who confederates, combines or conspires with any person

to do any act of violence in order to intimidate, or to put any force or constraint upon, any Legislative Council, Legislative Assembly or House of Assembly. R. S. C. c. 146, s. 4.

Not triable at quarter sessions, section 540. Special provisions, section 614.

This enactment does not apply to conspiracies to intimidate the Senate or House of Commons. They are covered partly by sections 65 and 69, *ante*.

ASSAULTS ON THE QUEEN.

71. Every one is guilty of an indictable offence and liable to seven years imprisonment, and to be whipped once, twice or thrice as the court directs, who—

(*a*) Wilfully produces, or has near Her Majesty, any arm or destructive or dangerous thing with intent to use the same to injure the person of, or to alarm, Her Majesty; or

(*b*) Wilfully and with intent to alarm or to injure Her Majesty, or to break the public peace:

(i) Points, aims or presents at or near Her Majesty any firearm, loaded or not, or any other kind of arm;

(ii) Discharges at or near Her Majesty any loaded arm;

(iii) Discharges any explosive material near Her Majesty;

(iv) Strikes, or strikes at, Her Majesty in any manner whatever;

(v) Throws anything at or upon Her Majesty; or

(*c*) Attempts to do any of the things specified in paragraph (*b*) of this section.

5 & 6 V. c. 51 (Imp.). Not triable at quarter sessions, section 540. Special provisions, section 614. As to whipping, section 957.

INCITING TO MUTINY. *(New.)*

72. Every one is guilty of an indictable offence and liable to imprisonment for life, who, for any traitorous or mutinous purpose, endeavours to seduce any person serving in Her Majesty's forces by sea or land from his duty and allegiance to Her Majesty, or to incite or stir up any such person to commit any traitorous or mutinous practice.

37 Geo. III. c. 10, (Imp.); 7 W. IV. & 1 V. c. 91, (Imp.). Not triable at quarter sessions, section 540. Special provisions, section 614; R. v. Fuller, 1 B. & P. 180; Archbold, 820; R. v. Tierney, R. & R. 74.

ENTICING SOLDIERS OR SEAMEN TO DESERT.

73. Every one is guilty of an indictable offence who, not being an enlisted soldier in Her Majesty's service, or a seaman in Her Majesty's naval service—

(*a*) By words or with money, or by any other means whatsoever, directly or indirectly persuades or procures, or goes about or endeavours to persuade, prevail on or procure, any such seaman or soldier to desert from or leave Her Majesty's military or naval service; or

(*b*) Conceals, receives or assists any deserter from Her Majesty's military or naval service, knowing him to be such deserter.

2. The offender may be prosecuted by indictment, or summarily before two justices of the peace. In the former case he is liable to fine and imprisonment in the discretion of the court, and in the latter to a penalty not exceeding two hundred dollars, and not less than eighty dollars and costs, and in default of payment, to imprisonment for any term not exceeding six months. R. S. C. c. 169, ss. 1 & 4; 6 Geo. IV. c. 5, (Imp.).

Triable at quarter sessions. Section 614 applies, though through error. Arrest of suspected deserters, section 561.

RESISTING WARRANT, ETC., ETC.

74. Every one who resists the execution of any warrant authorizing the breaking open of any building to search for any deserter from Her Majesty's military or naval service is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty of eighty dollars. R. S. C. c. 169, s. 7.

Arrest of deserters, section 561.

ENTICING MILITIA OR MOUNTED POLICE MEN TO DESERT.

75. Every one is guilty of an offence and liable, on summary conviction, to six months' imprisonment with or without hard labour, who—

(*a*) Persuades any man who has been enlisted to serve in any corps of militia, or who is a member of, or has engaged to serve in the North-west mounted police force, to desert, or attempts to procure or persuade any such man to desert; or

(*b*) Knowing that any such man is about to desert, aids or assists him in deserting; or

(*c*) Knowing that any such man is a deserter, conceals such man or aids or assists in his rescue. R. S. C. c. 41, s. 109; 52 V. c. 25, s. 4.

INTERPRETATION OF TWO NEXT SECTIONS.

76. In the two following sections, unless the context otherwise requires—

(*a*) Any reference to a place belonging to Her Majesty includes a place belonging to any department of the Government of the United Kingdom, or of the Government of Canada, or of any province, whether the place is or is not actually vested in Her Majesty;

(*b*) Expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof only be communicated;

(*c*) The expression "document" includes part of a document;

(*d*) The expression "model" includes design, pattern and specimen;

(*e*) The expression "sketch" includes any photograph or other mode of expression of any place or thing ;

(*f*) The expression "office under Her Majesty," includes any office or employment in or under any department of the Government of the United Kingdom, or of the Government of Canada or of any province. 53 V. c. 10, s. 5.

Those three sections are re-enactments of the Imperial "Official Secrets Act of 1889" 52 & 53 V. c. 52.

UNLAWFULLY OBTAINING OFFICIAL INFORMATION.

77. Every one is guilty of an indictable offence and liable to imprisonment for one year, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine, who—

(*a*) For the purpose of wrongfully obtaining information—

(i) Enters or is in any part of a place in Canada belonging to Her Majesty, being a fortress, arsenal, factory, dockyard, camp, ship, office or other like place, in which part he is not entitled to be ; or

(ii) When lawfully or unlawfully in any such place as aforesaid either obtains any document, sketch, plan, model or knowledge of anything which he is not entitled to obtain, or takes without lawful authority any sketch or plan ; or

(iii) When outside any fortress, arsenal, factory, dockyard or camp in Canada, belonging to Her Majesty, takes, or attempts to take without authority given by or on behalf of Her Majesty, any sketch or plan of that fortress, arsenal, factory, dockyard or camp ; or

(*b*) Knowingly having possession of or control over any such document, sketch, plan, model, or knowledge as has been obtained or taken by means of any act which constitutes an offence against this and the following section, at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interests of the state, to be communicated at that time ; or

(*c*) After having been intrusted in confidence by some officer under Her Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval or military affairs of Her Majesty, wilfully, and in breach of such confidence, communicates the same when, in the interests of the state, it ought not to be communicated ; or

(*d*) Having possession of any document relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to Her Majesty, or to the naval or military affairs of Her Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interests of the state, to be communicated at the time ;

2. Every one who commits any such offence intending to communicate to a foreign state any information, document, sketch, plan, model or knowledge obtained or taken by him, or intrusted to him as aforesaid, or communicates the same to any agent of a foreign state, is guilty of an indictable offence and liable to imprisonment for life. 53 V. c. 10, s. 1.

Not triable at quarter sessions, section 540. No prosecution without consent of Attorney-General, section 543. Section 614 is made to apply, though through error. "Having in possession" defined section 3.

BREACH OF OFFICIAL TRUST.

78. Every one who, by means of his holding or having held an office under Her Majesty, has lawfully or unlawfully, either obtained possession of or control over any document, sketch, plan or model, or acquired any information, and at any time corruptly, or contrary to his official duty, communicates or attempts to communicate such document, sketch, plan, model or information to any person to whom the same ought not, in the interests of the state, or otherwise in the public interest, to be communicated at that time, is guilty of an indictable offence and liable—

(*a*) If the communication was made, or attempted to be made, to a foreign state, to imprisonment for life; and

(*b*) In any other case to imprisonment for one year, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine.

2. This section shall apply to a person holding a contract with Her Majesty, or with any department of the Government of the United Kingdom, or of the Government of Canada, or of any province, or with the holder of any office under Her Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract who is under a like obligation of secrecy, as if the person holding the contract, and the person so employed, were respectively holders of an office under Her Majesty; 53 V. c. 10, s. 2.

See annotation under preceding section.

The Imperial Foreign Enlistment Act, 33-34 V. c. 90, applies to Canada. *See* R. v. Sandoval, Warb. Lead. Cas. 43.

PART V.

UNLAWFUL ASSEMBLIES, RIOTS, BREACHES OF THE PEACE.

79. An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, *or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.*

2. Persons lawfully assembled may become an unlawful asssembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose.

3. *An assembly of three or more persons for the purpose of protecting the house of any one in their number against persons threatening to break and enter such house in order to commit any indictable offence therein is not unlawful.*

R. v. Vincent, 9 C. & P. 91; O'Kelly v. Harvey, 15 Cox, 435; Beatty v. Gillbanks, 15 Cox, 138; Warb. Lead. Cas. 49; Back v. Holmes, 16 Cox, 263; R. v. Clarkson, 17 Cox, 483; R. v. Cunningham, 16 Cox, 420.

"The definition of an unlawful assembly depends entirely on the common law. The earliest definition of an unlawful assembly is in the Year Book, 21 H. VII. 39. It would seem from it that the law was first adopted at a time when it was the practice for the gentry, who were on bad terms with each other, to go to market at the head of bands of armed retainers. It is obvious that no civilized government could permit this practice, the consequence of which was at the time that the assembled bands would probably fight, and certainly make peaceable people fear that they would fight. It was whilst the state of society was such as to render this a prevailing mischief that the earlier cases were decided; and consequently the duty of not provoking a breach of the peace has sometimes been so strongly laid down as almost to make it seem as if it was unlawful to take means to resist those who came to commit crimes. We have endeavoured in section 84 to enunciate the principles of the common law, although in declaring that an assembly may be unlawful if it causes persons in the neighbourhood to fear that it will needlessly, and without reasonable occasion, provoke others to disturb the peace tumultuously, we are declaring that which has not as yet been specifically decided in any particular case. The clause as to the defence of a man's house has been inserted because of a doubt expressed on the subject."—Imp. Comm. Rep.

Divers persons assembled in a room, entrance money being paid, to witness a fight between two persons. The combatants fought in a ring with gloves, each being attended by a second, who acted in the same way as the

second at prize fights. The combatants fought for about 40 minutes with great ferocity, and severely punished each other. The police interfered and arrested the defendants, who were among the spectators.

Upon the trial of an indictment against them for unlawfully assembling together for the purpose of a prize fight, the chairman directed the jury that, if it was a mere exhibition of skill in sparring, it was not illegal; but, if the parties met intending to fight till one gave in from exhaustion or injury received, it was a breach of the law and a prize fight, whether the combatants fought in gloves or not, and left it to the jury to say whether it was a prize fight or not.

Held, that the jury were properly directed: R. v. Orton, 14 Cox, 226; *see* R. v. McNaughten, 14 Cox, 576.

The appellants with a considerable number of other persons, forming a body called "Salvation Army," assembled together in the streets of a town for a lawful object, and with no intention of carrying out their object unlawfully, or by the use of physical force, but knowing that their assembly would be opposed and resisted by other persons, in such a way as would in all probability tend to the committing of a breach of the peace on the part of such opposing persons. A disturbance of the peace having been created by the forcible opposition of a number of persons to the assembly and procession through the streets of the appellants and the Salvation Army, who themselves used no force or violence, it was—

Held, by Field and Cave, JJ., (reversing the decision of the justices), that the appellants had not been guilty of unlawfully and tumultuously assembling, etc., and could not therefore be convicted of that offence, nor be bound over to keep the peace.

Held, also, that knowledge by persons peaceably assembling for a lawful object, that their assembly will be forcibly opposed by other persons, under circumstances likely to lead

to a breach of the peace on the part of such other persons, does not render such assembly unlawful: Beatty v. Gillbanks, 15 Cox, 138; *see* R. v. Clarkson, 17 Cox, 483.

A procession being attacked by rioters a person in it fired a pistol twice. He appeared to be acting alone and nobody was injured.

Held, that he could not be indicted for riot, and, on a case reserved, a conviction on such an indictment was quashed: R. v. Corcoran, 26 U. C. C. P. 134.

On the trial of an indictment for riot and unlawful assembly on the 15th Jan., evidence was given on the part of the prosecution of the conduct of the prisoners on the day previous, for the purpose of showing (as was alleged) that B., in whose office one act of riot was committed, had reason to be alarmed when the prisoners came to his office. The prisoner's counsel thereupon claimed the right to show that they had met on the 14th to attend a school meeting, and to give evidence of what took place at the school meeting, but the evidence was rejected. *Held*, per Allen, C.J., and Fisher and Duff, JJ., (Weldon and Wetmore, JJ., dis.), that the evidence was properly rejected because the conduct of the prisoners on the 14th, could not qualify or explain their conduct on the following day. It is no ground for quashing a conviction for unlawful assembly on one day that evidence of an unlawful assembly on another day has been improperly received, if the latter charge was abandoned by the prosecuting counsel at the close of the case, and there was ample evidence to sustain the conviction. If a man knowingly does acts which are unlawful, the presumption of law is that the *mens rea* exists; ignorance of the law will not excuse him: R. v. Mailloux, 3 Pugs. (N.B.), 493.

RIOT.

80. A riot is an unlawful assembly which has begun to disturb the peace tumultuously.

See R. v. Kelly, 6 U. C. C. P. 372; R. v. Cunningham, 16 Cox, 420, and remarks under preceding section.

Section 12 of chapter 147, R. S. C., provided specially for the punishment of a rout.

PUNISHMENT FOR UNLAWFUL ASSEMBLY.

81. Every member of an unlawful assembly is guilty of an indictable offence and liable to *one* year's imprisonment. R. S. C. c. 147, s. 11.

Fine and sureties, section 958. *See post,* under section 83, and *ante,* under section 79. The punishment was two years under the repealed section.

PUNISHMENT OF RIOT.

82. Every rioter is guilty of an indictable offence and liable to *two* years imprisonment with hard labour. R. S. C. c. 148, s. 13.

Fine and sureties, section 958. The punishment was four years under the repealed section.

RIOT ACT.

83. It is the duty of every sheriff, deputy-sheriff, mayor or other head officer, and justice of the peace, of any county, city or town, who has notice that there are within his jurisdiction persons to the number of twelve or more unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the place where such unlawful, riotous and tumultuous assembly is, and among the rioters, or as near to them as he can safely come, with a loud voice to command, or cause to be commanded, silence, and after that openly and with loud voice to make, or cause to be made, a proclamation in these words or to the like effect:—

"Our Sovereign Lady the Queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life.

"God Save the Queen."

2. All persons are guilty of an indictable offence and liable to imprisonment for life who—

(*a*) With force and arms wilfully oppose, hinder or hurt any person who begins or is about to make the said proclamation, whereby such proclamation is not made; or

(*b*) Continue together to the number of twelve for thirty minutes after such proclamation has been made, or if they know that its making was hindered as aforesaid, within thirty minutes after such hindrance. R. S. C. c. 147, ss. 1 & 2.

