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MANUAL

OF THE

OFFICE, DUTIES, AND LIABILITIES,

OF A

JUSTICE OF THE PEACE,

WITH

PRACTICAL FORMS,

FOR THE

USE OF MAGISTRATES OUT OF SESSION ;

BY

HUGH TAYLOR, Esq., ADVOCATE.

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INTRODUCTION.

THE Justices of the Peace, as a body of men, whose services are so often required and found to be highly beneficial to the public, have frequent difficulties to contend with in this Colony, when acting by themselves, and in isolated situations where assistance would be desirable, but cannot always be obtained. Many respectable men whose names are inserted in the general Commission of the Peace, from their avocations and pursuits in life, have neither the time, nor the opportunities sufficient, for acquiring all the information and practical knowledge, that might be requisite, or which they might desire to obtain, to enable them to discharge, in a satisfactory manner, the various duties of a Justice of the Peace, and consequently, from an apprehension of falling into error, or of incurring responsibility, they decline to accept the office, or if they do accept, too frequently experience difficulties in the discharge of it. By this means the public is deprived of the services of men of influence and respectability in this department, who might otherwise prove useful in the localities where they reside.

It is certainly desirable, that men appointed for the maintenance of peace and good order in society, should be endowed with all the necessary quali-

fications for their office, to enable them to act with promptitude and firmness on all occasions ; but such cannot always be found, and the Executive of the Country must necessarily accept the services of those who are willing to give their time and attention to a conscientious discharge of the duties of the office, although not always versed in the knowledge of the law, or in the formalities it requires.

Whatever can tend to instruct, or to assist the Magistrate, in the discharge of his duty, ought to be favourably received, as it not only enables him to act with more confidence and security, but may in some measure serve to promote a more general knowledge of our criminal law, in which, as it affects our best rights and privileges, every man ought to feel himself more or less interested. In this Country little has been published on this subject, nor has there been any encouragement to make the attempt ; the publications hitherto generally in use among us, or those at least which regard the office and duties of a Justice of the Peace, are chiefly imported from England and adapted to the law as practised in that Country ; these however, are either too voluminous or too expensive for general use here, and are besides filled with a variety of matter, neither applicable nor received as law in this Province, and consequently, to many, more apt to mislead than to instruct.

Impressed with the belief that something explanatory of the office and duties of a Justice of the Peace, in this part of the Province, might prove useful, I have been induced to offer to the public the present manual on that subject, which, although imperfect in many respects, may yet merit some degree of approbation as a first attempt, or stimulate the exertions of others, to something more efficient. In it, I have endeavoured to compress into as small compass as possible, (consistently with perspicuity) what I consider to be most essential for the Justice to know, when acting alone, or out of Sessions, in the great variety of objects which fall within his jurisdiction, according to the present state of the law in this part of the Province, and to clothe it in language plain, simple, and unadorned:

The method I have adopted is,—in the first instance, to give a statement of the appointment, office, and duties of a Justice of the Peace, his protection, and his liability, in the discharge of those duties, with some general observations and decisions relative thereto. The subsequent part of the work will be arranged in alphabetical order, containing the different heads or titles of the principal matters and offences which fall under the notice or jurisdiction of the Justice out of Sessions, on each of which enough of the law has been stated, to shew the nature of those offences, and to enable him to judge how far he can interpose his

authority to promote the ends of justice, either by punishing the offender, or by securing his trial before a competent jurisdiction. As practical forms are necessary, especially in the numerous instances of summary conviction, which the late alterations in our Criminal Law have introduced, of these forms a sufficient number has been given in various instances, to enable the Justice to draw them up in all cases, as circumstances may require.

To Justices of the Peace residing in the cities where advice may at all times be readily obtained, and to those, who, from study or experience have become familiarized with all the duties of the office, what is here offered can afford little or no instruction ; but to those who live in distant situations, or who may require assistance, under circumstances where it cannot readily be had, the present manual may prove useful and instructive. And in this hope I rest the object of my labour.

To my Professional Brethren, I cheerfully submit the present manual, trusting that in their candour and liberality they will communicate to me the errors or omissions they will find in it, as by their friendly suggestions, I may be enabled, at some future period, to present the work in a more improved state, should circumstances render it convenient.

HUGH TAYLOR.

Montreal, June, 1843.

THE PRACTICE
OF A,
JUSTICE OF THE PEACE,
OUT OF QUARTER SESSIONS.

1. *Of the appointment of Justices.*
2. *their qualification.*
3. *their power, office, and duty.*
4. *their indemnity and protection,*
5. *their liability.*

I: OF THE APPOINTMENT OF JUSTICES.

Justices of the Peace are certain Officers, appointed by the Sovereign authority, to be Magistrates, within certain limits, generally within the Counties or Districts where they are resident, for the conservation of the Peace, and for the execution of divers things committed to their charge, as well by their commission, as by divers acts and statutes in that behalf.

Before the institution of Justices of the Peace in England, there were Conservators of the Peace in every county, whose office it was to preserve the King's peace, and to protect the obedient and innocent subjects from force and violence, *Burns J., Tit. J. of Peace.* These Conservators, by the ancient common law, were, by force

of the King's writ chosen by the freeholders in the County Court, out of the principal men of the County. After which election so made and returned, the King directed a writ to the person so elected, authorising him to take upon him and execute the office, until the King should order otherwise.

The general duty of Conservators of the Peace, by the common law, was to employ their own, and to command the help of others, to correct and pacify all such who in their presence, and within their jurisdiction and limits, by word or by deed, should go about to break the Peace, *Dalt. C. I.* These Conservators of the peace are now superseded by the modern Justices of the Peace.

Her Majesty the Queen, is by her office and dignity royal, the principal Conservator of the Peace within all her dominions, and may give authority to any other, to see the peace kept, and to punish such as break it, hence it is usually called the Queen's (or King's) Peace.

Justices of the Peace are now appointed by the Queen's Special Commission, under the Great Seal, the form of which, we are told, was settled by all the Judges of England in the year 1590. This Commission appoints them all jointly and severally to keep the peace, and any two or more of them in their sessions, to enquire of and determine felonies and other misdemeanors, in which number it was formerly usual to include some particular Justices who were directed to be always present, without which, or the presence of some of them, no business could be done, the words of the Commission running thus—“*Quorum aliquem vestrum A. B. C. &c. unum esse volumus*”—whence the persons so specially named, were usually called “*Justices of the Quorum.*” But this practice is

now no longer followed, and no exception is now taken or allowable for not expressing in the form of the proceedings had before the Justices, that one or more of them was or were of the *Quorum*.

As the office of these Justices is conferred by the Sovereign, so it subsists only during her pleasure, and is determinable by various means, but most generally by the issuing of a new Commission, which virtually and silently discharges all the Justices who are not included in it.

That Justices of the Peace may see the nature and extent of the authority they hold under their Commission, I shall here insert the General Commission of the Peace issued for the District of Montreal.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c.

To (*the names of the Justices appointed*) Esquires, Greeting. Know ye, that we have assigned you jointly and severally, and every one of you, our Justices, to keep the Peace in our District of Montreal, in that part of our Province heretofore known as the Province of Lower Canada, and to keep, and cause to be kept, all Ordinances and Statutes for the good of the peace and for the preservation of the same, and for the quiet rule and government of our people made in all and singular their articles in our said late Province or in our Province of Canada, according to the force, form, and effect of the same; and to chastise and punish all persons that offend against the form of those Ordinances and Statutes; and to cause to come before you, or any one of you, all those who, to any one or more of our people, concerning their bodies, or the firing of their houses, have used threats, to find security for the peace,

or their good behaviour towards us and our people ; and if they shall refuse to find such security, then, them in our prisons until they shall find such security, to cause to be safely kept. We have also assigned you, and every two or more of you, our Justices, to enquire more fully into the truth, by the oaths of good and lawful men of the District aforesaid, by whom the truth of the matter may be the better known, of all, and all manner of felonies, poisonings, trespasses, forestallings, regratings, engrossings, and extortions whatsoever, and of all and singular the crimes and offences of which the Justices of the Peace may and ought lawfully to enquire, by whomsoever and by what manner soever, in the said District, had, done, or perpetrated, or which hereafter shall there happen to be done, or attempted ; and also of all those who in the aforesaid District, in companies, against our peace in disturbance with our people, with armed force have gone or rode, or hereafter shall presume to go or ride ; and also of all those who shall there have laid in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people. And also of all Victuallers, and all and singular other persons, who in the abuse of weights and measures, or in selling victuals against the form of the Ordinances and Statutes, or any of them therefor made for the common benefit, or of our said late Province of Lower Canada, and of our people thereof, have offended or attempted, or hereafter shall presume in our said District to offend or attempt. And also of all Sheriffs, Bailiffs, Stewards, Constables, Keepers of Gaols, and other Officers who in the execution of their offices about the premises or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have

been, or hereafter shall happen to be, careless, remiss or negligent in our said District; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises or any of them, by whomsoever, and after what manner soever, in our aforesaid District, done or perpetrated, or which shall hereafter happen to be done or attempted in what manner soever. And to inspect all indictments whatsoever before you, or any of you taken, or to be taken, or before others late our Justices of the Peace, in our aforesaid District, made or taken and not yet determined; and to make and continue process thereupon against all and singular the persons so indicted, or who before you shall hereafter happen to be indicted, until they can be taken, surrender themselves, or be outlawed. And to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies, and indictments aforesaid; and all and singular other the premises, according to the Laws and Statutes of our said late Province of Lower Canada, or form of the Ordinances and Statutes aforesaid, as in the like case it has been accustomed or ought to be done; and the same offenders, and every of them, for their offences, by fines, ransoms or amerciaments, forfeitures, and other means as according to the law and custom of our said late Province of Lower Canada, or form of the Ordinances and Statutes aforesaid it has been accustomed, or ought to be done, to chastise and punish. Provided always, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, shall happen to arise, then let judgment in no wise be given before you, or any two or more of you, unless

10 OATH OF OFFICE OF A JUSTICE OF THE PEACE.

in the presence of one of our Justices of our Court of our Bench, or one of our Justices appointed to hold the assizes, in the said District ; and therefore we command you, and every one of you, that to keeping the peace, Ordinances, Statutes, and all and singular other the premises, you diligently apply yourselves, and that at certain days and places which you, or any such two or more of you as aforesaid shall appoint for these purposes, into the premises ye make enquiries, and all and singular the premises you hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of our said late Province of Lower Canada, saving to us our amerciements, and other things to us therefrom belonging. And we command by the tenor of these presents, our Sheriff of our said District, that at certain days and places, which you, or any two or more of you as is aforesaid shall make known to him, he cause to come before you or such two or more of you as aforesaid, so many and such good and lawful men of his District by whom the truth of the matter in the premises shall be the better known and enquired into.

In testimony whereof &c.

OATH OF OFFICE OF A JUSTICE OF THE PEACE.

You shall swear that as Justice of the Peace for the District of —, in all articles in the Queen's Commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of that part of the Province of Canada, heretofore called Lower Canada, and the Laws Ordinances and Statutes thereof made ; and ye shall not

be of counsel of any quarrel hanging before you ; and that ye hold your sessions after the form of the Statutes thereof made ; and the issues, fines, and amerçiements that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment or embezzling, and truly send them to the Queen's Exchequer ; ye shall not let, for gift or other cause, but well and truly ye shall do your office of Justice of the Peace in that behalf ; and that ye take nothing for your office of Justice of the Peace to be done, but of the Queen and fees accustomed, and costs limited by Statute ; and ye shall not direct, nor cause to be directed, any warrant by you to be made to the Parties, but ye shall direct them to the Bailiff of the said District, or other the Queen's Officers or Ministers, or other indifferent persons, to do execution thereof.

So help you God.

OF THE QUALIFICATION OF JUSTICES OF THE PEACE.

By Act of the Provincial Legislature of the 6th Vic. cap. 3, it is enacted, that no person shall be a Justice of the Peace, or act as such within any District of this Province, who shall not have in his actual possession, to and for his own proper use and benefit, a real estate, either in free or common soccage, or *en fief* or *en roture*, or *en franc aleu*, in absolute property, or for life, or by *emphyteose*, or lease for one or more lives, or originally created for a term not less than twenty one years, or by usufructuary possession for his life, in lands, tenements, or other immoveable property, lying and being in this Province, or above the value of three hundred pounds currency, over and above what will satisfy and discharge

all incumbrances affecting the same, and over and above all rents and charges payable out of, or affecting the same, who shall not before he takes upon himself to act as a Justice of the Peace, after the first day of January, one thousand eight hundred and forty three, take and subscribe the oath following before some Justice of the Peace for the District for which he intends to act, that is to say.

“ I, A. B., do swear that I truly and *bona fide*, have, to
 “ and for my own proper use and benefit, such an estate,
 “ (*specifying the nature of such estate, whether land, and*
 “ *if land designating the same by its local description,*
 “ *rents, or anything else*) as doth qualify me to act as
 “ Justice of the Peace for the District of ——— according
 “ to the true intent and meaning of an Act of the Pro-
 “ vincial Parliament, made in the sixth year of the Reign
 “ of Her Majesty Queen Victoria, and intituled, ‘ *An*
 “ ‘ *Act for the qualification of Justices of the Peace,*’ and
 “ that the same is lying and being (*or issuing out of lands,*
 “ *tenements or hereditaments situate*) within the Town-
 “ ship, Parish or Seigniorship of ——— (*or in several Town-*
 “ *ships, Parishes or Seigniorships of ———*) (*or as the case*
 “ *may be.*) So help me God.” A certificate of which
 oath having been so taken and subscribed as aforesaid,
 shall be forthwith deposited by the said Justice of the
 Peace, who shall have taken the same, at the Office of
 the Clerk of the Peace for the District, and be by the said
 Clerk filed among the records of the Sessions of the said
 District.

By the 5th clause it is also enacted, that any person who shall act as Justice of the Peace in and for any District in this Province, without having taken and subscribed the said oath as aforesaid, or without being quali-

fixed according to the true intent and meaning of this Act, shall for every such offence forfeit the sum of twenty five pounds currency, one moiety to Her Majesty, and the other moiety to such person or persons as shall sue for the same, to be recovered together with full costs of suit, by civil action, or by plaint or information in any Court having competent jurisdiction in the District wherein the offence shall have been committed; and in every action, suit, or information, the proof of his qualification shall be upon the person against whom the suit shall be brought.

By the 13th Sect. if the statement in any oath, or in any declaration under oath taken or made in pursuance of the requirements of this Act, to the knowledge of the person making the same, be false, such person shall be guilty of wilful and corrupt perjury, and subject to all the pains and penalties attendant on that offence.

By the 14th Sect. it is enacted that every action, suit or information given by this Act, shall be commenced within the space of six calendar months next after the fact upon which the same is grounded, shall have been committed, and not afterwards.

OF THE POWER, OFFICE, AND DUTY OF JUSTICES OF
THE PEACE.

It would be difficult to enumerate all the duties of a Justice of the Peace, from the great variety of circumstances in which he may be called to exercise his office, therefore, under this title, all that can be attempted will be to mark some general rules, and to shew how others may be collected by inference from adjudged cases, in instances where experienced Magistrates might derive information.

The power office and duty of a Justice of the Peace, depend upon his Commission, and on the several Statutes, Acts and Ordinances which have created objects submitted to his jurisdiction, 1 *Bl. Com.* 354. His Commission first empowers him singly to conserve the peace, and thereby gives him all the power of the ancient Conservators at the common law, in suppressing riots and affrays—in taking securities for the peace—and in apprehending and committing felons and other inferior criminals. The powers given to one or more Justices, by the said Statutes, Acts and Ordinances, in a variety of offences and matters to be determined before them in a summary manner, must necessarily call for the time and attention of those Justices, that their proceedings in such cases may be regulated conformably to law. Wherever they are called to inflict a penalty for the omission of some duty, or the commission of some infringement of the law, they must be convinced of the necessity or their knowing what the law in every such case enjoins, and in what manner it is to be enforced. The power of infliction of penalties by summary conviction has been found necessary for carrying into execution many laws made for the public benefit, and although this power has been considered as a departure from the security to liberty and property granted by *Magna Charta*, by which it is established that none ought to be tried or condemned but by their peers, yet it has been adopted as necessary from the encreasing number of laws occasioned by the increasing wants of a more advanced state of society, because it gives a speedy remedy against individuals for some breach of the law, often trivial, and can be had at small expense, and without loss of time, by the summary proceeding before the

Magistrate. Every man, therefore, who accepts the office of Justice of the Peace, and fulfils the duties of it, without sinister views of his own, or using it for political purposes, deserves well of the public, 4 *Bl. Com.* 281. Mr. Justice Blackstone observes, that the country is obliged to gentlemen who will undertake the duties of this office, and particularly to men of rank and influence, who hold a greater stake in society, and from their situation in life must be presumed to be more alive to its general interest. The extensive powers of a Justice of the Peace, even in the hands of a man of honour, are highly formidable, but should the office fall into the hands of men of low rank and character, it will be liable to be prostituted to the low ends of selfish ambition, or of personal resentment. Under such circumstances, therefore, how essential is it for the interests of society that men of fit character, and such as will meet the public confidence, should be appointed to this office?

When a Statute directs certain things to be done generally by *Justices* of the Peace, and no power is expressly given to *one Justice*, to act under it, a single Justice in that case has no jurisdiction to execute its provisions, *Dalt. Just. c. 5.—1 Deacon. 714.* Yet, if the offence be any misdemeanor, or matter against the peace, then upon complaint made to one Justice, he may of his own authority grant a warrant for the apprehension of the offender, in order that he may be brought before himself and some other Justice for the purpose of hearing and determining the complaint, *Dalt. Just. c. 6.—Burns J.*

When a Justice is out of the particular District for which he is commissioned, he has no coercive Magisterial power, and, therefore, his acts or orders are not binding.

It seems, however, that recognizances and informations, voluntarily taken before him in any place, are good, 2 *Hawk. c. S. s.* 28.

But a Justice has no jurisdiction either over the offence, or the offender, when the one is committed, and the other abiding in another District.

There are cases, however, where the presence of the offender, within the District or jurisdiction of the Justice, which authorize him, from the necessity of preserving the peace, to proceed against the offender. Thus, if a man commit a felony in the District of Quebec or Three Rivers, and comes into the District of Montreal, a Justice of the latter District may take the information against him, and also his examination, and may commit him, and bind over the witnesses to give evidence at the trial, and in short proceed in all respects, as if the offence had been committed within his jurisdiction, 2 *Hale* 50.

By Stat. 24 Geo. 2, cap. 55. If any person against whom a warrant is issued shall escape into any other county, any Justice of that county, upon proof of the hand writing of the Justice granting the warrant, may indorse his own name thereon, which shall be sufficient authority to the person charged with the execution of the warrant, to execute the same in such other county, and carry the offender before the Justice who indorsed the warrant, or any other Justice of that county, in case the offender beailable, but if not, then before a Justice of the county where the offence was committed.

In cases of summary conviction and the lighter kinds of misdemeanors, a Magistrate should issue a summons against the party, and not a warrant in the first instance, 13 *East*. 55. But if the party disobeys the summons,

then the Justice may properly issue a warrant against him, that is where the presence of the party is anywise necessary for the object of the complaint or prosecution, for when a Statute gives a Justice jurisdiction over an offence, it impliedly gives him a power to compel the attendance of the party charged with it, 2 *Hawk. c. 13. s. 15.*—10 *Mod. 248.*—2 *Bing. 63.*

It is in the discretion of a Magistrate when he takes the examination of a person charged before him with felony, whether he will allow the presence of an Attorney, or other person acting as legal adviser, either for the prisoner or prosecutor, for such an examination is only a preliminary enquiry, whether there be sufficient ground to commit the prisoner for trial, 1 *B. and C. 37.*—3 *B. and A. 432.*—1 *Chitt. Rep. 217.*—2 *D. and R. 86.* And if an Attorney had a right to be present, there could never be any private examinations which are often necessary for the purposes of justice, in order to find where further evidence may be obtained, and to get at accomplices,—an object that would be entirely defeated if an Attorney for one of a gang of felons might obtain and convey information to the rest.

In the case, however, of a trial, or summary conviction before a Magistrate there is a difference—here, the Magistrate acts judicially, and it is reasonable that a party should have professional assistance before he is finally condemned to pay a penalty, or suffer a term of imprisonment.

A Justice of the Peace out of Sessions, before information filed in Court, or indictment found, has jurisdiction in the first instance upon sufficient affidavits to issue his warrant to apprehend a party charged with publishing a

libel, and requiring him to find bail, and in default of sureties, to commit to prison to abide his trial, 4 *Moore*. 195.—1 *B. and B.* 548.

When an Act empowers two Justices to execute a judicial act, they must meet and execute it together, and cannot proceed separately, 3 *T. Rep.* 38.—2 *East*. 244.

On complaint for breach of the peace, for threats, or other sufficient cause, a Justice of the Peace is authorised to require sureties of the peace, for a limited time according to his discretion, and need not bind the party over to the next Sessions only, 2 *B. and A.* 278.

A Justice may issue his warrant to search for stolen property, and to bring a party before him, upon the representation of a reasonable suspicion of felony committed, and it is not absolutely necessary that there should be a direct and positive averment on oath, 1 *D. and R.* 102.

Although a Justice of the Peace is required to administer an oath in the investigation of matters properly brought before him in his judicial character, yet it is very questionable whether he is justifiable in taking a voluntary affidavit made on any extra-judicial matter, as is frequently done upon any petty occasion, as swearing to an account, or matter of debt, or to any fact or circumstance unconnected with any proceeding legally had before the Justice, 4 *Bl. Com.* 137. There can be no conviction for perjury on such affidavits, although the guilt of it may be incurred. Lord Coke says, it is a high contempt to administer any such oath, and that the offence is punishable by fine and imprisonment, 3 *Inst.* 165.

In all cases where a Justice may hear and determine out of Sessions, whether on his own view—on confession, or the oath of witnesses, he ought to make a record in

writing under his hand of all the matters and proofs,—which record must be returned to the Sessions.

By the Ordinance of the Governor and Special Council of the 2 Vic. c. 20, it is enacted that each Justice of the Peace shall make a quarterly return of every prosecution for any offence of a public nature, or for the recovery of any penalty imposed for any such offence, which shall have been brought before him whether sitting alone or with any Justice or Justices, at any other place than the Court House of any District or Inferior District of the Province of Lower Canada. And such return shall be sent to the Clerk of the Peace for the District, not more than ten, nor less than five days before the holding of each Court of Quarter Sessions, and shall be filed of record by such Clerk, and laid before the Justices at such Court, and such return shall extend from the date of the then last return to that of the return itself, and shall show—

1. The Justice or Justices, if any, sitting with the Justices making the return.
2. The place of sitting.
3. The name of the prosecutor.
4. The name of the defendant.
5. The offence.
6. The result, whether conviction or acquittal.
7. The judgement and amount of penalty, if any.
8. The costs allowed to the successful party.
9. The costs allowed against the unsuccessful party, for anything done at his instance in or about the prosecution.
10. The amount of penalties paid, and to whom.
11. The amount of penalty paid to the Receiver.

General, or for any public purpose, or remaining to be so paid and in whose hands.

And such return shall be dated at the time and place at which it shall be made, and signed by the Justice who shall make it, and shall be made by each Justice, during the period over which it extends.

FORM OF THE RETURN TO BE MADE IN CONFORMITY
TO THE ABOVE ORDINANCE.

DISTRICT OF } Return of all the prosecutions, informa-
 } tions, and complaints had before me,
A. B., Esquire, one of Her Majesty's Justices of the
Peace in and for the said District, residing at B. in the
Parish of — in the said District, from and since the
— day of — last past, to the day of the date of the
present return, made in conformity to the Ordinance of
the Governor and Special Council, of the 2 Vict., c. 20,
intituled, "An Ordinance for the better information of
"the Government, and of the public, concerning prose-
"cutions brought before Justices of the Peace."

<i>Amount paid to the Receiver General or to be paid, and other matters.</i>	<i>Amount of penalty and to whom paid.</i>	<i>Litara costs against the Unsuccessful Party.</i>	<i>Costs allowed to the Successful Party.</i>	<i>The Judgment.</i>	<i>Conviction or Acquittal.</i>	<i>The Offense.</i>	<i>Name of Defendant.</i>	<i>Name of Prosecutor.</i>	<i>Place of Sitting.</i>	<i>Justice sitting with Justice making this Return.</i>
None.	None.	None.	£1 0 0	To give security of the peace for six months and to pay costs.	Convicted.	For assaulting and threatening to do bodily harm to the prosecutor.	C. D.	A. B.	Berthier.	None.
None.	10s. paid to the Justice making this return.	None.	£0 10 0	To pay 20s. for damages and a penalty of 10s.	Convicted.	For unlawfully and maliciously breaking down and destroying the prosecutor's fences.	C. D.	A. B.	Terrebone	None.
None.	£0 10 0 not paid, nor levied.	None.	£0 10 0	To pay 15s. for damages to the prosecutor and costs, and a penalty of 5s.	Convicted.	For having dug and rooted up a large quantity of potatoes in an open field belonging to the prosecutor, with intent to steal them.	C. D.	A. B.	Sorel.	None.

Certified and returned by me, the said Justice, at _____ aforesaid, this _____ day of _____ 18--.

(Signed),

A. B., J. P.

When a conviction is had before two or more Justices, they must all sign the return.

Dalton says, that inasmuch as most of the business of a Justice of the Peace consisteth in the execution of divers Statutes which cannot be sufficiently abridged, but that they will come short of the substance and body thereof, therefore it shall be safest for the Justices to have an eye to the Statute Book itself, and thereby to take their further and better directions for their whole proceedings, *Dalton, c. 173*. For, as Lord Coke says, abridgments are of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially upon them. He further observes, that it is a good rule for all Judges and Justices whatsoever, who have jurisdiction by any Statute, which at the first was temporary, or only for a time, to consider well before they give judgment, whether that Statute have been continued or made perpetual, *4 Inst. c. 31, p. 171*. and if it were at first made perpetual, whether it be not repealed or altered by any Statute.

The law having wisely provided in this Province that copies of the Acts of the Legislature shall be transmitted to Her Majesty's Justices of the Peace, for their guidance and direction in the several matters committed to their charge, it is certainly desirable that every Justice of the Peace, who has a view to the due execution of his office, would, when it conveniently can be done, collect and preserve in their proper order, all the Acts and Statutes of our Provincial Legislature, as well as those passed before as since the Union, as he will find many things in them in which his ministry may be either useful or necessary; and to those who take a deeper interest in the

country, they will present an historical view of our progress in legislation, of our political warfare, and of our gradual and growing improvements in whatever can render this Colony a valuable appendage to the British Crown.

As a Justice of the Peace ought not to refuse his ministry, in any matter within his competency when required, and as this will extend to a great variety of objects wherein proceedings may necessarily be had before him, it is advisable that he should feel satisfied on the following points.

1st. That the matter of complaint or information, of whatever nature it may be, is within his cognizance and jurisdiction.

2nd. That he knows the course that ought to be adopted in every such matter—whether it be to grant a warrant on a charge of felony or misdemeanor—or to issue a summons for some neglect or contravention of the law for which a penalty is incurred, or otherwise.