The omission of "God Save the Queen" is fatal. R. v. Child, 4 C. & P. 442; *see* sections 40, 41, 42, *ante,* and Archbold, 955. Limitation, one year, section 551. R. v. Pinney, 3 B. & Ad. 947: R. v. Kennett, 5 C. & P. 282;

R. v. Neale, 9 C. & P. 431; R. v. Vincent, 9 C. & P. 91; R. v. James, 5 C. & P. 153.

IF RIOTERS DO NOT DISPERSE, ETC., ETC.

84. If the persons so unlawfully, riotously and tumultuously assembled together as mentioned in the next preceding section, or twelve or more of them, continue together, and do not disperse themselves, for the space of thirty minutes after the proclamation is made or after such hindrance as aforesaid, it is the duty of every such sheriff, justice and other officer, and of all persons required by them to assist, to cause such persons to be apprehended and carried before a justice of the peace; and if any of the persons so assembled is killed or hurt in the apprehension of such persons, or in the endeavour to apprehend or disperse them, by reason of their resistance, every person ordering them to be apprehended or dispersed, and every person executing such orders, shall be indemnified against all proceedings of every kind in respect thereof: Provided, that nothing herein contained shall, in any way, limit or affect any duties or powers imposed or given by this Act as to the suppression of riots before or after the making of the said proclamation, R. S. C. c. 147, s. 3.

See annotation under preceding section.

RIOTOUS DESTRUCTION OF BUILDINGS.

85. All persons are guilty of an indictable offence and liable to imprisonment for life who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish or pull down, or begin to demolish or pull down, any building, or any machinery, whether fixed or movable, or any erection used in farming land, or in carrying on any trade or manufacture, or any erection or structure used in conducting the business of any mine, or any bridge, waggon-way or track for conveying minerals from any mine. R. S. C. c. 147, s. 9; 24-25 V. c. 97, s. 11, (Imp.).

See next section.

Indictment.—That on at J. S., J. W. and E. W., together with divers other evil-disposed persons, to the jurors aforesaid unknown, unlawfully, riotously and tumultuously did assemble together, to the disturbance of the public peace; and being then and there so unlawfully, riotously and tumultuously assembled together as aforesaid did then and there unlawfully and with force begin to demolish and pull down, the dwelling-house of one J. N., there situate.

See note under next section.

The accused may be convicted of the offence covered by next section, if the evidence warrants it: section 713.

RIOTOUS DAMAGE TO BUILDINGS.

86. All persons are guilty of an indictable offence and liable to seven years' imprisonment who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force injure or damage any of the things mentioned in the last preceding section.

2. *It shall not be a defence to a charge of an offence against this or the last preceding section that the offender believed he had a right to act as he did, unless he actually had such a right.* R. S. C. c. 147, s. 10; 24-25 V. c. 97, s. 12 (Imp.).

"Sub-section 2 removes what is at least a doubt. *See* R. v. Langford, Car. & M. 602; R. v. Casey, 8 Ir. Rep. C. L. 408."—Imp. Comm. Rep.

See R. v. Phillips, 2 Moo. 252; Drake v. Footitt, 7 Q. B. D. 201.

Indictment.—That on at S., J. W. and E. W., together with divers other evil-disposed persons, to the said jurors unknown, unlawfully, riotously, and tumultuously did assemble together to the disturbance of the public peace, and being then and there so unlawfully, riotously and tumultuously assembled together as aforesaid, did then and there unlawfully and with force injure a certain dwelling-house of one J. N., there situate. *Add a count stating "damage" instead of "injure."*

The riotous character of the assembly must be proved. It must be proved that these three or more, but not less than three, persons assembled together, and that their assembling was accompanied with some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as were calculated to inspire people with terror, such as being armed, using threatening speeches, turbulent gestures, or the like. It is a sufficient terror and alarm, if *any one* of the Queen's subjects be in fact terrified: Archbold, 552. Then prove that the assembly began with force to demolish the house in question. It must appear that they began to demolish some part of the *freehold;* for instance, the demolition of moveable shutters is not sufficient: R. v. Howell, 9 C. & P. 437. A demolition by fire is within the Statute. Prove that the defendants were either active in demolishing the house, or present,

aiding and abetting. To convict under section 85, the jury must be satisfied that the ultimate object of the rioters was to demolish the house, and that if they had carried their intention into effect, they would in point of fact have demolished it; for if the rioters merely do an injury to the house, and then of their own accord go away as having completed their purpose it is not a beginning to demolish within this section. But a total demolition is not necessary, though the parties were not interrupted, and the fact that the rioters left a chimney remaining, will not prevent the Statute from applying. But if the demolishing or intent to demolish be not proved, and evidence of riot and injury or damage to the building is produced, the jury may find the defendant guilty of the offence created by section 86.

UNLAWFUL DRILLING.

87. The Governor in Council is authorized from time to time to prohibit assemblies without lawful authority of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises, movements or evolutions, and to prohibit persons when assembled for any other purpose so training or drilling themselves or being trained or drilled. Any such prohibition may be general or may apply only to a particular place or district and to assemblies of a particular character, and shall come into operation from the publication in the *Canada Gazette* of a proclamation embodying the terms of such prohibition, and shall continue in force until the like publication of a proclamation issued by the authority of the Governor in Council revoking such prohibition.

2. Every person is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority and in contravention of such prohibition or proclamation—

(*a*) Is present at or attends any such assembly for the purpose of training or drilling any other person to the use of arms or the practice of military exercises or evolutions; or

(*b*) At any assembly trains or drills any other person to the use of arms or the practice of military exercises or evolutions. R. S. C. c. 147, ss. 4 & 5. 60 Geo. III. and 1 Geo. IV. c. 1, (Imp.). (*Amended.*)

Limitation, 6 months, section 551; *see* Archbold, 822.

UNLAWFULLY BEING DRILLED.

88. Every one is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority, attends, or is present at, any such assembly as in the last preceding section mentioned, for the purpose of being, or who at any such assembly is, without lawful authority and in contra-

vention of such prohibition or proclamation, trained or drilled to the use of arms or the practice of military exercises or evolutions. R. S. C. c. 147, s. 6.

Limitation, 6 months, section 551.

FORCIBLE ENTRY OR DETAINER.

89. Forcible entry is where a person, whether entitled or not, enters in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, on land then in actual and peaceable possession of another.

2. Forcible detainer is where a person in actual possession of land, without colour of right, detains it in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, against a person entitled by law to the possession thereof.

3. What amounts to actual possession or colour of right is a question of law.

4. Every one who forcibly enters or forcibly detains land is guilty of an indictable offence and liable to one year's imprisonment.

Archbold, 886; R. v. Smyth, 5 C. & P. 201; Lows v. Telford, 13 Cox, 226, Warb. Lead Cas. 51.

"Forcible entry and detainer are offences at common law; and this section, we believe, correctly states the existing law."—Imp. Comm. Rep.

Indictment.—That A. D., C. D., E. F., G. H., and J. K., on day of , in the year of our Lord , unlawfully and injuriously and with a strong hand entered into a certain mill, and certain lands and houses, and the sites of a certain mill and certain houses, with the appurtenances, situate in the parish of , in the said county, and then in the possession of one L. M., and unlawfully and injuriously and with a strong hand, expelled and put out the said L.M. from the possession of the said premises, in a manner likely to cause a breach of the peace.

AFFRAY.

90. An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

2. Every one who takes part in an affray is guilty of an *indictable* offence and liable to *one year's* imprisonment *with hard labour*. R. S. C. c. 147, s. 14.

The words "to the alarm of the public" should be inserted after the word "fighting" in the first line. Under section 14, chapter 147 of the Revised Statutes, this offence

was punishable by three months on summary conviction. It must now be proceeded against by indictment.

CHALLENGE TO FIGHT A DUEL.

91. Every one is guilty of an indictable offence and liable to three years' imprisonment who challenges or endeavours by any means to provoke any person to fight a duel, or endeavours to provoke any person to challenge any other person so to do.

This was an offence at common law: R. v. Rice, 3 East, 581; R. v. Philipps, 6 East, 463: 3 Chit. 487.

PRIZE FIGHTS, ETC., ETC.

92. In sections ninety-three to ninety-seven inclusive the expression "prize-fight" means an encounter or fight with fists or hands, between two persons who have met for such purpose by previous arrangement made by or for them. R. S. C. c. 153, s. 1.

R. v. Perkins, 4 C. & P. 537; R. v. Murphy, 6 C. & P. 103; R. v. Coney, 15 Cox, 46, 8 Q. B. D. 534; in R. v. Taylor, 13 Cox, 68, it was held that a stakeholder to a prize-fight is not an accessory before the fact nor an abettor, to the manslaughter, if one of the combatants is killed, he not being present: *see* R. v. Orton, Warb. Lead. Cas. 54, and R. v. Coney, *Id.* 56.

The following three sections of chapter 153, Revised Statutes are unrepealed.

6. If, at any time, the sheriff of any county, place or district in Canada, any chief of police, any police officer, or any constable, or other peace officer, has reason to believe that any person within his bailiwick or jurisdiction is about to engage as principal in any prize-fight within Canada, he shall forthwith arrest such person and take him before some person having authority to try offences against this Act, and shall forthwith make complaint in that behalf, upon oath, before such person; and thereupon such person shall inquire into the charge, and if he is satisfied that the person so brought before him was, at the time of his arrest, about to engage as a principal in a prize-fight, he shall require the accused to enter into a recognizance, with sufficient sureties, in a sum not exceeding five thousand dollars and not less than one thousand dollars, conditioned that the accused will not engage in any such fight within one year from and after the date of such arrest; and in default of such recognizance, the person before whom the accused has been brought shall commit the accused to the gaol of the county, district or city within which such inquiry takes place, or if there is no common gaol there, then to the common gaol which is nearest to the place where such inquiry is had, there to remain until he gives such recognizance with such sureties.

7. If any sheriff has reason to believe that a prize-fight is taking place or is about to take place within his jurisdiction as such sheriff, or that any persons are about to come into Canada at a point within his jurisdiction, from any place outside of Canada, with intent to engage in, or to be concerned in, or to attend any prize-fight within Canada, he shall forthwith summon a force of the inhabitants of his district or county sufficient for the purpose of suppressing and preventing such fight; and he shall, with their aid, suppress and prevent the same, and arrest all persons present thereat, or who come into Canada as aforesaid, and shall take them before some person having authority to try offences against this Act, to be dealt with according to law, and fined or imprisoned, or both, or compelled to enter into recognizances with sureties, as hereinbefore provided, according to the nature of the case.

10. Every judge of a superior court or of a county court, judge of the sessions of the peace, stipendiary magistrate, police magistrate, and commissioner of police of Canada, shall, within the limits of his jurisdiction as such judge, magistrate or commissioner, have all the powers of a justice of the peace with respect to offences against this Act.

CHALLENGE TO A PRIZE-FIGHT.

93. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one thousand dollars and not less than one hundred dollars, or to imprisonment for a term not exceeding six months, *with or without hard labour* or to both, who sends or publishes, or causes to be sent or published or otherwise made known, any challenge to fight a prize-fight or accepts any such challenge, or causes the same to be accepted, or goes into training preparatory to such fight, or acts as trainer or second to any person who intends to engage in a prize-fight. R. S. C. c. 153, s. 2.

PRINCIPAL IN A PRIZE-FIGHT.

94. Every one is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding twelve months and not less than three months, *with or without hard labour* who engages as a principal in a prize-fight. R. S. C. c. 153, s. 3.

AIDERS, ABETTORS, ETC.

95. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding twelve months, *with or without hard labour* or to both, who is present at a prize-fight as an aid, second, surgeon, umpire, backer, assistant or reporter, or who advises, encourages or promotes such fight. R. S. C. c. 153, s. 5.

See R. v. Coney, 15 Cox, 46, Warb. Lead. Cas. 56, and note under section 92 *ante*.

LEAVING CANADA TO ENGAGE IN A PRIZE-FIGHT.

96. Every inhabitant or resident of Canada is guilty of an offence and liable, on summary conviction, to a penalty not exceeding four hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding six months, *with or without hard labour* or to both, who leaves Canada with intent to engage in a prize-fight without the limits thereof. R. S. C. c. 153, s. 5.

The interpretation clause does not state what is the difference between an inhabitant and a resident.

TRIAL, ETC.

97. If, after hearing evidence of the circumstances connected with the origin of the fight or intended fight, the person before whom the complaint is made is satisfied that such fight or intended fight was *bona fide* the consequence or result of a quarrel or dispute between the principals engaged or intended to engage therein, and that the same was not an encounter or fight for a prize, or on the result of which the handing over or transfer of money or property depended, such person may, in his discretion, discharge the accused or impose upon him a penalty not exceeding fifty dollars. R. S. C. c. 153, s. 9.

Section 7, chapter 147, R. S. C., authorizing the sheriff to prevent by force any prize-fight has not been repealed. *See ante*, under section 92.

INCITING INDIANS TO RIOTOUS ACTS.

98. Every one is guilty of an indictable offence and liable to two years' imprisonment who induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds, apparently acting in concert—

(*a*) To make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or

(*b*) To do any act calculated to cause a breach of the peace. R. S. C. c. 43, s. 111.

Inciting an Indian to commit any indictable offence is punishable by five years, section 112, chapter 43, R. S. C. even if that indictable offence is itself liable to a lesser punishment.

PART VI.

UNLAWFUL USE AND POSSESSION OF EXPLOSIVE SUBSTANCES AND OFFENSIVE WEAPONS —SALE OF LIQUORS.

99. Every one is guilty of an indictable offence and liable to imprisonment for life who wilfully causes, by any explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property is actually caused or not. R. S. C. c. 150, s. 3.

See post annotations under sections 247, 248 & 488.

As to search warrant, section 569 sub-sections 7, 8.—"Explosive substance" defined, section 3. This and the two following sections are re-enactments of the Imperial "Explosive Substances Act of 1883": 46 V. c. 3.

INJURIES BY EXPLOSIVE SUBSTANCES.

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

(*a*) Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property;

(*b*) Makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or to cause serious injury to property, or to enable any other person by means thereof to endanger life or to cause serious injury to property—

Whether any explosion takes place or not and whether any injury to person or property is actually caused or not. R. S. C. c. 150, s. 3.

See note under preceding section.

POSSESSION OF EXPLOSIVES.

101. Every one is guilty of an indictable offence and liable to seven years' imprisonment who makes, or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or has it not in his possession or under his control, for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object. R. S. C. c. 150, s. 5; 46 V. c. 3 (Imp.).

"Having in possession" and "Explosive substance" defined, section 3; R. v. Charles, 17 Cox, 499, is a case under the corresponding section of the Imperial act.

POSSESSION OF OFFENSIVE WEAPONS.

102. Every one is guilty of an indictable offence and liable to *five years'* imprisonment who has in his custody or possession, or carries, any offensive weapons for any purpose dangerous to the public peace. R. S. C. c. 149, s. 4. (*Amended*).

Limitation, 6 months, section 551. "Having in possession" and "Offensive weapon" defined, section 3; search warrant, section 569. The following sections of chapter 149, Revised Statutes respecting the seizure of arms kept for dangerous purposes are unrepealed.

5. All justices of the peace in and for any district, county, city, town or place, in Canada, shall have concurrent jurisdiction as justices of the peace, with the justices of any other district, county, city, town or place, in all cases with respect to the carrying into execution the provisions of this Act, and with respect to all matters and things relating to the preservation of the public peace under this Act, as fully and effectually as if each of such justices was in the commission of the peace, or was *ex officio* a justice of the peace for each of such districts, counties, cities, towns or places.

7. The Governor in Council may, from time to time, by proclamation, suspend the operation of this Act in any province of Canada or in any particular district, county or locality specified in the proclamation; and from and after the period specified in any such proclamation, the powers given by this Act shall be suspended in such province, district, county or locality; but nothing herein contained shall prevent the Governor in Council from again declaring, by proclamation, that any such province, district, county or locality shall be again subject to this Act and the powers hereby given, and upon such proclamation this Act shall be revived and in force accordingly.

CARRYING OFFENSIVE WEAPONS.

103. If two or more persons openly carry offensive weapons in a public place in such a manner and under such circumstances as are calculated to create terror and alarm, each of such persons is liable, on summary conviction before two justices of the peace, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment to imprisonment for any term not exceeding thirty days. R. S. C. c. 148, s. 8.

Limitation, one month, section 551. "Offensive weapon" defined, section 3.

BEING FOUND WITH SMUGGLED GOODS.

104. Every one is guilty of an indictable offence and liable to imprisonment for ten years who is found with any goods liable to seizure or forfeiture under any law relating to inland revenue, the customs, trade or navigation, and knowing them to be so liable, and carrying offensive weapons. R. S. C. c. 32, s. 213. (*Amended*).

As the section reads, there must be both the unlawful possession and the carrying of arms to constitute this offence. Section 213, of chapter 32, Revised Statutes, *An Act respecting the Customs*, is repealed, also sections 98 and 99, of chapter 34, Revised Statutes, *An Act respecting the Inland Revenue.*

CARRYING OF ARMS, SELLING ARMS.

105. Every one is guilty of an offence and liable on summary conviction to a penalty not exceeding twenty-five dollars and not less than five dollars, or to imprisonment for one month, who, not being a justice or a public officer, or a soldier, sailor or volunteer in Her Majesty's service, on duty, or a constable

or other peace officer, and not having a certificate of exemption from the operation of this section as hereinafter provided for, and not having at the time reasonable cause to fear an assault or other injury to his person, family or property, has upon his person a pistol or air-gun elsewhere than in his own dwelling-house, shop, warehouse, or counting-house.

2. If sufficient cause be shown upon oath to the satisfaction of any justice, he may grant to any applicant therefor not under the age of sixteen years and as to whose discretion and good character he is satisfied by evidence upon oath, a certificate of exemption from the operation of this section, for such period, not exceeding twelve months, as he deems fit.

3. Such certificate, upon the trial of any offence, shall be *primâ facie* evidence of its contents and of the signature and official character of the person by whom it purports to be granted.

4. When any such certificate is granted under the preceding provisions of this section, the justice granting it shall forthwith make a return thereof to the proper officer in the county, district or place in which such certificate has been granted for receiving returns under section nine hundred and two; and in default of making such return within ninety days after a certificate is granted, the justice shall be liable, on summary conviction, to a penalty of not more than ten dollars.

5. Whenever the Governor in Council deems it expedient in the public interest, he may by proclamation suspend the operation of the provisions of the first and second sub-sections of this section respecting certificates of exemption, or exempt from such operation any particular part of Canada, and in either case for such period, and with such exceptions as to the persons hereby affected, as he deems fit. Section 1, c. 148. (*Amended*).

Limitation, one month, s. 551.

106. Every one is guilty of an offence and liable on summary conviction to a penalty not exceeding fifty dollars, who sells or gives any pistol or air-gun, or any ammunition therefor, to a minor under the age of sixteen years, unless he establishes to the satisfaction of the justice before whom he is charged that he used reasonable diligence in endeavouring to ascertain the age of the minor before making such sale or gift, and that he had good reason to believe that such minor was not under the age of sixteen.

2. Every one is guilty of an offence and liable on summary conviction to a penalty not exceeding twenty-five dollars who sells any pistol or air-gun without keeping a record of such sale, the date thereof, and the name of the purchaser and of the maker's name, or other mark by which such arm may be identified.

Limitation, one month, s. 551.

107. Every one who when arrested, either on a warrant issued against him for an offence or while committing an offence, has upon his person a pistol or air-gun is guilty of an offence and liable on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars and not less than twenty dollars, or to imprisonment for any term not exceeding three months, *with or without hard labour*. R. S. C. c. 148, s. 2.

Limitation, one month, s. 551.

108. Every one who has upon his person a pistol or air-gun, with intent therewith unlawfully to do injury to any other person, is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding *two hundred dollars* and not less than *fifty dollars*, or to imprisonment for any term not exceeding *six* months, *with or without hard labour*. R. S. C. c. 148, s. 3.

Limitation, one month, s. 551.

109. Every one who, without lawful excuse, points at another person any firearm or air-gun, whether loaded or unloaded, is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding *one hundred dollars* and not less than *ten* dollars, or to imprisonment for any term not exceeding thirty days, *with or without hard labour*. R. S. C. c. 148, s. 4.

Limitation, one month, s. 551.

110. Every one who carries about his person any bowie-knife, dagger, dirk, metal knuckles, skull cracker, slung shot, or other offensive weapon of a like character, or secretly carries about his person any instrument loaded at the end, or sells or exposes for sale, publicly or privately, any such weapon, or being masked or disguised carries or has in his possession any firearm or air-gun, is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, and not less than ten dollars, and in default of payment thereof to imprisonment for any term not exceeding thirty days, *with or without hard labour*. R. S. C. c. 148, s. 5.

Limitation, one month, s. 551.

CARRYING SHEATH-KNIVES IN SEAPORTS.

111. Every one, not being thereto required by his lawful trade or calling, who is found in *any town or city* carrying about his person any sheath-knife is liable, on summary conviction before two justices of the peace, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment thereof to imprisonment for any term not exceeding thirty days, *with or without hard labour*. R. S. C. c. 148, s. 6.

Limitation, one month, s. 551.

The section does not only apply to seaports as the repealed section did. The heading only does. Section 7 of chapter 148, Revised Statutes. "An Act respecting the Improper Use of Firearms and other Weapons" is unrepealed.

LEGAL CARRYING OF ARMS.

112. It is not an offence for any soldier, *public officer*, *peace officer*, sailor or volunteer in Her Majesty's service, constable or other policeman, to carry loaded pistols *or other usual arms or offensive weapons* in the discharge of his duty. R. S. C. c. 148, s. 10.

The words in italics are new.

REFUSAL TO DELIVER ARMS WHEN ATTENDING A PUBLIC MEETING.

113. Every one attending a public meeting or being on his way to attend the same who, upon demand made by any justice of the peace within whose jurisdiction such public meeting is appointed to be held, declines or refuses to deliver up, peaceably and quietly, to such justice of the peace, any offensive weapon with which he is armed or which he has in his possession, is guilty of an indictable offence.

2. The justice of the peace may record the refusal and adjudge the offender to pay a penalty not exceeding eight dollars, or the offender may be proceeded against by indictment as in other cases of indictable offences. R. S. C. c. 152, s. 1.

For a conviction under indictment, the punishment would be under section 951, *post;* limitation, one year, section 551. Sections 1, 2, 3, chapter 152, "An Act respecting the Preservation of Peace at Public Meetings," are unrepealed.

COMING ARMED NEAR A MEETING.

114. Every one, except the sheriff, deputy sheriff and justices of the peace for the district or county, or the mayor, justices of the peace or other peace officer for the city or town respectively, in which any public meeting is held, and the constables and special constables employed by them, or any of them, for the preservation of the public peace at such meeting, is guilty of an indictable offence, and liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both, who, during any part of the day upon which such meeting is appointed to be held, comes within one mile of the place appointed for such meeting armed with any offensive weapon. R. S. C. c. 152, s. 5.

Limitation, one year, section 551. "Offensive weapon" defined, section 3.

An offender punishable by three months imprisonment should be liable to conviction upon summary proceedings.

LYING IN WAIT FOR PERSONS RETURNING FROM PUBLIC MEETING.

115. Every one is guilty of an indictable offence and liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both, who lies in wait for any person returning, or expected to return, from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets or other offensive demeanour, directed to, at or against such person, to provoke such person, or those who accompany him, to a breach of the peace. R. S. C. c. 152, s. 6.

Limitation, one year, section 551. Why is the offence under this section indictable?

SALE OF ARMS, NORTH-WEST TERRITORIES.

116. Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty of two hundred dollars or to six months' imprisonment, or to both, who, during any time when and within any place in the North-West Territories where section one hundred and one of *The North-West Territories Act* is in force—

(*a*) Without the permission in writing (the proof of which shall be on him) of the Lieutenant Governor, or of a commissioner appointed by him to give such permission, has in his possession or sells, exchanges, trades, barters or gives to, or with any person, any improved arm or ammunition; or

(*b*) Having such permission sells, exchanges, trades, barters or gives any such arm or ammunition to any person not lawfully authorized to possess the same.

2. The expression "improved arm" in this section means and includes all arms except smooth-bore shot-guns; and the expression "ammunition" means fixed ammunition or ball cartridge. R. S. C. c. 50, s. 101.

Section 101, of chapter 50, R. S. C. *the North West Territories Act*, is unrepealed.

As to search warrant, section 569.

PROTECTION OF PUBLIC WORKS.

117. Every one employed upon or about any public work, within any place in which the *Act respecting the Preservation of Peace in the vicinity of Public Works* is then in force, is liable, on summary conviction, to a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession who, upon or after the day named in the proclamation by which such Act is brought into force, keeps or has in his possession, or under his care or control, within any such place, any weapon.

2. Every one is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than forty dollars, who, for the purpose of defeating the said Act, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed within any place in which the said Act is at the time in force, any weapon belonging to or in custody of any person employed on or about any public work. R. S. C. c. 151, ss. 1, 5 & 6.

118. Upon and after the day named in any proclamation putting in force in any place *An Act respecting the Preservation of Peace in the vicinity of Public Works*, and during such period as such proclamation remains in force, no person shall, at any place within the limits specified in such proclamation, sell, barter, or directly or indirectly, for any matter, thing, profit or reward, exchange, supply or dispose of any intoxicating liquor nor expose, keep or have in possession any intoxicating liquor intended to be dealt with in any such way.

2. The provisions of this section do not extend to any person selling intoxicating liquor by wholesale and not retailing the same, if such person is a licensed distiller or brewer.

3. Every one is liable, on summary conviction, for a first offence, to a penalty of forty dollars and costs, and, in default of payment, to imprisonment

for a term not exceeding three months, with or without hard labour,—and on every subsequent conviction to the said penalty and the said imprisonment in default of payment, and also to further imprisonment for a term not exceeding six months, with or without hard labour, who, by himself, his clerk, servant, agent or other person, violates any of the provisions of this or of the preceding section.

4. Every clerk, servant, agent or other person who, being, in the employment of, or on the premises of, another person, violates or assists in violating any of the provisions of this or of the preceding section for the person in whose employment or on whose premises he is, is equally guilty with the principal offender and liable to the same punishment. R. S. C. c. 151, ss. 1, 13, 14 & 15.

Chapter 151, Revised Statutes, "An Act respecting the Preservation of Peace in the vicinity of Public Works," is unrepealed.

CONVEYING LIQUOR, ETC., ETC., ETC., TO HER MAJESTY'S SHIPS.

119. Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a fine not exceeding fifty dollars for each offence, and in default of payment to imprisonment for a term not exceeding one month, with or without hard labour, who, without the previous consent of the officer commanding the ship or vessel—

(*a*) Conveys any intoxicating liquor on board any of Her Majesty's ships or vessels; or

(*b*) Approaches or hovers about any of Her Majesty's ships or vessels for the purpose of conveying any such liquor on board thereof; or

(*c*) Gives or sells to any man in Her Majesty's service, on board any such ship or vessel, any intoxicating liquor. 50-51 V. c. 46, s. 1.

As to arrest without warrant of offenders against this section by any officer, *see* section 552, sub-section 6; as to search for liquor and seizure by such officer, section 573.

PART VII.

SEDITIOUS OFFENCES.—UNLAWFUL OATHS.

OATHS TO COMMIT CERTAIN OFFENCES. *(New).*

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

(*a*) Administers, or is present at and consenting to the administration of, any oath or any engagement purporting to bind the person taking the same

to commit any crime punishable by death or imprisonment for more than five years; or

(*b*) Attempts to induce or compel any person to take any such oath or engagement; or

(*c*) Takes any such oath or engagement. 52 Geo. III. c. 104 (Imp.).

Not triable at quarter sessions, section 540.

This enactment and the two next are taken from chapter 10 of the Cons. Stat. of Lower Canada, of which sections 5, 6, 7, 8 & 9 remain unrepealed.

OTHER UNLAWFUL OATHS. (*New*).