3rd. That all ulterior proceedings to be taken in such matters are sufficiently understood, so that the usual forms may be adhered to, observing always that when the law has prescribed a particular form in any case, that form must be strictly followed. And that cases may occur, where it may be advisable, or necessary, to call in the aid of another Magistrate, as in matters of bail, examinations of parties, commitments, and the like, *See 4 and 5 Vic. c. 24.*

It is usual, I believe, for the Justices in many parts of the country to employ clerks to assist them in the duties of their office. Their choice in this respect ought to be made with due attention to the character and abilities of that individual, as he is generally entrusted with the conduct

and direction of the business of the Magistrate, and although he may prove a very useful and necessary assistant, still the Magistrate ought to remember that he, and not his clerk, is the responsible person for all his proceedings; and as every Justice may in a short time, and with ordinary attention, familiarize himself with the principal duties of his office it is desirable that he should do so, that he may be able to direct his clerk, in the proceedings to be taken, and to see that his directions are followed, for here, as in the ordinary affairs of life, the man you employ to do your work, will always do it the better, that he knows you are a judge of what he does.

The Justice of the Peace ought to keep a Register Book or diary, in which all his doings as a Justice are noted, or entered, day by day as they occur. This will prove a useful and necessary memorandum of his proceedings, as he may be required not only to give copies of those proceedings, but also to give evidence respecting them on questions that may arise in the Supreme Courts; by following this course the Justice will be better able to see any little error or omission he may have committed in any of his former proceedings, and thereby acquire more correctness in future; it will also tend to facilitate the duties of his office, and lead to a ready habit in the dispatch of business. When the examination of witnesses, or of a prisoner, is to be taken on any charge of felony or misdemeanor, such examinations, being original documents, ought to be taken on separate sheets of paper, and signed by the parties, when they can write, and by the Justice, as they must be forwarded to the Clerk of the Court in which the prisoner or party accused is to be tried, and consequently cannot be inscribed at length in

the Justice's diary. The same thing will apply to all recognizances taken by the Justice, as they must be transmitted in the same manner. Yet some memorandum ought to be entered of what is thus done. As thus—

“ MONDAY, 2nd June, 1843.

“ This day a charge was brought before me against
 “ one J. B., of the Parish of ——— for feloniously stealing
 “ a horse, the property of A. H., of ———. And having
 “ taken the information on oath of A. H. and J. F.
 “ issued my warrant to apprehend the said J. B., and
 “ directed it to T. G. to be executed.”

“ TUESDAY, 3rd June, 1843.

“ This day J. B., of the Parish of ——— was brought
 “ before me by virtue of my warrant, charged on the oath
 “ of A. H. and J. F. of having feloniously stolen a horse,
 “ the property of the said A. H. Whereupon I pro-
 “ ceeded to take the examination on oath of the said
 “ A. H. and J. F., in the presence of the said J. B. who
 “ cross examined the witnesses, but offered no witnesses
 “ in explanation, (*or as the case may be.*) And the felony
 “ appearing to be clearly proved, I committed the prisoner
 “ for trial, and bound the said A. H. and J. F. by recog-
 “ nizances, to appear and prosecute and give evidence
 “ before the Court of ——— to be holden at ——— on the
 “ ——— day of ——— next. These recognizances and
 “ depositions I transmitted to A. D., Esquire, Clerk of
 “ the said Court, by T. D., the officer having the charge
 “ of the said prisoner.”

These entries will of course be varied according to the circumstance of each case.

In regard to the examination of witnesses on any complaint founded on a penal Statute, or other *summary*

proceeding to be had before the Magistrate, they ought to be inscribed at length on the Magistrate's Book or Register, because they remain in his possession, and from them he afterwards draws up the conviction in proper form, to be transmitted either to the Court of Quarter Sessions, or to the Superior Court of King's Bench, as the case may require.

Before taking the evidence of a witness, he must be sworn, and, therefore, in a case where Magistrates first took the examination of witnesses, not on oath in support of a conviction, and afterwards swore them to the truth of their evidence, the Court disapproved the practice, *4 D. and R. 734.*

As much is intrusted to the prudence and discretion of the Magistrates, so will many occasions occur, where that prudence and discretion may be exercised with advantage to the parties concerned ; he ought to be not only the terror of evil doers, but the protector and encourager of those who do well. Should he be desirous to promote the welfare of the people around him, he will find frequent opportunities of doing so, by his endeavours to allay differences and disputes among them, and by his influence and authority to check those heats and passions which too often lead to acts of violence and breaches of the peace, these he is authorized to correct and punish, when conciliation cannot otherwise be effected ; but by calling the parties before him and hearing them, he will seldom fail to settle their differences, which might otherwise be productive of litigation, and of much expense and loss of time to all concerned ; for in matters of this kind, the public can have no interest, unless it be to prevent their appearing in a Court of Justice. By these means a Magistrate will acquire the respect and confidence of his

fellow citizens, and his opinions and advice will have greater influence, and be more beneficial to the parties, than any advantage that might be acquired by a victorious lawsuit.

As the Justice of the Peace is required to act not only ministerially, but judicially, he ought in all his acts to avoid whatever may lead to the appearance of partiality in his opinions and judgments. The impression that he who is raised to the seat of Justice, leans in his decisions to the side of friendship, or to that of a political party, is destructive of all confidence, and alienates the minds of men from that obedience to the laws, and that respect for justice, which are so essential for the support of good order in society. Among Magistrates appointed throughout the country, we cannot always expect to find men of great talents, or versed in all the knowledge of the law but we may expect to find among them, men of sound judgment, acting from honest intention, which will always enable them to discharge the duties of their office, with satisfaction to themselves and benefit to their country ; for such the law has great consideration, although their judgment may be wrong, yet if the intention be right, they are sure to receive protection, 2 *Burr.* 1162.—1 *T. R.* 653.

The appointment of men of character and influence, who have an interest in the country, to the office of Justice of the Peace, becomes a matter of infinite importance. The Justice constitutes a material link in the chain that connects the people with the Government ; he is appointed by the one, but for the protection of the other, and is in a situation to communicate with both, while called by his office to check the faults and failings of those around him,

he has occasion also to know much of their character and disposition, to controul the violent and ill-disposed by his influence and authority, and to direct them in the way of their duty. The Magistrate who thus supports the interests of the community and the dignity of his office, discharges aright the trust reposed in him by the constitution, and deserves well of the public. From this view of the office no doubt, my Lord Coke, calls it such a subordinate Government for the tranquillity and quiet of the realm, as no part of the Christian world hath the like, 4 *Instit. c.* 31.

4TH OF THE INDEMNITY AND PROTECTION OF JUSTICES OF THE PEACE.

The Justice of the Peace holds a certain rank in society, and in the faithful discharge of his duty, is entitled to the respect of his fellow citizens, he is also strongly protected by law, for when he acts uprightly or without any bad views or ill intention, should he even mistake the law, the Court will never punish him by granting an information against him, but leave the parties to their ordinary remedy at law, 1 *Burr.* 556.—2 *Bur.* 785, 1162.—1 *T. R.* 653.

Nor will the Court even grant a *mandamus* against him to command him to do what may render him liable to an action, 1 *Bar. and C.* 485.

Also when he acts *judicially* in a matter where he has jurisdiction, he is not punishable at the suit of the party, but only at the King, for what he doth as a Judge, in matters which he hath power by law to hear and determine, without the concurrence of any other, he is not liable to an action. But in cases where he proceeds *ministerially* rather than *judicially*, if he acts corruptly

or contrary to law, he is liable to an action at the suit of the party, as well as to an information at the suit of the King.

With respect to actions against Justices for any inadvertence in the exercise of their authority, or any excess of Jurisdiction, the law has afforded them ample protection from the claims of a vindictive or litigious party, by the Stat. 24, Geo. 2, c. 44. I shall here give a few extracts from this Statute, as it may be useful to the Justice to know the nature of the protection thereby afforded him.

By this Statute no action can be brought against a Justice of the Peace for anything done by him in the execution of his office, until notice in writing shall be delivered to him, or left at his usual place of abode, by the Attorney or Agent of the party who intends to sue, at least one calendar month before the suing out or serving the same; in which notice must be clearly expressed, the cause of the action, and on the back, the name of the Attorney or Agent indorsed, with the place of his abode.

By Section 3d of this Statute, no plaintiff shall recover, where the action is grounded on any act of the defendant as a Justice of the Peace, unless it is proved upon the trial that the notice was duly given. And by Sec. 5. no evidence shall be permitted to be given by the plaintiff on the trial of any cause of action, except what is contained in the notice.

The notice must express the nature of the writ or process intended to be sued out, as well as of the cause of action, but it need not specify the form. And in stating the cause of action, it is sufficient to inform the defendant substantially of the ground of complaint, 7 *T. R.* 631.—7 *Camp.* 196.—5 *B. and A.* 837.—1 *Dow and R.* 497.

By Sec. 2. The Justice may at any time within one Calendar month after the giving of the notice, tender amends to the party complaining, or to his Agent or Attorney, and may plead such tender in the action, which, if the Jury find sufficient, they shall give a verdict for the defendant.

And by Sect. 8, no action can be brought against any Justice, for anything done in the execution of his office, unless commenced within six calendar months after the act committed, 4 *Moore* 465. This is to be reckoned inclusive of the day of committing the act.

By 7 Jac. 1 c. 5, and 21 Jac. 1 c. 12, it is also provided that in all actions against Justices, for anything done in their official capacity, the defendant is allowed to plead the general issue, and give the special matter in evidence; and if a verdict pass for the defendant, or if the plaintiff discontinues, or is non-suited, the defendant shall have double costs, *See also Doug.* 307.—7 *T. R.* 448.

It has been determined that the Justice is entitled to the benefit of these Statutes, if he has jurisdiction over the subject matter, and conceives himself at the time to be acting as a Justice, notwithstanding what he does, is not in the regular execution of his office, 9 *East.* 365.—2 *Chit.* 459.—2 *H. Black* 114.—1 *B. and C.* 13.—5 *T. R.* 1.—3 *Camp.* 242.—3 *M. and S.* 580.—2 *Price.* 126.

But where persons acting as Justices, *colore officii*, and not *virtute officii*, that is where the office gives no authority whatever for the doing of the act complained of, but the authority is assumed, as falling within the office, a Magistrate will not in such case be protected by these Statutes, 2 *Esp.* 542.—2 *Chit. R.* 140. Nor is any notice necessary in an action against a person for the

penalty for acting as a Justice, without a proper qualification, for such an action impeaches his right altogether to act in any way as a Justice, *Holt Rep.* 458.

In the case of an action brought against a Magistrate charging him with having wrongfully convicted the party complaining, it is necessary that the Magistrate should shew a subsisting conviction valid upon the face of it, and applying to a case within his cognizance, which will be a bar to the action, until that conviction shall have been reversed or quashed, *Holt* 287.—7 *T. R.* 631, 2. and see 2 *B. and B.* 391. If a valid subsisting conviction be proved at the trial, which appears by the date to warrant the act done under it, the Court will not in that collateral proceeding, as it would in a proceeding in which the conviction is directly impeached, enquire into the time when it was actually drawn up, nor receive evidence to prove that it was not in fact drawn up until after the action commenced—provided the date is warranted in fact by the time when the conviction actually took place; 12 *East.* 82.—16 *East.* 20, 21. But if the want of jurisdiction appears by the conviction itself, an action may be supported before the conviction is quashed, 16 *East.* 23.

If the conviction be good upon the face of it, the production and proof of it, will justify the convicting Magistrate, as well in respect of the facts stated therein, which are necessary to give him jurisdiction, as upon the merits of the conviction itself, 3 *Moore* 294. For the courts will not presume injustice or partiality in Magistrates, but give them credit for the truth of the facts stated by them, subject to the peril always attending the wilful abuse of that credit, by a false statement, *Skin* 123.

From the general rule of reason, of "*No man being a Judge in his own cause,*" it should follow that Justices should not execute their office in any case wherein they have a private interest, and so the rule generally holds, but there are cases which, from the necessity of the thing, form an exception to the rule—as when a Justice shall be assaulted, or *in doing his office*, shall be abused to his face, and no other Justice present with him, it then seems he may commit such offender, until he shall find sureties for the peace, or good behaviour, *Dalt. c. 173.*—1 *Str.* 420. It also seems that in such case the Justice may commit the party as for a *contempt*, for using scandalous and insulting language to him, whilst in the execution of his office; but as such a commitment is by way of *punishment*, it must be made by warrant in writing, and not by word of mouth only, it must also not be a general warrant, by ordering the party to be detained, "*until discharged by due course of law,*" but must limit his detention in gaol to the time for which he was committed as a punishment for his contempt, as for a week, or a month, as the case may be, 7 *Taunt.* 63.—2 *Marsh.* 377.—1 *D. and R.* 559.—5 *Bar. and Ald.* 894.

5TH OF THE LIABILITY OF JUSTICES.

It is established by numerous decisions, that Justices of the Peace are liable, not only to an action at the suit of the party injured, in consequence of the irregularity of their proceedings, but even to an information, or criminal prosecution at the suit of the Crown, 1 *Doug.* 426, and 238, 272.—1 *Str.* 21, 413.—1 *D. and R.* 485. Should they act *partially, corruptly, or maliciously*—should they condemn *without hearing* the party, *without evidence*, or

without jurisdiction—are all cases of irregularity for which redress is allowed against the Justices of the Peace.

As every person ought to be heard in his own defence before he is convicted, therefore, if a Justice, in the case of a summary conviction, proceed against a party without previously summoning him to appear, it is such a misdemeanor as will render him liable to a criminal information, 1 *Salk.* 181.—2 *Ld. Raym.* 1407.—1 *Stra.* 46, 678.

If a Justice will not on complaint to him made, execute the duties of his office as a Magistrate, or is guilty of any wilful misconduct, the party aggrieved may not only move for an information against him, but may also apply to have him put out of the commission.—2 *Atk.* 2.—1 *T. R.* 692.—7 *T. R.* 374.

Where a Justice, however, refuses to proceed in any matter which by his office he is authorised or required to do, and his refusal does not arise from any corrupt or improper motive, the proper course for the party complaining, is to move for a *mandamus*, to compel him to proceed, 1 *Stra.* 530.

In actions brought against Justices for misdemeanor, in the execution of their office, they are obliged to shew the regularity of their convictions, *Burn's Just. 4th, Justice of P.*—2 *Sess. Ca.* 372. And the informations laid before them upon which the convictions are grounded must be produced and proved.

MANUAL
OF
THE OFFICE AND DUTIES
OF
A JUSTICE OF THE PEACE,
WITH PRACTICAL FORMS.

In proceeding to bring under the notice of the Justice of the Peace, some of the principal matters that fall under his jurisdiction out of Sessions, I have adopted the alphabetical arrangement, as giving a more regular means of reference to any particular point that may be required. Under such an arrangement, the whole body of the criminal law might have been comprehended, but this I consider to be unnecessary, as from the many treatises on that subject, better information can be derived, than any I could pretend to offer—it would besides be extending too far the plan of the present work, which is offered merely as a manual to the Justice of the Peace, to assist him in the practical duties of his office, and limited to those leading and principal matters, in which his ministry is more frequently required, either in the summary proceeding and convictions had before himself, or in such previous investigations of crimes and offences, as are necessary for securing the offender, and bringing him to a trial before the Court ; the course of proceeding to attain these objects, and the mode and manner of doing so, is all

that is here proposed. It has, however, been thought advisable, for the assistance of the Justice, to state under each head or title, so much of the law, as will shew the nature of the offence, and enable him to judge, how far he can interpose his authority as a Magistrate, to promote the ends of justice, in matters where the public peace and interest are so much concerned.

Before entering upon the description and definition of those heads and titles of the criminal law, in which the ministry of the Justice may be required out of Sessions, I would make some general observations touching the practical part of his duties on the various complaints and accusations that may be brought before him, as by noticing them here, it will be unnecessary to repeat them hereafter under any particular head or title where they might be useful.

1. When any complaint or information is brought before the Justice, upon which any proceeding is to be taken, he must first swear the informant—the usual oath is—“ You swear that you will answer truly to all such questions as shall be asked of you. So help you God.” The Justice will then require the informant to state the nature and circumstance of the complaint or information he has to make, the material parts of which the Justice will cause to be reduced to writing, describing the offence to which it refers, by the appropriate terms of the law, whether it be *murder*, *burglary*, *robbery*, or any other felony or misdemeanor. The information being closed, it must be read over to the informant, and then signed by him ; if he cannot write, that fact is to be mentioned, and to be then certified by the Justice as sworn to before him. The same formality is to be observed in taking the deposition of every other witness.

2. If a warrant is to be issued to apprehend any person in consequence of the information so received, it may be addressed generally—To all Constables, Police Officers, and other Officers of the Peace in and for the District of — and to *each* and *every* of them, so that any one of them may act under it. Or the Justice may address it to any individual by name, as he has the right to appoint his own officers to execute his warrants. The warrant must be under the hand and seal of the Justice.

3. When the person against whom a warrant is issued for any felony, is brought before the Justice, his first duty is to take his examination, notifying to the prisoner the charge brought against him, and requiring him to state what he has got to say in answer to it,—and in doing this, he must be careful not to hold out to the prisoner any hopes of favour or protection, nor use any harsh or threatening expressions towards him, as to the enormity of his crime, or the danger of his situation, nor permit any person in attendance about the prisoner, to use language of this, or of any kind, that might influence him in the answer he is required to make to the accusation against him, or induce him to believe that it might be better for him to acknowledge his guilt ; the answer of the prisoner ought to be free and voluntary, without bias or restraint of any kind, leaving to himself to judge what is most for his own interest. This answer, whatever it may be, must be reduced to writing ; in general it is a denegation of the offence,—that he is not guilty,—and he may at times go into a long detail of circumstances to shew his innocence, but of such detail it is unnecessary to take notice, but merely to state the result to which it tends,—that he is not guilty of the charge, unless he alludes to any

particular matter or fact connected with the accusation, which ought to be taken down; or he may refuse to make any answer at all, in which case the Justice must only take down such refusal. Should the prisoner confess his guilt, the Justice must be satisfied that this is not the effect of any improper communication or tampering with the prisoner, but the result of his own deliberate reflection, and which must be taken down by the Justice in the mode and manner, and under all the circumstances in which the prisoner gives it. The examination being closed, it must be read over to the prisoner, and he be required to sign it,—if he refuses to do so, or says that he cannot write, of this the Justice must make a note, and then subscribe his name.

4. Should the prisoner confess the crime whereof he is accused, it will be unnecessary to proceed with the further examination of witnesses; but should he deny it, the Justice must then call before him those who gave their information, and all other persons who have any knowledge of the facts to appear before him for their examination in this respect. Should any of them refuse to appear after due notification given to them, the Justice, after receiving the affidavit of the person giving the notice, can issue his warrant to compel their appearance. Should the case of the prisoner appear anywise difficult or intricate, it will be prudent, and in some respects necessary, that the Justice should call to his assistance, one or more of his brethren, to deliberate with him on the further course to be adopted—he will observe what the Act 4 and 5 Vic. c. 24. s. 1, 2, prescribes in this respect. As this may require a short delay, it will be necessary to provide for the safe keeping of the prisoner in the mean time, either

by committing him to the common gaol of the District, not exceeding the space of two or three days, (see form of the warrant, title *commitment*) or should this be inconvenient, either by reason of the distance or otherwise, to give the prisoner in charge to the officer in whose custody he is, that with all necessary assistance, he be safely kept and detained until the day fixed for his further examination, when he is to be again brought before the Justices—in the mean time another Justice being called in, and the prisoner brought before them, they will proceed with the examination of the witnesses. This examination is to be had, by examining each witness separately, and reducing into writing all the material facts of which he has a knowledge, after having been duly sworn in the presence of the prisoner, who is entitled to cross-question every witness thus produced against him. The examination of each witness when concluded, must be read over to him, and then signed by him, and also subscribed by each of the Justices present ; when all the witnesses have been thus examined, the Justices have to determine whether the case is so clearly made out against the prisoner, that he ought to stand committed to take his trial before the Court, or whether there be such doubt in it, that he ought to be admitted to bail in the mean time ; and lastly, whether the cause of suspicion, and proof against the prisoner is so slight, that he ought to be immediately discharged. If the prisoner is to stand committed, a warrant of commitment, or *mittimus*, must be immediately made out, under the hands and seals of the Justices, in the usual form, specifying the nature of the offence, and the prisoner be forwarded under safe custody to gaol. If the prisoner is to be bailed, the amount of the bail must be settled, and a recognizance

made out accordingly—if no bail, or insufficient bail, be offered, the prisoner must then be committed for *want of bail*, to be so expressed in the warrant, and to be detained in gaol until sufficient bail be offered, or until he shall be discharged by due course of law. In either case the Justices will immediately bind each of the witnesses by recognizance to appear at the time and place of the sitting of the Court at which the trial of the prisoner is to be had, and forthwith transmit under seal all these proceedings, viz :—The information, the examination of the prisoners and the witnesses, with the several recognizances, to the Clerk of the same Court. And should any of the Justices use the precaution of keeping a register or memorandum book of his proceedings, he will not fail to note down therein, all his doings upon this, as upon every other occasion, in which his ministry is required.

5. Should the information laid before the Justice, be for a misdemeanor, to be tried *before the Court*, he will proceed to issue his warrant as above, to bring the offender before him, and to take his examination or answer to the charge made against him. The Justice will also take the depositions or examinations of such witnesses as know anything of the matter, and bind them severally by recognizance to appear and give evidence at the time and place of trial. But in this case, the offence being of a less criminal nature, and the party accused being entitled to be bailed, the law does not seem to require that there should be any examination of the witnesses in his presence. It only remains to be ascertained whether the accused has sufficient bail to offer, which will be taken by the Justice in the usual manner, or in default of bail to commit the party to gaol, as before stated. Here also the proceedings

had before the Justice are to be forwarded without delay to the proper officer of the Court where the trial is to be had. In cases of this description, it is not necessary, nor does the law require, that the Justice should call in the assistance of any of his brethren, unless he find any difficulty in the case, which, for his own satisfaction, might induce him to communicate with some of them on the subject.

6. Should the information laid before the Justice, be for any petty offence, or for the recovery of a penalty under any penal act or statute, over which the Justice has cognizance and power to hear and determine, it is not usual, nor proper in such case, to issue a warrant in the first instance against the offender, unless in some cases for breach of the peace, but only to grant a summons for his appearance at a certain time and place for the trial of the complaint, when the Justice after hearing the parties and their witnesses will determine what he considers to be right, according to the circumstances of the case. Should the defendant fail to appear, the Justice before proceeding, must see that the summons has been duly served, and take the oath of the person serving it, to establish that fact, and then proceed to hear the merits of the case, against the defendant in default, by taking down the evidence of the witnesses and adjudging on the complaint. In this case the proceedings remain with the Justice, and ought therefore to be inscribed on his register, and not on flying sheets of paper, which are apt to be mislaid or destroyed; from the proceedings thus taken, the Justice can, at his leisure, draw up a conviction in a more regular form, which constitutes the *record* of the case, that he may have it ready to

meet any appeal from his judgment, to the Quarter Sessions, when such appeal is allowed, or any writ of *certiorari*, addressed to him from the Superior Court, to revise his proceedings.

7. As in many cases the authority of the Justice will be required, for carrying his judgment into execution, this must be regulated according to the nature of the judgment. In some cases the law authorizes the Justice on inflicting a penalty, to direct that it shall be paid immediately, or within a certain time, or on default thereof, that the party be committed to gaol, or the house of correction for a certain space of time—in such cases, where the penalty is not paid, the warrant of commitment may be immediately granted. In other cases, the penalty is directed to be levied by distress and sale of the goods and chattels of the offender, and in default of sufficient goods and chattels, that he be committed as before stated. Here the first proceeding in execution, is by warrant of commitment, if no sufficient distress can be found. Yet no warrant of commitment can, or ought to be granted, until the constable or officer charged with the execution of the warrant of distress, shall have certified on oath upon that warrant, that he had made due search and enquiry, and had not been able to find any goods or chattels of the convicted party, whereon to levy the penalty and costs. In some of the books it is stated, that upon the return of *nulla bona* by the officer, the Justice should make a record of that fact, and adjudge the imprisonment thereon: this record may be made by an entry in the Register kept by the Justice. In all cases where authority is given to adjudge costs to or against a party, the amount of such costs should be immediately ascertained and mentioned in the judgment.

I would recommend to the particular notice of the Justices of the Peace those acts of our Provincial Legislature which have lately been passed touching the Criminal law. I allude to the acts of the 4 and 5 Vict. c. 24, 25, 26, and 27,—as they comprehend a very material portion of that law, and introduce not only a great and humane change in the administration of it, but extend the authority of the Justice, out of Sessions, in numerous instances, where formerly he had no jurisdiction, and also prescribe the course of summary and other proceedings to be observed in the investigation of the various crimes and misdemeanors to which they refer. With all this law it is essential for the Justice to become acquainted, as his ministry may often be required to enforce obedience to this portion of it, in which the public have so great an interest.

ABDUCTION OF WOMEN.

By the Act of the Provincial Legislature of the 4 and 5 Vic. c. 27, s. 19.—if any person shall, from motives of lucre, take away or detain any woman against her will, having any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be an heiress presumptive, or next of kin to any one having such interest, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender, and every person counselling, aiding, and abetting such offender shall be guilty of *felony*, and on conviction, liable to be imprisoned at hard labour, at the discretion of the Court.

By Sec. 20. If any person shall unlawfully take, or cause to be taken, any unmarried girl, under the age of sixteen years, out of the possession, and against the will of her father or mother, or of any other person, having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and on conviction, suffer such punishment by fine or imprisonment, or both, as the Court shall award.

By Sec. 21. If any person shall maliciously, either by force or fraud, lead or take away, or decoy, or entice away, or detain any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or if any person shall, with any such intent, receive or harbour any such child knowing the same to have been so enticed, taken away, or detained, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and on conviction, liable to imprisonment at hard labour in the penitentiary for not less than seven years, or in any other prison for any time, not exceeding two years.

Under this law, as in all cases of felony and misdemeanor, the Justice of the Peace, can receive the necessary informations, or depositions of witnesses, to substantiate the offence, and grant his warrant to arrest the offender—and after taking his examination, and the examination of the witnesses in his presence, in the case of felony, commit him to prison for trial, or admit him to bail, as circumstances may require.

See the following forms.

Information to ground a warrant for apprehending a principal and accessory, for taking away, or detaining a woman, against her will.

DISTRICT OF } Information and complaint of A. B., of
 ————— } the Parish of ——— in the said District,
 } yeoman, taken before me W. R., Esquire,
 } one of Her Majesty's Justices of the
 } Peace, in and for the said District.

The said A. B., being duly sworn, deposeth and saith, that on or about the ——— day of ——— instant, at the Parish aforesaid, (*or parish or place where the offence was committed*) one C. D., of the said Parish, Gentleman, did, from motives of lucre, feloniously take away, and doth detain against her will, one E. H., of the said Parish of ——— spinster (*or widow*) being a person having a legal interest in a real estate (*or a personal estate, as the case may be*) in the said District, with intent to marry her, (*or to defile her, or to cause her to be married or defiled by some other person, as the case may be.*) And further, that one T. B., late of the said Parish of ——— yeoman, did counsel, aid and assist, the said C. D., then and there, to commit the said felony.

Sworn this ——— day of }
 ——— 18 —, before me } (*Signed*) A. B.
 (*Signed*) W. R., J. P. }

The circumstances of each particular case to be stated in the information, as they occur.

Warrant to apprehend the accused on the foregoing information.