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

(*a*) Administers or is present at and consenting to the administration of any oath or engagement purporting to bind the person taking the same:

(i) To engage in any mutinous or seditious purpose;

(ii) To disturb the public peace or commit or endeavour to commit any offence;

(iii) Not to inform and give evidence against any associate, confederate or other person;

(iv) Not to reveal or discover any unlawful combination or confederacy, or any illegal act done or to be done or any illegal oath or obligation or engagement which may have been administered or tendered to or taken by any person, or the import of any such oath or obligation or engagement; or

(*b*) Attempts to induce or compel any person to take any such oath or engagement; or

(*c*) Takes any such oath or engagement: C. S. L. C. c. 10, s. 1. 37 Geo. III. c. 123 (Imp.).

Not triable at quarter sessions, section 540.

R. v. Lovelass, 6 C. & P. 596.

Indictment.—The jurors for our Lady the Queen, present, that A. B. on the day of , in the year of our Lord , did unlawfully administer and cause to be administered to one C. D. a certain oath and engagement, purporting, and then intended, to bind the said C. D., not to inform or give evidence against any associate, confederate, or other person of or belonging to a certain unlawful association and confederacy, to wit and which said oath and engagement was then taken by the said C. D.

INDICTMENT FOR TAKING AN UNLAWFUL OATH.

Commence as ante]—did unlawfully take a certain oath and engagement, purporting [*&c., as in the last precedent*]: he, the said C. D., not being then compelled to take the said oath and engagement.

COMPULSION. *(New).*

122. Any one who, under such compulsion as would otherwise excuse him, offends against either of the last two preceding sections shall not be excused thereby unless, within the period hereinafter mentioned, he declares the same and what he knows touching the same, and the persons by whom and in whose presence, and when and where, such oath or obligation or engagement was administered or taken, by information on oath before one of Her Majesty's justices of the peace for the district or city or county in which such oath or engagement was administered or taken. Such declaration may be made by him within fourteen days after the taking of the oath or, if he is hindered from making it by actual force or sickness, then within eight days of the cessation of such hindrance, or on his trial if it happens before the expiration of either of those periods. C. S. L. C. c. 10, s. 2.

52 Geo. III. c. 104; 37 Geo. III. c. 123, (Imp.).

SEDITIOUS OFFENCES DEFINED. *(New).*

123. No one shall be deemed to have a seditious intention only because he intends in good faith—

(*a*) To show that Her Majesty has been misled or mistaken in her measures; or

(*b*) To point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any province thereof, or in either House of Parliament of the United Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite Her Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or

(*c*) To point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of her Majesty's subjects.

2. Seditious words are words expressive of a seditious intention.

3. A seditious libel is a libel expressive of a seditious intention.

4. A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

"This section appears to us to state accurately the existing law. On this very delicate subject, we do not undertake to suggest any alteration of the law."—Imp. Comm. Rep.

R. v. Frost, 22 St. Tr. 471; R. v. Winterbotham, 22 St. Tr. 823; R. v. Binns, 26 St. Tr. 595; O'Connell v. R., 11

Cl. & F. 155, 234; R. v. Vincent, 9 C. & P. 91; R. v. Pigott, 11 Cox, 44; R. v. Burns, 16 Cox, 355.

The truth of a seditious or blasphemous libel cannot be pleaded as a defence to an indictment: R. v. Duffy, 9 Ir. L. R. 329; R. v. Bradlaugh, 15 Cox, 217; *Ex parte* O'Brien, 15 Cox, 180; R. v. Ramsay, 15 Cox, 231; *see* note under section 170, *post*.

PUNISHMENT. *(New).*

124. Every one is guilty of an indictable offence and liable to two years' imprisonment who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy.

Fine or sureties, section 958. Not triable at quarter sessions, section 540. On an indictment for a seditious libel, the words need not be set out, section 615; *see* note under preceding section.

LIBELS ON FOREIGN SOVEREIGNS. *(New).*

125. Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile or expose to hatred and contempt in the estimation of the people of any foreign state, any prince or person exercising sovereign authority over any such state.

Not triable at quarter sessions, section 540. Words need not be set out in indictment, section 615; R. v. D'Eon, 1 W. Bl. 517; R. v. Peltier, 28 St. Tr. 529; Shirley's Lead. Cas. Cr. L. 3; R. v. Gordon, 1 Russ. 351; R. v. Bernard, Warb. Lead. Cas. 45; R. v. Most, 14 Cox, 583, 7 Q. B. D. 244, *per* Coleridge, C.J. Fine, in lieu of, or in addition to the punishment, section 958. The intent to disturb peace and friendship between the United Kingdom and the foreign state whose sovereign has been libelled would appear to be necessary to constitute this offence at common law: Stephen, Cr. L. 99.

FALSE NEWS. *(New).*

126. Every one is guilty of an indictable offence and liable to one year's imprisonment who wilfully and knowingly publishes any false news or tale whereby injury or mischief is or is likely to be occasioned to any public interest.

Not triable at quarter sessions, section 540. Fine and sureties for the peace, section 958.

The 3 Edw. I. c. 34, and 2 Ric. II. c. 25 (now repealed by 50 & 51 V. c. 59), enact that none be so hardy to tell or publish any false news or tales, whereby discord or occasion of discord or slander, may grow between the King and his people, and the great men of the realm. In Chitty's Crim. Law, vol. 2, 527, is a form of indictment for spreading false rumours in order to enhance the price of hops. "It is said to have been resolved by all the judges that all *writers* of false news are indictable and punishable; and probably at this day the fabrication of news likely to produce any public detriment would be considered as criminal": Starkie on Libel, 546, 1st edition. What would constitute a "publishing" under the above section is not clear. In Chitty's form above cited, the publishing is not by writing. The 3 Edw. I. c. 34, has the words "tell or publish." A publication may be oral or written: 2 Starkie, Libel, 141.

PART VIII.

PIRACY. *(New).*

127. Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable to the following punishment:—

(*a*) To death, if in committing or attempting to commit such crime the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;

(*b*) To imprisonment for life in all other cases.

"We have thought it better to leave this offence undefined, as no definition of it would be satisfactory which is not recognized as such by other nations; and, after careful consideration of the subject, we have not been able to discover a definition fulfilling such a condition. We may observe as to this that the subject has been much discussed in the courts of the United

States, and the result appears to justify the course which we have adopted."—Imp. Comm. Rep.

See Stephen's, Cr. L. 104. Not triable at quarter sessions, section 540.

PIRATICAL ACTS. (*New*).

128. Every one is guilty of an indictable offence and liable to imprisonment for life who, within Canada, does any of the following piratical acts, or who, having done any of the following piratical acts, comes or is brought within Canada without having been tried therefor:—

(*a*) Being a British subject, on the sea, or in any place within the jurisdiction of the Admiralty of England, under colour of any commission from any foreign prince or state, whether such prince or state is at war with Her Majesty or not, or under pretense of authority from any person whomsoever commits any act of hostility or robbery against other British subjects, or during any war is in any way adherent to or gives aid to Her Majesty's enemies;

(*b*) Whether a British subject or not, on the sea or in any place within the jurisdiction of the Admiralty of England, enters into any British ship, and throws overboards or destroys any part of the goods belonging to such ship, or laden on board the same;

(*c*) Being on board any British ship on the sea or in any place within the jurisdiction of the Admiralty of England—

(i) Turns enemy or rebel, and piratically runs away with the ship, or any boat, ordnance, ammunition or goods;

(ii) Yields them up voluntarily to any pirate;

(iii) Brings any seducing message from any pirate, enemy or rebel;

(iv) Counsels or procures any persons to yield up or run away with any ship, goods or merchandise, or to turn pirates or to go over to pirates;

(v) Lay violent hands on the commander of any such ship in order to prevent him from fighting in defence of his ship and goods;

(vi) Confines the master or commander of any such ship;

(vii) Makes or endeavours to make a revolt in the ship; or

(*d*) Being a British subject in any part of the world, or (whether a British subject or not) being in any part of Her Majesty's dominions or on board a British ship, knowingly—

(i) Furnishes any pirate with any ammunition or stores of any kind;

(ii) Fits out any ship or vessel with a design to trade with or supply or correspond with any pirate;

(iii) Conspires or corresponds with any pirate.

See under preceding section.

PUNISHMENT. (*New*).

129. Every one is guilty of an indictable offence and liable to suffer death who, in committing or attempting to commit any piratical act, assaults with intent to murder, or wounds, any person, or does any act likely to endanger the life of any person.

See annotation under section 127.

NOT FIGHTING PIRATES. (*New*).

130. Every one is guilty of an indictable offence and liable to six months' imprisonment, and to forfeit to the owner of the ship all wages then due to him, who, being a master, officer or seaman of any merchant ship which carries guns and arms, does not, when attacked by any pirate, fight and endeavour to defend himself and his vessel from being taken by such pirate, or who discourages others from defending the ship, if by reason thereof the ship falls into the hands of such pirate: 8 Geo. I. c. 24, s. 6, (Imp.).

Not triable at quarter sessions, section 540; fine or sureties, section 958.

TITLE III.

OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE.

PART IX.

CORRUPTION AND DISOBEDIENCE.

CORRUPTION OF JUDGES OR MEMBERS OF PARLIAMENT. (*New*).

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

(*a*) Holding any judicial office, or being a member of Parliament or of a legislature, corruptly accepts or obtains, or agrees to accept, or attempts to obtain for himself or any other person, any money or valuable consideration, office, place, or employment on account of anything already done or omitted, or to be afterwards done or omitted, by him in his judicial capacity, or in his capacity as such member; or

(*b*) Corruptly gives or offers to any such person, or to any other person, any such bribe as aforesaid on account of any such act or omission.

Not triable at quarter sessions, section 540; no indictment for judicial corruption without the leave of the Attorney-General of Canada, section 544; a common law misdemeanour: *see* R. v. Bunting, 7 O. R. 524.

"In a general code of the criminal law we have thought it right to include the offence of judicial corruption. As no case of the kind has occurred (if we except the prosecutions of Lord Bacon and Lord Macclesfield) it is not surprising that the law on the subject should be somewhat vague."—Imp Comm. Rep.

CORRUPTION OF PEACE OFFICERS, ETC., ETC. (*New*).

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

(*a*) Being a justice of the peace, peace officer, or public officer, employed in any capacity for the prosecution or detection or punishment of offenders, corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself, or for any other person, any money or valuable consideration, office, place or employment, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any crime, or to protect from detection or punishment any person having committed or intending to commit any crime; or

(*b*) Corruptly gives or offers to any such officer as aforesaid any such bribe as aforesaid with any such intent.

"Peace officer" defined, section 3. Not triable at quarter sessions, section 540; a common law misdemeanour; form of indictment for attempt to bribe a constable: Archbold, 869.

FRAUDS UPON THE GOVERNMENT.

133. Every one is guilty of an indictable offence and liable to a fine of not less than one hundred dollars, and not exceeding one thousand dollars, and to imprisonment for a term not exceeding one year and not less than one month, and in default of payment of such fine to imprisonment for a further time not exceeding six months who—

(*a*) Makes any offer, proposal, gift, loan or promise, or who gives or offers any compensation or consideration, directly or indirectly, to any official or person in the employment of the Government, or to any member of his family, or to any person under his control, or for his benefit, with intent to obtain the assistance or influence of such official or person to promote either the procuring of any contract with the Government, for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, the execution of any such contract, or the payment of the price, or consideration stipulated therein, or any part thereof, or of any aid or subsidy, payable in respect thereof; or

(*b*) Being an official or person in the employment of the Government, directly or indirectly, accepts or agrees to accept, or allows to be accepted by any person under his control, or for his benefit, any such offer, proposal, gift, loan, promise, compensation or consideration; or

(*c*) In the case of tenders being called for by or on behalf of the Government, for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, directly or indirectly, by himself or by the agency of any other person on his behalf, with intent to obtain the contract therefor, either for himself or for any other person, proposes to make, or makes, any gift, loan, offer or promise, or offers or gives any consideration or compensation whatsoever to any person tendering for such work or other service, or to any member of his family, or other person for his benefit, to induce such person to withdraw his tender for such work or other service, or to compensate or reward him for having withdrawn such tender; or

(*d*) In case of so tendering, accepts or receives, directly or indirectly, or permits or allows to be accepted or received by any member of his family, or by any other person under his control, or for his benefit, any such gift, loan, offer, promise, consideration or compensation, as a consideration or reward for withdrawing or for having withdrawn such tender; or

(*e*) Being an official or employee of the Government, receives, directly or indirectly, whether personally, or by or through any member of his family, or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration whatsoever, either in money or otherwise, from any person whomsoever, for assisting or favouring any individual in the transaction of any business whatsoever with the Government, or who gives or offers any such gift, loan, promise, compensation or consideration; or

(*f*) By reason of, or under the pretense of, possessing influence with the Government, or with any Minister or official thereof, demands, exacts or receives from any person, any compensation, fee or reward, for procuring from the Government the payment of any claim, or of any portion thereof, or for procuring or furthering the appointment of himself, or of any other person, to any office, place or employment, or for procuring or furthering the obtaining for himself or any other person, of any grant, lease or other benefit from the Government; or offers, promises or pays to such person, under the circumstances and for the causes aforesaid, or any of them, any such compensation, fee or reward; or

(*g*) Having dealings of any kind with the Government through any department thereof, pays any commission or reward, or within one year before or after such dealings, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, makes any gift, loan, or promise of any money, matter or thing, to any employee or official of the Government, or to any member of the family of such employee or official, or to any person under his control, or for his benefit; or

(*h*) Being an employee or official of the Government, demands, exacts or receives, from such person, directly or indirectly, by himself, or by or through any other person for his benefit, or permits or allows any member of his family, or any person under his control, to accept or receive—

(i) Any such commission or reward; or

(ii) Within the said period of one year, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, accepts or receives any such gift, loan or promise; or

(*i*) Having any contract with the Government for the performance of any work, the doing of anything, or the furnishing of any goods, effects, food or materials, and having or expecting to have any claim or demand against the Government by reason of such contract, either directly or indirectly, by himself or by any person on his behalf, subscribes, furnishes or gives, or promises to subscribe, furnish or give, any money or other valuable consideration for the purpose of promoting the election of any candidate, or of any number, class or party of candidates to a legislature or to Parliament, or with the intent in any way of influencing or affecting the result of a provincial or Dominion election.

2. If the value of the amount or thing paid, offered, given, loaned, promised, received or subscribed, as the case may be, exceeds one thousand dollars, the offender under this section is liable to any fine not exceeding such value.

3. The words "the Government" in this section include the Government of Canada and the Government of any province of Canada, as well as Her Majesty in the right of Canada or of any province thereof. 54-55 V. c. 23, s. 1; 52-53 V. c. 69 (Imp.).

Not triable at quarter sessions, section 540; limitation, two years, section 551. As to indictments for frauds in certain cases, section 616.

CONSEQUENCES OF A CONVICTION.

134. Every person convicted of an offence under the next preceding section shall be incapable of contracting with the Government, or of holding any contract or office with, from, or under it, or of receiving any benefit under any such contract. R. S. C. c. 173, ss. 22, 23; 54-55 V. c. 23, s. 2.

BREACH OF TRUST BY PUBLIC OFFICER. *(New).*

135. Every public officer is guilty of an indictable offence and liable to five years' imprisonment who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person.

Not triable at quarter sessions, section 540; fine or sureties, section 958.

"A. an accountant in the office of the paymaster-general, fraudulently omits to make certain entries in his accounts, whereby he enables the cashier to retain large sums of money in his own possession, and to appropriate the interest on such sums to himself after the time when they ought to have been paid to the Crown. A. commits a misdemeanour. 2. A., a commissary-general of stores in the West Indies, makes contracts with B. to supply stores on the condition that B. should divide the profits with A. A. commits a misdemeanour."—Stephen's Cr. L. 121.

No such enactment is to be found in the Imperial Draft Code of 1879, nor in the bill of 1880, though, by the latter, it was proposed to supersede the whole of the common law. And that it was so left out intentionally is evident from the fact that it was provided for in the bill of 1879, s. 71, drafted by Sir James Stephens, who took it from his Digest., Art. 121, from which it has been re-produced *verbatim* in this code.

The defendant, a government officer, having charge of some public dredging, used his own steam-yacht for the purpose of towing the government's dredges, and also used a storehouse of his own for the purpose of stowing government stores. The steam yacht was registered in the name of one of the defendant's friends, in whose name the accounts for the towing were made out and rendered.

The accounts for the storage were sent to the government in the name of another friend of the defendant. The defendant, whose duty it was to audit these accounts, under s. 42, c. 29, R. S. C., certified them as correct, and received the amounts. It was proved that the services charged for were rendered, and that the prices charged were not higher than what the government would have had to pay to any other person performing the same services; also that some of the defendant's superior officers were informed of his doings in the matter and did not interpose to stop them. *Held*, upon a reserved case, that the defendant was guilty of misbehaviour in office: R. v. Arnoldi, 23 O. R. 201. *See* a form of indictment in the report of that case.

CORRUPTION IN MUNICIPAL AFFAIRS.

136. Every one is guilty of an indictable offence and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding two years and not less than one month, and in default of payment of such fine to imprisonment for a further term not exceeding six months, who directly or indirectly,—

(*a*) Makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member of a municipal council, whether the same is to inure to his own advantage or to the advantage of any other person, for the purpose of inducing such member either to vote or to abstain from voting, at any meeting of the council of which he is a member or at any meeting of a committee of such council, in favour of or against any measure, motion, resolution or question submitted to such council or committee; or

(*b*) Makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member or to any officer of a municipal council for the purpose of inducing him to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or

(*c*) Makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any officer of a municipal council for the purpose of inducing him to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act; or

(*d*) Being a member or officer of a municipal council, accepts or consents to accept any such offer, proposal, gift, loan, promise, agreement, compensation or consideration as is in this section before mentioned; or in consideration thereof, votes or abstains from voting in favour of or against any measure, motion, resolution or question, or performs or abstains from performing any official act; or

(*e*) Attempts by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a municipal council in giving or withholding his vote in favour of or against any measure, motion, resolution or question, or in not attending any meeting of the municipal council of which he is a member, or of any committee thereof; or

(*f*) Attempts by any such means as in the next preceding paragraph mentioned to influence any member or any officer of a municipal council to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person, or to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act: 52 V. c. 42, s. 2.

Not triable at quarter sessions, section 540; limitation, two years, section 551; *see* R. v. Lancaster, 16 Cox, 737; R. v. Hogg, 15 U. C. Q. B. 142.

SELLING OFFICE, APPOINTMENT, ETC., ETC. *(New).*

137. Every one is guilty of an indictable offence who, directly or indirectly—

(*a*) Sells or agrees to sell any appointment to, or resignation of any office, or any consent to any such appointment or resignation, or receives, or agrees to receive, any reward or profit from the sale thereof; or

(*b*) Purchases or gives any reward or profit for the purchase of any such appointment, resignation or consent, or agrees or promises to do so.

Every one who commits any such offence as aforesaid, in addition to any other penalty thereby incurred, forfeits any right which he may have in the office and is disabled for life from holding the same.

2 Every one is guilty of an indictable offence who, directly or indirectly—

(*a*) Receives or agrees to receive any reward or profit for any interest, request or negotiation about any office, or under pretense of using any such interest, making any such request or being concerned in any such negotiation; or

(*b*) Gives or procures to be given any profit or reward, or makes or procures to be made any agreement for the giving of any profit or reward, for any such interest, request or negotiation as aforesaid; or

(*c*) Solicits, recommends or negotiates in any manner as to any appointment to or resignation of any office in expectation of any reward or profit; or

(*d*) Keeps any office or place for transacting or negotiating any business relating to vacancies in, or the sale or purchase of, or appointment to or resignation of offices.

The word "office" in this section includes every office in the gift of the Crown or of any officer appointed by the Crown, and all commissions, civil, naval and military, and all places or employments in any public department or office whatever, and all deputations to any such office and every participation in the profits of any office or deputation.

Common law misdemeanour, 3 Chit. 681. The offence is not triable at quarter sessions, section 540; punishment under s. 951.

DISOBEDIENCE TO STATUTE LAW.

138. Every one is guilty of an indictable offence *and liable to one year's imprisonment* who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, *unless some penalty or other mode of punishment is expressly provided by law.* R. S. C. c. 173, s. 25 (*amended*).

R. v. Walker, 13 Cox, 94; Stephen's Cr. L. Art. 124; fine or sureties, s. 958; *see* R. v. Hall, 17 Cox, 278, and cases there cited; Hamilton v. Massie, 18 O. R. 585.

The offence which had given rise to this last case would probably now be held to be a not indictable one under the above section 138.

DISOBEDIENCE TO ORDERS OF COURT. *(New).*

139. Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any lawful order other than for the payment of money made by any court of justice, or by any person or body of persons authorized by any statute to make or give such order, unless some penalty is imposed, or other mode of proceeding is expressly provided by law.

Fine or sureties, section 958; Stephen's Cr. L. Art. 125; Archbold, 949.

NEGLECT OF PEACE OFFICER TO SUPPRESS RIOT. *(New).*

140. Every one is guilty of an indictable offence and liable to two years' imprisonment who, being a sheriff, deputy-sheriff, mayor, or other head officer, justice of the peace, or other magistrate, or other peace officer, of any county, city, town, or district, having notice that there is a riot within his jurisdiction, without reasonable excuse omits to do his duty in suppressing such riot.

Fine or sureties, section 958; R. v. Pinney, 3 B. & Ad. 947.

NEGLECT TO AID PEACE OFFICER TO SUPPRESS RIOT. *(New).*

141. Every one is guilty of an indictable offence and liable to one year's imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy-sheriff, mayor or other head officer, justice of the peace, magistrate, or peace officer in suppressing any riot, without reasonable excuse omits so to do.

Fine or sureties, section 958; "peace officer" defined, section 3; R. v. Brown, Car. & M. 314.

NEGLECT TO AID PEACE OFFICER. *(New).*

142. Every one is guilty of an indictable offence and liable to six months imprisonment who, having reasonable notice that he is required to assist any

sheriff, deputy-sheriff, mayor or other head officer, justice of the peace, magistrate, or peace officer, in the execution of his duty in arresting any person, or in preserving the peace, without reasonable excuse omits so to do.

See under preceding section; fine in lieu of or in addition to punishment, section 958: R. v Sherlock, Warb. Lead. Cas. 53

Indictment.—The jurors for our Lady the Queen present that heretofore and before the committing of the offence hereinafter mentioned, to wit, on the day of *A. B.* was lawfully in the custody of *C. D.*, a constable of , on a charge of and the said *A. B.* on the day aforesaid, committed an assault upon the said *C. D.*, being such constable as aforesaid, and a breach of the peace, with intent to resist such his lawful apprehension; and the jurors aforesaid, do further present, that the said *C. D.*, as such constable, there being a reasonable necessity for him so to do, called upon *E. F.*, who was then present, for his assistance, in order to prevent the said assault and breach of the peace; and that the said *E. F.* did unlawfully, wilfully, and knowingly refuse to aid the said *C. D.*, being such constable in the execution of his duty in arresting the said *A. B.*, and to prevent an assault and breach of the peace as aforesaid.

MISCONDUCT OF OFFICERS, ETC., ETC.

143. Every one is guilty of an indictable offence and liable to a fine and imprisonment, who, being a sheriff, deputy-sheriff, coroner, elisor, bailiff, constable or other officer intrusted with the execution of any writ, warrant or process, wilfully misconducts himself in the execution of the same, or wilfully, and without the consent of the person in whose favour the writ, warrant or process was issued, makes any false return thereto. R. S. C. c. 173, s. 29.

Section 934 as to amount of fine, and section 951 as to imprisonment.

OBSTRUCTING PEACE OFFICER, ETC.

144. Every one is guilty of an indictable offence and liable to *ten* years' imprisonment who resists or wilfully obstructs *any public* officer in the execution of his duty or any person acting in aid of such officer.

2. Every one is guilty of an offence and liable on indictment to two years' imprisonment, and on summary conviction before two justices of the peace to six months' imprisonment with hard labour, or to a fine of one hundred dollars, who resists or wilfully obstructs—

(*a*) *Any peace* officer in the execution of his duty or any person acting in aid of any such officer;

(*b*) Any person in the lawful execution of any process against any lands or goods or in making any lawful distress or seizure. R. S. C. c. 162, s. 34.

The punishment was two years under the repealed clause. The increase to ten years gives twelve challenges to the accused, section 668.

"Peace officer" and "public officer" defined, section 3. *See* annotation under section 263, *post*, which covers the same offence and makes it punishable by two years.

PART X.

MISLEADING JUSTICE.

PERJURY.

145. Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, and whether such evidence is material or not, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding. Evidence in this section includes evidence given on the *voir dire* and evidence given before a grand jury.

2. Every person is a witness within the meaning of this section who actually gives his evidence, whether he was competent to be a witness or not, *and whether his evidence was admissible or not.*

3. Every proceeding is judicial within the meaning of this section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any Legislative Council, Legislative Assembly or House of Assembly or any committee thereof, empowered by law to administer an oath, or before any justice of the peace, or any arbitrator or umpire, or any person or body of persons authorized by law or by any statute in force for the time being to make an inquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, *or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not and whether the proceeding was duly instituted or not before*

such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid.

4. Subornation of perjury is counselling or procuring a person to commit any perjury which is actually committed.

The words in italics seem to be new law, or settle doubts which have been raised.

"In framing the above section, we have proceeded on the principle that the guilt and danger of perjury consist in attempting by falsehood to mislead a tribunal *de facto* exercising judicial functions. It seems to us not desirable that a person who has done this should escape from punishment, if he can show some defect in the constitution of the tribunal which he sought to mislead, or some error in the proceedings themselves."—Imp. Comm. Rep.

Perjury, by the common law, appears to be a wilful false oath by one who, being lawfully required to depose the truth in any proceeding in a "*court*" of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not: 3 Russ. 1.

Hawkins, vol. 1, p. 429, has the word "*course*" of justice, instead of "*court*" of justice.

Bishop, Cr. Law, vol. 2, 1015, says a "*course*" of justice, and thinks that the word "*court*" in Russell is a misprint for "course," though Bacon's abridgement, verb. *perjury*, also has "*court*." Roscoe, 747, has also "*court*" of justice, but says that the proceedings are not confined to courts of justice; and a note by the editor of the American sixth edition says a "*course*" of justice is a more accurate expression than a "*court*" of justice.

There is no doubt, however, that, according to all the definition of this offence by the common law the party must be lawfully sworn, the proceeding in which the oath is taken must relate to the administration of justice, the assertion sworn to must be false, the intention to swear falsely must be wilful, and the falsehood material to the matter in question. Promissory oaths, such as those taken by officers for the faithful performance of duties, cannot be the subject of perjury.—Cr. L. Comrs., 5th Report, 51.

False swearing, under a variety of circumstances, has been declared by numerous statutes to amount to perjury, and to be punishable as such. But at common law false swearing was very different from perjury. The offence of perjury, at the common law, is of a very peculiar description, say the Cr. L. Comrs., 5th Rep. 23, and differs in some of its essential qualities from the crime of false testimony, or false swearing, as defined in all the modern Codes of Europe. The definition of the word, too, in its popular acceptation, by no means denotes its legal signification. Perjury, by the common law, is the assertion of a falsehood upon oath in a judicial proceeding, respecting some fact material to the point to be decided in such proceeding; and the characteristic of the offence *is not the violation of the religious obligation of an oath, but the injury done to the administration of public justice by false testimony.*

Here, in Canada, the above section declares to be perjury all oaths, etc., taken or subscribed in virtue of any law, or required or authorized by any such law, as did the repealed statute; and voluntary and extra-judicial oaths, being prohibited, it may be said that, with us, every false oath, *knowingly*, *wilfully* and *corruptly* taken, amounts to perjury and is punishable as such. The interpretation Act, c. 1, Rev. Stat., enacts that the word oath includes a solemn affirmation whenever the context applies to any person and case by whom and in which a solemn affirmation may be made instead of an oath, and in like cases the word *sworn* includes the word *affirmed* or *declared*. *See* ss. 23, 24, Can. Ev. Act, 1893. The words "or whether such evidence is material or not" in the above section 145 are an important alteration of the law on perjury, as it stands in England. As stated before, by the common law, to constitute perjury, the false swearing must be, besides the other requisites, in a *matter material* to the point in question. By the above section this ingredient of perjury is not necessary; *see* Stephen's Digest of Criminal Law, xxxiii.

1st. *There must be a lawful oath.*—R. v. Gibson, 7 R. L. 573; R. v. Martin, 21 L. C. J., 156; R. v. Lloyd, 16 Cox, 235; 19 Q. B. D. 213.