DISTRICT OF } To the Constables, Officers of Police, and
 ----- } all other Officers of the Peace, in and for
 } the said District, and to each and every of
 } them. *☞ The warrant, here as in every
 } other case, may be addressed to any parti-
 } cular person by name.*

Whereas A. B. of the parish of ----- in the said District, yeoman, hath this day made oath before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, that on or about the ----- day of ----- instant, at the Parish aforesaid, (*or the Parish or place where the offence was committed*) one C. D. of the said Parish, gentleman, did, from motives of lucre, feloniously take away, and doth detain, against her will, one E. H. of the said Parish, spinster, (*or widow*) being a person having a legal interest in a real estate, (*or personal estate, as the case may be*) in the said District, with intent to marry her, (*or to defile her, or to cause her to be married or defiled by some other person, as the case may be*) and that one T. B., late of the Parish of ----- yeoman, did then and there counsel, aid and assist the said C. D. to commit the said felony, these are therefore in Her Majesty's name, to charge and command you, and each and every of you, forthwith to apprehend, and bring before me, or some other of Her Majesty's Justices of the Peace, in and for the said District, the said C. D. and T. B., to answer to the said complaint and to be further dealt with, according to law. Given under my hand and seal at-----aforesaid, this----- day of----- one thousand eight hundred and-----

(Signed) W. R., J. P. [SEAL]

Examination of the said C. D. and T. B. on the above information.

DISTRICT OF } Examination of C. D. of the Parish of
 _____ } _____ in the said District, gentleman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace in
 and for the said District.

The said C. D. being charged before me, the said Justice, on the oath of A. B. of the Parish of _____ in the said District, yeoman, with having, (*here state the charge as set forth in the information.*) And the said C. D. being by me, the said Justice, asked what he hath to say in answer to the said charge, the said C. D., doth freely and voluntarily, declare and say, that he is not guilty of the felony aforesaid whereof he is charged.

Taken this _____ day of
 _____ 18 —, before me. } (*Signed*) C. D.
 (*Signed*) W. R., J. P. }

The examination of T. B., to be taken in the same manner, only altering the nature of the charge against him.

The Justice will afterwards proceed to take the examination of the witnesses in presence of the prisoners, either with or without the assistance of another Justice, and to commit them to gaol, as circumstances may require.

WARRANT OF COMMITMENT.

DISTRICT OF } To the keepers of the common gaol for the
 _____ } said District.

Receive into your custody the bodies of C. D., of the Parish of _____ in the said District, gentleman, and T.

B., of the same place, yeoman, brought before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, the said C. D. charged on oath, with having (*here enter the charge as contained in the information.*) The said T. B., also charged on oath with having (*here enter the charge against him in the same manner.*) And them safely keep in the common gaol of the said District, until they shall be delivered by due course of law. Given under my hand and seal this _____ day of _____ one thousand eight hundred and _____.

(Signed,) W. R., J. P. [SEAL.]

Where two Justices have taken cognizance of the offence, the warrant will of course be in the names of and signed by both.

ABDUCTION AND STEALING OF CHILDREN, &c.

Information for stealing or enticing away a child under ten years of age.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman, taken
 before me, W. R., Esquire, one of Her
 Majesty's Justices of the Peace, in and
 for the said District.

The said A. B., being duly sworn, deposeth and saith, that on the _____ day of _____ instant, at the Parish aforesaid, one C. D., of _____ in the said District, laborer did maliciously, by force, (*or by fraud, as it may be*) lead, take (*or carry away, or decoy, or entice away, as the*

fact may be) a certain male (*or female*) child called, J. B. then and there being the son (*or daughter*) of the said A. B., and then and there being under the age of ten years, to wit of the age of five years and upwards, with intent then and there to deprive the said A. B., so then and there being the father of the said J. B., and then and there having the lawful charge of the said J. B., of the possession of the said J. B., by concealing and detaining the said J. B. from the said A. B. (*or with intent to steal some article of apparel or ornament, or other thing of value or use upon or about the person of the said J. B., or as the case may be.*) Therefore demands justice.

Sworn as above.

(Signed,) A. B.

The warrant to apprehend and other proceedings to be had against the accused in this case, are, in point of form, the same as in the preceding, observing always the difference of the charge in each of these proceedings.

ABORTION.

By the Provincial Act of the 4. and 5 Vic. c. 27, sec. 13. It is enacted, that whosoever, with intent to procure the mis-carriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument, or other means whatsoever, with the like intent, shall be guilty of felony, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary.

Information on the above Act.

DISTRICT OF } Information of A. B. of the Parish of
 _____ } _____ in the said District, spinster,
 taken before me W. R., Esquire, one of
 Her Majesty's Justices of the Peace in and
 for the said District.

The said A. B. being duly sworn deposeth and saith, that on the _____ day of _____ last, at the Parish aforesaid, she, this deponent being then in a state of pregnancy, one C. D. of the Parish of _____ in the said District, laborer, with the view and intent to procure the mis-carrriage of this deponent, did administer to her, a certain drug or medicine of a noxious nature, (*or if any instrument or other means were used for this purpose, to state the same, as the case may be,*) whereby this deponent was much injured in her health, and in great danger of her life.

Sworn this _____ day of }
 _____ 18 — , before me, } (Signed) A. B.
 (Signed) W. R., J. P. }

The warrant, examinations, the commitment or bailing of the prisoner, and binding the witnesses by recognizances to appear and give evidence, may be made out as stated in the preceding title, varying the circumstances of the case.

ACCESSARY—ACCOMPLICE.

An offender, may be either a principal in the *first* degree, that is to say, the actor, or actual perpetrator of the offence or a principal in the *second* degree, or an *accomplice*, one who is present, aiding and assisting with a felonious intent to commit the felony, or he may be an *accessary*.

An *Accessory*, is he who is not the chief actor in the offence, nor present at its performance, but who is some way concerned therein, either *before*, or *after* the fact committed.

An accessory *before* the fact committed, is he, that being absent, at the time of the felony committed, procures, counsels, commands or abets another to commit a felony, 1 *Hale*. 615.

An accessory *after* the fact is, where a person knowing the felony to be committed by another, relieves, comforts or assists the felon.

There are no accessories, except in felonies. In *high treason*, *misdemeanors* and *trespasses*, all are principals.

By the Provincial Act 4 and 5 Vic. c. 24, s 37. if any person shall counsel, procure or command any other person to commit any *felony*, such person shall be deemed guilty of *felony*, and may be indicted, either as an accessory *before* the fact, together with the principal felon, or for a substantive felony, whether the principal shall, or shall not have been previously convicted, or be amenable to Justice—and such offence may be tried by any Court which can try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed, either on the high seas, or at any place on land, whether within Her Majesty's dominions or without—and if the offence be committed in different Counties or Districts, the accessory may be tried in either.—And by s. 38, of the same Act, accessories *after* the fact to any felony, may be tried by any Court that has jurisdiction to try the principal felon, in the same manner as if the accessorial act had been committed at the same

place as the principal felony—and if the offence of the principal be committed in one County or District, and that of the accessory in another, the accessory may be tried in either.

An *accomplice*, is one of many equally concerned in a felony, and the term is generally applied to those, who are admitted to give evidence against their fellow Criminals, when other evidence is not sufficient to convict them. The Justice of the Peace ought to guard against holding out any inducement to an accomplice to confess his guilt, or to make any acknowledgement or declaration, in the hope of being admitted a witness against his associates, but leave it to the officer prosecuting for the Crown to determine the point.

Information against an accessory *before* the fact.

DISTRICT OF } Information of A. B. of the Parish of ——
 ————— } in the said District, yeoman, taken before
 me W. R., Esquire, one of Her Majesty's
 Justices of the Peace, in and for the said
 District.

The said A. B. being duly sworn, deposeth and saith, that after the hour of nine in the —— day of —— last, his dwelling house, situated in the said Parish, was feloniously and burglariously broken and entered by some person or persons, and one silver watch of the value of five pounds, and one great coat of the value of three pounds, (*or whatever the articles stolen and their value may be*) the property of the said deponent, then and there being in the said house, were then and there feloniously stolen, taken and carried away, and that he hath just

cause to suspect, and doth suspect, that C. D., late of the Parish of ——— in the said District, labourer, did commit the said felony and burglary, and that J. G. of the same place, labourer, did counsel, advise and abet the said C. D. to commit the said felony and burglary.

Sworn this ——— day of)
 ——— 18 —, before me } (Signed,) A. B.
 (Signed,) W. R., J. P. }

Warrant on the above information.

DISTRICT OF } To the Constables, Officers of Police, and
 ————— } other Officers of the Peace, in and for the
 } said District, and to each and every of
 } them.

Whereas A. B., of the Parish of ——— in the said District, yeoman, hath made oath before me, W. R. Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, that (*here take in the statement contained in the information.*) These are, therefore, in Her Majesty's name to command you, and each and every of you, forthwith to apprehend and bring before me or some other of Her Majesty's Justices of the Peace in and for the said District, the said C. D. and J. G. to answer to the said charge, and to be further dealt with according to law. Given under my hand and seal this ——— day of ——— one thousand eight hundred and ———.

(Signed,) W. R., J. P. [SEAL.]

The subsequent proceedings to be had, are according to the usual course by the examination of witnesses, &c.

Information against an accessory *after* the fact.

DISTRICT OF } Information of A. B. of the Parish of ——
 ————— } in the said District, yeoman, taken before
 me, W. R., Esquire, one of Her Majesty's
 Justices of the Peace in and for the said
 District.

The said A. B. being duly sworn, deposeth and saith, that on the —— day of —— last, at the Parish aforesaid, one bay coloured horse, of the value of ten pounds, the property of the said deponent was stolen, taken, and led away by some person or persons, and that he hath just cause to suspect, and doth suspect, that one C. D., of the Parish of —— in the said District, yeoman, did commit the said felony. And the said A. B. further saith, that since the said felony was committed, one J. G. of the said Parish, yeoman, hath received, harboured and concealed, the said C. D. in the dwelling house of him the said J. G. at the parish aforesaid, he the said J. G. then and there well knowing that the said C. D. had committed the said felony.

Sworn this —— day of }
 —— 18 —, before me, } (Signed,) A. B.
 (Signed,) W. R., J. P.

Information against an accessory *after* the fact, for receiving stolen goods, knowing them to have been stolen, and search warrant thereon.

DISTRICT OF } Information of A. B., of the Parish of ——
 ————— } —— in the said District, yeoman,
 taken before me W. R., Esquire, one of
 Her Majesty's Justices of the Peace in and
 for the said District.

The said A. B. being duly sworn, deposeth and saith, that on the ——— day of ——— last, at the Parish aforesaid, the following goods, chattels and effects, his property, that is to say, one silver watch of the value of five pounds, one great coat of the value of three pounds, and three silk handkerchiefs of the value of ten shillings, were feloniously stolen, taken, and carried away, from and out of the dwelling house of him, the said A. B., by one C. D., of the Parish of ——— in the said District, labourer,—and the said deponent further saith, that he hath cause to suspect, and doth suspect that one J. G. of ——— in the said District, labourer, hath feloniously received the said goods, chattels and effects, knowing them to have been stolen, and doth now hide and conceal the same in his dwelling house, out houses, or other his premises at ——— aforesaid. Wherefore the said deponent prays that a search warrant may be granted to him to search for the said goods, chattels and effects in the said dwelling house and other the premises of the said J. G.

Sworn this ——— day of }
 ——— 18 —, before me } (Signed,) A. B.
 (Signed,) W. R., J. P.

Search Warrant on the above information.

DISTRICT OF } To the Constables, Officers of Police, and
 ——— } other Officers of the Peace, in and for the
 said District, and to each and every of
 them.

Whereas A. B., of the Parish of ——— in the said District, yeoman, hath this day made oath before me, W. R. Esquire, one of Her Majesty's Justices of the Peace,

in and for the said District, that on the ——— day of ——— instant, at the Parish aforesaid, the following goods, chattels and effects, his property, that is to say (*here enumerate the articles*) were feloniously stolen, taken and carried away, from and out of his dwelling house by one C. D., of the Parish of ——— in the said District, labourer, and that he the said A. B. hath cause to suspect, and doth suspect, that one J. G., of the said District, labourer, hath feloniously received the said goods, chattels and effects, knowing them to have been so stolen, and doth now hide and conceal the same in his dwelling house, out house, or other his premises at ——— aforesaid, the said A. B. thereupon praying that a search warrant may be granted to him to search for the said goods chattels and effects, in the said dwelling house, out house, and other the premises of the said J. G. These are therefore to authorize and require you, and each and every one of you, with necessary and proper assistants, to enter in the day time, into the said dwelling house, out house, and other the premises aforesaid of the said J. G., and there diligently to search for the said goods, chattels and effects, and if the same, or any part thereof shall be found upon such search, that you bring the same so found, and also the body of the said J. G. before me, or some other of Her Majesty's Justices of the Peace, in and for the said District, to be dealt with according to law. Given under my hand and seal this ——— day of ——— one thousand eight hundred and ———.

(Signed,) W. R., J. P. [SEAL.]

If the officer charged with the execution of the warrant, find any of the stolen goods in the possession of the accused, the latter must be arrested and brought before the

Justice together with the articles so found, that such articles may be identified in the presence of the Justice, and the same be directed by him to be put in a place of security until the time of trial—or should it appear from the examination of witnesses or otherwise, that the accused had received the goods so stolen, into his possession, knowing them to have been stolen, he must be committed for trial—unless from any favorable circumstances in the case, any two Justices should be induced to admit him to bail.

Warrant of commitment, where goods stolen have been found on a search warrant.

DISTRICT OF } To the Keeper of the Common Gaol for
 _____ } the said District.

Whereas A. B. of the Parish of _____ in the said District, hath made oath before me W. R. Esquire, one of Her Majesty's Justices of the Peace in and for the said District, that on the _____ day of _____ instant, at the Parish aforesaid, certain goods and effects his property, (*here insert the goods stolen and the value,*) were feloniously stolen, taken, and carried away, from and out of the dwelling house of him the said A. B. in the aforesaid Parish, by one C. D. of the Parish of _____ in the said District, laborer, and further that he the said A. B. had cause to suspect, and did suspect, that one J. G. of _____ in the said District, laborer, had feloniously received the said goods and effects, knowing them to have been stolen, and that the said J. G. did hide and conceal the same, in his dwelling house, out-houses or other his premises at _____ aforesaid, and therefore praying that a search warrant might be granted to him, to search

for the said goods and effects in the said dwelling house, out-houses and other the premises aforesaid of the said J. G.—and such search warrant having been granted by me the said Justice, and upon such search made by virtue thereof, in the said dwelling houses, out-houses, and premises aforesaid of the said J. G. the said goods and effects (*or part thereof, describing them*) were found in the possession of the said J. G. These are therefore to charge and command you, to receive into your custody the said J. G. and him safely keep in the Common Gaol of the said District, until he shall be thence delivered by due course of law. Given under my hand and seal, this ——— day of ——— one thousand eight hundred and ———

(Signed) W. R., J. P. [SEAL]

AFFRAY.

An *affray* signifies a fighting between two or more persons in public—and there must be a stroke given, or an assault made to constitute an affray, 1 *B. Just. Affray*. If it happen in private, it is not an affray, as it is stated to be an offence, *to the terror of Her Majesty's Subjects*. No quarrelsome or threatening words will amount to an affray, yet a Constable may carry the threatener before a Justice of the Peace, to find sureties of the Peace, 1 *Hawk. 1 c. 63*.

An *affray* differs from a *riot*, in this, that two persons only may be guilty of an affray, whereas three persons at least are necessary to constitute a riot, 1 *Hawk. c. 65. 81*.

A Constable, and every Peace Officer, is not only empowered, but bound to suppress an affray which happens

in his presence, and he may demand the assistance of others to enable him to do so, which if they refuse to give him, they are punishable by fine and imprisonment, 1 *Hawk. c. 63. s. 13.*

If an affray is in a house, a Constable, after giving notice of his official character, and demand to enter, may break open doors to preserve the peace—and if affrayers fly from the street to a house, and the Constable follow with fresh suit, he may also break open the doors to take them, 1 *Hawk. c. 63, s. 16.*

A Justice of the Peace may authorise the arrest of any person for an affray committed in his presence, and compel the offender to find sureties for the peace, but he cannot do this without a warrant, and on complaint on oath, when the affray is out of his view, 1 *Hawk. c. 63. s. 18.*

Information for an Affray.

DISTRICT OF } A. B., of the Parish of ——— in the
 ——— } said District, laborer, came before me, W.
 R., Esquire, one of Her Majesty's Justices of the Peace, in
 and for the said District, and made oath, that on the ———
 ——— day of ——— instant, C. D., of the Parish of
 ——— in the said District, butcher, and G. H., of the
 same place, laborer, and T. B., also of the same place,
 yeoman, did, in a tumultuous manner and with force and
 arms make an Affray at the said Parish of ——— to the
 terror of Her Majesty's subjects, then and there being,

wherein the said A. B., was assaulted, beaten and illused by the said C. D., G. H. and T. B., without any just or reasonable cause.

Sworn this _____ day of
 _____ 18 —, before me } (Signed) A. B.
 (Signed) W. R., J. P. }

Warrant to apprehend Affrayers, &c.

DISTRICT OF } To the Constables, &c., (*as in preceeding*
 _____ } *Warrants.*)

Whereas A. B. of the Parish of _____ in the said District, yeoman, hath this day made oath before me W. R. one of Her Majesty's Justices of the Peace, in and for the said District, that C. D. of the Parish of _____ in the said District, butcher, and G. H. of the same place, laborer, and T. B. also of the same place, yeoman, did on the _____ day of _____ instant, at the said Parish of _____ in a tumultuous manner and with force and arms, make an affray to the terror of Her Majesty's subjects then and there being, and wherein the said A. B. was assaulted, beaten and ill used by the said C. D., G. H., and T. B. without any lawful or sufficient provocation given to them or to either of them by the said A. B. These are therefore, in Her Majesty's name, to command you, and each and every one of you forthwith to apprehend and bring before me or some other of Her Majesty's Justices of the Peace, in and for the said District, the said C. B., G. H., and T. B., to answer to the said complaint, and to find such securities as the law requires. Given under my hand and seal, this _____ day of _____ 18 — .

(Signed) A. B., J. P. [SEAL]

In matters of this kind, if the offence appears to be of a serious nature, the course is, to bind the parties to appear at the Quarter Sessions, to answer to the complaint, and in the meantime to keep the peace ;—but should it appear of minor importance, and the complainant request the Justice to proceed summarily to hear and determine the matter, he is authorised so to do, by the Act of 4 and 5 Vic., c. 26, sec. 27. And when this can be done, it is rendering a service to the public and to the parties.

APPEAL TO THE SESSIONS.

See under the head, *Conviction*.

APPRENTICES.

See under the head, *Masters and Servants*.

ARREST.

The *arrest* is, in the Criminal Law, an apprehending or restraining of the person of any individual, in order to be forthcoming to answer an alleged or suspected offence or crime ; and to such an arrest, all persons whatsoever without distinction are equally liable—but no man can in general be arrested, unless charged with such a crime as will at least justify holding him to bail when taken. *4 Bl. Com.* 289.

A Justice of the Peace may himself apprehend, or cause any other person to apprehend without warrant, any person who shall be guilty of felony, or breach of the peace in his presence,—*Burn's Just, Hale Hist.* 87.

Any Justice may take of the County or District any number of persons as he shall think fit to pursue, arrest, and imprison, traitors, murderers, robbers, and other felons ; or such as break, or go about to break the peace—and every person being required ought to aid and assist, on pain of fine and imprisonment.

When a Magistrate has a particular knowledge that any crime has been committed by any person, he ought not himself to arrest the criminal, but to make oath of the fact before some other Magistrate, unless the crime be committed in his presence.

All persons of full age present when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and imprisoned, *2 Hawk. 74*. So every person is bound to assist an officer, when required, to take a felon, or to suppress an affray—and to arrest any one attempting to commit a felony.

The party making an arrest, should seize, or touch the person of the offender, or otherwise confine him ;—bare words will not make an arrest.

A private person may break and enter into a house and arrest a person, to prevent him from murdering another who cries for assistance.

A private person having arrested a felon, should deliver him to a constable, or carry him before a Justice.

If any man be found attempting to commit a felony in the night, any one may apprehend and detain him until he can be carried before a Magistrate.

ARREST BY WARRANT—SEE WARRANT TO APPREHEND.

ARSON—SEE BURNING.

ARTICLES OF THE PEACE.

Wherever a person has just cause to fear that another will burn his house, or do him, or his wife, or his children a corporal hurt, he may exhibit articles of the peace before a Justice of the Peace, who is bound to require the party to find sureties to keep the peace towards the complainant, upon the latter making oath that he is actually under such fear from the other person, and that he has just cause to be so—and that he does not require such surety out of malice or vexation, 1 *Hawk. c. 60. s. 6. 7.*

All persons whatsoever have a right to demand surety of the peace. A wife may demand it against her husband—and a husband against his wife.

If the party against whom articles of the peace are exhibited be present, he may be immediately committed, unless he offer sureties; but if he be absent, the Justice cannot commit him for not finding such sureties, until he has been required, and has neglected, or refused so to do—and the warrant in that case, must state the cause for which it is granted, and at whose suit, 1 *Hawk. c. 60. s. 9.*

The recognizance to keep the peace in this case, ought in general to bind the party to appear at the next sessions of the Peace, and in the mean time to keep the peace towards all Her Majesty's liege subjects, and especially towards the party complaining, who may appear at the sessions to have this recognizance renewed should his cause of fear still subsist.

Persons under age, and married women, ought to find security by their friends, as they cannot be bound by themselves.

The Justice ought not to receive affidavits from the adverse party, denying or controverting the facts stated in the demand for surety of the peace, 13 *East. R.* 171.

All authorities agree, that fear lest another will hurt his servants or his cattle, or other goods, is not sufficient ground for requiring surety of the peace, *Dalt.* 116.

Although according to the common course the Justice binds the party giving security for the peace to the ensuing sessions, yet he can in the exercise of a prudent discretion, bind him for a longer space of time—and there may be many cases in which it is more convenient to bind the party for a certain time, than to the next sessions only, in order to avoid the expense and trouble both to him and his sureties, of attending a second time to accomplish an object that may as well be effected by a first attendance before the Justice, when the whole matter may be heard and discussed, 1 *Hawk. c.* 60. *s.* 15. And in a case where a Justice of the peace required a party against whom the complaint was made, to find surety for keeping the peace for *two years*—and for his default committed him to prison, it was held that the Justice was fully authorised in so doing, and that the warrant of commitment for this cause was strictly legal, 2 *B. & A.* 278.

Complaint and demand of surety for the Peace.

DISTRICT OF } Complaint and information of A. B., of
 _____ } the Parish of _____ in the said District, yeoman, taken before me W. R., Esquire, one of Her Majesty's Justices of the Peace in and for the said District.

The said A. B., being duly sworn, deposeth and saith, that he hath just cause to fear, and doth fear, that C. D.,

of the Parish of _____ in the said District, yeoman, will do him some hurt or bodily harm, and doth therefore require surety of the peace against him. That the said C. D. hath at different times, and particularly on the _____ day of _____ instant, aussaulted the said deponent, and used threatening and abusive language towards him, which gives the deponent cause to suspect, that the said C. D., intends to do him some personal injury. That the said deponent doth not require such surety out of malice or vexation, but only for his personal security.

Sworn at _____ this _____
 day of _____ before me, } (Signed,) A. B.
 (Signed,) W. R., J. P. }

Warranty for surety of the Peace.

DISTRICT OF }
 _____ } To the Constables, Officers of Police, &c.

Whereas A. B. of the Parish of _____ in the said District, yeoman, hath made oath before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, that (*here take in the complaint as stated.*) These are therefore to command and require you, and each and every of you, that you do forthwith bring the said C. D., before me, or some other of Her Majesty's Justices of the Peace, in and for the said District, to find sufficient sureties for his personal appearance at the next General Quarter Sessions of the Peace, to be holden at _____ in the said District, on _____ day of _____ next, and also that he the said C. D., shall in the meantime keep the peace towards all Her Majesty's liege subjects, and especially towards the said A. B., the complainant, (*or to find good and sufficient sureties to*

keep the peace towards the said A. B., and all Her Majesty's liege subjects, for the space of six months, as the Justice may judge proper.) Given under my hand and seal, at _____ in the said District, this _____ day of _____ in the year one thousand eight hundred and _____

(Signed,) W. R., J. P. [SEAL.]

Should the party produce sufficient sureties before the Justices, they will enter into recognizance in the terms of the warrant.

See *Recognizance for surety for the peace.*

But should the party provide insufficient, or no surety, he must then be committed to gaol until such sureties are given.

See *Commitment for want of sureties.*

ASSAULT AND BATTERY.

An *Assault*, is an attempt to offer with force and violence to do a corporal hurt to another, as by striking at another with a stick, or other weapon, or without a weapon, though the party striking misses his aim. So, drawing a sword or bayonet—presenting a gun at a person within the reach at which a gun will carry—pointing a pitchfork at a person within reach—throwing a bottle or glass with intent to wound or strike—or even holding up a fist in a menacing manner—or a similar act accompanied with such circumstances as denote at the time an intention, coupled with a present ability, of using actual violence against the person of another, will amount to an *assault*, 1 *Hawk. c.* 62, s. 1.—4 *Bl. Com.* 120.—1 *East P. c.* 406. But words alone will not make an assault.

A *Battery*, which includes an assault, is more than an attempt to do a corporal hurt to another, as it is carrying that attempt into effect. And any injury whatsoever, be it ever so small, which is actually done to the person of another, in an angry or revengeful, or rude, or insolent manner, is a battery in the eye of the law.

The intention with which the act is done is material in the enquiry, whether it will amount or not, to an assault.

An assault may be justified, as where a man assaults and beats a person in his own defence, or in defence of his wife, parent, child or master—and so a wife may justify an assault in defence of her husband.

But in all cases where a man is justified in beating another in defence of himself, or his property, or in the discharge of his duty, the force used must not be greater than is reasonably necessary to accomplish the lawful purpose. And unless there be violence used by a trespasser, a man should not begin by striking him, but should first require him to desist, or to depart. And if that is refused, he should then gently lay his hands upon him, before he proceeds to greater extremities, 8 *T. R.* 78.—1 *East P. C.* 406.

So, though an attempt to strike will justify the striking by the other party, yet even a previous assault and battery will not justify a retaliation out of all proportion to the necessity, or the provocation received.

If an injury to a person be *accidental* and *undesigned*, it will not amount to an assault.

An assault may be aggravated, either in respect to the *place* in which, or the person upon whom, it is committed—or from the *criminality* of the *purpose* intended to be effected,—1 *Russ. c. L.* 873.

By Act of the Provincial Legislature of 4 and 5 Vic. c. 27 s. 27 and seq. authority is given to the Justices of the Peace, to take cognizance of Assaults and Batteries, committed under various circumstances, and in some instances to proceed by a summary conviction of the offender. To that act (of which a full extract will be found in the present work) I must refer, as the safest guide for the Magistrate in all his proceedings to be had in this respect.

—————

Complaint and Information for a Common Assault.

DISTRICT OF } A. B. of the Parish of ——— in the
 ————— } said District, yeoman, maketh oath and
 saith, that on the ——— day of ——— instant, at
 the Parish aforesaid, he was violently assaulted and beat
 by C. D. of the said Parish, laborer, without any just
 cause or provocation—therefore prays justice in the
 premises—*(and in case the party complaining should be
 desirous that the Justice should hear and determine his
 complaint in a summary manner, then add)* and that any
 of Her Majesty's Justices of the Peace, do proceed sum-
 marily to hear and determine his said complaint.

Sworn at ——— this ——— day
 of ——— 18 —. before me W. R. Esq.
 one of Her Majesty's Justices of } (Signed) A. B.
 the Peace for the said District. }
 (Signed) W. R., J.P.)

Other informations for assaults may be readily drawn in the above form, according to the subject matter of the complaint, and in which the Justice may proceed summarily to hear and determine the offence, with the consent of the complainant.

There are however cases of assault, which according to the Act of 4 and 5 Vic., c. 27, the Justices cannot determine.

1. To assault, strike or wound any Magistrate, officer, or other person in the exercise of his duty concerning the preservation of any vessel in distress, or of goods wrecked, or cast on shore,—4 and 5 Vic., c. 27, sec. 24.
2. For an assault with intent to commit felony,—4 and 5 Vic. c. 27, sec. 25.
3. For an assault on any Peace Officer, or Revenue Officer in the execution of his duty, or upon any person acting under him,—4 and 5 Vic., c. 27, sec. 25.
4. For an assault with intent to resist or prevent the apprehension or detainer of any party, liable by law to be apprehended,—4 and 5 Vic., c. 27, sec. 25.
5. For any assault committed in pursuance of any conspiracy to raise the rate of wages,—4 and 5 Vic., c. 27, sec. 25.
6. For an assault in which any question shall arise as to the title of any lands, &c., or any interest therein—or as touching any Bankruptcy or Insolvency, or any execution under the process of any Court of Justice,—4 and 5 Vic., c. 27, sec. 30.
7. Or wherever the complaint appears to be a fit subject of prosecution by indictment before the Court,—4 and 5 Vic., c. 27, sec. 30.

The following cases may be tried and determined by two Justices of the Peace.

1. Where any person shall unlawfully and with force hinder any seaman from exercising his lawful business, &c.—4 and 5 Vic., c. 27., sec. 26.
2. When any person shall beat, or use violence to any

other person, with intent to deter or hinder him, from selling or buying any wheat or grain, flour, meal, &c. in any market or other place—or shall beat, &c., any person having charge or care of any wheat, &c., whilst on its way to, or from any city, market town, or other place, with intent to stop the conveyance of the same.

Warrant for a Common Assault.

DISTRICT OF } To any Constable, Officer of Police, or
 _____ } other Peace Officers, in and for the said
 District.

Whereas complaint hath this day been made before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, upon the oath of A. B. of the Parish of _____ in the said District, yeoman, that C. D. of the said Parish, laborer, did, on the _____ day of _____ instant, at the said Parish, violently assault and beat the said A. B. by striking him with his fists, several blows on the head and other parts of the body, and praying that any of Her Majesty's Justices of the Peace would proceed summarily to hear and determine his said complaint. These are therefore in Her Majesty's name, to command and require you, and each and every of you, forthwith to apprehend the said C. D. and bring him before me or some other of Her Majesty's Justices of the Peace, in and for the said District, to answer to the said complaint, and to be further dealt with according to law. Given under my hand and seal, at _____ aforesaid, this _____ day of _____ one thousand eight hundred and _____.

(Signed) W. R., J. P. [SEAL]

If the complaint be against an Inhabitant, or known resident in the parish, or neighbourhood, the Justice should proceed by a summons, and not by a warrant to apprehend, in the first instance against the defendant, for his appearance to answer thereto. Should he however refuse to appear upon the summons, the Justice may then issue his warrant against him.

If the Justice after hearing the parties, shall consider the complaint to be well founded, he will condemn the defendant in the terms of the *s. 27*, of the above Act, to pay such penalty and costs, as the circumstances of the case may require, and will draw up a conviction thereon in the form prescribed by the said Act,—or he may dismiss the complaint with costs, should it appear trifling or ill founded.

As in complaints of this kind the Public have little interest, and it is advisable in most cases to prevent litigation, and to conciliate the contending parties, the law has accordingly authorised the Justice in cases of a summary conviction, to discharge the offender, from his conviction on his making such satisfaction to the party aggrieved, as he shall determine, *s. 29*.

If the defendant when arrested and brought before the Justice, state a sufficient ground of defence, but is not prepared with witnesses to substantiate it, a day may be given him for that purpose; in the meantime, should the Justice deem it necessary, the defendant ought to enter into recognizance for his appearance before the Justice on that day, when the parties are to be heard and judgment given. Should the complainant require that the matter be heard before the Court, the defendant must then enter into recognizance with sureties to appear at the next Quarter Sessions to answer thereto.

Recognizance in the usual form—see *Recognizance*.

If the defendant neglects or refuses to give the surety required, he will then be committed for the want of such surety, to be so expressed in the warrant, until discharged by due course of law—and the complainant and his witnesses bound to appear and prosecute and give evidence in the case.

Commitment for want of sureties in the usual form,
See *Commitment*.

Should the complaint be founded on any assault of a violent nature, or committed in the furtherance of some other criminal offence, the circumstances attending the same must be stated in the complaint or information, and referred to in the warrant of commitment, should it become necessary from want of bail. In all other respects the ordinary forms are to be followed.

Certificate to be granted by a Justice of the Peace on dismissing a complaint for a common assault, under the above Act of 4 and 5 Vic. c. 27. s. 27.

DISTRICT OF } I, W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District, do hereby certify, that the complaint made before
 me by A. B., of the Parish of _____ in the said Dis-
 trict, yeoman, against C. D. of the same place yeoman,
 for having on the _____ day of _____ at the
 Parish aforesaid, assaulted and beat the said A. B., was
 this day by me the said Justice, after hearing the parties,
 dismissed with costs. Given under my hand at _____
 in the said District, this _____ day of _____ one
 thousand eight hundred and _____.

(Signed,) W. R., J. P

ATTAINDER.

An *Attainder* is the *stain* or *corruption* of the blood of a criminal capitally condemned, and is the immediate and inseparable consequence, by the common law of pronouncing sentence of death against him—he being then called *attaint*, that is stained or blackened, 4 *Bl. Com.* 330.

A person *attainted*, is no longer of any credit or reputation, he cannot be a witness in any Court, neither is he capable of performing the functions of another man, for by a sort of anticipation of his punishment, he is already dead in law, 4 *Bl. Com.* 380.— 3 *Justin.* 213.

But attainder does not follow until *after judgment*; for there is a great difference between a man *convicted*, and one *attainted*, though they are frequently, though inaccurately, confounded together. After *conviction* only, there is still in contemplation of law a possibility of innocence—something may be offered in arrest of judgment—the indictment may be erroneous which will render the guilt of the party uncertain, and thereupon the present conviction may be quashed, or he may obtain a pardon, which supposes some latent sparks of merit to plead in extenuation of his crime. But when judgment is once pronounced, both law and fact conspire to prove him completely guilty—and there is then not the remotest possibility left of anything to be said in his favor.

BAIL.

Bail is a delivery, or bailment of a person to his sureties, upon their giving together with himself a sufficient security for his appearance, he being supposed to continue in their friendly custody, instead of going to gaol, 4 *Bl. Com. ch. 22.*—*Hawk. 6. 2. c. 15.*—2 *Hale. c. 15.*—1 *Chitty. C. L. 92.*

The persons who become bail for a prisoner, are said to have a coercive power over him, and may at any time retake him, if they doubt he will fly, and bring him before a Justice, who must either commit him in discharge of his bail, or else oblige him to find new sureties, 4 *Bl. Com. 296.*—2 *Hale. 127.*

To refuse or delay to bail any personailable, is an offence against the liberty of the subject in any Magistrate by the Common Law, as well as by the Statute 3 Edw. 1, c. 15, and by the Hab. Corp. Act. And lest the intention of the law should be frustrated by the Justices requiring bail to a greater amount than the nature of the case demands, it is expressly declared by Stat. 1 W. and M. s. 2, c. 1, that excessive bail ought not to be required. Though what bail shall be excessive must be left to the Courts to determine, on considering the circumstances of the case—and on the other hand if the Magistrate takes insufficient bail, he is liable to be fined, if the criminal fail to appear.

The bail to be taken by the Magistrate, ought to be two men at least, of sufficient ability to meet the sum to be expressed in their recognizance, which must be left in a great degree to the discretion of the Magistrate, and there-

fore he may examine them upon oath as to the value of their property, to ascertain that each of them is of sufficient ability to answer the sum in which he is bound, 2 *Hale*. 125.—*Hawk*. 6. 2. c. 15, s. 4.—*Bac. Ab. Bail. F.*

If the party accused be under age, or a married woman, then the sureties only enter into recognizance, 3 *M. & S.* 1.

The recognizances need not be signed by any of the parties bound in the condition, 1 *Chitty*. 104. *Dick. Inst. Recog.*

On the subject of *bail*, I must here again refer the Magistrate to the before mentioned Act of the Provincial Legislature of the 4 and 5 Vic. c. 24, s. 1. 29., where he will find several directions and injunctions to regulate his conduct in this respect, and which he must necessarily observe.

By this Act, persons charged with felony, or suspicion of felony, upon positive or credible evidence, or by such evidence, if not explained or contradicted, shall in the opinion of the Justice or Justices before whom the prisoner is brought, raise a strong suspicion or presumption of guilt, such prisoner shall be committed to prison.—4 and 5 Vic. c. 24, s. 1. But where there is only one Justice present, and evidence against the prisoner shall neither raise a strong suspicion of guilt, nor warrant his discharge, in such case the prisoner shall be taken before two Justices at least, and if in their opinion, the evidence against the prisoner shall not be such as to raise a strong presumption of guilt, or if such evidence be adduced on the part of the prisoner as to weaken the presumption of his guilt, he may in such case be admitted to bail. It being however understood, that any such Justices are not

bound to hear evidence on behalf of the prisoner, unless it shall appear conducive to the ends of justice.

That the two Justices before they admit to bail, or one or more Justice or Justices, before they commit to prison any person arrested for felony, or suspicion of felony, shall take the examination of such person, and the information on oath of those having any knowledge of the facts, and reduce what may be material thereof into writing in the presence of the party accused, if in custody, who shall be allowed to cross-examine the witnesses produced. That where bail is taken by the two Justices, they shall certify the bailment in writing. And every Justice is authorised to summon and call before him all necessary witnesses within his jurisdiction, who can give any material evidence concerning such felony or suspicion of felony, take their examinations on oath, and bind them by recognizance to appear at such Court where the trial of the cause is to be had, then and there to prosecute and give evidence against him. That the said Justice or Justices shall subscribe all such examinations, informations, bailments, and recognizances, and cause the same to be delivered to the proper Officer of the Court, in which the trial is to be had, before, or at the opening of the Court. And in case any person so summoned to appear and give evidence before the Justice or Justices, shall refuse to submit to such examination, or to enter into such recognizance, it shall be lawful for him or them to commit such persons to the Common Gaol of the District, County, City, or Town, until such person shall submit to such examination, or shall enter into such recognizance, or be discharged by due course of law,—4 and 5 *Vic. c. 24. s. 2.*

That every Justice before whom any person shall be taken on a charge of a misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information in oath of those having any knowledge of the facts, the material parts whereof he shall put down in writing, before he shall commit to prison or require bail from the person so charged. And in every case of bailment, the Justice shall certify the same in writing, and shall have authority to bind all persons by recognizance to appear and prosecute, or give evidence in like manner as in cases of felony--and shall subscribe all examinations, informations, bailments, and recognizances, and cause the same to be delivered to the proper Officer of the Court, in which the trial is to had, before or at the opening of the Court,— 4 and 5 Vic., c. 24, s. 3.

That when any person shall be committed for trial by any Justice or Justices, it shall be allowed to the prisoner or his Counsel, Attorney or Agent, to notify the committing Justice or Justices, that he will apply to Her Majesty's Court of Superior Jurisdiction, or to one of the Judges thereof, for an order to the Justices of the Peace, for the District where such prisoner shall be confined, to admit such prisoner to bail,—it shall thereupon be the duty of such committing Justice or Justices to transmit without delay to the office of the Clerk of the Crown, closed up under the hand and seal of one of them, a certified copy of all informations, examinations and other evidences touching the offence wherewith such prisoner is charged, together with a copy of the warrant of commitment, and that the packet containing the same, shall be handed to the person applying for the same in order to such transmission—and it shall be certified on the outside thereof to

contain the information touching the case in question,—
4 and 5 Vic., c. 24, s. 5.

The latter part of this section of the Act cannot however be understood to apply, where the Justice or Justices may have previously transmitted to the Clerk of the Court in which the trial of the accused is to be had, all the examinations, informations, bailments and recognizances, taken by them relative to the offence in question; all that they can certify upon receiving the notice mentioned, is, that they had so transmitted the several documents in question as by law required.

It is also enacted that if any Justice shall neglect or offend in any thing contrary to the true intent and meaning of the provisions therein contained, it shall be lawful to the Court to set such fine on every Justice as it shall see fit,—*4 and 5 Vic. c. 24, s. 7.*

It cannot here fail to be observed, that by this Act, a great latitude is given to the Justices, either to accept or refuse bail in the cases brought before them, as by the power given to two or more of them to judge of the weight and credibility of the evidence adduced against a prisoner, and even to hear evidence on his behalf, few cases of felony can occur, where an offender might not be admitted to bail. As the power here given is great, so ought it to be exercised with the greater discretion. Justices, while bound to protect the liberty of the subject, and to prevent oppression, ought still to be watchful that great offenders do not escape the public justice, and to admit none to bail for crimes that endanger the public safety. In the exercise of a discretionary power, it is difficult to lay down specific rules for the direction of Justices,—they must be guided by the evidence before them, the character of the

accused, and any circumstances that may call for the discreet exercise of their authority. As from the nature of the investigations had before them, the detention or liberation of the accused must in the first instance depend, the safer course for the Justices would be in crimes of any magnitude, should doubt even arise as to the extent of culpability of the accused, to adhere to the old rule as closely as they can, and instead of entering upon a minute discussion of the evidence either for or against the prisoner, to leave it to the Judges of the Superior Courts to determine the question of bail, and to avoid the possibility of reflection, that through their means a notorious offender had escaped, by having been imprudently admitted to bail.

There are certain cases where it is said that Justices ought not to bail—as in treason, whether relating to the coin, or more immediately affecting the Government, or the person of the Sovereign—in murder—in homicide, if the prisoner is clearly the slayer, and not merely suspected to be so—but should it appear to have been by *misadventure*, or in self defence, the prisoner may be liberated on bail,—4 *Bl. Com.* 298.—2 *Hale.* 139. In all felonies, but more especially those of a more aggravated nature, such as burglary, sacrilege, robbery and the like, bail ought not to be received by the Justices, unless the circumstances or suspicions against the prisoner are so slight or uncertain, that his detention in gaol would be harsh and unjust.

The cases in which the Justices ought not to hesitate in admitting a party to bail, are clearly pointed out—as when persons of good fame are charged with bare suspicion of any felony—persons charged with small or petty larceny, if they have not already been convicted, or been guilty of

similar offences—persons accused of sundry trespasses, where life or members come not in question—also for assaults or other offences below felony—unless in any such case the right of bail be excluded by some special Act of the Legislature. But in cases of affray and violent assaults, where a dangerous wound has been given, from which death may ensue, there the guilty person ought not to be bailed, until it shall be ascertained, that the wounded party is out of danger,—1 *Hawk.* 6. 1. c. 63, s. 19.

RECOGNIZANCE IN BAIL—SEE RECOGNIZANCE.

BENEFIT OF CLERGY—SEE CLERGY.

BIGAMY.

Bigamy is the offence of marrying a second wife or husband, during the lifetime of the first—or of having two wives or husbands at the same time,—4 *Bl. Com.* 163.—1 *East.* 1. c. 464.

By Act of the Provincial Legislature of the 4 and 5 Vic. c. 27, s. 22, this offence is declared to be a felony, and punishable by imprisonment and hard labour. It is however provided that nothing in that Act contained shall extend to any second marriage contracted out of this Province, by any other than a subject of Her Majesty resident in this Province, and leaving the same with intent to commit the offence. Nor to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by

such person to be living within that time. Nor shall extend to any person, who at the time of such second marriage shall have been divorced from the bond of the first marriage. Nor to any person, whose former marriage shall have been declared void by the sentence of the Court of competent jurisdiction.

The ministry of the Justice of the Peace in regard to this offence, as in all other felonies, may be required to receive the necessary informations—grant the necessary warrants—take the necessary examinations of the accused and the witnesses—and all necessary recognizances of bail—as the case may require.

Information for Bigamy.

DISTRICT OF } Information of A. B., in the Parish of
 _____ } _____ in the said District, yeoman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in
 and for the said District.

The said A. B. being duly sworn, deposeth and saith, that C. D., late of the Parish of _____ in the said District, yeoman, on the _____ day of _____ one thousand eight hundred and _____ at the Parish of _____ in the said District, (*or wherever the first marriage was had*) did marry one E. F., of the said Parish of _____ spinster, and her, the said E. F., then and there had for his wife. And that he the said C. D. afterwards, to wit, on the _____ day of _____ of the year _____ in the said Parish of _____ feloniously did marry and take to his wife, one G. H., spinster, the said

E. F., his former wife, being then living, against the form of the Act in such case made and provided.

Sworn at _____ in the said
 District, this _____ day of } (Signed,) A. B.
 _____ 18 —, before me. }
 (Signed,) W. R., J. P.

Upon this information the Justice will issue his warrant in the usual form (stating in it the matters set forth by the information,) to apprehend the party accused, and when brought before him, will pursue the directions of the beforementioned Act, s. 24. s. 1 and 2., touching the examination of the party and the witnesses.

BEASTS, BIRDS, &C.

The Stealing of any Beast or Bird in a state of confinement, is a misdemeanor by Act 4 and 5 Vic. c. 25. s. 30, and on summary conviction before a Justice of the Peace, the offender may be fined, and also condemned to pay the value of the beast or bird stolen.

See forms of *Conviction*, in the Act.

BRIBERY.

Bribery is the receiving of any undue reward by any person whatsoever, whose ordinary profession or business relates to the administration of public justice—or who is in any official situation, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity ; the person who gives the bribe

being considered as guilty of the offence, as he who takes it.—2 *Inst.* 149.—1 *Hawk. c.* 67. *s.* 2.—4 *Bl. Com.* 139.

Nothing (as Hawkins justly observes) can be more prejudicial to the good of the public, than to have places of the highest concernment, and on the due execution of which, the happiness of both king and people depends, disposed of, not to those who are most fit to execute them, but to those who are most able to pay for them, nor can anything be a greater discouragement to industry and virtue, than to see those places of trust and honor, which ought to be the reward of persons, who by long labor and diligence, have qualified themselves for them, conferred on those who have no other recommendation but that of being the highest bidders. The purchasing an office too, gives a greater temptation to him who fills it, to abuse his power by bribery and extortion, in order to indemnify himself for the great expense he was put to in obtaining it, and he is too apt to strain a point to make his bargain answer his expectations.

By Stat. of 11. Hen. 4., all Judges, Officers, and Ministers of the King, convicted of bribery, shall forfeit treble the bribe, be punished at the King's will, and be discharged from the King's service for ever.—3 *Inst.* 146.

A mere attempt to bribe a Judge or a Juryman, is punishable.—2 *East. R.* 14. 16.

For the punishment of the offence of bribery at elections, it is provided by the Act of the Provincial Legislature, of 6 Vic. c. 1. s. 30., that any person who shall give or cause to be given, or loan any sum of money, or give any office, place or employment, gratuity or reward, or any bond, bill or note, or conveyance of land or other property, or promise of the same to any elector, in considera-

tion of, or for the purpose of corrupting him to give his vote for any candidate, or to forbear to give his vote to any candidate, or as a compensation to any elector for his loss of time or expenses, or by any other pretence whatsoever—or any voter who shall accept the same for the aforesaid purpose, shall forfeit and pay a sum not less than five pounds, nor more than one hundred pounds, in the discretion of the Court and Jury having jurisdiction of the same, with costs of suit, and which may be sued for and recovered by action or plaint in any Court of Record in this Province having competent jurisdiction.

BRIDGES.

Unlawfully and maliciously to pull down any *public Bridge*, so as to render it dangerous or impassable, declared to be *felony*, by Act of 4 and 5 Vic., c. 26, s. 13.

The proceedings to be had before the Magistrate here, are the same as in all other cases of felony.

BURGLARY.

Burglary is defined to be a *breaking* and *entering* the *dwelling house* of another,—in the night,—with *intent* to commit *some felony*,—whether that *intent* be executed or not, 4 *Bl. Com.* 224, 2 *East. P. C.* 484.

Here it may be well to observe the distinctions made by the Act of the 4th and 5th Vic. c. 25, in regard to the crime of burglary, as to the *time*, and *manner* of committing it, and what is considered to constitute the *dwelling house*, in which it may be committed.

As to the *time*—it is enacted by the 16th section of the above Act—that as far as the same is essential to the offence of burglary, the night shall be considered, and is thereby declared to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day. But should a person enter the dwelling house in the day time, without breaking, with intent to commit a felony, and lie concealed therein, but break out in the night time, this is declared to be burglary.

As to the *manner*—it is enacted by the 14th section, that whosoever shall burglariously break and enter any dwelling house, and shall use violence towards the persons being therein, as by assaulting with intent to murder, or shall stab, cut, wound, beat, or strike any such person, shall be guilty of felony, and suffer death. But by the 15th section, if the burglary be committed without using such violence to the inmates, the punishment is limited to imprisonment and hard labour, at the discretion of the Court.

As to the *dwelling house*—it is enacted by the 18th section, that no building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed a part of such dwelling house for the purpose of burglary, unless there shall be a communication between such building and the dwelling house, either immediate, or by means of a covered and inclosed passage, leading from the one to the other.

The proceedings before the Magistrate on this offence, after receiving the information, are the same as to the warrants to be issued, and the examinations to be taken, as in other cases of felony.

See form of information for *burglary* under the title *accessary*.

There may however be *house breaking*, without burglary, as in the case of breaking into a dwelling house in the day time, or into any shop, ware house, or counting house, not being part of the dwelling house, at any time, either by day or by night, and stealing therein, see s. 17.19. and 20. of the above Act.

BURNING.

By Act of the Provincial Legislature of the 4 and 5 Vic. c. 26 s. 2, it is enacted, that whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of felony, and being convicted thereof shall suffer death.

By Section 3, Whosoever shall unlawfully and maliciously set fire to any church, chapel or meeting house for the exercise of religious worship, or shall unlawfully and maliciously set fire to any house, stable, coach house, out-house, ware house, office, shop, mill, malt house, hop-oust, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person,—shall be guilty of felony, and on conviction be liable at the discretion of the Court to imprisonment and hard labour.

By Section 7, Whosoever shall unlawfully and maliciously set fire to, or in anywise destroy any ship or vessel, either with an intent to murder any person, or

whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall suffer death.

By Section 8, Unlawfully and maliciously to set fire to any ship or vessel, with intent to injure the owner, the proprietor, or goods on board thereof, or the insurer of the same, is declared to be felony and punishable by imprisonment and hard labour.

By Section 17, Unlawfully and maliciously to set fire to any stack of corn, grain, pulse, peat, coals, charcoal, or wood, or any steer of wood is declared to be felony, and on conviction punishable by imprisonment and hard labour.

—

Information for burning a barn.

DISTRICT OF } The information of A. B., of the Parish of
 ————— } ————— in the said District, yeoman,
 taken before me, W. R., Esquire, one of
 Her Majestys Justices of the Peace in and
 for the said District.

The said A. B. being duly sworn, deposeth and saith, that on the ——— day of ——— instant, a Barn, the property of this deponent, was unlawfully and maliciously set fire to and burnt by some person or persons ;— That this deponent hath just and probable cause to believe and suspect, and doth verily and truly believe and suspect, that C. D. of ——— in the said District, laborer, did set fire to and cause the said barn, to be burnt in manner aforesaid (*here insert any causes of suspicion there may be against the accused, to the knowledge of the deponent.*)

Sworn at _____ in the said
 District, this _____ day of } (Signed,) A. B.
 _____ 18—, before me. }
 (Signed,) W. R., J. P.

Upon this information the Justice will issue his warrant (drawn in the usual form, stating in it the ground of the information) in order to apprehend the accused, and when brought before him, will cause the examination of the prisoner to be taken, and also the examination of the witnesses, after being duly sworn, in the presence of the prisoner, and thereupon proceed to commit, to bail, or to release the prisoner, as circumstances may require. This being a case of suspicion, in which the circumstances may require to be weighed and considered, it will be necessary to call in the assistance of another Magistrate, before proceeding definitively against the prisoner.

See titles *Examination, Commitment, Recognizance.*

CARRIER.

A Carrier who embezzles goods received by him to carry to a certain place, is not guilty of felony, because there was not a *felonious taking*.—1 *Hawk.* 33 s. 3, 5.

But if he opens a package and takes out part of the goods with intent to steal, he may then be guilty of felony—for in so doing he not only gains by wrong the possession of a part, but he obtains it fraudulently and clandestinely.—1 *Hawk.* 33 s. 5.

And if a carrier bring the goods to the place appointed, and afterwards takes them away secretly, with intent to

steal them, he is then also clearly guilty of felony—because the possession which he received from the owner being determined, his second taking, is in all respects the same as if he were a mere stranger.—1 *Hawk.* 33 s. 5.

And it has also been determined, that if goods be delivered to a carrier to carry to a certain place, and he carries them to another place, and there disposes of them to his own use, this is felony—because he thereby declares that his original intention was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them.—*Kelynge.* 81, 82.

Where goods are stolen from a carrier, he may prefer an indictment against the thief as for his own goods ; for though he has not the absolute property, yet he has such a possessory property, that he may either maintain trespass against a wrong doer, or indict a thief.—*Kelynge* 39.

It is likewise said, that a man may commit larceny by stealing his own goods delivered to a carrier, with intent to make the carrier answer for them—for as the carrier might have indicted a stranger for stealing them, so the injury is altogether as great, and the fraud as base, where they are thus taken away by the very owner.—1 *Hawk.* c. 34 s. 30.

Information against a carrier for stealing.

DISTRICT OF } Information of A. B., of the Parish of
 ----- } ----- in the said District, Merchant,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in
 and for the said District.

The said A. B. being duly sworn, deposeth and saith, that on the ----- day of ----- last, at ----- in the said District, this deponent delivered into the charge

and custody of C. D. of the same place, common carrier, a certain package of goods, the property of said deponent, containing sundry pieces of cotton, linen and woollen goods, (*or as the case may be*) of great value, viz., of the value of ———— pounds, on the promise and undertaking of the said C. D. for a valuable consideration safely to carry and convey the said packages to ———— and there to deposit and leave the same with one J. G. That afterwards, to wit, on the ———— day of ———— aforesaid, at ———— in the said District, while the said package was under the care and custody of the said C. D. to be carried and conveyed as aforesaid, he, the said C. D., did feloniously break, tear, and cut open the said package, and did feloniously extract, steal, take and carry away therefrom, sundry articles contained in the said package, viz. three pieces of linen goods of the value of three pounds, three pieces of cotton goods of the value of two pounds, and one piece of woollen goods of the value of five pounds, to the great damage of this deponent.

Sworn at ———— in the said
 District, this ———— day of } (Signed,) A. B.
 ———— 18 — , before me. }
 (Signed,) W. R., J. P.

The proceedings on this information are the same as in any other felony.

CATTLE.

By Ordinance of the Governor and Council of the 2 Vic. c. 2. s. 11. amended and made permanent by Ordinance of the 4 Vic. c. 47., it is enacted and ordained, that it shall be

lawful for any Justice of the Peace to commit any person or persons being convicted before him, by his own view, or by the oath of one or more credible witnesses, or by his, her, or their confession, of overloading, over driving, or otherwise ill treating any horse, dog, or other animal, to the Common Gaol for any time not exceeding one calendar month; and all Constables shall and may apprehend such person or persons, and bring him, her, or them, before a Justice of the Peace, to be dealt with according to the provisions of this Ordinance.