And, therefore, it must be taken before a competent jurisdiction, or before an officer who had legal jurisdiction to administer the particular oath in question. And though it is sufficient *primâ facie* to show the ostensible capacity in which the judge or officer acted when the oath was taken, the presumption may be rebutted by other evidence, and the defendant, if he succeed, will be entitled to an acquittal: 2 Chit. 304; R. v. Roberts, 14 Cox, 101; R. v. Hughes, 14 Cox, 284.

The words in italics in the above section 145 have altered the law to a large extent as to this requisite of an oath impugned for perjury; *see* a collection of cases in R. v. Hughes, Warb. Lead. Cas. 60.

2nd. *The oath must be false*—By this, it is intended that the party must believe that what he is swearing is fictitious; for, it is said, that if, intending to deceive, he asserts of his own knowledge that which may happen to be true, without any knowledge of the fact, he is equally criminal, and the accidental truth of his evidence will not excuse him: 2 Chit. 303. *Bishop's first book of the law, 117.* How far this is the law under the above section remains to be settled by the jurisprudence. And a man may be indicted for perjury, in swearing that he *believes* a fact to be true which he must know to be false: R. v. Pedley, 1 Leach, 325.

3rd. *The false oath must be knowingly, wilfully, and corruptly taken.*—The oath must be taken and the falsehood asserted with deliberation and a consciousness of the nature of the statement made, for if it seems rather to have been occasioned by inadvertency or surprise, or a mistake in the import of the question, the party will not be subjected to those penalties which a corrupt motive alone can deserve: 2 Chit. 303. If an oath is false to the know-

ledge of the party giving it, it is, in law, wilful and corrupt: 2 Bishop, Cr. L. 1043, *et seq.*

It hath been holden not to be material, upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended were, in the event, any way aggrieved by it or not; insomuch as this is not a prosecution grounded on the damage of the party but on the abuse of public justice: 3 Burn's Just. 1227; and that would be so now under the above section.

Indictment for Perjury: The Jurors for Our Lady the Queen present, that heretofore, to wit, at the (*assizes*) holden for the county (*or district*) of on the day of before (*one of the judges of Our Lady the Queen*), a certain issue between one E. F. and one J. H. in a certain action of *covenant* was tried, upon which trial A. B. appeared as a witness for and on behalf of the said E. F. and was then and there duly *sworn* before the said and did then and there, upon his *oath* aforesaid, falsely, wilfully and corruptly depose and *swear* in substance and to the effect following, "*that he saw the said G. H. duly execute the deed on which the said action was brought*," whereas, in truth, the said A. B. did not see the said G. H. execute the said deed, and the said deed was not executed by the said G. H., and the said A. B. did thereby commit wilful and corrupt *perjury*. *See* forms under s. 611, *post*.

Perjury is now triable at quarter sessions, section 540.

The indictment must allege that the defendants swore falsely, wilfully and corruptly; where the word *feloniously* was inserted instead of *falsely*, the indictment, though it alleged that the defendant swore wilfully, corruptly and maliciously, was held bad in substance, and not amendable: R. v. Oxley, 3 C. & K. 317.

If the same person swears contrary at different times, it should be averred on which occasion he swore wilfully, falsely and corruptly: R. v. Harris, 5 B. & Ald. 926.

As to assignments of perjury, the indictment must assign positively the manner in which the matter sworn to is false. A general averment that the defendant falsely swore, etc., etc., upon the whole matter is not sufficient; the indictment must proceed by special averment to negative that which is false: 3 Burn's Just. 1235; but *see* section 616, *post.*

Proof.—It seems to have been formerly thought that in proof of the crime of perjury two witnesses were necessary; but this strictness, if it was ever the law, has long since been relaxed, the true principle of the rule being merely this, that the evidence must be something more than sufficient to counterbalance the oath of the prisoner, and the legal presumption of his innocence: section 684, *post.* The oath of the opposing witness therefore will not avail unless it be corroborated by material and independent circumstances; for otherwise there would be nothing more than the oath of one man against another, and the scale of evidence being thus in one sense balanced, it is considered that the jury cannot safely convict. So far the rule is founded on substantial justice. But it is not precisely accurate to say that the corroborative circumstances must be tantamount to another witness; for they need not be such as that proof of them, standing alone, would justify a conviction, in a case where the testimony of a single witness would suffice for that purpose. Thus, a letter written by the defendant, contradicting his statement on oath, will render it unnecessary to call a second witness. Still, evidence confirmatory of the single accusing witness, in some slight particulars only, will not be sufficient to warrant a conviction, but it must at least be strongly corroborative of his testimony, or to use the quaint but energetic language of Chief Justice Parker, "a strong and clear evidence, and more numerous than the evidence given for the defendant." When several assignments of perjury are included in the same indictment it does not seem to be clearly settled whether, in addition to the testimony of a single witness,

corroborative proof must be given with respect to each, but the better opinion is that such proof is necessary, and that too, although all the perjuries assigned were committed at one time and place. For instance, if a person, on putting in his schedule in the Bankruptcy Court, or on other like occasion, has sworn that he has paid certain creditors, and is then indicted for perjury on several assignments, each specifying a particular creditor who has not been paid, a single witness with respect to each debt will not, it seems, suffice, though it may be very difficult to obtain any fuller evidence. The principle that one witness, with corroborating circumstances, is sufficient to establish the charge of perjury, leads to the conclusion, that without any witness directly to disprove what is sworn, circumstances alone, when they exist in a documentary shape, may combine to the same effect; as they may combine, though altogether unaided by oral proof except the evidence of their authenticity, to prove any other fact connected with the declarations of persons or the business of life. In accordance with these views, it has been held in America that a man may be convicted of perjury on documentary and circumstantial evidence alone, *first*, where the falsehood of the matter sworn to by him is directly proved by written evidence springing from himself, with circumstances showing the corrupt intent; *secondly*, where the matter sworn to is contradicted by a public record, proved to have been well known to the prisoner when he took the oath; and *thirdly*, when the party is charged with taking an oath contrary to what he must necessarily have known to be true, the falsehood being shown by his own letter relating to the fact sworn to, or by any other writings which are found in his possession, and which have been treated by him as containing the evidence of the fact recited in them.

If the evidence adduced in proof of the crime of perjury consists of two opposing statements by the prisoner, and nothing more, he cannot be convicted. For, if one only was delivered under oath, it must be presumed, from the

solemnity of the sanction, that the declaration was the truth, and the other an error or a falsehood; though the latter, being inconsistent with what he has sworn, may form important evidence with other circumstances against him. And if both the contradictory statements were delivered under oath, there is still nothing to show which of them is false when no other evidence of the falsity is given. If, indeed, it can be shown that before making the statement on which perjury is assigned the accused had been tampered with, or if any other circumstances tend to prove that the statement offered as evidence against the prisoner was true, a legal conviction may be obtained, and provided the nature of the statement was such that one of them must have been false *to the prisoner's knowledge* slight corroborative evidence would probably be deemed sufficient. But it does not necessarily follow that because a man has given contradictory accounts of a transaction on two occasions he has therefore committed perjury. For cases may well be conceived in which a person might very honestly swear to a particular fact, from the best of his recollection and belief, and might afterwards from other circumstances be convinced that he was wrong, and swear to the reverse, without meaning to swear falsely either time. Moreover, when a man merely swears to the best of his memory and belief, it of course requires very strong proof to show that he is wilfully perjured. The rule requiring something more than the testimony of a single witness on indictments for perjury is confined to the proof of the falsity of the matter on which the perjury is assigned. Therefore the holding of the Court, the proceedings in it, the administering the oath, the evidence given by the prisoner, and, in short, all the facts, exclusive of the falsehood of the statement which must be proved at the trial, may be established by any evidence that would be sufficient were the prisoner charged with any other offence. For instance, if the false swearing be that two persons were together at a certain time, and the assignment of perjury

be that they were not together at that time, evidence by one witness that at the time named the one person was at London, and by another witness that at the same time the other person was in York, will be sufficient proof of the assignment of perjury: 2 Taylor on Evidence, par. 876, *et seq.*

On an indictment for perjury alleged to have been committed at the Quarter Sessions, the chairman of the Quarter Sessions ought not to be called upon to give evidence as to what the defendant swore at the Quarter Sessions: R. v. Gazard, 8 C & P. 595.

But this ruling is criticized by Greaves, note *n*, 3 Russ. 86, and Byles, J., in R. v. Harvey, 8 Cox, 99, said that though the judges of Superior Courts ought not to be called upon to produce their notes, yet the same objection was not applicable to the judges of inferior courts, especially where the judge is willing to appear: 3 Burn's Just. 1243.

In R. v. Hook, Dears. & B. 606, will be found an interesting discussion on the evidence necessary upon an indictment for perjury.

The Imperial Statute, corresponding to section 4 of c. 154, Rev. Stat., unrepealed, (*post*, under next section), authorizes the judge to commit, unless such person shall enter into a recognizance and give sureties. Our statute gives power to commit *or* permit such person to enter into a recognizance and give sureties.

Greaves remarks on this last mentioned clause: "The crime of perjury has become so prevalent of late years, and so many cases of impunity have arisen, either for want of prosecution, or for defective prosecution, that this and the following sections were introduced to check a crime which so vitally affects the interests of the community.

"It was considered that by giving to every court and person administering oaths a power to order a prosecution for perjury at the public expense, coupled with a power of commitment in default of bail, many persons would be

deterred from committing so detestable a crime, and in order to effectuate this object the present clause was framed, and as it passed the Lords it was much better calculated to effect that object than as it now stands.

"As it passed the Lords it applied to any justice of the peace. The committee in the Commons confined it to justices in petty and special sessions,—a change much to be regretted, as a large quantity of business is transacted before a single justice or one metropolitan or stipendiary magistrate, who certainly ought to have power to commit under this clause for perjury committed before them.

"Again, as the clause passed the Lords, if an affidavit, etc., were made before one person, and used before another judge or court, etc., and it there appeared that perjury had been committed, such judge or court might commit. The clause has been so altered that the evidence must be given, or the affidavit, etc., made before the judge, etc., who commits. The consequence is that numerous cases are excluded; for instance, a man swears to an assault or felony before one justice, and on the hearing before two it turns out he has clearly been guilty of perjury, yet he cannot be ordered to be prosecuted under this clause. Again, an affidavit is made before a commissioner, the court refer the case to the master and he reports that there has been gross perjury, or the court see on the hearing of the case before them that there has been gross perjury committed, yet there is no authority to order a prosecution under this clause. So, again, a man is committed for trial on the evidence of a witness which is proved on the trial to be false beyond all doubt, yet if such witness be not examined, and do not repeat the same evidence on the trial, the court cannot order him to be prosecuted.

"It is to be observed, that before ordering a prosecution under this clause, the court ought to be satisfied, not only that perjury has been committed, but that there is a 'reasonable cause for such prosecution.' Now it must ever

be remembered that two witnesses, or one witness and something that will supply the place of a second witness are *absolutely essential* to a conviction for perjury. The court, therefore, should not order a prosecution unless it sees that such proof is capable of being adduced at the trial; and as the court has the power, it would be prudent in every case, if practicable, at once to bind over such two witnesses to give evidence on the trial, otherwise it may happen that one or both may not be then forthcoming to give evidence. It would be prudent also for the court to give to the prosecutor a minute of the point on which, in its judgment, the perjury had been committed, in order to guide the framer of the indictment, who possibly may be wholly ignorant otherwise of the precise ground on which the prosecution is ordered. It is very advisable, also, that where the perjury is committed in giving evidence, such evidence should be taken down in writing by some person who can prove it upon the trial, as nothing is less satisfactory or more likely to lead to an acquittal than that the evidence of what a person formerly swore should depend entirely upon mere memory. Indeed, it may well be doubted whether it would be proper to order a prosecution in any case under this Act where there was no minute in writing of the evidence taken down at the time.

"Again, it ought to be clear, beyond all reasonable doubt, that perjury has been *wilfully* committed before a prosecution is ordered": Lord Campbell's Acts, by Greaves, 22.

See section 691 as to proof of trial at which perjury was committed: R. v. Coles, 16 Cox, 165.

It is to be observed that this section is merely remedial, and will not prevent a regular record from being still admissible in evidence, and care must be taken to have such record drawn up in any case where the particular averments in the former indictments may be essential: Lord Campbell's Acts, by Greaves, 27.

Subornation of Perjury.—Subornation of perjury is an offence as perjury itself, and subject to the same punishment.

Section 145, declaring all evidence whatever material with respect to perjury, also applies to subornation of perjury.

Section 691, as to certificate of indictment and trial, applies also to subornation of perjury. Subornation of perjury, by the common law, seems to be an offence in procuring a man to take a false oath, amounting to perjury, who actually taketh such oath: 1 Hawk. 435.

But it seemeth clear that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury, yet it is certain that he is liable to be punished, not only by fine, but also by infamous corporal punishment: 1 Hawk. *loc. cit.* This crime is incitement, section 530.

An attempt to suborn a person to commit perjury, upon a reference to the judges was unanimously holden by them to be a misdemeanour: 1 Russ. 85.

And upon an indictment for subornation of perjury if it appears, at the trial, that perjury was not actually committed, but that the defendant was guilty of the attempt to suborn a person to commit the offence, such defendant may be found guilty of the attempt, section 711.

In support of an indictment for subornation the record of the witness's conviction for perjury is no evidence against the suborners, but the offence of the perjured witness must be again regularly proved. Although several persons cannot be joined in an indictment for perjury, yet for subornation of perjury they may: 3 Burn's Justice, 1246.

Indictment, same as indictment for perjury to the end, and then proceed:—And the Jurors aforesaid further present, that before the committing of the said offence by the

said A. B., to wit, on the day of at C. D. unlawfully, wilfully and corruptly did cause and procure the said A. B. to do and commit the said offence in the manner and form aforesaid.

As perjury, subornation of perjury is now triable at Quarter Sessions.

Indictment quashed, (for perjury) none of the formalities required by section 140 of the Procedure Act having been complied with: R. v. Granger, 7 L. N. 247.

These formalities are now required in all indictments, section 641.

A person accused of perjury cannot have accomplices, and is alone responsible for the crime of which he is accused: R. v. Pelletier, 1 R. L. 565.

Including two charges of perjury in one indictment would not be ground for quashing it. An indictment that follows the form given by the statute is sufficient: R. v. Bain, Ramsay's App. Cas. 191.