By Act of the Provincial Legislature, of 4 and 5 Vic. c. 25. sec. 29. if any person shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb—or shall wilfully kill any such cattle, with intent to steal the carcass or skin, or any part of the cattle so killed, and by Act of 4 and 5 Vic. c. 26. sec. 16., if any person shall unlawfully and maliciously *kill, maim or wound* any such cattle, he shall be guilty of felony, and on conviction, he shall be liable to imprisonment and hard labor at the discretion of the Court.

As the information and other proceedings thereon, under this head, can refer only to the fact of feloniously stealing or maiming, &c., the usual forms may be observed.

Information for maliciously maiming an ox.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace in and
 for the said District.

The said A. B. being duly sworn, deposeth and saith, that, on the ——— day of ——— instant, C. D., of ——— in the said District, laborer, did, at the Parish aforesaid (*or place where the act was done,*) unlawfully, maliciously and feloniously, main and wound, one ox of the value of five pounds, the property of the said deponent by cutting, bruising and breaking one of the legs of the said ox, to the injury of the said deponent, and against the act in such case made and provided ;—therefore prays justice.

The warrant to *apprehend* or to *commit*, to be in the usual form, including the charge contained in the information.

CERTIORARI.

The *Certiorari* is a writ issuing out of the King's Bench, in the name of the Queen, directed to the Judges, Justices of the Peace, or Officers of Inferior Courts, commanding them to certify, or to return the Records of a Cause depending before them, to the end that the party may have the more sure and speedy justice before the Queen's Justices, or such Justice as she shall assign, to determine the cause,—1 *Bac.*, *Ab.* 559.

It requires no special law to authorize this writ, for it is a consequence of all inferior jurisdictions of Record, to have their proceedings removable for the purpose of being examined by the Court of King's Bench, 1 *Ld. Ray.* 469.

In this respect the proceeding by *Certiorari* differs from a right of appeal ; for the latter does not exist unless created by express provision, whereas the other lies of course unless expressly taken away by Statute ;—it is not pre-

vented by the words of the Statute empowering the Justices to hear, and *finally determine*,—the effect of that expression being only, to make the determination of the Justices final as to matter of fact,—2 *Hawk.*, c. 27, s. 23, 3 *Mod.* 95.

When a writ of *Certiorari* is applied for at the suit of the Crown, or by the private prosecutor, it issues of course, and without assigning any cause, because delay cannot be presumed,—2 *Hawk.* c. 27, s. 27, 2 *Term. Rep.* 89.

This writ is grantable in Term time by the Court, and in vacation by a single Judge, to a defendant, upon special application and cause shewn.

By a Rule of Court 1 Ann. B. R. no *certiorari*, shall be granted to remove orders of Justices from which the law has given an appeal to the Sessions, before the matter be determined on the appeal, or the time for appealing be expired, because it hinders the privilege of appealing. But a defendant may wave his privilege in this respect, and apply for a *certiorari* without delay,—1 *Salk.* 147, *Paley.* 217, *Andr.* 343.

By the Stat. 13 Geo. 2 c. 18 s. 5, it is enacted, that for the better preventing vexatious delays and expense occasioned by serving out writs of *certiorari* for the removal of convictions, &c., before Justices of the Peace, no writ of *certiorari* shall thenceforth be granted, issued forth or allowed, to remove any conviction, order, &c., made by any Justice, or Justices of the Peace, unless such *certiorari* shall be moved or applied for, within six calendar months next after such conviction, order, &c., and unless it be duly proved upon oath, that the party suing out the same hath given *six days notice* thereof in writing to the Justice or Justices, by and before whom such conviction,

order, &c., shall be so made, to the end that such Justice or the parties therein concerned may shew cause against the issuing or granting the said *certiorari*.

The six days notice must be given to the Magistrate *previous to the application*, for the rule to shew cause. The service of that rule, though more than six days be given upon it, is not a sufficient compliance with the act, —5 *T. R.* 279, 281. The want of such previous notice, is therefore a good cause to be shewn against making the rule absolute. Or even if the rule has been made absolute, and the writ issued, the Court will supersede it, on the ground that no notice was given previous to the moving for it.

These restrictions, however, do not attach upon applications on behalf of prosecutors, nor upon those made by the Attorney General officially on account of a Defendant. —15 *East.* 337.—1 *East.* 298, 303. (*a*)—2 *Str.* 1209.

A further condition to be observed before a *certiorari* can be obtained by a defendant, is that of giving security for costs, &c. By the Stat. 5 Geo. 2 c. 19 s. 1, it is enacted that no *certiorari* shall be allowed to remove any judgment or order of His Majesty's Justices of the Peace, unless the party prosecuting such *certiorari*, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one or more Justices of the Peace, or before any Judge of the King's Bench, in the sum of fifty pounds with condition to prosecute the same at his own costs and charges with effect—and to pay all such costs as shall be taxed. And in case the party shall not enter into such recognizance, or shall not fulfil the conditions, Justices may proceed upon such judgments or orders, as if no such *certiorari* had been granted.

This writ is directed to the Justice or Justices by whom the conviction was made. According to Mr. Serjeant Hawkings, 2 Hawk c. 27 s. 42, if a person who ought to certify a record dies, having such record in his possession, a *certiorari* may be directed to his executor or administrator to certify it.

This writ must be delivered to the Justice before the time limited for its return expires, or it will be of no avail.—2 Hawk. c. 27, s. 64. But from the time of its delivery, it supersedes the authority of the Justices below, and all subsequent proceedings are void, provided the necessary security has been given as required.—1 Salk. 143.

If, before any *certiorari* is awarded, a warrant of distress has been made and delivered to the Constable, or person charged with the execution of it, who has detained the goods, he may proceed to sell, for the *certiorari* under such circumstances has no operation upon the execution which was begun before it issued. Nor has the Court of King's Bench any power over the warrant so previously granted, so as to make a rule upon the Constable to return it.—2 L. Raym. 990.—1 Salk. 147.

Writ of Certiorari to a Justice of the Peace, to return a conviction to the Court of K. B.

DISTRICT OF } Victoria by the Grace of God of the United
 _____ } Kingdom of Great Britain and Ireland,
 Queen, Defender of the Faith.

(L. S.)

To W. R., of _____ in the District of Montreal, in our Province of Canada, Esquire, one of our Justices assigned to keep the peace, and also to hear and determine divers felonies, trespasses and other misdeeds, in the said District committed. Greeting.

We, being willing for certain causes, that all and singular the record of conviction, of whatsoever trespasses and contempts against the Act of the 4 and 5 Vic. c. 26, intituled, "An Act for consolidating and amending the laws in the Province relative to malicious injuries to property," by virtue whereof C. D., of the Parish of _____ in the said District, laborer, is convicted by you, of having cut down and destroyed certain trees and shrubs, contrary to the said Act, (*or for whatever the conviction was,*) as said is, be sent by you before us, do command you, that you send all and singular the record of conviction aforesaid, with all things touching the same by whatsoever name the said C. D., may be named therein, before us, under your seal, in our Court of King's Bench, at _____ in the said District, in the _____ day of _____ next, together with this writ, that we may further cause to be done thereon, what of right and according to law, we shall see fit to be done. Witness, the Hon. _____ our Chief Justice of our said Court, at _____ this _____ day of _____ one thousand eight hundred and _____

(Signed,) M. and M., *Prothonotary.*

The manner of making the return to the said writ is as follows :—

On the back of the writ of Certiorari inscribe.

"The execution of this writ appears in the Schedules hereunto annexed."

(Signed) W. R., *J. P.*

On a separate piece of parchment or paper (*for although in England these returns are required to be made on parchment, yet in this part of this Province, they*

have generally been made on paper and accordingly received by the Courts) draw up the following return.

DISTRICT OF } I, W. R., Esquire one of the Justices of
 ————— } our Sovereign, Lady the Queen, assigned
 to keep the peace in and for the said District, and to hear
 and determine divers felonies, trespasses and other mis-
 demeanors in the said District committed, by virtue of this
 writ to me directed, do under my hand and seal, certify
 and return unto Her Majesty in Her Court of King's
 Bench, the record of conviction of which mention is made
 in the same writ. In witness whereof, I, the said W. R.,
 Esquire, have to these presents set my hand and seal.
 Given at ————— in the said District, this —————
 day of ————— one thousand eight hundred and —————

(Signed) W. R., J. P. [SEAL]

The conviction being ready, drawn up in due form under the hand and seal of the Justice, this return should, with the conviction, be attached to the writ of certiorari and bound together, by means of some tape or silk taste passing through the whole and the ends united under the seal of the Justice. The returns so prepared will then be folded up, put under cover, sealed and addressed to the officer of the Court out of which the writ issued,—generally the Prothonotary of the Court of the King's Bench—and on some corner, on the back of this packet, endorse as follows.

A. B., &c. }
 vs. } Certiorari and Return.
 C. D. }

Forward this return by some sure or regular conveyance to its destination—and take a note of what you have thus

done, and the mode and manner of doing it, in your Journal, or Memorandum Book, formerly mentioned.

It is sufficient for the Justice to return the conviction in due form, without returning also the information, examinations and affidavits taken in the proceedings had before him,—these, although original documents, (and which may be taken down in his register or note book above noticed) remain in the possession of the Justice, and ought to be preserved by him, as they may be called for upon some future occasion.

As the proceedings on the conviction, after it has been returned into Court, do not regard the Justice, except in so far as he may have to comply with any order of the Court thereon, I shall not here notice them, as they do not fall within the contemplation of the present manual.

CHALLENGE TO FIGHT.

It is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge, or even barely to endeavour to provoke another to send a challenge or to fight.—1 *Hawk. c. 63 s. 3.*—4 *Bl. Com.* 150.

In such cases the parties in the first instance may be bound over to keep the Peace, and may be prosecuted before the Court for this offence, and should death ensue by duel, to be indicted for murder.

Information for sending a challenge.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, gentleman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in
 and for the said District.

The said A. B. being duly sworn, deposes and saith, that on the _____ day of _____ instant, at the Parish aforesaid, C. D. of _____ in the said District, gentleman, did unlawfully provoke and excite him, the said A. B., unlawfully to fight a duel with him, the said C. D., and that he, the said C. D., did then and there write, or cause to be written, a certain challenge in the name of him, the said C. D., in the form of a letter, directed to the said A. B., which said challenge was to the tenor and effect following, that is to say (*here set forth the letter*) and which said letter the said C. D., did then and there afterwards send to the said A. B., against the peace, &c., and therefore the said A. B., prays justice in the premises,--(*should the challenge be sent by verbal message, the same form may be followed, varying the mode of sending the challenge.*)

Sworn at _____ in the said
 District, this _____ day of
 _____ 18 — , before me. } (Signed,) A. B.
 (Signed,) W. R., J. P.

The party being brought before the Justice, upon his warrant, may be bound over to keep the peace for a certain limited time, or until the next General Quarter Sessions of the Peace, as he may see fit. If sufficient sureties are not found, the party may be committed to the Common Gaol until such sureties are found, or he be from thence otherwise delivered by due course of law.

CHEATS.

Cheats, which are punishable by the common law, may in general be decried, to be *deceitful practices* in defrauding, or endeavoring to defraud another of his known right, by means of some *artful devise*, contrary to the plain rules of common honesty.—1 *Hawk. c. 71. sec. 1.*

A *Cheat*, by the statute, is a person who falsely and deceitfully obtains, or gets into his hands or possession, the money, goods, chattels, jewels, or other things of other persons by colour and means of *false tokens*, or counterfeit letters made in another man's name.—*Stat. 30. Geo. 2. c. 24.*

By Act of the Provincial Legislature of 4 and 5 Vic. c. 25. sec. 45. If any person shall, by any *false pretence*, obtain from any other person, any chattel, money, or valuable security, with intent to *cheat* or *defraud* any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the Court to imprisonment and hard labor.

The words of the above Act would seem to extend to every case of fraud, where a party, either in his own name and on his own account, or in the name, or on the account of some other person, falsely obtains money or goods from another—as by falsely representing himself to be in a situation in which he is not—or falsely representing any occurrence that has not happened—to which persons of ordinary caution may give credit—the ingredient of the offence being the obtaining money, &c., by a *false pretence* with an intent to *cheat* or *defraud*.

Information for obtaining goods under a false pretence.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, Merchant,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in
 and for the said District.

The said A. B. being duly sworn, deposeth and saith, that on the _____ day of _____ instant, at the Parish aforesaid, C. D., of _____ in the said District, labourer, did knowingly and designedly, by false pretences, that is to say, by alledging and pretending that he the said C. D., was the servant of one J. G., of _____ in the said District, Esquire, and was directed and authorised by his said master to demand and obtain from the said A. B. one keg of butter, and one box of soap, for and on account of the said J. G., (*or any other false pretence whatever it may be*) by means whereof the said C. D. did obtain and get into his possession, one keg of butter, of the value of three pounds, and one box of soap of the value of two pounds, of the goods and chattels of the said A. B., he the said C. D. not being at the time the servant of the said J. G., nor by him the said J. G. directed or authorised to demand and obtain from him, the said A. B., the said keg of butter and box of soap, as by the said C. D. it was falsely pretended, contrary to law. Wherefore prays justice.

Sworn at _____ in the said }
 District, this _____ day of }
 _____ 18 — , before me, } (Signed,) A. B.
 (Signed,) W. R., J. P.

Warrant to apprehend on the above charge, to be written in the usual form, grounded on the charge as stated in the information.

This being a misdemeanor, the party is entitled to be admitted to bail—if such be offered, the sureties will enter into recognizance with the defendant for his appearance at the Quarter Sessions, or other Criminal Court. Should no bail, or insufficient bail be offered, he must stand committed until discharged by due course of law, or until sufficient bail shall be given.

See *Commitment* in such case.

The instances in which false pretences may be used for the purpose of fraud, are too numerous to be noticed here, but as the same form of proceeding will apply to all, I consider it unnecessary to particularize any other besides the above.

CHILD STEALING.

See *Abduction of Women*.

CHURCH.

By Act of the Provincial Legislature of the 4 and 5 Vic. c. 26 s. 3, it is enacted, that whosoever shall unlawfully and maliciously set fire to any Church, Chapel, or Meeting house for the exercise of any mode or form of religious worship, shall be guilty of felony, and on conviction be liable to imprisonment and hard labour, at the discretion of the Court.

And by Act of 4 and 5 Vic. c. 27, s. 31, it is enacted, that if any person shall wilfully disturb or disquiet any assemblage of persons met for religious worship, by profane discourse, by rude or indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order or solemnity of the meeting, such person shall, upon conviction thereof before any Justice of the Peace on the oath of one or more credible witness or witnesses, forfeit and pay such a sum of money, not exceeding five pounds, as the said Justice shall think fit.

For forms and proceedings on the above Act of 4 and 5 Vic. c. 26, s. 3, see title *Burning*.

Information for disturbance of a congregation in Church during Divine Service, under 4 and 5 Vic. c. 27, s. 31.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in and
 for the said District.

The said A. B. being duly sworn, deposeth and saith, that on Sunday, the _____ day of _____ instant, a congregation of persons being assembled and met together in the Parish Church of the said Parish, (*or in any Church, Chapel, or other place of worship as the case may be*) for the purpose of religious worship, C. D., late of the said Parish, tailor, and J. G. of the same place, labourer, together with divers other evil disposed persons, did, during the performance of such religious worship in the said Parish Church (*or such Church, Chapel &c., as above*) the day and year aforesaid, at the Parish aforesaid, wilfully interrupt and disquiet the said congregation so

assembled, by making a great noise, and hallooing at and near the said Church (*or Church, Chapel, &c., as above*) and throwing stones against and breaking the windows of the said Church (*or Church, Chapel, &c., as above*) (*or other disturbances as the case may be*) whereby the said congregation was greatly terrified and disturbed, and the said religious worship indecently interrupted. Therefore prays justice in the premises.

Sworn at _____ in the said
 District, this _____ day of
 _____ 18 —, before me. } (Signed,) A. B.
 (Signed,) W. R., J. P.

Warrant to apprehend the said C. D. and J. G.

This warrant may be drawn in the usual form, stating in it the substance of the above information, and concluding in the usual manner.

This being a misdemeanor, which the Justice is allowed to hear and determine, he may proceed immediately on the offenders being brought before him, to hear the parties and to take the examination of their witnesses in writing, and if he is satisfied that the complaint is well founded, he will convict the offenders and fine them in conformity to the above act.

See the form of conviction as settled by the Act.

CLERGY—BENEFIT OF.

The benefit of Clergy was a privilege formerly allowed by the law to clerks in orders, and afterwards to those among the laity who could read—by virtue of which a

criminal, though duly convicted, was discharged from the sentence of the law, in the King's Courts, and delivered over to the Ecclesiastical canons.

This absurd practice, Blackstone says, had its origin in the pious or rather the superstitious regard paid by Christian Princes to the Church in its infant state, but the ill use that had been made of it, and its becoming at length an unmeaning ceremony, occasioned its being abolished in England by Statute 7 and 8, Geo. 4, c. 28, s. 6. and subsequently in this Province by Act of 4 and 5 Vic. c. 24, s. 19.

COIN AND CURRENCY.

By the Act of the Provincial Legislature of the 4 and 5 Vic. c. 93. sec. 12. made to regulate the Currency of this Province, it is provided, that if any person shall colour, gild or case over with gold or silver, or any thing producing the colour of gold and silver, any coin of coarse gold or of coarse silver, or of base metal resembling any coin made current by the said Act—or if any person shall bring or import into this Province any forged, false or counterfeit gold, silver or copper coin, like to any of the gold, silver or copper coin, made current by the said Act, knowing the same to be false &c,—or if any person shall alter or tender in payment as being any of the gold, silver or copper coin, made current by the said Act, any false or counterfeit coin, counterfeited to any of the gold, silver or copper coins made current by said Act, knowing the same to be false or counterfeit, such person shall be guilty of a misdemeanor, and on conviction shall be liable to im-

prisonment and hard labour—and if such person shall afterwards offend in like manner, he shall be guilty of felony, and punished accordingly.

By sec. 13. If any person shall form, make, cut, sink, stamp, engrave, repair or mend, or shall assist in forming, &c., or shall have in his or her possession, except for some known and lawful purpose, any die, plate, press, tool or instrument, paper, matter or material, of any kind used or designed for the purpose of counterfeiting or imitating any coin which shall be lawfully current in this Province by virtue of this Act,—or any Bank note, bill, note or writing, purporting to be a Bank note in circulation in this Province, or in any of the United States of America adjoining this Province,—such person shall be guilty of a misdemeanor, and shall be liable to punishment accordingly. And the proof that such die, plate, press, tool or instrument, paper, metal or material, was formed, made, cut, sunk, stamped, engraved, repaired or mended by, or was in the possession of such person, for some lawful purpose shall be upon him or her.

By sec. 14. It is declared lawful for any Justices of the Peace upon complaint made on oath before him, that there is just cause to suspect, that any person or persons, is or are, or hath or have been concerned in making, counterfeiting or imitating any such coin, bank note, bill, note or writing as aforesaid, by warrant under his hand, to cause the dwelling house, room, workshop, outhouse or other buildings, yard, gardens, ground or other place belonging to such suspected person or persons, to be searched for any counterfeit coin, &c. And if any such, or any die, plate, press, &c., as aforesaid, shall be found in the such possession or custody of any person whatsoever, it shall

be lawful for any person or persons discovering the same to seize and carry the same forthwith before a Justice of the Peace, having jurisdiction within the locality in which the same shall be seized, who shall cause the same to be secured and produced in evidence against the offender.

By sec. 15, The person to whom any suspicious gold, silver or copper coin shall be tendered in payment, may cut or break the same, and if found counterfeit, the person tendering the same shall bear the loss, otherwise the person breaking it, shall receive a sum proportionate to its weight. And if any question arise, whether such coin be counterfeit, it shall be determined by any Justice of the Peace, who if he entertain any doubt in that behalf, may summon three skilful persons,—the decision of a majority of whom shall be final.

Information in order to obtain a warrant to search for Counterfeit Coin, &c.

DISTRICT OF } Information of A. B. of the Parish of ———
 ————— } ———, in the said District, yeoman, taken
 before me W. R., Esquire, one of Her
 Majesty's Justice of the Peace, in and for
 the said District.

The said A. B., being duly sworn, deposeth and saith, that he has just cause to suspect, and doth suspect, that J. F., of ————— in the said District, pedlar, and J. G. late of the same place, silversmith, are concerned in the making and counterfeiting dollars and half dollars, to the similitude and likeness of silver dollars and half dollars of the lawful current money of this Province, in a certain

dwelling house, workshop, and other out buildings thereunto attached, now in the occupation of the said J. G., at _____ in the said District. And this deponent further saith, that he hath at different times seen in the hands of the said J. F., and of the said J. G., at _____ aforesaid, and particularly on or about the _____ day of _____ last past, sundry pieces of counterfeit coin of the similitude and likeness aforesaid, and hath also seen as well the said J. F. as the said J. G. at different other times at _____ aforesaid, tender in payment and offer to pass in lawful current coin, sundry pieces of counterfeit coin of the similitude and likeness aforesaid, (*and other causes of suspicion may be stated as the case may be.*)

Sworn at _____ in the said
 District, this _____ day of }
 _____ 18 _____ before me. } (Signed) A. B.
 (Signed) W. R., J. P.

This information may be varied according to circumstances, so as to apply to any other of the objects contained in the 14 Section of the above act.

Search warrant on the above information.

DISTRICT OF } To any Constable, Officer of Police, or
 _____ } other Officer of the Peace in and for
 the said District and to each and every of
 them.

Whereas A. B. of the Parish of _____ in the said District, yeoman, hath this day made oath before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, that he hath just cause to suspect and doth suspect, that J. F. of _____ in the said District, pedlar, and J. G. late of the same place, silversmith,

are concerned in the making and counterfeiting of dollars and half dollars, to the similitude and likeness of silver dollars and half dollars, of the lawful current coin of this Province, in a certain dwelling house, workshop and other buildings thereunto attached, now in the possession of the said J. G. at ——— in the said District. These are therefore in Her Majesty's name to command and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said dwelling house, workshop, and other out buildings thereunto attached, now in the occupation of the said J. G., and there diligently to search for such counterfeit dollars and half dollars, and for all tools or implements and materials for making or coining any such false and counterfeit dollars and half dollars ; and if any of these shall be found upon such search, you are to bring the same so found, and also the body of the said J. G. before me, or some other of Her Majesty's Justices of the Peace, in and for the said District, that the said false and counterfeit dollars or half dollars so found may be secured as by law required, and the said J. G. held to answer to the said complaint. Given under my hand and seal at ——— in the said District, this ——— day of ——— one thousand eight hundred and ———.

(Signed,) W. R., J. P. [SEAL.]

Although the foregoing Act, section 14, says nothing about apprehending the person in whose custody any counterfeit money or coining implements may be found, yet, in every case where the connection of any person with the offence committed, is brought home to him as participating therein, by his possession of what constitutes a principal ground of the offence,—as of the goods stolen,

the implements for coining and the like, it is sufficient cause for bringing that person before the Justice, to account for such possession. This principle cannot be doubted—and one strong reason is, that a guilty person finding he was discovered, if left at liberty after such search, might easily escape before another warrant could be procured against him.

If upon the search made, any tools or implements such as described are found, the Justice ought to take the examination of persons of competent knowledge as to the use and fitness of such tools or implements for coining—and also the examination of the person in whose possession such tools or implements were found, so as to give him an opportunity of shewing he had the same for a lawful purpose.

This offence being considered as a misdemeanor, the person in whose possession, the counterfeit coin, or implements for coining have been found, is entitled to be bailed, and if good and sufficient bail be offered, a recognizance for that purpose should be prepared, and all the witnesses bound over in the same manner, to appear and give evidence at the Court, where the trial should be had. If on the contrary the party offers no bail, or insufficient bail, he must stand committed until such trial can be had.

Warrant of commitment in such case.

DISTRICT OF _____ } W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District.

To any Constable, Officer of Police, or other Officer of the Peace, in and for the said District, and to the Keeper of the Common Gaol in [and for the said District.

These are in Her Majesty's name to charge and command you the said Constable, Officer of Police, or other Officer of the Peace, and each and every of you, forthwith to convey and deliver into the custody of the said keeper, of the said Common Gaol, the bodies of J. F., of _____ in the said District, pedlar, and of J. G., late of the same place, silversmith, charged on oath before me the said Justice with the suspicion of being concerned in the making and counterfeiting silver dollars and half dollars to the similitude and likeness of the lawful current coin of this Province,—and whereas upon a search warrant issued in this behalf, certain tools and instruments fit for the purpose of making, coining and conterfeiting such false and counterfeit coin, have been found in the dwelling house and workshop of the said J. G., at _____ aforesaid, in the possession of the said J. G., without his being able to shew that the said tools and instruments were in his possession for any lawful purpose. And the said J. F., and J. G., not having produced any good and sufficient sureties for their appearance to answer to the said complaint, the said keeper of the said Common Gaol is hereby commanded to receive into his custody the said J. F. and J. G., and them safely keep until they shall be thence delivered by due course of law, or until such sufficient sureties shall be given. Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____

(Signed,) W. R., J. P. [SEAL.]

Information for uttering counterfeit coin.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace in and
 for the said District.

The said A. B. being duly sworn, deposeth and saith,
 that on the _____ day of _____ instant, at the
 Parish aforesaid, C. D. of _____ in the said District,
 pedlar, unlawfully and deceitfully uttered and paid to him,
 the said deponent, one piece of false money, made and
 counterfeited to the likeness and similitude of the lawful
 current coin of this Province, called a half dollar, the said
 C. D. then and there well knowing the said piece of
 money to be false and counterfeited.

Sworn at _____ in the said
 District, this _____ day of }
 _____ 18 —, before me. } (Signed,) A. B.
 (Signed,) W. R., J. P.

The warrant to apprehend in this case to be in the
 usual form, containing the charge as stated in the infor-
 mation.

The offender in this case is entitled to be admitted to
 bail, and the course to be observed thereon will be the
 same as in the preceding case. Should no bail, or insuf-
 ficient bail, be offered, the commitment to gaol will be for
 the want of such bail, stating the charge against the
 accused to be made on oath as contained in the infor-
 mation.

COMMITMENT.

A *Commitment*, implies the sending a man to prison by the warrant or order of any Court, or Magistrate, where the party has been convicted, or is charged with a crime.

A Justice is bound to commit all persons charged before him with offences which are not bailable, as well as all persons who neglect to offer bail for offences which are bailable, that is, provided a *prima facie* case is made out against them.—2 *Hawk. c. 16, s. 1.*—1 *B. and C. 50.*

An order for commitment to prison should be in writing, and may be drawn either in the name of the Queen, or in the name of the Magistrate who makes it, expressing his office of authority,—and in all cases must be directed to the gaoler, or other person to whose custody the person is committed, and must be under the hand and seal of the Justice. It must state the time and place of making it—the name and surname of the party committed, if known—and if not known—describing his person—his age—stature—complexion—colour of hair, and the like—and to add—that he refuses to tell his name,—that he is charged on oath—and the offence with which he is charged. If the offence is indictable, it must conclude, *until discharged by due course of law.* If the offence is bailable, the conclusion of the commitment should be—*to be detained in custody for want of sureties, or until he shall be discharged by due course of law.*—1 *Hale. 557.*—2 *Hale. 122.*—7 *Taunt. 63.*

A commitment in execution on a summary conviction or adjudication by Justices, is, in general, subject to the foregoing rules, but requires more certainty. This com-

mitment must shew before whom the conviction was made, and, where it is in pursuance of a special authority, the terms must be special and exactly pursue that authority. It must also state, that the offender was convicted of the offence, and correspond in every particular with the conviction.

A commitment for punishment, must state the precise time of imprisonment, and also the manner,—as whether it is to hard labor or correction.

A commitment for want of distress, must state that first, and where the offender is to be discharged upon any condition—as payment of a penalty—the giving security—or the doing of some other act, such condition must be expressed in the commitment, because on the compliance therewith, the party is entitled to his immediate discharge.

Whenever a Justice of the Peace is empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person *being in his presence*, shall refuse to be bound, or to do such thing, the Justice may commit him to gaol to remain there till he shall comply,—even where the party is a married woman,—2 *Hawk. c. 16, s. 2*,—*Hale. P. C.* §282.—3 *M. and S.* 1.

Where a statute imposes a penalty, and on failure of sufficient distress directs that the offender shall be committed to prison for a certain period—if the offender is convicted of a penalty, and has effects sufficient to satisfy only a *part*, the effects ought not to be taken under the warrant of distress, but the imprisonment should be resorted to, for the law never intended a man should suffer *both* punishments upon *one* conviction. But in such case, the Magistrate cannot commit the party, until he has ascertained the want of sufficient goods and effects to satisfy the

penalty, by a regular return to that effect on the warrant of distress, made by the officer charged with the execution of it.—2 *Lord Raym.* 1195.—*Fost.* 132.—11 *Mod.* 54.—*Paley.* 184.—1 *Stra.* 710.

It is said, that where the Officer makes a return of *Nulla Bona*, or no sufficient distress upon the warrant, the Justice should make a record, that is a Statement of the fact that the Officer charged with the execution of the warrant of distress had made a return thereto, that the party had not sufficient goods and effects to satisfy the amount of the condemnation, and thereupon enter an order, that the party be forthwith committed to the Common Gaol, to be imprisoned during the time limited by law, or until the amount of the condemnation be paid. This would be unnecessary and it would be more regular, if the conviction in the first instance contained all the punishment that the law inflicts, or that was intended to be imposed on the offender.—1 *Ld. R.* 545.—*Paley*, 184.

Where contemptuous and libellous words are spoken of a Justice of the Peace in the execution of his office *and in his presence* it seems that he may commit the party for a contempt,—2. *Salk.* 420.—7. *Taunt.* 63.

If the commitment is for felony, it must contain the special nature of the felony briefly stated, as in the case of *arson*—for burning the dwelling house or other house of ——— at such time and place : in the case of *larceny*, for stealing the goods and chattels of ——— with the time and place : in case of *misdemeanor*,—the particular circumstances constituting the misdemeanor ought to be stated—it being in general advisable to describe every offence concisely, by marking the particular fact or circumstance, which constitutes the substance of it.

But a Commitment for *high treason*,—on suspicion of treason generally—or for treasonable practices, without stating any overt act, or other particulars of the crime is sufficient.—2 *Hawk.* 6. 2. c. 16. sec. 16.—7. *T. R.* 736.—1 *Stra.* 3 and 4.

So also a commitment charging the party generally with insulting a Justice of the Peace in the execution of his office without specifying particularly what the party said, or did, is sufficient. The commitment however ought to specify the *time* of imprisonment.—2. *Barn* 155.—*Hawk. B.* 2. c. 16. sec. 16.—5. *B. and A.* 895.

It is safe to state on the *Commitment*, although not necessary, that the party has been charged upon oath.—1. *Leach.* 167.

Nor is it necessary to state any part of the evidence adduced before the Magistrate, or to shew the grounds on which he has thought fit to commit the offender,—2. *Wils.* 158. But it is necessary to set forth the particular crime alleged against the party with convenient certainty.—14 *East.* 70. 2. 3.

Wherever the commitment is in nature of *punishment*, the time of imprisonment must be stated, for if it is until the party *be discharged by due course of law*, it will be bad.—5 *B. and A.* 895.—7 *Taunt.* 68.—*B. and A.* 218.

Commitment—general form of.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District.

To any Constable, Officer of Police, or any other Officer of the Peace in and for the said District, and to the keeper of the Common Gaol of the said District.

These are to command you, the said Constable, &c., and each and every of you, in Her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said Common Gaol, the body of C. D., of the Parish of ——— in the said District, labourer, charged on oath, before me the said Justice, with having, on the ——— day of ——— instant, at the Parish aforesaid, feloniously stolen, taken, and carried away, divers goods and effects of the value of five pounds, the property of A. B., of ——— in the said District, yeoman, (*or of whatever other offence the party may be accused.*) And you, the said keeper of the said Common Gaol, are hereby required to receive into your custody, the said C. D., and him safely keep in the said Gaol, until he shall be thence delivered in due course of law. Given under my hand and seal at ——— in the said District, this ——— day of ——— one thousand eight hundred and ———

W. R., J. P. [SEAL.]

Commitment for want of bail, on aailable offence.
 DISTRICT OF } W. R., Esquire, one of Her Majesty's
 ——— } Justices of the Peace, in and for the said
 District.

To any Constable, &c., &c., and to the keeper of the Common Gaol in and for the said District.

These are to command you, the said Constable, &c., &c., and each and every of you, in Her Majesty's name, forthwith to convey and deliver into the custody of the

keeper of the said Gaol, the body of C. D., of the Parish of _____ in the said District, labourer, charged on oath before me the said Justice, with having on the _____ day of _____ last, at the Parish aforesaid, violently assaulted, beat and bruised, one A. B., of _____ in the said District, yeoman, without any lawful cause or provocation. And you, the said keeper of the said Gaol, are hereby commanded to receive into your custody the said C. D., and him safely keep in the said Gaol, for want of sufficient bail, until he be there delivered by due course of law. Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____.

(Signed) W. R., J. P. [SEAL.]

Commitment by a Justice of the Peace for insulting him in the execution of his office.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District.

To any Constable, &c., &c., and to the keeper of the Common Gaol of the said District.

These are to command you the said Constable, &c. &c. and each and every of you, in Her Majesty's name forthwith to convey and deliver into the custody of the keeper of the said gaol, the body of C. D. of the Parish of _____ in the said District, laborer, charged by me the said Justice, with indecent and contemptuous behaviour towards me, he, the said C. D., having this day at _____ in the said District, insulted and obstructed me the said

Justice, in the due execution of my office as a Justice of the Peace as aforesaid, by reason whereof, I, the said Justice, have this day at _____ aforesaid, adjudged the said C. D. to be guilty of a contempt towards me in the execution of my said office, and have condemned him to be committed and be confined in the said gaol for the space of one calendar month. And you the said keeper of the said gaol are hereby commanded to receive into your custody the said C. D. and him safely keep in the said gaol, for the space of one calendar month from this day, and for so doing this shall be your sufficient warrant. Given under my hand and seal, at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____.

(Signed) W. R., J. P. [SEAL]

When the commitment is made for a specific period or punishment for insulting the Justice in the execution of his office, it would seem right that he should draw up a conviction, stating the offence, and adjudging the offender to the punishment to be inflicted, as this would serve as a ground for issuing the warrant of commitment. But should the Justice see fit, instead of adjudging the offender to imprisonment for a limited time, to order him to give security to keep the peace,—the commitment would in that case conclude thus,—“*and him safely keep in the said gaol, until he shall find good and sufficient sureties to keep the peace for _____ calendar months, or be thence discharged by due course of law.*”

Form of conviction in such case.

DISTRICT OF } Be it remembered that on this _____
 _____ } day of _____ in the year one thousand
 eight hundred and _____ at _____ in the said
 District, I, W. R., Esquire, one of Her Majesty's Justices
 of the Peace in and for the said District, being in the
 execution of my office as such Justice in taking the
 examination of witnesses on a complaint made before me
 for larceny, (*or in whatever other duty the Justice was at
 the time employed*) one C. D., of the Parish of _____
 in the said District, labourer, cometh before me, and
 in my presence and hearing, useth contemptuous and
 insulting language towards me, the said Justice, the said
 C. D. then and there openly and publicly saying, that I,
 the said Justice, was ignorant of my duty as a Magistrate
 —that I, the said Justice, was unfit and incapable to fill
 the office of a Justice of the Peace—that I, the said Jus-
 tice, acted wrongfully, and committed injustice towards
 Her Majesty's subjects—(*or whatever other contemptuous
 words or expressions were used, or conduct observed by the
 offender,*) whereby I, the said Justice, am prevented and
 obstructed in the due execution of my said office as a
 Justice of the Peace as aforesaid. Whereupon I, the said
 Justice, by reason of the matters aforesaid, do declare and
 adjudge the said C. D. to be guilty of a contempt towards
 me the said Justice, in the execution of my said office,
 and do therefore condemn him, the said C. D., to be
 imprisoned in the Common Gaol of the said District for
 and during the space of one calendar month (*or to find
 sureties for the peace for six calendar months—or until
 the next ensuing Quarter Sessions of the Peace for the
 said District, and to stand committed to the Common*

Gaol of the said District until such sureties be given.)
 Given under my hand and seal at _____ aforesaid,
 this _____ day of _____ one thousand eight hun-
 dred and _____.

(Signed) W. R., J. P. [SEAL.]

Commitment for non-payment of a penalty on a sum-
 mary conviction, on 4 and 5 Vic. c. 26.

DISTRICT OF } W. R., Esquire, one Her Majesty's Jus-
 _____ } tices of the Peace, in and for the said
 } District.

To any Constable, &c. &c., and to the Keeper of the
 Common Gaol (or of the House of Correction) of the
 said District.

Whereas C. D., of the Parish of _____ in the said
 District, labourer, was on the _____ day of _____
 instant, at _____ in the said District, convicted before
 me the said Justice, of having on the _____ day of
 _____ last at the Parish aforesaid, unlawfully and ma-
 liciously destroyed sundry young trees, saplings and under-
 wood, the property of one J. G., of the said Parish, yeo-
 man, for which offence the said C. D., was by me, the
 said Justice declared to have forfeited, and was ad-
 judged and condemned to pay forthwith to me the said
 Justice, the penalty of ten shillings, also the sum of twenty
 shillings by me the said Justice allowed and directed to be
 paid to the said J. G., for his damages in this behalf, with
 the further sum of ten shillings for his costs, and that on
 default of such payment, he the said C. D., should be im-
 prisoned and kept to hard labor. in the Common Gaol (or

House of Correction) for the space of one Calendar month—and the said C. D., not having paid the said penalty, damages and costs in conformity to the said conviction and judgment, you the said Constable, &c. &c. and each of you are and is hereby commanded and required to take, and convey and deliver the body of the said C. D., to the keeper of the said Gaol (*or House of Correction,*) and you the keeper of the said Gaol (*or House of Correction,*) are hereby commanded to receive into your custody the said C. D., and him safely keep at hard labor in the said Gaol (*or House of Correction*) for the space of one calendar month, unless the said penalty, damages and costs shall be sooner paid. Given under my hand and seal at _____ aforesaid, this _____ day of _____ one thousand eight and _____

(Signed,) W. R., J. P. [SEAL.]

NOTE.—Commitment in the first instance, on a summary conviction, is to be used only where the Act gives a power to *commit* by way of punishment, or when the penalty, &c., is not paid conformably to the conviction. But where the penalty is in the first instance directed to be levied by distress and sale of the offender's goods and chattels, and his commitment to gaol or the house of correction only on a default of the sufficiency of such goods and chattels, in that case there must be a return of the officer charged with the execution of the warrant of distress of the insufficiency of such goods and chattels, duly certified, before such commitment can be had.

Commitment on Officer's Return of *nulla bona* on a warrant of distress.

DISTRICT OF } W. R. Esquire, one of Her Majesty's Jus-
 _____ } tices of the Peace, in and for the said
 District.

To any Constable, &c. &c. and to the keeper of the Com-
 mon Gaol of the said District.

Whereas C. D. of the Parish of _____ in the said
 District, labourer, was on the _____ day of _____
 last, at _____ in the said District, convicted before me
 the said Justice, of having on the _____ day of
 _____ last, at the Parish aforesaid, (*here set forth the
 offence as stated in the conviction*) contrary to the Act in
 such case made and provided, by reason whereof the said
 C. D. hath forfeited and hath been adjudged to pay the
 sum of _____ as a penalty, also the sum of _____
 by me, the said Justice, allowed to the said _____ for
 his damages in this behalf, with the further sum of _____
 for his costs; which said penalty, damages and
 costs, were by me, the said Justice directed to be paid
 in ten days next after the said conviction, and that on
 default of such payment, he, the said C. D., should be
 imprisoned in the said Common Gaol, for the space of
 one calendar month. And whereas afterwards, to wit,
 on the _____ day of _____ instant, (*after the expi-
 ration of the time limited for the payment*) the said penalty,
 damages and costs not being then paid, I the said Justice
 did issue my warrant addressed to the Constables, &c.
 commanding and authorizing them and each and every
 of them to levy the said penalty, damages and costs
 by distress and sale of the goods and chattels of the
 said C. D. And whereas it appears to me by
 the return made upon oath by _____ the officer
 charged with the execution of the said warrant, that no

sufficient distress can be found whereon to levy the aforesaid penalty, damages, and costs ; these are therefore to command you, and each and every of you, the said Constables, &c., &c., to take the said C. D. by his body, and him to convey to the said Common Gaol, and deliver him to the said keeper. And I do hereby command the said keeper to receive into his custody the said C. D., and him safely to keep and detain in the said Gaol, for the space of one calendar month, unless the said penalty, damages and costs shall be sooner paid. Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____.

(Signed) W. R., J. P. [SEAL]

Commitment for stealing cattle.

DISTRICT OF } W. R., Esquire, one of Her Majesty's Jus-
 _____ } tices of the Peace in and for the said District.
 To any Constable, &c., &c., and to the keeper of the
 Common Gaol for the said District.

Whereas C. D., of the Parish of _____ in the said District, labourer, stands charged before me, on the oath of A. B., of _____ in the said District, yeoman, with having on the _____ day of _____ instant, at _____ aforesaid, feloniously taken, stolen, and driven away, one ox, one cow, and ten sheep, of the value of twenty pounds, of the goods and chattels of the said A. B. ; these are therefore to charge and command you, the said Constable, &c., &c., and each and every of you to take and convey the said C. D. to the said Common Gaol, and there to deliver him to the said keeper. And you, the said keeper, are hereby commanded to receive into your custody the said C. D., and him safely to keep

in the said Gaol, until he shall be thence delivered by due course of law. Given under my hand and seal at —— in the said District, this —— day of —— one thousand eight hundred and ——.

(Signed) W. R., J. P. [SEAL.]

If the offence be stealing a *horse, mare, or colt*—say *leading away*, instead of *driving away*.

From the forms here given, the beginning and conclusion of which are generally the same, all other commitments may be drawn, observing always to state in each particular case the nature of the crime or offence, of which the party is accused or convicted.

COMPOUNDING OFFENCES.

The *compounding a larceny or robbery*, is where the party robbed, not only knows the felon, but also takes the goods again, or other amends, upon agreement not to prosecute. This offence was formerly held to make a man an accessory to the crime, but it is now only punished by fine and imprisonment, unless it be accompanied with some degree of maintenance given to the felon, which will then make the party an accessory after the fact.—1 *Hawk.* 59 s. 6 and 4.—*Bl. Com.* 134.

By Act of the Provincial Legislature of the 4 and 5 Vic. c. 25, s. 50, every person who shall corruptly take any money or reward, directly or indirectly, under pretence, or on account of helping any person to any chattel or other property which shall by any felony or misdemeanor have been stolen, taken, &c., (unless he cause the offender to be apprehended and brought to trial) shall be guilty of felony, and be liable, at the discretion of the Court, to imprisonment and hard labour.

And by sec. 51. of the same Act, if any person shall publicly advertise a reward for the return of any property which shall have been stolen or lost, and shall in such advertisement use any words, purporting that no question shall be asked, or that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any enquiry after the person producing such property ; or shall promise or offer in any such advertisement to return to any pawnbroker or other person who may have bought, or advanced money by way of a loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward, for the return of such property, every such person shall forfeit the sum of twenty pounds, for every such offence to any person who will sue for the same.

The compounding of informations upon penal statutes, without leave of the Court is a misdemeanor against public justice.—4 *Bl. Com.* 136.

Information for taking a reward for the recovery of stolen property.

DISTRICT OF } Information of A. B., of the Parish of
 ————— } ————— in the said District, yeoman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in and
 for the said District.

The said A. B. being duly sworn, deposeth and saith, that on the ——— day of ——— last, at the Parish aforesaid, a silver watch of the value of five pounds, the property of the said A. B., was feloniously stolen, taken and carried away by some person or persons to him

unknown—and that afterwards, to wit on the _____ day of _____ instant, C. D., of the Parish of _____ in the said District, labourer, for and in consideration of the sum of ten shillings, then and there paid to him the said C. D., by the said A. B., did agree and undertake, to and with the said A. B. that he the said C. D., would procure and obtain the said silver watch so stolen, to be restored to the said A. B., (*or would use his best endeavours to that effect*) contrary to the Act in such case made and provided.

Sworn at _____ in the said
 District, this _____ day of } (Signed,) A. B.
 _____ 18—, before me. }
 (Signed,) W. R., J. P.

The warrant to be issued, and the other proceedings to be had on this information are the same as in other cases of felony.

CONFESSION.

Confession is, in law, an acknowledgment that the offence with which a person is charged, has been committed by him.

A free and voluntary confession made by a prisoner, whether made before or after he is apprehended—whether made on a general examination, or after commitment—whether reduced into writing or not—in short any voluntary confession made by a prisoner at any time or place, is strong evidence against him, and if satisfactorily proved, sufficient to convict without any corroborating circumstances. But if it be drawn from him by improper influ-

ence, threats, or promises, it cannot be received in evidence.—2 *Leach* 554.—*Russ. and Ry.* 440, 481.

If a confession be obtained by undue means, nothing that the prisoner afterwards says under the influence of having made that confession, can be received.

Confession of a prisoner on his examination on a charge of felony.

DISTRICT OF } Voluntary examination of C. D. of the
 _____ } Parish of _____ in the said District,
 labourer, taken before me W. R. Esquire,
 one of Her Majesty's Justices of the Peace.

The said C. D., being brought before me, the said Justice, charged on the oath of A. B., of the Parish of _____ in the said District, yeoman, with having on the _____ day of _____ last, at the said Parish of _____ feloniously stolen a *silver teapot*, of the value of ten pounds, the property of the said A. B. Upon his examination now taken before me, in answer to the said charge, the said C. D., freely and voluntarily confesseth and acknowledgeth the same to be true, and that he the said C. D., did steal, take and carry away the said silver teapot at the time and place above mentioned, from and out of the dwelling house of the said A. B. And further saith not—and the aforesaid confession having been by me, the said Justice, deliberately read over to the said C. D., and being required to sign the same, the said C. D., saith, that he cannot write, but that the said confession contains the truth.

Taken at _____ in the said
 District, this _____ day of
 _____ 18 — , before me. }
 (Signed,) W. R., J. P.

CONSPIRACY.

Conspiracy, is a combination of two or more persons to injure a third person, or to do something evil or illegal.

According to Hawkins, all confederacies whatsoever wrongfully to prejudice a third person, or to maintain another in any matter whether it be true or false, are highly criminal at common law.—1 *Hawk. c. 72. sec. 2.* And whether the confederacy is entered into for an *unlawful purpose* to be effected by *lawful means*—or the *purpose is lawful*, and the *means unlawful*,—or whether the purpose be, or be not, effected,—the *conspiracy* is equally criminal.—2 *Ld. Raym. 1167.*—1 *Leach. 37.*—3 *Burr. 1439.*—1 *East. 462.* *Conspiracy*, or *unlawful agreement*, or *plotting* or *contriving together*, though the object be not accomplished, is the gist of the offence and the very nature of the offence of course requires that *more than one person* should be concerned in it.—2 *Burr. 993.*—3 *Burr. 1321.*

The object of conspiracy is not confined to an immediate wrong to particular individuals, it may be to injure *public trade*—to affect *public health*,—to violate *public peace*,—to insult *public justice*, or to do any other act which is in itself illegal.—*Chitty's. C. L. 1138.*

Information against Journeymen for conspiring to raise wages, and not to work but at certain hours.

DISTRICT OF } Information of A. B., of the Parish of
 ————— } ————— in the said District, Merchant
 Tailor, taken before me, W. R., Esquire,
 one of Her Majesty's Justices of the Peace
 in and for the said District.

The said A. B. being duly sworn, deposeth and saith, that C. D., E. F., G. H., and divers others being workmen and journeymen tailors, and not being content to work at their trade and employment as such journeymen tailors, at the usual rates and wages they generally received, nor to work for and during the number of hours they usually worked each day, did assemble and meet together at ——— in the said District, on the ——— day of ——— instant, and did then and there combine and agree among themselves, that none of them, the said C. D., E. F., G. H., and others aforesaid, would from that day work at any lower or lesser rate of wages than (*here the different rates of wages as claimed to be inserted.*) And further that none of them would work day-work for any longer time than from six o'clock in the morning to nine o'clock in the evening of each day. And the said C. D., E. F., G. H., and others aforesaid did then and there also combine and agree among themselves, that they, and each of them, would do all in their power to induce, persuade, force and compel all other journeymen tailors at ——— aforesaid, to join and unite with them, the said C. D., E. F., G. H., and others aforesaid, in the said conspiracy and combination, to the great damage of him, the said A. B.

Sworn at ——— in the said
 District, this ——— day of } (Signed,) A. B.
 ——— 18 —, before me. }
 (Signed,) W. R., J. P.

The beginning and conclusion of the warrant to apprehend in this case is in the usual form, and stating in it the

matters contained in the information, is all that is required to complete it. This being a bailable offence, the parties will be admitted to bail accordingly, or committed to Gaol for want of it, and the witnesses for the prosecution bound over to appear at the Court of Quarter Sessions, or other Court where the trial is to be had, in order to give evidence. The proceedings when closed will be transmitted to the Clerk of the Court.

It being unnecessary to multiply precedents when not required, it is presumed that the foregoing will suffice, with suitable alteration according to circumstances to meet any case of combination that may occur.

CONSTABLE.

The Constable is a Peace Officer generally chosen by the Justices at their Quarter Sessions, and is the proper Officer to a Justice of the Peace, and bound to execute his warrants.—*Burns*.

Every Constable is by the Common Law, a conservator of the Peace, and is authorised without any warrant to arrest all traitors, felons, or suspicious persons, and in case of any breach of the Peace committed, or about to be committed in the presence of a Constable, or where violent threats or attempts are used by any person to beat or hurt another, he may arrest the party, and carry him before a Magistrate, or detain him till he can conveniently do so.—*2. Hawk. c. 12. sec. 19.—Dalt. c. 116. sec. 3.*

By *St. 27. Geo. 2 c. 20. sec. 2.*, a Constable executing any warrant of distress, must, if required, shew the same to the person whose goods are distrained, and suffer

a copy thereof to be taken. But in no case is a Constable required to part with his warrant out of his possession, for that is his justification under 24 Geo. 2. c. 44. sec. 6., in case of any action brought against him.

By the Ordinance of the Governor and Special Council of the 4 Vic. c. 17, s. 7, the Policemen appointed for the Cities of Quebec and Montreal, are sworn in as Constables in the several Districts for preserving the Peace, and preventing robberies and other felonies, and apprehending offenders against the peace, and it is ordained, that the men so sworn, have within the said Districts all such powers and authorities, privileges and advantages, and shall be liable to all such duties and responsibilities as any Constable duly appointed has now, or hereafter may have under and by virtue of the laws of this Province, or of any Statute or Ordinance made or to be made, and shall obey all such lawful commands as they may from time to time receive from the Commissioner of Police, for conducting themselves in the execution of their office.

CONVICTION—SUMMARY.

The matters which fall under the cognizance of the Justice of the Peace out of Sessions, and by which he is authorised to proceed by summary conviction, are at the present day so numerous, and of such importance, that I have thought it necessary to enter more fully into the course and mode of proceeding to be observed by him, as by attending thereto he will acquire a greater facility in conducting the various matters brought under his notice, in which summary proceedings are authorised. On this

head I have found in Paley and Deacon all that could be desired for the direction of the Magistrate, and their observations I have in general followed, in as far as I considered them useful or applicable in this part of the Province.

A *Conviction* as here used, is a record of the summary proceedings upon any penal Statute, before one or more Justices of the Peace, or others duly authorised, in a case where the offender has been convicted and sentenced.

The power given to Justices of the Peace to convict an offender in a summary way, without a trial by Jury, is in restraint of the common law, and a tacit repeal of that clause in the Great Charter, which says, "*That a man shall be tried by his equals,*" for which reason when this special power is given to Justices of the Peace by an Act of the Legislature, it must be strictly pursued, as the Justice can assume no authority, nor proceed in any other manner than is prescribed by the Statute under which he acts. There must be a regular course of proceeding in this mode of trial, as well as in the trial by Jury, in order to attain the ends of justice.

A conviction usually consists of the following principal parts:—

1. The Information or Complaint.
2. The Summons.
3. The appearance or non-appearance of the Defendant.
4. The Defence or Conviction.
5. The Evidence, unless the Defendant confesses.
6. The Judgment.

1ST OF THE INFORMATION OR COMPLAINT.

The information or complaint is the foundation of all the subsequent proceedings. Wherever the complaint is

required by statute to be in writing, that form must be observed, but unless expressly so directed, it does not seem necessary that it should be so,—*Paley* 15. Nor is it requisite that the information be upon oath where the statute does not require it ; but if the Magistrate should find it necessary to proceed in the first instance by warrant to apprehend the offender, instead of a summons,—in every such case the information must be upon oath.

The information is the complaint made by the party informant, or complaining to the Magistrate, and it ought when made in writing, to set forth the following points:—

1st. The day and year on which it is exhibited,—that it may appear to be subsequent to the offence, and to ascertain that the prosecution is within the time limited by Statute.

2nd. Mention of the place where the information is stated to be received, is also necessary, in order to shew that the Magistrate at the time was acting within his jurisdiction.

3d. The name and style of the Magistrate before whom the complaint is lodged, must be set forth ;—to shew that he is a Magistrate of the County or District where the offence is stated to have happened, that the jurisdiction may appear on the face of the proceedings.

4th. The name of the informer or complainant should be also stated:—this is the more necessary where he is entitled to a part of the penalty, that the conviction may appear to be founded upon other evidence than that of the informer. There are a few cases where the informer may be a witness, but there he is entitled to no part of the penalty.

5th. The charge or complaint must then be stated, beginning with the name of the offender or offenders. It is said to be no objection that the offender appears to be a married woman, (*femme covert*), as it has been decided that she may be convicted on a penal Statute, without joining the husband. *Sed quære*,—*Paley* 60.—2 *Str.* 1120.—*Stol.* 96.

6th. The information should likewise specify the *time* and *place* of committing the fact complained of, that it may appear that the prosecution is commenced in due *time* and that the place where it was committed is within the jurisdiction of the Justice,—1 *L. Raym.* 582.—2 *L. Raym.* 1220. Yet the offence need not be proved to have been committed on the day on which it is laid,—it is enough if it be proved to have been within the time limited for the prosecution. If stated to have been committed within such a day and such another day, it is held to be sufficient,—2 *Hawk. c.* 25, s. 82—10 *Mod.* 248—*Salk.* 378.

7th. The offence charged must contain every ingredient required by the Statute, to make it complete. It must be described in all its particulars and the facts complained of must be specified, that it may appear they amount to the offence contemplated by the Statute. In all cases when the quality of the offence consists of a simple fact, it is sufficient to use the words of the statute as applicable to the fact.—*Paley.* 66.—8 *T. R.* 536.—1 *T. R.* 122.—2 *Ld. Raym.* 791.