The non-production by the prosecution, on a trial for perjury, of the plea which was filed in the civil suit wherein the defendant is alleged to have given false testimony, is not material when the assignment of perjury has no reference to the pleading, but the defendant may, if he wishes, in case the plea is not produced, prove its contents by secondary evidence. It is not essential to prove that the facts sworn to by the defendant, as alleged in the indictment, were material to the issue in the cause in which the defendant was examined: R. v. Ross, M. L. R. 1 Q. B. 227; 28 L. C. J. 261.

As to stenographer's notes and sufficiency of evidence in perjury: *see* Downie v. R., 15 S. C. R. 358, M. L. R. 3 Q. B. 360; R. v. Murphy, 9 L. N. 95; R. v. Evans, 17 Cox, 37; R. v. Bird, 17 Cox, 387.

PUNISHMENT.

146. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who commits perjury or subornation of perjury.

2. If the crime is committed in order to procure the conviction of a person for any crime punishable by death or imprisonment for seven years or more, the punishment may be imprisonment for life. R. S. C. c. 154, s. 1.

The words in italics are new: *see* section 221, *post.*

The following section of c. 154 R. S. C. is unrepealed.

4. Any judge of any court of record, or any commissioner before whom any inquiry or trial is held, and which he is by law required or authorized to hold, may, if it appears to him that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, affirmation, declaration, deposition, examination, answer or other proceeding made or taken before him, direct such person to be prosecuted for such perjury, if there appears to such judge or commissioner a reasonable cause for such prosecution,—and may commit such person so directed to be prosecuted until the next term, sittings or session of any court having power to try for perjury in the jurisdiction within which such perjury was committed, or permit such person to enter into a recognizance, with one or more sufficient sureties, conditioned for the appearance of such person at such next term, sittings or session, and that he will then surrender and take his trial and not depart the court without leave,—and may require any person such judge or commissioner thinks fit, to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid.

See remarks under preceding section. A form of indictment under sub-section 2 of this section 146 is given in schedule one, form F. F. *post*, under s. 611, but the words, "penal servitude" therein are a gross error. Section 684, *post*, applies to this section 146. *See* MacDaniel's Case, Fost. 121.

FALSE OATHS. (*New*).

147. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being required or authorized by law to make any statement on oath, affirmation or solemn declaration, thereupon makes a statement which would amount to perjury if made in a judicial proceeding.

"This is at most a common law misdemeanour in cases not specially provided for by statute, of which there are a considerable number."—Imp. Comm. Rep.

This enactment seems unnecessary. It is covered by sub-section 3 of section 145, *ante.*: section 616, *post* applies.

FALSE OATH, OTHER CASES.

148. Every one is guilty of perjury who—

(*a*) Having taken or made any oath, affirmation, solemn declaration or affidavit whereby any Act or law in force in Canada, or in any province of

Canada, it is required or permitted that facts, matters or things be verified, or otherwise assured or ascertained by or upon the oath, affirmation, declaration or affidavit of any person, wilfully and corruptly, upon such oath, affirmation, declaration or affidavit, deposes, swears to, or makes any false statement as to any such fact, matter or thing; or

(*b*) Knowingly, wilfully and corruptly, upon oath, affirmation, or solemn declaration, affirms, declares, or deposes to the truth of any statement for so verifying, assuring or ascertaining any such fact, matter or thing, or purporting so to do, or knowingly, wilfully and corruptly takes, makes, signs or subscribes any such affirmation, declaration or affidavit, as to any such fact, matter or thing,—such statement, affidavit, affirmation or declaration being untrue, in the whole or any part thereof; R. S. C. c. 154, s. 2.

See notes under sections 145 & 146, *ante*.

FALSE AFFIDAVIT OUT OF PROVINCE WHERE IT IS USED.

149. Every person who wilfully and corruptly makes any false affidavit, affirmation or solemn declaration, out of the province in which it is to be used but within Canada, before any person authorized to take the same, for the purpose of being used in any province of Canada, is guilty of perjury in like manner as if such false affidavit, affirmation or declaration were made before a competent authority in the province in which it is used or intended to be used. R. S. C. c. 154, s. 3.

FALSE STATEMENTS. (*New*).

150. Every one is guilty of an indictable offence and liable to two years' imprisonment who, upon any occasion on which he is permitted by law to make any statement or declaration before any officer authorized by law to permit it to be made before him, or before any notary public to be certified by him as such notary, makes a statement which would amount to perjury if made on oath in a judicial proceeding.

Section 616 applies. Fine or sureties, section 958.

"It may be doubtful whether this is at present even a common law misdemeanour, but we feel no doubt that it ought to be made indictable."—Imp. Comm. Rep.

FABRICATING EVIDENCE. (*New*).

151. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to mislead any court of justice or person holding any such judicial proceeding as aforesaid, fabricates evidence by any means other than perjury or subornation of perjury.

Section 616 applies. A verdict of attempt to commit the offence may be given, section 711.

"Fabricating evidence is an offence which is not so common as perjury, but which does occur, and is sometimes detected. An instance occurred a few years ago in a trial for shooting at a man with intent to murder him, where the defence was that,

though the accused did fire off a pistol it was not loaded with ball, and the only intent was to frighten. Evidence was given that a pistol ball was found lodged in the trunk of a tree nearly in the line from where the accused fired to where the prosecutor stood. It was afterwards discovered that the ball had been placed in the tree by those concerned in the prosecution in order to supply the missing link in the evidence. Such an offence is as wicked and as dangerous as perjury, but the punishment as a common law offence (if, irrespective of conspiracy, it be an offence), is only fine and imprisonment."—Imp. Comm. Rep.

To mislead a court by the manufacture of false evidence is a misdemeanour. An attempt to do so is also an offence, although in point of fact the court was not misled: R. v. Vreones, 17 Cox, 267, [1891] 1 Q. B. 360.

CONSPIRACY TO BRING FALSE ACCUSATION. (*New*).

152. Every one is guilty of an indictable offence who conspires to prosecute any person for any alleged offence, knowing such person to be innocent thereof, and shall be liable to the following punishment:

(*a*) To imprisonment for fourteen years if such person might, upon conviction for the alleged offence, be sentenced to death or imprisonment for life;

(*b*) To imprisonment for ten years if such person might, upon conviction for the alleged offence, be sentenced to imprisonment for any term less than life.

A common law misdemeanour. Section 616, *post*, applies.

Indictment.—That *A. B.* and *C. D.*, being evil-disposed persons, and wickedly devising, and intending to deprive one *E. F.* of his good name, fame, and reputation, and subject him without just cause to the pains and penalties inflicted by law upon persons guilty of an assault, on , did unlawfully conspire, combine, confederate, and agree, wilfully, unlawfully, and without any reasonable or probable cause in that behalf, to charge and accuse the said *E. F.* of the crime of indecently and unlawfully assaulting the said *A. B.*, knowing the said *E. F.* to be innocent thereof. And the jurors aforesaid further present, that the said *A. B.* and *C. D.*, in pursuance of the said conspiracy, combination, confederacy, and agreement on the day aforesaid, falsely

and maliciously did cause and procure the said *E. F.* to be apprehended and taken into custody by one *E. H.*, then being one of the constables of the police force, and to be conveyed in custody to a certain prison and police-station, and there to be imprisoned.

ADMINISTERING OATHS WITHOUT AUTHORITY.

153. Every justice of the peace or other person who administers, or causes or allows to be administered, or receives or causes or allows to be received any oath or affirmation touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force at the time being, or authorized or required by any such law, is guilty of an indictable offence and liable to a fine not exceeding fifty dollars, or to imprisonment for any term not exceeding three months.

2. Nothing herein contained shall be construed to extend to any oath or affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence, or to any oath or affirmation required or authorized by any law of Canada, or by any law of the province wherein such oath or affirmation is received or administered, or is to be used, or to any oath or affirmation which is required or authorized by the laws of any foreign country to give validity to an instrument in writing or to evidence designed or intended to be used in such foreign country. R. S. C. c. 141, ss. 1, 2.

Sections 26 and 27 of the *Canada Evidence Act of 1893* re-enact sections 3 & 4 of the Act respecting Extra Judicial Oaths, c. 141, R. S. C.

Section 153 is taken from section 13 of 5 & 6 W. IV, c. 62, of the Imperial Statutes, the preamble of which reads thus:

"Whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial inquiry, nor in any wise required or authorized by any law; and whereas doubts have arisen whether or not such proceeding is illegal; for the suppression of such practice and removing such doubts, Her Majesty," etc.

Sir William Blackstone, before this statute, had said (Vol. IV, p. 137): "The law takes no notice of any perjury but such as is committed in some court of justice having power to administer an oath; or before some magistrate or proper officer, invested with a similar authority, in some proceedings relative to a civil suit or a criminal prosecu-

tion, for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them. For which reason, it is much to be questioned how far any magistrate is justifiable in taking a voluntary affidavit in any extra-judicial matter, as is now too frequent upon every petty occasion, since it is more than possible that, by such idle oaths, a man may frequently, *in foro conscientiæ*, incur the guilt and, at the same time, evade the temporal penalties of perjury."

"And Lord Kenyon, indeed, in different cases, has expressed a doubt, whether a magistrate does not subject himself to a criminal information for taking a voluntary extra-judicial affidavit." : 3 Burn's, Just. v. Oath.

Indictment.—The Jurors for our Lady the Queen present, that J. S. on . . . . at . . . . being one of the Justices of Our said Lady the Queen, assigned to keep the peace in and for the said county (*or district*), did unlawfully administer to and receive from a certain person, to wit, one A. B., a certain oath, touching certain matters and things, whereof the said J. S., at the time and on the occasion aforesaid, had not any jurisdiction or cognizance by any law in force at the time being, to wit, at the time of administering and receiving the said oath, or authorized, or required by any such law; the same oath not being in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence nor being required or authorized by any law of the Dominion of Canada, or by any law of the said Province of . . . . wherein such oath has been so received and administered, and was to be used (*if to be used in another Province add "or by any law of the Province of . . . . wherein the said oath* (*or affidavit*) *was* (*or is*) *to be used"*); nor being an oath required by the laws of any foreign country to give validity to any instrument in writing or to evidence, designed or intended to be used in such foreign country; that is to say, a certain oath touching and concerning; *state the subject-matter of the*

oath or affidavit so as to show that it was not one of which the Justice had jurisdiction or cognizance, and was not within the exceptions.

A county magistrate complained to the bishop of the diocese of the conduct of two of his clergy and to substantiate his charge he swore witnesses before himself, as magistrate, to the truth of the facts: *held*, that the matter before the bishop was not a judicial proceeding, and therefore that the magistrate had brought himself within the statute against voluntary and extra-judicial oaths, and that he had unlawfully administered voluntary oaths, contrary to the enactment of the statute: R. v. Nott, Car. & M. 288, 9 Cox, 301.

In the same case, on motion in arrest of judgment, it was held, that an indictment under the statute (5 & 6 W. IV, c. 62, s. 13) is bad, if it does not so far set out the deposition that the court may judge whether or not it is of the nature contemplated by the statute; that the deposition and the facts attending it should have been distinctly stated, and the matter or writing relative to which the defendant was said to have acted improperly should have been stated to the court in the indictment, so that the court might have expressed an opinion whether the defendant had jurisdiction, the question whether the defendant had jurisdiction to administer the oath being one of law, and to be decided by the court; but the majority of the court thought that it was not necessary to set out the whole oath. Greaves, nevertheless, thinks it prudent to set it out at full length, if practicable, in some counts: 1 Russ. 193, note.

Upon the trial, to establish that the defendant is a justice of the peace, or other person authorized to receive oaths or affidavits, evidence of his acting as such will, *prima facie*, be sufficient: Archbold, 830.

And it is not necessary to show that he acted wilfully

in contravention of the Statute: the doing so, even inadvertently, is punishable: *Id.*

CORRUPTING JURIES AND WITNESSES.

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

(*a*) Dissuades or attempts to dissuade any person by threats, bribes or other corrupt means from giving evidence in any cause or matter, civil or criminal; or

(*b*) Influences or attempts to influence, by threats or bribes or other corrupt means, any juryman in his conduct as such, whether such person has been sworn as a juryman or not; or

(*c*) Accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a juryman; or

(*d*) Wilfully attempts in any other way to obstruct, pervert or defeat the course of justice. R. S. C. c. 173, s. 30. (*Amended*).

Sub-section (*b*) covers the common law offence of embracery: 4 Blac. Comm. 140; sub-section (*a*) also was a common law misdemeanour; sub-sections (*c*) and (*d*), *see* 1 Russ. 265; form of indictment, 2 Chit. 235; fine in addition to or in lieu of punishment, section 958; verdict of attempt on an indictment for principal offence, section 711.

As to conspiracy to obstruct, pervert, prevent or defeat the course of justice, section 527, *post.*

COMPOUNDING PENAL ACTIONS.

155. Every one is guilty of an indictable offence and liable to a fine not exceeding the penalty compounded for, who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action without any *order or consent of the court, whether any offence has in fact been committed or not.* R. S. C. c. 173, s. 31. (*Amended*).

This applies to *qui tam* actions. The words in italics are new.

See Keir v. Leeman, 9 Q. B. 371; R. v. Crisp, 1 B. & Ald. 282; R. v. Mason, 17 U. C. C. P. 534; R. v. Best, 2 Moo. 124; Kneeshaw v. Collier, 30 U. C. C. P. 265; Windhill Local Board v. Vint, 17 Cox, 41, 45 Ch. D. 351, and cases there cited, as to compounding misdemeanours.

The repealed statute, chapter 173, section 31, R. S. C. applied only to the Province of Quebec and had "without

the permission or direction of the Crown" instead of "without order or consent of the court."

The court, under the above section 155, would probably require the consent of the Crown before giving its own consent.

TAKING A REWARD FOR HELPING TO RECOVER PROPERTY STOLEN, ETC.

156. Every one is guilty of an indictable offence and liable to seven years' imprisonment who corruptly takes any money or reward, directly or indirectly, under pretense or upon account of helping any person to recover any chattel, money, valuable security or other property which, by any indictable offence, has been stolen, taken, obtained, extorted, converted or disposed of, unless he has used all due diligence to cause the offender to be brought to trial for the same. R. S. C. c. 164, s. 89; 24-25 V. c. 96, s. 101, (Imp.).