8th. An essential point to be carefully attended to in describing the offence charged, is, that every *exemption*, *excuse*, or *qualification* which accompanies the description of the offence in the enacting clause, be distinctly

and positively negatived, to shew that the defendant at the time of the offence committed, did not come within, nor was entitled to claim any such *exemption, excuse or qualification*.—1 *Saund.* 262. (*d*)—*Foster.* 420.—1. *T. R.* 141.—7. *T. R.* 27.

The different points requisite to complete the information, although from the statement here given of them they may appear somewhat formal, yet in practice the whole may be comprehended in a few lines. The Magistrate has only to look at any of the informations of which forms are before given, and he will there find all the foregoing requisites briefly set out—of time—place—persons—title of the Magistrate—and ground of complaint.

2ND OF THE SUMMONS.

If the Justice is satisfied, either that he has no jurisdiction over the offence, or that it is not clearly and sufficiently described, he may dismiss it immediately, without taking any further proceeding upon it. But if the information appears to justify the interference of the Magistrate, the next step is to give the party accused, notice of the accusation, and an opportunity to answer it, by issuing a summons addressed to him, containing the substance of the charge, or a copy of the information annexed. This summons ought to fix a day, hour, and place for the appearance of the defendant, allowing a sufficient time for the attendance of himself and witnesses. A conviction on default of appearance, where the summons was, to appear immediately was held to be wrong—but if the defendant appear at the time and makes defence, that will

cure all defect in the summons. Although Justice requires that a party should be duly summoned and fully heard before he be condemned, yet if he be present and has heard the complaint and all the witnesses, and has not asked for any further time (and so stated in the conviction,) this is an acquiescence and is sufficient.—1 *Bur.* 679.—1. *East. R.* 649.

The date of the summons must not be on an earlier day than that of the information—nor on a Sunday—nor on an impossible day.—2 *Ld. Raym.* 1526.—*Salk.* 181.

The service of the summons should be proved upon oath if the party do not appear. Personal service is no doubt preferable, but as this cannot always be done, the leaving a copy of the summons at the house and domicile of the party with some of the inmates of the family will be sufficient.—*Paley* 19, 57.—14 *East. R.* 268.—*Prov. Ord.* 2 *Vic. c.* 2 s. 2.—4 and 5 *Vic. c.* 26, s. 30.

In cases of summary conviction, and in the lighter kind of misdemeanors, a Magistrate should issue a summons against the party, and not a warrant in the first instance.—13 *East* 55. But if the party disobeys the summons, *in a case where his presence is necessary for the validity of the proceedings (as for proving the identity of the defendant)* then the Justice may properly issue a warrant against him, taking however the oath of some person to substantiate the facts upon which it is grounded.—2 *Deacon.* 718.—2 *Hawk. c.* 13, s. 15.—10 *Mod.* 248.—2 *Bing.* 63. For where a Statute gives a Justice jurisdiction over an offence, it impliedly gives him a power to compel the attendance of the party charged with it. But, where the presence of a Defendant is not necessary for the validity of the proceedings, the Justice, after having

ascertained that the summons had been regularly served, may proceed to hear evidence in support of the prosecution against the Defendant, as being in default, and to adjudge thereon.—1 *Str.* 44.

3rd. Of the appearance or non-appearance of the defendant.

Although for offences arising merely by penal Statutes and not connected with any breach of the peace, a Justice ought not even after a summons and default of the party, to cause him to be apprehended, yet in cases where from the nature of the offence, or the character of the offender, the object of the prosecution would be defeated, by giving him notice, there the Legislature arms the Justice with a special power and authority to issue his warrant immediately upon the information.—*Paley* 19, 106.

If the defendant appears, any irregularity in the summons—or in the service of it—or even the want of a summons altogether, becomes immaterial—except it be in a case where a special form of summons is required by the Statute, which must necessarily be complied with.—1 *East. R.* 649.—3 *Bur.* 1785.—1 *Str.* 261.—2 *Salk.* 423.—*Coup.* 30.

Upon the defendant's appearance, he either prays time, or confesses the charge, or denies it, and makes defence immediately. In the first case, if he pleads not guilty, and requires time for his defence and to produce his evidence, it is reasonable, and the law seems to require, that the party should be allowed a proper interval for that purpose—there is no particular rule laid down in this respect, and it must depend upon the circumstances of the case and the prudent discretion of the Justice. If delay is given, care ought to be taken not to exceed the time,

if any be limited by the Statute, for making the conviction, but if the limitation refers only to the time within which the *offence* must be prosecuted, and not to the time of making the *conviction*, then the hearing and subsequent proceedings will be valid, though postponed to a term beyond the period mentioned in the Statute.—3 *East*. 467.—1 *Salk*. 383.

If the defendant confesses the charge, nothing more remains for the Justice, after recording such confession, but to pass judgment, and impose the penalty.

If the defendant denies the charge, the next step is for the informant to substantiate the information by sufficient evidence.

It is necessary that the names of every witness produced to support the information, should be stated, that it may appear that he is not the informer, who is generally interested, as receiving some portion of the penalty, unless the Statute has otherwise directed.—2 *Ld. Raym*. 1545. —*Str*. 316. It should also appear that the witness was examined on oath, and the substance of the whole evidence ought to be set forth, or at least so much thereof as is sufficient to warrant the conviction.—2 *Str*. 996.—7 *T. R.* 153. The witness must be examined in the presence of the defendant, when he appears and defends the case, that he may have an opportunity of cross-examination.—*Bosc*. 90.—2 *Burr. R.* 1163. For should the deposition of the witness have been taken out of the presence of the defendant, it will not be sufficient to read over that deposition to the defendant, who is entitled to see and hear the witness examined, but the examination must be begun anew,—6 *T. R.* 75.—1 *T. R.* 125, 230.

4TH OF THE DEFENCE.

When the witnesses in support of the charge have been heard, the defendant should be called upon to produce his evidence in support of his defence—this the Justice ought to receive as far as material and state in the record of conviction, as well as the evidence in support of the information, although he should afterwards give judgment against the defendant.—7 *T. R.* 153.

Should the Justice be satisfied, after hearing all the evidence on behalf of the prosecutor, that the complaint or charge has not been proved, he ought to dismiss the same without calling upon the defendant to produce any evidence in support of his defence.

It is held as a maxim, that where property comes in question, the exercise of a summary Jurisdiction by Justices of the Peace is ousted—therefore if the defendant sets up a right of property in the thing he is accused of taking or destroying, and if there appear any colour of such right the Justice ought to acquit him, as not having jurisdiction to determine the right, and leave the parties to their recourse before another jurisdiction.—1 *Ld. Raym.* 583.—2 *do.* 900.—4 and 5 *Vic. c.* 26 *sec.* 14.—*do. c.* 27 *sec.* 30.

If the defendant confesses the charge, the Justice may convict without going into any further evidence against him,—*Bosc.* 62. 3. 4. But the confession must be of such facts as fully constitute the offence charged in the information, otherwise it will not supply the defect of evidence.

What the defendant says, either in defence, or as a confession, must be taken down in writing and stated in the conviction.

5TH OF THE EVIDENCE.

As already shewn, the name of the witness or witnesses to be examined should be stated, and also that they were sworn and examined in the presence of the defendant.

The fact charged must be proved to have been committed in the place where it was laid, or at least in some place within the jurisdiction of the Justice convicting,—2 *Ld. Raym.* 2220.—7. *T. R.* 241.

The evidence ought to be set out at large, and contain a full and accurate statement of the *facts* that constitute the offence. In some instances the offence can only be described generally in the information, and yet consists, either of a number of distinct acts, which in the aggregate constitute the offence, and must therefore be proved.—4 *Burr.* 2062.—*Doug.* 469.—*Bosc.* 95.

The evidence must be taken upon oath, (or affirmation, in case of a Quaker) for these are the only legal modes of receiving testimony, and it must be so expressly stated in the conviction, otherwise the conviction will be liable to be quashed. This oath or affirmation should also be administered as well in the presence of the Justice as of the defendant, and so stated in the conviction.—2 *Bar. and Car.* 600.—4 *Bar and Ald.* 616.

The evidence ought to fix a certain date to the offence in respect of time, as the offence must appear to have been committed prior to the information. Also it may appear that the information and proceedings have been had within the time allowed by the statute.—1 *Ld. Raym.* 510.—*Paley* 128.—7 *East.* 146.

With respect to the *degree* and *sufficiency* of the evidence, and the credit due to the witnesses, the rule appears to be, that if there is any evidence, although slight,

to establish the charge in the information, and the Justice draws his conclusion to convict upon it, a Superior Court will not in general, examine the propriety of the conclusion, for the Justice is the sole judge of the *weight* of the evidence, and the Superior Court will not enquire whether the conclusion drawn by the Justice, be, or be not, the inevitable conclusion from the evidence, but whether the evidence is such as would be sufficient to be left to a Jury on a trial.—6 *T. R.* 177, 376.—8 *T. R.* 588.—14 *East.* 273.—3 *Burr.* 1475.—4 *Bar. and Ald.* 616.

But where there is no evidence to establish the particular charge before the Justice, or the evidence is too slight to be submitted to a Jury, in either of these cases the Court above, will not only judge of the evidence, but will order a conviction in such case to be quashed.—8 *T. R.* 588.—*Cowp.* 728.—2 *M. and Sal.* 145.

In a case where the Justice acquitted a party, though upon evidence disclosing a *prima facie* case, and upon which the defendant might have been found guilty, the Superior Court refused to reverse their judgment, saying, they must consider that the Justice had determined upon the facts and not on the law, and the Court above could not judge of the credit due to the witnesses whom they did not hear examined.—6 *T. R.* 376.

The witnesses for the defendant ought to be sworn, and their testimony as to all material facts of the defence taken down in the same manner as that for the prosecution.—4 and 5 *Vic. c. 24, s. 10.*—7 *T. R.* 152.—*Paley* 127.

The Justice cannot compel witnesses to attend on a summary trial, unless the Statute empowers him as it frequently does, to summon them under a penalty, for not attending or refusing to be examined.—*Burn's Just.*

6TH OF THE JUDGMENT.

The judgment is a necessary part of every conviction, and should contain—1st an adjudication that the defendant is convicted, and 2nd an adjudication of the forfeiture or penalty—and when costs are allowed the amount thereof should be ascertained.—*Bosc.* 109.—13 *East.* 57 *Note.*

A Justice has not any power as incident to his jurisdiction, to mitigate a penalty imposed by a particular Statute, for a judgment for too little, is as faulty as a judgment for too much—he can use no discretion in this respect, unless it be given him by the Statute on which the conviction is founded.—1 *T. R.* 252.—*Paley.* 167.

Where the penalty is expressly appropriated by the Statute, as where it is ordered to be divided equally between the poor of a parish and the informer, or party aggrieved, the judgment need not contain any award to that effect, it is sufficient if it award the penalty to be distributed as the Act directs.—1 *Salk.* 383.—*East,* 573.—2 *T. R.* 18.

The conviction when made up should be signed and sealed by the Justice, as being the only proper mode of authenticating it, as the record of his proceedings, and it should also be dated on the day on which it is signed. The date indeed becomes a material part of the conviction, when a Statute provides that a conviction must be made within a certain time after the offence is committed, for in such case, it is void, if it does not appear to have been made within that time, and it makes no difference that it was prevented from being made within the time by an adjournment, at the request of the defendant himself,

for after the time has expired for making the conviction, there is no authority existing for that purpose.—2 *East*. 467.

But where a Statute provides, that the *offence be prosecuted*, or that the *party be prosecuted for the offence* within a stated time, it is then sufficient that the information be laid, though the conviction do not take place within that time, the information being for that purpose, the commencement of the prosecution.—1 *Deacon*. 327.—1 *Salk*. 383.

When an impossible or an incongruous date is specified, if the conviction be complete without it,—it may be rejected as surplusage.—2 *East*. 197.

With regard to the mode of reckoning the time limited by penal Statutes, the following points have been determined.

1st. If the time be expressed by the *year*, or any aliquot part, as a *half*, a *quarter*, &c., of a year, the computation is by calendar months of twelve to the year. But if the *months* are mentioned, but not the *year*, they are always computed by *lunar months*, of four weeks to the month.—*Doug*. 465.—3 *East*. 407.—2 *Camp*. 296.—2 *Deacon*. 298.—*Carth*. 406.

2nd. When the time is dated from the *offence committed*, the day on which it was committed is to be reckoned as one. Formerly, when the time was limited, *from* the day of doing the act in question, *that day* used to be excluded from the reckoning, but since the case of *Pugh vs. the Duke of Leeds*, *Cowp*. 714, this distinction has been done away with.

To simplify the task of drawing up convictions, many of our modern penal Statutes provide certain compendious

forms,—which, though given as models, are for the most part directory only, and intended to assist the Magistrate in the discharge of his duty. Where such forms are prescribed, they must be strictly followed.

In the use of these forms, care must be taken where a blank is left for inserting the offence, that it be described with sufficient accuracy, and that every material fact necessary to constitute the offence be stated.—13 *East*. 139.

But where particular forms are not prescribed by Statute, it is necessary that the general form of conviction applicable to each particular case, should be observed.

The Court will not take notice of any formal defect in the proceedings under a penal Statute, unless it appear upon the face of the conviction itself.—3 *Dowl. and Ry.* 35.

GENERAL FORM OF CONVICTION.

DISTRICT OF } Be it remembered that on the _____
 _____ } day of _____ in the year of our Lord,
 one thousand eight hundred and _____ at _____
 in the said District, A. B., of the Parish of _____ in
 the said District, yeoman, who prosecuteth as well for Her
 Majesty, as for himself in this behalf, (*this, when part of
 the penalty is given to the Queen and part to the infor-
 mer,*) (or who prosecutes as well for _____ as for
 himself,) (*when part of the penalty is given to any
 Corporate Body, Parish, or special purpose*) in his proper
 person came before me, W. R., Esquire, being one (*or if
 before more than one Justice, then say*) before us, W. R.,

and (*the other or others, naming them*) Esquires, being two, (*or of whatever number they may be*) of the Justices assigned to keep the peace in and for the said District, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said District committed, and gave me, the said Justice, (*or us the said Justices,*) to be informed, that on or about the ——— day of ——— in the year of our Lord, one thousand eight hundred and ——— at the Parish aforesaid, one H. D., of ——— in the said District, yeoman, did (*here insert the charge or information, stating in a particular manner the time, place, and circumstances which brings it within any Statute, Act, or Ordinance, whereby the Justice has jurisdiction*) against the form of the (*Statute, Act, or Ordinance as the case may be*) in such case made and provided, whereby the said H. D. hath for his said offence, forfeited the sum of ——— lawful money of Great Britain (*or lawful current money of the Province, as the case may be*) to be paid and applied as the said (*Statute, Act, or Ordinance*) directs and requires. (*If the information be for any of those offences such as stated in the Act of 4 and 5 Vic. c. 25 and 26, where a damage is allowed to the complainant, besides the penalty which is left to depend upon the judgment of the convicting Magistrate, and when a demand for such damages is contained in the information, then state as follows,*) whereby the said H. D. hath become liable to pay not only such penalty as may be awarded against him by reason of his offence aforesaid, but also the said sum of ——— demanded by the said A. B., in and by his information aforesaid for his damages by him suffered and sustained in this behalf, and also his costs. And therefore the said A. B.

N

prayed that the said H. D. may be summoned to answer the premisses, and that he be convicted of the said offence, and thereupon condemned to pay the penalty aforesaid, and the costs in this behalf (*when costs are allowed to be given*) (*or if the demand be in a case where damages are allowed, then say,*) and thereupon condemned to pay such penalty and damages as may be awarded against him, and also the costs in this behalf; whereupon afterwards, that is to say, on the said _____ day of _____ in the year aforesaid, at _____ in the said District, I, the said Justice, (*or we &c.*) did issue my (*or our*) summons, under my hand (*or our hands*) thereby notifying to the said H. D., the said information and complaint, and thereby requiring him the said H. D., to be and appear before me, the said Justice, (*or us, &c.*) on _____ the _____ day of _____ now instant (*or next,*) at the hour of ten in the forenoon of the same day at _____ in the said District, to answer and make his defence to the matters contained in the said information and complaint. Whereupon afterwards, to wit, on the said _____ day of _____ now instant, at _____ aforesaid, at the hour aforesaid, the said H. D., having before the day last mentioned, been duly summoned to be and appear as aforesaid,—(*in case the defendant does not appear,*) yet the said H. D., does not appear at the time and place aforesaid, but makes default, whereupon one C. D., (*the person serving the summons,*) a credible witness upon his corporal oath taken before me, the said Justice, (*or us, the said Justices,*) says, that he the said C. D., did on the _____ day of _____ instant, at _____ in the said District, at the hour of _____ in the _____ noon, duly serve the said H. D., with the said sum-

mons, by then and there delivering a true copy thereof and of the said information to the said H. D., in person, (*or where the service of the summons is not made personally, say, by delivering a true copy thereof and of the said information to a person of the family at the domicile or usual place of residence of the said H. D., at ——— aforesaid.*) Whereupon on the said ——— day of ——— instant, at ——— aforesaid in the said District, one W. W., of the ——— in the said District, yeoman, a credible witness, cometh before me, the said Justice (*or us, &c.*) and being by me the said Justice, (*or us, &c.*) then and there duly sworn touching the premises, the said W. W., doth depose and say, (*here set forth all the matters of fact stated by the witness as far as they relate to the offence in question—and if more than one witness be produced, state the swearing and examination of every such witness, thus,*) and also on the said last day aforesaid, at ——— aforesaid in the said District, B. O., of the same place, labourer, another credible witness, cometh before me the said Justice, (*or us, &c.*) and being by me the said Justice, (*or us, &c.*) duly sworn touching the premises, the said B. O., doth depose and say, (*here set forth the matters of fact relevant to the complaint stated by this witness—and in the same manner state the swearing and take the examination of every other witness that may be produced in support of the information. The evidence being closed, the Justice or Justices will proceed to give judgment either to dismiss the complaint, if they consider that it has not been proved, but if proved to convict the defendant, and say.*) Whereupon, upon hearing and fully understanding all and singular the matters and things alleged and proved touching the premises, it manifestly appears to me the said Jus-

tice (*or to us, &c.*) that the said H. D., is guilty of the premises above charged against him in the said information and thereupon, I, the said Justice, (*or we &c.*) do convict the said H. D., of the offence aforesaid in and by the said information charged against him, and I, the said Justice, (*or we, &c.*) do adjudge that the said H. D., for his offence aforesaid, hath forfeited the sum of ——— lawful money of Great Britain, (*or lawful current money of the Province,*) and I, the said Justice, (*or we &c.*) do condemn the said H. D., to pay the said sum of ——— lawful money of Great Britain, (*or lawful current money aforesaid,*) one half thereof to be paid to Our Sovereign Lady the Queen, and the other half to the said A. B., the said informer, (*or complainant*) according to the (*Statute, Act, or Ordinance,*) in such case made and provided, (*that is to say, where the law makes this division of penalty—or if a different division is made, then to adjudge accordingly, and if costs are allowed to be given by the law, then say,*) and, I, the said Justice, (*or we, &c.*) do also adjudge that the said H. D., do forthwith pay to the said A. B., the sum of ——— lawful current money aforesaid for his costs in and about the premises,—(*and when the law directs the commitment of the party to Gaol, or to the House of Correction, on default of payment, either immediately, or within any limited time, of what has been adjudged against him, then add,*) and I, the said Justice, (*or we, &c.*) do further adjudge, that in default of payment by the said H. D., within ——— days from this day, of the aforesaid penalty and costs, the said H. D., be committed to the Common Gaol (*or House of Correction,*) of the said District, for the space of ——— (*as the law may allow and the*

Justice see fit to limit,) if the said penalty and costs be not sooner paid. (*In case damages are demanded and by law allowed to be given, then after adjudging the penalty, add thus,)* and I, the said Justice (*or we, &c.,*) do also adjudge and condemn the said H. D., to pay to the said A. B., for his damages by him suffered and sustained in the premises by reason of the offence aforesaid, the sum of ——— lawful current money, aforesaid—(*then adjudge the costs, where costs are allowed.*)

(*If the defendant appear, there will be no need to make proof of the service of the summons upon him. And if he admits and confesses the fact charged in the information against him, then say.*) And afterwards, that is to say, on the ——— day of ——— in the year aforesaid, at ——— aforesaid, the said H. D. appeareth and is present before me, the said Justice (*or us, &c.*) in order to answer to the said information and complaint, and he the said H. D. having heard the same, is asked by me the Justice, (*or us, &c.*) if he can say any thing, why he, the said H. D. should not be convicted of the premises above charged upon him in form as aforesaid. Whereupon the said H. D. freely and voluntarily confesseth and acknowledgeth the said information and complaint, and all and singular the matters therein contained to be true, and doth not shew any cause before me the said Justice, (*or us, &c.*) why, he the said H. D., should not be convicted of the said offence charged in the said information. Whereupon, &c. (*then proceed to enter up the conviction and judgment as before stated in the case by default.*)

(*If the defendant appears and pleads not guilty, to the information, then proceed, after stating his appearance and the demand made to him to answer, &c., as above, thus.*) Whereupon the said H. D. pleadeth, that he is

not guilty of the said offence in manner and form as charged against him. And afterwards on the——day of—— in the year aforesaid, at —— in the District aforesaid, one W. W. of —— in the said District, yeoman, a credible witness, cometh before me the said Justice, (*or us, &c.*) and being by me the said Justice, (*or us, &c.*) duly sworn touching the premises, in the presence of the said H. D. he the said W. W., deposes and saith that (*here set forth all the matters of fact stated by the witness in as far as they relate to the offence in question—and if the witness be cross-examined by the defendant, then state thus*) and the said W. W. being cross-examined by the said H. D. on his oath aforesaid saith, (*here set forth the cross-examination, and if more than one witness be produced in support of the complaint, state in the same manner the appearance—the swearing—and the examination of every such other witness in manner as above, always stating the same to be done in the presence of the defendant. When the evidence in support of the prosecution is closed, then say,*) And the said A. B. having no further evidence to offer in support of the said information and complaint, the said H. D. is by me, the said Justice (*or us &c.*) asked what he hath to offer in answer to the evidence given as aforesaid, (*if the Defendant produces any witnesses on his defence, then say,*) whereupon the said H. D. produces and offers as a credible witness on his behalf, one E. F., of —— in the said District, yeoman, and the said E. F. being now personally present, is by me, the said Justice (*or us &c.*) duly sworn touching the premises, and being examined by and on behalf of the said H. D. the said E. E. doth depose and say, that (*here set forth all the material facts given in the evidence by the witness, and also his cross-examination should it be made—in*

like manner state the swearing—examination—and cross-examination of every other witness that may be produced on the part of the defendant. If the defendant does not produce any witnesses on his defence, then say.) But the said H. D. doth not offer or produce any witnesses before me the said Justice, (*or us, &c.*) in his defence, against the said information and complaint. (*Then proceed to judge thus.*) And forasmuch as upon hearing and fully understanding the said information and complaint, and the evidence given as aforesaid, and also upon hearing and fully understanding all and singular the matters and things alleged and proved touching the premises, it manifestly appears to me, the said Justice (*or us, &c.*) (*if the opinion of the Justices is to dismiss the complaint as not proved, then say*) that the said information and complaint is not founded, or hath not been proved before me, the said Justice (*or us &c.*) and therefore I, the said Justice, (*or we &c.*) do now here dismiss the same, (*and where costs are allowed, say,*) and I the said Justice, (*or we, &c.*) do condemn the said A.'B. to pay to the said H. D. the sum of ———— for his costs in this behalf. (*In case the complaint appears to be well founded and proved, then record the judgment against the defendant, in the manner and form above stated on the default, and conclude thus.*) In witness whereof, I, the said Justice, (*or we the said Justices*) to this record of conviction do put my hand and seal, (*or our respective hands and seals*) at ———— aforesaid, this ———— day of ———— in the year of our Lord one thousand eight hundred and ————.

(Signed,) { J. G., J. P. [SEAL.]
 { ———, J. P. [SEAL.]

The above general form of a summary conviction, is adapted to three different cases,—when the defendant does not appear—when he appears and confesses the complaint—and when he appears and contests it. These are the most general instances where summary convictions occur—and this general form may be varied so as to apply to any other case, care being taken to state the complaint and the proceedings as circumstances may require.

—————

Form of conviction prescribed by the Act of 4 and 5 Vic. c. 25, intituled, “*An Act for consolidating and amending the laws in this Province relative to Larceny, and other offences connected therewith.*”

DISTRICT OF } Be it remembered that on the ———
 ——— } day of ——— in the year of our Lord
 one thousand eight hundred and ——— at ———
 in the said District, A. O. is convicted before, me, J. P.,
 one of Her Majesty’s Justices, (*or before us, J. P. and
 S. L., Justices*) of the Peace for the said District, for that
 he the said A. O. did (*here specify the offence, and the
 time and place when and where the same was committed,
 as the case may be, and in a second conviction state the
 first conviction.*) and I, the said J. P., (*or we the said
 J. P. and S. L.*) adjudged the said A. O. for his said
 offence, to be imprisoned in the ——— or in the
 ——— and there kept to hard labour for the space of
 ——— or to forfeit and pay ——— (*here state the
 penalty actually imposed—or state the penalty and also
 the value of the articles stolen, embezzled, or taken—or
 the amount of the injury done, as the case may be and*

in any case where costs shall be awarded) also to pay the sum of _____ for costs; and in default of immediate payment of the said sum, (*or sums*) to be imprisoned in the _____ and there kept to hard labour, for the space of _____ unless the said sum (*or sums*) shall be sooner paid. And I, (*or we*) order that the said sum (*or sums*) shall be paid by the said A. O. on or before the _____ day of _____, that the said sum of _____ (*i. e. the penalty only*) shall be paid to me (*or to us, the convicting Justice or Justices,*) and that the sum of _____ (*i. e. the value of the articles stolen or the amount of the injury done*) shall be paid to C. D. (*the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty as before.*) And (*if the Justice or Justices shall think proper to award the complainant his costs,*) I, (*or we*) order that the said sum of _____ for costs shall be paid to the said C. D. (*the complainant.*) Given under my hand and seal (*or our hands and seals*) the day and year last above mentioned.

Here the Justices sign. { J. P., J. P. [SEAL.]
 { S. L., J. P. [SEAL.]

The above form of conviction is intended to apply to the different kinds of judgment that may be rendered on the various objects contained in the preceding Act:—

1st. When the party is condemned to imprisonment only, without any other forfeiture or penalty.

2nd. When the party is condemned to pay a certain penalty only, or a penalty with costs.

3rd. When besides the penalty, the party is condemned to pay the value of the articles stolen, or the amount of the damage done—either with or without costs.

4th. When the party is condemned to pay immediately or within a certain time—and on default of such payment that he be imprisoned, &c.

5th. And lastly, when the value of the articles stolen, or the damage done, is not given to the party injured—when he is examined as a witness, or is unknown.

Care must therefore be taken in drawing up every conviction on the before mentioned Act, to limit the above form to the nature of the judgment given in each particular case, and not to adopt more of it than this requires—by so doing, regularity will be preserved, and much labor saved to the Justice—which is the principal object intended in all these special forms prescribed in any Act or Ordinance.

The cases of summary conviction, to which the above form is intended to apply under the said Act, are the following.—

1. Persons in possession of shipwrecked goods not giving a satisfactory account of them to the Justice of the Peace.—sec. 23.