As to the meaning of the words "valuable security" and "property," *see ante*, section 3.

Indictment.—The Jurors for Our Lady the Queen, present that A. B. on unlawfully and corruptly did take and receive from one J. N. certain money and reward, to wit, the sum of five dollars of the monies of the said J. N. under pretense of helping the said J. N. to recover certain goods and chattels of him the said J. N. before then stolen, the said A. B. not having used all due diligence to cause the person by whom the said goods and chattels were so stolen, to be brought to trial for the same.

It was held to be an offence within the repealed statute to take money under pretense of helping a man to goods stolen from him, though the prisoner had no acquaintance with the felon, and did not pretend that he had, and though he had no power to apprehend the felon, and though the goods were never restored, and the prisoner had no power to restore them: R. v. Ledbitter, 1 Moo. 76. The section of the repealed statute, under which this case was decided, was similar to the present section: 2 Russ. 575.

If a person know the persons who have stolen any property, and receive a sum of money to purchase such property from the thieves, not meaning to bring them to justice, he is within the statute, although the jury find that he did not

mean to screen the thieves, or to share the money with them, and did not mean to assist the thieves in getting rid of the property by procuring the prosecutrix to buy it: R. v. Pascoe, 1 Den. 456.

A person may be convicted of taking money on account of helping a person to a stolen horse, though the money be paid after the return of the horse: R. v. O'Donnell, 7 Cox, 337. As to the meaning of the words "*corruptly* takes": *see* R. v. King, 1 Cox, 36.

As to compounding crimes: *see* R. v. Burgess, Warb. Lead. Cas. 67; 16 Q. B. D. 141.

UNLAWFULLY ADVERTISING REWARD.

157. Every one is liable to a penalty of two hundred and fifty dollars for each offence, recoverable with costs by any person who sues for the same in any court of competent jurisdiction, who—

(*a*) Publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked; or

(*b*) Makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property; or

(*c*) Promises or offers in any such public advertisement to return to any pawnbroker or other person who advanced money by way of loan on, or has bought, any property stolen or lost, the money so advanced or paid, or any other sum of money for the return of such property; or

(*d*) Prints or publishes any such advertisement. R. S. C. c. 164, s. 90.

The penalty is recoverable under section 929, *post*.

Limitation, six months as to offence under (*d*), section 551.

FALSE CERTIFICATE OF EXECUTION OF SENTENCE OF DEATH.

158 Every one is guilty of an indictable offence and liable to two years' imprisonment, who knowingly and wilfully signs a false certificate or declaration when a certificate or declaration is required with respect to the execution of judgment of death on any prisoner. R. S. C. c. 181, s. 19.

This section seems out of place. It should come after section 946, *post*.

Fine in addition to or in lieu of punishment, section 958.

PART XI.

ESCAPES AND RESCUES.

BEING AT LARGE WHILE UNDER SENTENCE. (*New*).

159. Every one is guilty of an indictable offence and liable to two years' imprisonment who, having been sentenced to imprisonment, is afterwards, and before the expiration of the term for which he was sentenced, at large within Canada without some lawful cause, the proof whereof shall lie on him. 5 Geo. IV. c. 84, s. 22, (Imp.).

"In dealing with the somewhat intricate subject of escapes and rescues we have made distinctions which are, we think, insufficiently recognized by the existing law, between the commission of such offences by peace officers and gaolers, and by other persons."—Imp. Comm. Rep.

Not triable at quarter sessions, section 540.

Fine and sureties, section 958.

Sections 1, 2, 6, 32 *et seq.* of 53 V. c. 37, are unrepealed.

Form of indictment: Archbold 884. Proof of a previous conviction, section 694.

What is an escape.—An escape is where one who is arrested gains his liberty without force before he is delivered by due course of law. The general principle of the law on the subject is that as all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, those who, declining to undergo a legal imprisonment when arrested on criminal process, free themselves from it by any artifice, and elude the vigilance of their keepers, are guilty of an offence of the nature of a misdemeanour. It is also criminal in a prisoner to escape from lawful confinement, though no force or artifice be used on his part to effect such purpose. Thus, if a prisoner go out of his prison without any obstruction, the doors being opened by the consent or negligence of the gaoler, or if he escape in any other manner, without using any kind of force or violence, he will be guilty of a misdemeanour: R. v. Nugent, 11 Cox, 64. The officer by whose default a

prisoner gains his liberty before he is legally discharged is also guilty of the offence of escape, divided in law, then, into two offences, a *voluntary* escape or a *negligent* escape. To constitute an escape there must have been an actual arrest in a criminal matter.

A *voluntary* escape is where an officer, having the custody of a prisoner, knowingly and intentionally gives him his liberty, or by connivance suffers him to go free, either to save him from his trial or punishment, or to allow him a temporary liberty on his promising to return and, in fact, so returning: R. v. Shuttleworth, 22 U. C. Q. B. 372. Though some of the books go to say that, in this last case, the offence would amount to a *negligent* escape only.

A *negligent* escape is where the party arrested or imprisoned escapes against the will of him that arrests or has him in charge, and is not freshly pursued and taken again before he has been lost sight of. And in this case, the law presumes negligence in the officer, till evident proof on his part to the contrary. The sheriff is as much liable to answer for an escape suffered by his officers as if he had actually suffered it himself. A justice of the peace who bails a person not bailable by law is guilty of a negligent escape, and the person so discharged is held to have escaped.

When was an escape a felony, and when a misdemeanour.—An escape by a prisoner himself is no more than a misdemeanour whatever be the crime for which he is imprisoned. Of course, this does not apply to prison-breaking, but simply to the case of a prisoner running away from the officer or the prison without force or violence. This offence falls under section 164, *post.* An officer guilty of a *voluntary* escape is at common law involved in the guilt of the same crime of which the prisoner is guilty, and subject to the same punishment, whether the person escaping were actually committed to some gaol, or under an arrest only and not committed, and whether the offence

be treason, felony or misdemeanour, so that, for instance, if a gaoler *voluntarily* allows a prisoner committed for larceny to escape he is guilty of a felonious escape, and punishable as for larceny; whilst if such prisoner so voluntarily by him allowed to escape was committed for obtaining money by false pretenses, the gaoler is then guilty of a misdemeanour, punishable under the common law by fine or imprisonment, or both, but now under sections 165 and 166, *post*. Greaves, note (*r*), 1 Russ. 587, says that the gaoler might also, in felonies, be tried, as an accessory after the fact, for voluntary escape: *see* 1 Hale 619, 620. A *negligent* escape is always a misdemeanour, and is punishable, at common law, by fine or imprisonment or both.

What is a prison-breaking, and when was it a felony or a misdemeanour? The offence of prison-breach is a breaking and going out of prison by force by one lawfully confined therein. Any prisoner who frees himself from lawful imprisonment, by what the law calls a breaking, commits thereby a felony or a misdemeanour, according as the cause of his imprisonment was of one grade or the other: R. v. Haswell, R & R. 458. But a mere breaking is not sufficient to constitute this offence; the prisoner must have escaped. The breaking of the prison must be an actual breaking, and not such force and violence only as may be implied by construction of law. Any place where a prisoner is lawfully detained is a prison *quoad* his offence, so a private house is a prison if the prisoner is in custody therein. If the prison-breaking is by a person lawfully committed for a misdemeanour it is, as remarked before, a misdemeanour, but if the breaking is by a person committed for felony then his offence amounts to felony.

A prisoner was indicted for breaking out from the lock-up, being then in lawful custody for felony. It appeared that the prisoner and another man had been given into the custody of a police officer, without warrant, on a charge of stealing a watch from the person. They were taken before

a magistrate. No evidence was taken upon oath but the prisoner was remanded for three days. The prisoner broke out of the lock-up and returned to his home. He appeared before the magistrate on the day to which the hearing of the charge had been adjourned, and on the investigation of the charge it was dismissed by the magistrate, who stated that in his opinion it was a lark and no jury would convict. The prisoner contended that the charge having been dismissed by the magistrate he could not be convicted of prison-breaking, citing 1 Hale, 610, 611, that if a man be subsequently indicted for the original offence and acquitted such acquittal would be a sufficient defence to an indictment for breach of prison. But Martin, B., held that a dismissal by the magistrate was not tantamount to an acquittal upon an indictment, and that it simply amounted to this, that the justices did not think it advisable to proceed with the charge, but it was still open to them to hear a fresh charge against him. The prisoner was found guilty: R. v. Waters, 12 Cox, 390.

What is a rescue, and when was it a felony or a misdemeanour?—Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment. A rescue in the case of one charged with felony is felony in the rescuer, and a misdemeanour if the prisoner is charged with a misdemeanour: R. v. Haswell, R. & R. 458. But though, upon the principle that wherever the arrest of a felon is lawful the rescue of him is a felony, it will not be material whether the party arrested for felony, or suspicion of felony, be in the custody of a private person or of an officer, yet, if he be in the custody of a private person, it seems that the rescuer should be shown to have knowledge of the party being under arrest for felony.

See 1 Russ. 581, *et seq.*; 4 Stephen's Comm. 227, *et seq.*; 1 Hale, P. C. 595; 2 Hawk. p. 183; 5 Rep. Cr. L. Com., (1840), p. 53; 2 Bishop, Cr. L. 1066; R. v. Payne, L. R. 1 C. C. R. 27.

For forms of indictment: *see* Archbold, 795; 2 Chit. Cr. L. 165; 5 Burn's Just. 137; 3 Burn's Just. 1332; 2 Burn's Just. 10; R. v. Young, 1 Russ. 291.

By section 711, *post*, upon an indictment for any of these offences the defendant may be found guilty of the attempt to commit the offence charged, if the evidence warrants it.

None of the offences under this part XI are triable at quarter sessions, section 540. Fine when punishment not more than five years, section 958.

ASSISTING ESCAPE OF PRISONERS OF WAR. (*New*).

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

(*a*) Assists any alien enemy of Her Majesty, being a prisoner of war in Canada, to escape from any place in which he may be detained; or

(*b*) Assists any such prisoner as aforesaid, suffered to be at large on his parole in Canada or in any part thereof, to escape from the place where he is at large on his parole. 52 Geo. III, c. 156, (Imp.).

BREAKING PRISON.

161. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by force or violence, breaks any prison with intent to set at liberty himself or any other person confined therein on any criminal charge. R. S. C. c. 155, s. 4.

"Prison" defined, section 3. A verdict under next section may be given, section 711. *See* remarks under section 159, *ante*.

ATTEMPT, ETC., ETC.

162. Every one is guilty of an indictable offence and liable to two years' imprisonment who attempts to break prison, or who forcibly breaks out of his cell, or makes any breach therein with intent to escape therefrom. R. S. C. c. 155, s. 5.

"Prison" defined, section 3; fine and sureties, section 958.

ESCAPE FROM PRISON, ETC., ETC.

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

(*a*) Having been convicted of any offence, escapes from any lawful custody in which he may be under such conviction; or

(*b*) Whether convicted or not, escapes from any prison in which he is lawfully confined on any criminal charge.

See remarks under preceding sections. A verdict of attempt may be given, section 711.

ESCAPE FROM LAWFUL CUSTODY.

164. Every one is guilty of an indictable offence and liable to two years' imprisonment who being in lawful custody other than as aforesaid on any criminal charge, escapes from such custody.

See remarks under preceding sections of this chapter.

ASSISTING ESCAPE IN CERTAIN CASES.

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

(*a*) Rescues any person or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under sentence of death or imprisonment for life, or after conviction of, and before sentence for, or while in such custody, upon a charge of any crime punishable with death or imprisonment for life; or

(*b*) Being a peace officer and having any such person in his lawful custody, or being an officer of any prison in which any such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom.

See remarks under preceding sections of this chapter.

ASSISTING ESCAPE IN OTHER CASES.

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

(*a*) Rescues any person, or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under a sentence of imprisonment for any term less than life, or after conviction of, and before sentence for, or while in such custody upon a charge of any crime punishable with imprisonment for a term less than life; or

(*b*) Being a peace officer having any such person in his lawful custody, or being an officer of any prison in which such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom.

Fine and sureties, section 958. *See* remarks under preceding sections.

The Code does not provide for the offence of a negligent escape by the sheriff or gaoler as section 7 of the repealed statute did as to escape from penitentiaries.

AIDING ESCAPE FROM PRISON.

167. Every one is guilty of an indictable offence and liable to two years' imprisonment who with intent to facilitate the escape of any prisoner lawfully imprisoned conveys, or causes to be conveyed, anything into any prison. R. S. C. c. 155, s. 6; 28-29 V. c. 126, s. 37, (Imp.).

See remarks under preceding sections.

Indictment.—The jurors for our Lady the Queen present, that before and at the time of the committing of the offence hereinafter mentioned, to wit, on the day of , in the year of our Lord , one *A. B.* was a prisoner, and in lawful custody of one *W. S.*, in the common gaol in and for the county of ; and that *E. F.* afterwards and whilst the said *A. B.* was such prisoner and in custody as aforesaid, unlawfully did convey and cause to be conveyed into the gaol aforesaid two steel files, being instruments proper to facilitate the escape of prisoners, and the said files, being such instruments as aforesaid, then unlawfully did deliver and cause to be delivered to the said *A. B.* then being such prisoner in the lawful custody of *W. S.* as aforesaid, without the consent or privity of the said keeper of the said gaol; which said files being such instruments as aforesaid, were so conveyed into the said gaol, and delivered to the said *A. B.* by the said *E. F.* as aforesaid, with the intent to aid and assist the said *A. B.*, so being such prisoner and in custody as aforesaid, to escape from and out of the said gaol, and to facilitate his escape.

UNLAWFUL DISCHARGE OF PRISONER.

168. Every one is guilty of an indictable offence and liable to two years' imprisonment, who knowingly and unlawfully, under colour of any pretended authority, directs or procures the discharge of any prisoner not entitled to be so discharged, and the person so discharged shall be held to have escaped. R. S. C. c. 155, s. 8.

See remarks under preceding sections.

PUNISHMENT.

169. Every one who escapes from custody shall, on being retaken, serve, in the prison to which he was sentenced, the remainder of his term unexpired at the time of his escape, in addition to the punishment which is awarded for such escape; and any imprisonment awarded for such offence may be to the penitentiary or prison from which the escape was made. R. S. C. c. 155, s. 11.