2. Persons offering to sell any shipwrecked goods, and not giving a satisfactory account, how they got them.—sec. 24.

3. Persons stealing dogs, or birds or beasts in confinement.—sec. 30.

4. Persons stealing, cutting, breaking, or otherwise destroying or damaging with intent to steal, any line or dead fence, pale, rail, style, or gate.—sec. 32.

6. Persons having in their possession any tree, sapling or shrub, or any post, pale, rail, style or gate, and not satisfactorily accounting for the same.—sec. 33.

7. Persons stealing, &c., any tree, sapling, shrub, bush,

plant, root, fruit or vegetable, production in a garden, orchard, &c.—sec. 34.

8. Persons stealing, &c., any cultivated root, or plant used for the food of man or beast, &c., growing in open ground, not a garden,—sec. 35.

9. Persons knowingly receiving stolen property, the stealing whereof would be punishable on summary conviction, punishable as principals.—Sec. 52.

10. Persons aiding, abetting, counselling or procuring the commission of any offence, punishable on summary conviction.—Sec. 54.



The form of summary conviction prescribed by the Act of 4 and 5 Vic. c. 26, intituled,—“*An Act for consolidating and amending the laws in this Province, relative to malicious injuries to property,*”—is the same as that prescribed by the foregoing Act of 4 and 5 Vic. c. 25,—and will apply in the following cases.

1. Persons cutting, breaking, barking, rooting up, or otherwise destroying or damaging any tree, sapling, or shrub, or any underwood, wherever the same may be growing, where the injury amounts to one shilling at the least.—Sec. 20.

2. Persons destroying, or damaging with intent to destroy, any plant, root, fruit, or vegetable production, in any garden, orchard, nursery ground, &c.—Sec. 21.

3. Persons destroying, or damaging with intent to destroy any cultivated root or plant used for the food of man or beast, &c., and growing in open ground, not being a garden or orchard, &c.—Sec. 22.

4. Persons cutting, breaking, throwing down, or in any wise destroying any fence, wall, stile, or gate.—Sec. 23.

5. Persons committing any damage or injury upon any real or personal property, whether private or public.—Sec. 24.

6. Persons found committing any offence against this Act, whether the same be punishable on indictment, or by summary conviction, may be apprehended without warrant, and carried before a Justice of the Peace, &c.—Sec. 28.

7. Persons who aid, abet, counsel or procure the commission of any offence punishable by summary conviction under this Act.—Sec. 31.

The form of summary conviction prescribed by the Act of the 4 and 5 Vic. c. 27, intituled, “*An Act for consolidating and amending the Statutes in this Province relative to offences against the person,*” is the same as that prescribed by the 4 and 5 Vic. c. 25 and c. 26. And the cases where summary conviction may be had under this Act, are the following.

1. Persons hindering or assaulting any seaman, &c., to prevent him from working at his lawful trade, or doing him any hurt or violence—or assaulting any person with intent to prevent the buying or selling of grain. Conviction to be had before *two* Justices.—Sec. 26.

2. Persons committing any common assault and battery.—Sec. 27.

3. Persons who wilfully disturb any assemblage of persons met for religious worship.—Sec. 31.

It is to be observed in this Act, that the fines imposed by it, are not to be paid to the Justice or Justices imposing

them but in the manner directed by the Act. By the 32nd Section, it is provided, that in default of payment of any fine imposed under the authority of this Act within the time limited by the Justice at the time of conviction, it shall be lawful for him to issue his warrant to levy the same by distress and sale of the goods and chattels of the offender. And in case no sufficient distress can be found—then to commit the offender to the Common Gaol for any term not exceeding one month. Now the above are the only instances where summary conviction can be had before the Justices—in one of which, by sec. 27, he is authorised, on default of payment of the penalty within the time limited, to commit the offender to Gaol. The offence stated in the sec. 31, is therefore the only instance wherein the above cited sec. 32 of the act will apply, in which case it is necessary, before commitment of the offender, that a warrant of distress should issue, and that there should be a return of the officer charged with the execution of it, that he could not find sufficient distress whereon to levy the fine and costs.

It has been stated as a general principle, and is besides specially required by different Acts of the Legislature, that the Justices of the Peace, should return to the Quarter Sessions, the summary convictions had before them. To save to the Justices the labor of making up a formal conviction in every case, the Ordinance of the Governor and Special Council of the 2 Vic. c. 20, limits the form to certain particular objects which every such return shall contain, and to simplify the matter as far as possible, I have given a tabular form comprehending all these objects. This Ordinance being a general law, will apply

in all cases, where there is no particular direction or provision in this respect, or where a special form is not prescribed. This distinction should be noticed—as for instance, in the Acts of the 4 and 5 Vic. c. 25 and c. 26, by both of which it is directed, that the Justice before whom any conviction shall be had, shall return the same to the next General or Quarter Sessions of the Peace, and as by these Acts a special form of conviction is given, it necessarily follows, that the return to be made shall be in the form so prescribed, and not in the limited form of the Ordinance. It may also be observed here, that in the case of an appeal to the Sessions, or of a *certiorari* issuing from the King's Bench, the conviction to be returned in either of these cases, must be in the particular form prescribed by the law on which such conviction is had, or where there is no such *particular* form given, then in the *general* form herein before stated, that the Court may see the whole evidence given, and the regularity of the proceedings had before the Justice.

APPEAL TO THE SESSIONS.

Where a party is dissatisfied with the conviction and judgment of the Justice, he may in some instances appeal to the Sessions, that is in those cases where an appeal is allowed by the Statute on which the conviction is founded, for such appeal is by no means a matter of common right, but must be given by express enactment.—1 *M. and S.* 448.—6 *East.* 514.—2 *T. R.* 509. 510.

When this appeal is allowed, it is usually upon the condition. 1st. That a reasonable notice thereof be given

to the Justice, whose judgment is appealed from--and 2nd upon entering into recognizance that the party will prosecute the appeal without any wilful or affected delay and abide by the judgment of the Sessions.

As the Justice ought to transmit all his convictions to the Sessions, he is more especially bound to do so upon receiving a notice of appeal, that the party may not be prevented, or delayed in prosecuting his appeal therefrom.

When such notice has been given, and recognizance entered into, all further proceedings on the conviction should be staid until the decision of the Sessions upon the appeal.

CORONER.

The Coroner is a very ancient officer at the Common Law, he is ranked among the conservators of the peace, and is called *Coroner*, because he has principally to do with pleas of the Crown, or such wherein the Crown is immediately concerned. He is appointed by the Crown, and his duty consists in taking inquisitions touching the death of any human being, which happens suddenly, by violence, or in prison. Upon receiving intimation of such death, the Coroner issues his warrant to a Constable to summon a competent number of good and lawful men to constitute a Jury of twelve at least, to make enquiry upon view of the body of the deceased, when and how he came by his death—for unless there be a view of the body, and the Jury be sworn by the Coroner, no inquest can be taken. After viewing the body and hearing such evidence as may be produced, the Jury give in their verdict as to the

cause and manner of the death, and the inquisition thus taken is signed by the Jury and the Coroner and returned into the Court of King's Bench. When a Coroner's Jury have found that a party is guilty of murder or manslaughter, the Coroner by virtue of the Statute 4 Edw. 2 st. 2, may issue his warrant and apprehend him, and commit him to prison for trial.

COSTS.

The Justices out of Sessions have no power to grant costs on the convictions and other proceedings had before them, unless expressly authorised by the Statute or Act under which their proceedings are had. And when they grant costs, the amount must be specified, and ought to be ascertained by the Justice or Justices granting them.

DAMAGE OF PROPERTY.

See *Malicious injuries to property*, Stat. 4 & 5 Vic. c. 26.

DEAD BODIES.

The stealing of a dead body is not a felony, for a corpse is *nullius in bonis*,—but it is viewed by the common law as a very flagrant misdemeanor, as being a practice, *contra bonos mores*, and shocking to the general sentiments and feelings of mankind. It is an indictable offence at common law, and punishable by fine, or imprisonment, or both.—1 *Hale. P. C.* 515.—2 *East. P. C.* 652.—*Russ. and Ry.* 366 (*n*).—2 *T. R.* 733.

But though the stealing of a corpse does not amount to felony, the stealing of the grave clothes, coffin, &c., is felony—for the property of these remains in the executors, or whoever was at the charge of the funeral.—2 *Bl. Com.* 429.—4 *Bl. Com.* 236.

DISTRESS.

Distress, is the taking or distraining—or the seizing and selling of a personal chattel to procure satisfaction for some wrong or offence of which a party has been convicted.—4 *Deacons Dig.* 367. It is a remedy given by various penal Statutes, either for awarding compensation to a party injured, or for the recovery of a penalty imposed on the party offending, in cases of a summary conviction before a justice of the Peace.

To justify taking a distress, the Constable, or person making it, must have a regular warrant for so doing—must take only things distrainable—and the distress must be made in a proper time and place.

By the 27 Geo. 2 c. 20 sec. 1, where a Justice is empowered by any Statute to issue a warrant of distress for the levying of a penalty, or any other sum directed to be paid by a Statute, the Justice may order the goods distrained to be sold within a certain time, to be limited by the warrant, so as such time be not less than four, nor more than eight days after the distress made, unless the penalty and costs be sooner paid. By the same Statute the Officer may deduct the reasonable charges of the distress out of the money arising from the sale—and if required he must shew the warrant to the person whose goods are distrained, and suffer a copy to be taken.

If in seizing for the whole sum due, the first distress is found insufficient from mistaking the value of the goods seized, which may be uncertain, a second distress may be made.

The power of proceeding by distress is derived entirely from special statutory provisions, and is not any necessary consequence of a conviction.—*Paley*. 176. If a Statute confers only a power to convict, without making provision for the recovery of the penalty, there seems to be no compulsory means of carrying such a law into effect. It is therefore usual for Statutes inflicting penalties to grant an express authority for this purpose.

When the Justice is empowered to issue his warrant on the refusal or neglect of payment of the penalty within the limited time, it seems to be understood that no *demand* is necessary to enable him to do so, after the expiration of the time.—6 *East*. 75 *et Seq.* Where an appeal is given to the Sessions, and security has been given to prosecute the same, all proceedings on the conviction ought to be suspended, until the appeal shall have been determined—and this even after the warrant of distress may have been issued.

It is laid down by Mr. Sergeant Hawkins, V. 2, c. 14, sec. 5, that upon the warrant of a Justice for levying a forfeiture, where the whole or any part thereof belongs to the King, the Officer is justified in breaking open outer doors for the execution of this warrant: but there seems to be no such power by law in other cases, where no part of the penalty is vested in the Crown.

The Constable or other person charged with the execution of the Warrant of Distress, is bound at the time assigned for the return, to certify to the Justice, what he has

done upon it. If he refuses to do so, or if he has levied the penalty, and refuses to pay it over, he may be proceeded against by indictment or information,—4 *Salk.* 380.

If a corporal punishment be inflicted by Statute in failure of sufficient distress, and it so happen that the offender being convicted of one penalty, has effects sufficient to satisfy only a part, it has been held, that the goods ought not to be taken, but that upon the return of the Constable that sufficient distress could not be found, the corporal punishment should be resorted to. For the law never intended that a man should suffer both punishments for one conviction,—2 *Ld. Raym.* 1195.—11 *Mod.* 54. *Fortesc.* 132.

WARRANT OF DISTRESS.

DISTRICT OF } W. R. Esquire, one of Her Majesty's Jus-
 _____ } tices of the Peace, in and for the said Dis-
 } trict.

To any Constable, or other Officer of the Peace in and for the said District.

Whereas C. D. of the Parish of _____ in the said District, labourer, hath this day (*or lately*) been convicted before me, the said Justice, of having (*here describe the offence, and the time and place, when and where committed,*) whereby the said C. D. hath forfeited and hath by me the said Justice been adjudged to pay the penalty of £ _____ (*and where damages are given for any injury committed, then say,*) also the sum of £ _____ for damages allowed, and adjudged to be paid, by the said C. D. for the injury by him committed to the property of the said A. B. (*or for the value of the articles stolen, broken, or damaged, as the case may be—and where costs allowed,*

then say,) and further the sum of ——— by me the said Justice allowed and adjudged to be paid by the said C. D. to the said A. B. for his costs by him laid out about the conviction aforesaid. These are therefore to command and require you, and each and every of you, to distrain the goods and chattels of the said C. D. wheresoever they may be found within the said District; and on the said goods and chattels so distrained to levy the said penalty, (*damages and costs, when adjudged, making together £ ——— .*) And if within the space of four days next after such distress by you made, the said last mentioned sum of £ ——— together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels, so by you distrained as aforesaid, and out of the money arising from such sale, that you do pay (*here state the payment to be made of the penalty as directed by the conviction, which is generally one half to the Queen, and the other half to the informer or complainant—the damages to the party injured with the costs, as the case may be,*) returning to the said C. D. the overplus, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And you are to certify to me with the return of this precept what you shall have done in the execution thereof. Hereof fail not. Given under my hand and seal at ——— in the said District, this ——— day of ——— in the year of our Lord, one thousand eight hundred and ———

(Signed) W. R., J. P. [SEAL]

In all cases where the Magistrate confers authority to an inferior officer to execute his orders, or warrants, but more especially in those cases where monies are to be

levied and expences incurred, it is the duty of the Magistrate to ascertain that such orders or warrants are duly executed, and to correct all negligence or imposition in this respect. It is no doubt a primary consideration that justice should be correctly rendered, but it is equally essential that it should be correctly executed. The men who are appointed for the administration of Justice generally have character sufficient to secure the public confidence—they may err, but not from intention—but the executory part of the law must frequently be entrusted to needy men, who seek occasion to promote their own interest by means not always the most legitimate, and it but too often happens that the unfortunate individual who has not the means to satisfy what the law has condemned him to pay, becomes a prey to the rapacity of an unworthy officer, who, under pretence of granting some indulgence, some delay—or by some other contrivance, finds means to increase his demand for fees, or other reward for his services, contrary to the ends of justice. Every warrant issued by the Magistrate should be regularly returned by the officer charged with the execution of it, containing a statement of all his doings upon it, but especially of all monies received by him, whether as fees, or otherwise, and this upon oath, so as to prevent any undue practices. Although the party whose property has been seized, or who has paid his money on any judgment against him, has a right to see this return, and to know to what purpose his money has been applied, yet this will seldom be required, as among the lower ranks in life, the officer armed with a Justice's warrant is considered entitled to all his demands, and to which they generally submit, without knowing, or being able to determine how far they

are correct. It is therefore necessary, that all fees for services done—all charges for distraining, keeping and selling of goods—and all charges whatever, of every Officer or Constable employed by the Magistrate, should be seen and taxed by him, and none other allowed.

The above general form of a warrant of distress may serve in any other case, by varying the terms of the conviction, and the application of the monies levied as circumstances may require.

Constables return for want of Distress.

DISTRICT OF } I, P. D., Constable, in and for the said
 _____ } District, do hereby certify and return to
 W. R., Esquire, one of Her Majesty's Justices of the
 Peace in and for the said District, that by virtue of the
 warrant of distress to me directed, under the signature
 and seal of the said W. R., and bearing date at _____
 in the said District, the _____ day of _____ one
 thousand eight hundred and _____ commanding and
 requiring me to make and levy by distress and sale of the
 goods and chattels of C. D., of the Parish of _____
 in the said District, labourer, the sum of _____ I have
 made diligent search for, but do not know, nor can I
 find, sufficient goods and chattels of the said C. D., in the
 said District, whereof I could levy the aforesaid sum of
 _____ as by the said warrant of distress, I am com-
 manded. Given under my hand at _____ this _____
 day of _____ 18_____

(Signed,) P. D., Constable.

In order further to assist the Constable in the execution of his duty, in the case of a seizure and sale of goods and chattels under a warrant of distress, I would here make some observations which may be useful for the regularity of his proceedings.

Upon receiving the warrant of distress, the Constable ought to go to the residence of the defendant, or person against whom the warrant has issued, and after announcing his character as Constable, and the authority with which he is vested, to demand payment of the amount stated in his warrant, and on default of such payment, to attach and seize sufficient of the goods and chattels of the party to cover the amount in question with the costs to accrue thereon. The Constable must make a statement, or what the Bailiffs of the Civil Courts call a *proces verbal* of what he does in this respect with an inventory of all the articles seized, and of which a copy ought to be given to the defendant. It would be advisable that some person should accompany the Constable on this occasion, for the greater regularity of his proceedings. The goods and chattels seized are to be removed by the Constable, and placed in safe custody until the day of sale, limited by the warrant, unless he receives such security as can induce him to rely that these goods and chattels will be forthcoming when required, but this must be done on his own responsibility. The sale ought to be publicly announced by some outcry or notice, that the articles seized may not be sold in a private manner, or at too great an undervalue. On the day of sale the articles seized must be separately adjudged to the highest bidder, and the sale continued until sufficient has been levied, to pay the amount contained in the warrant of Distress, and the charges of

taking, keeping and selling the articles seized. A copy of this sale with a statement of all the fees and charges of the Constable, after being certified and allowed by the Justice of the Peace, is also to be given to the defendant—and no *other* or *greater* fees or charges can be received by the Constable than those thus certified and allowed, or he will be liable to be indicted for extortion or severely punished.

Statement or *proces verbal*, to be made by the Constable on proceeding to the seizure and sale of goods and chattels on a warrant of distress.

DISTRICT OF } Be it remembered that by virtue of a
 _____ } warrant of distress to me directed, under
 the signature and seal of W. R., Esquire, one of Her
 Majesty's Justices of the Peace, in and for the said District,
 bearing date at _____ in the said District, the _____
 day of _____ one thousand eight hundred and _____
 _____ addressed to me P. D. a Constable in and for the
 said District, commanding and authorising me to make
 and levy by distress and sale of the goods and chattels of
 C. D., of _____ in the said District, labourer, the sum
 of _____ for a penalty, and also the sum of _____
 for the costs (*according to the statement contained in the
 warrant of distress*) as mentioned and contained in the
 said warrant of distress, I, the said P. D. this day went to
 the dwelling house (*or residence*) of the said C. D. at
 _____ aforesaid, where being, I exhibited to the said
 C. D. (*or to some person resident in the house or family
 of the party*) my said warrant, and then and there
 demanded payment of the said sum (*or sums*) of money,
 which payment not having been made, I proceeded to

attach and seize the following goods and chattels, the property and in the possession of the said C. D., that is to say, (*Here state the several articles seized*) which said goods and chattels I have taken into my keeping and possession (*or have left in the possession of the said C. D., if satisfactory security be given in this respect,*) and did then and there notify to the said C. D. that I would on the ——— day of ——— instant, at ten of the clock in the forenoon (*being within eight days after the seizure*) at ——— aforesaid, proceed to the sale of the said goods and chattels, if the aforesaid sum (*or sums*) of money should not be sooner paid.

And whereas afterwards, to wit, on the said ——— day of ——— instant, the aforesaid sum (*or sums*) of money in the said warrant of distress mentioned, not having been paid, I the said Constable, after due notice given did proceed to the sale of the aforesaid goods and chattels of the said C. D., so by me seized as aforesaid, and did adjudge the same at open and public sale to the best and highest bidder, in the manner following, that is to say,—

ARTICLES SEIZED.	NAME OF HIGHEST BIDDER.	PRICE OF ADJUDICATION.

And the aforesaid sum (*or sums*) of money in the said warrant of distress mentioned, having, by means of the sale aforesaid, been levied, and also the further sum of £ ——— taxed and allowed for the charges of taking, keeping and selling the said distress, the overplus (*where*

any overplus remains) of the proceeds of the said sale, amounting to £ ———— was by me the said Constable, this day paid over to the said C. D. and a copy of these presents at the same time delivered to him (*or left at his residence, as the case may be.*) Given at ———— aforesaid, this ———— day of ———— one thousand eight hundred and ————.

P. D., *Constable.*

DISTURBANCE OF PUBLIC WORSHIP.

See *Church.*

DOGS—STEALING.

See Act 4 and 5 Vic. c. 25, sec. 30.

DWELLING HOUSE.

Stealing in—See *Burglary.*—4 and 5 Vic. c. 25, s. 14, 16.

Setting fire to—See *Burning.*—4 and 5 Vic. c. 25, s. 2, 3.

ELECTIONS—BRIBERY AT.

See *Bribery.*

EMBEZZLEMENT.

See Act. 4 and 5 Vict. c. 25, s. 39, 40, 41.

Embezzlement is properly considered as a species of larceny and punished accordingly. By the above Act, s. 39, Clerks or servants receiving money, &c., on their

master's account and embezzling it, shall be deemed to have feloniously stolen it, and are punishable by imprisonment and hard labour.

Agents embezzling money entrusted to them to be applied to any special purpose, or embezzling any goods or valuable security entrusted to them for safe custody or for any special purpose, are guilty of a misdemeanor and punishable accordingly.—Sec. 41.

But independently of any statutable provisions, it seems that any person filling a public office who abuses his trust, by embezzling or misapplying the money or effects committed to his charge, is guilty of a *misdemeanor* at common law. Thus a Surveyor of the Highways, who uses the gravel and material obtained for repairing them on his own premises, and employs the public labourers on his own grounds, may be indicted for a misdemeanor.—3 *Chitt. C. L.* 666.—2 *Russ.* 223.

Information by a master against his clerk for embezzlement.

DISTRICT OF } Information of A. B., of the Parish of
 ————— } ————— in the said District, Merchant,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace in and
 for the said District.

The said A. B. being duly sworn deposeth and saith, that C. D., of the same place, being his clerk, and employed by him, the said A. B., to receive money, goods, and effects for and on account of him, the said A. B., his master and employer, did on the —————

day of _____ last, at _____ aforesaid, receive and take into his custody, for and on account of the said A. B. a sum of *twenty five* pounds, and afterwards, to wit, on the same day, did feloniously embezzle and secret the same, (*or part thereof, as the case may be*) contrary to the Act in such case made and provided. Wherefore prays Justice.

Sworn at _____ in the said
 District, this _____ day of } (Signed,) A. B.
 _____ 18 —, before me. }
 (Signed,) W. R., J. P.

The usual course of proceeding as in a case of felony is to be observed upon this information, by issuing a warrant to apprehend the offender—to take his examination and that of the witness—to bind the latter over by recognizance to appear and give evidence at the Court where trial is to be had, and to commit, or to admit the prisoner to bail as circumstances may require.

Information by a merchant against his agent, or broker for embezzling money entrusted to him for a special purpose.

DISTRICT OF } Information of A. B., of the Parish of—
 _____ } — in the said District, trader, taken before me, W. R., Esquire, one of Her Majesty's Justices of the Peace in and for the said District.

The said A. B., being duly sworn, deposeth and saith, that on _____ day of _____ last, at _____ aforesaid, C. D., of _____ in the said District, trader,

was entrusted by him the said A. B., with a Check on the Bank of Montreal, made and signed by him the said A. B. for the payment to him the said C. D., or bearer, of a sum of fifty pounds, with directions, in writing to him the said C. D., as the agent of him the said A. B., to apply the said sum of fifty pounds for and towards the payment of a larger sum of money, then due and owing by him the said A. B., to one G. H., of ——— aforesaid. That afterwards, to wit, on or about the ——— day of ——— instant, at ——— aforesaid, the said C. D. did receive and get into his possession, the amount of the said check from the said Bank of Montreal, for and on account of the said A. B., but did not comply with the directions so as aforesaid by him given to the said C. D., as such agent, but in violation of good faith, he the said C. D., did embezzle and convert the said sum of fifty pounds to his own use, to the said injury of the said defendant— wherefore prays Justice, &c.

Sworn at ——— in the said District, this ——— day of ——— 18 — , before me. (Signed,) W. R., J. P.	}	(Signed,) A. B.
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The course here is the same as on the preceding information, observing however that in this case the party is intitled to be admitted to bail, should sufficient bail be offered.

Information against a factor or agent entrusted with the sale of goods, for pledging the same to his own benefit.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, merchant,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace in and
 for the said District.

The said A. B., being duly sworn, deposeth and saith, that on or about the _____ day of _____ last, at the Parish aforesaid, C. D., of the same place, merchant, was entrusted by him the said A. B., as the agent and factor of him the said A. B., with certain goods and merchandizes of the value of fifty pounds, with orders and directions to the said C. D., as such agent and factor, to sell and dispose of the said goods and merchandizes for the benefit and behoof of him the said A. B. Yet he the said C. D. without any authority whatever from the said A. B., but contrary to his orders and directions aforesaid, afterwards, to wit, on the _____ day of _____ last at _____ aforesaid, did pledge and dispose of the said goods and merchandizes as his own property, and for his own use and behoof, to the great damage of him the said A. B.,—Wherefore, &c.

Taken at _____ in the said
 District, this _____ day of
 _____ 18 —, before me. } (Signed) A. B.
 (Signed,) W. R., J. P.

The course of proceeding in this case is the same as on the last preceding information.

ESCAPE.

An escape, is where one who is lawfully arrested, gains his liberty before he is delivered by due course of law.

Escapes are of three kinds, 1st—by the party himself; 2d—by an officer or person having the offender in his custody—or 3d, an escape caused by a stranger to the arrest, which is called a *rescue*.

1st. All persons being bound to submit to the judgment of the law, whoever, *after being lawfully arrested*, refuses to undergo that imprisonment which the law imposes on him, and frees himself from it before he is delivered by due course of law, though he use no force or violence, is guilty of a high contempt, punishable by fine and imprisonment,—2 *Hawk. c. 17, s. 5.*—4 *Bl. Com.* 129.

But to render any person criminally answerable for an escape, there must have been previously an actual arrest, justifiable in point of law, and a legal imprisonment or restraint continuing at the time of the escape to constitute the offence,—2 *Hawk. c. 19, s. 1, 2, 3.*—1 *Hale.* 194.

2d. Escapes suffered by officers are either *voluntary* or *negligent*.

A *voluntary* escape is where the officer knowingly gives a prisoner his liberty, with the intent to save him from his trial, or punishment, by doing which the officer is involved in the guilt of the crime with which the prisoner stands charged,—1 *Hale.* 596.

A *negligent* escape, is, where the party imprisoned escapes against the will of the officer, and is not freshly pursued and taken before he is lost sight of. So if a felon escapes by force from an officer, the latter is not wholly excused, as he ought to have taken sufficient strength to his assistance,—1 *Hale.* 602.

3d. The offence of a stranger or third person aiding and assisting a prisoner to escape, is called a *rescue*—which see.

Warrant to apprehend a person for escaping from Gaol
or from the House of Correction.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
————— } Justices of the Peace in and for the said
District, to any Constable or Peace Officer
in and for the said District.

Whereas A. B., keeper of the Common Goal, (*or of the House of Correction*) for the said District, hath this day made information and complaint before me, the said Justice, that C. D. hath unlawfully and wilfully escaped from the Common Goal (*or House of Correction*) at ————— for the said District, and from, and out of the custody of him the said A. B., the keeper thereof, before the expiration of the term for which the said C. D. was ordered to be imprisoned, (*or if before trial and condemnation then say*) to which the said C. D. stood committed by warrant under the hand and seal of G. F., Esquire, one of Her Majesty's Justices of the Peace in and for the said District, on a charge of *larceny (or whatever the offence may be.)* These are therefore to command you, and each and every of you, to apprehend and bring before me, or some other of Her Majesty's Justices of the Peace for the said District, the said C. D. to answer to the said complaint, and to be further dealt with according to law. Given under my hand and seal at ————— in the said District, this ————— day of ————— one thousand eight hundred and —————.

(Signed) W. R., J. P. [SEAL.]

The granting of the warrant must be upon the previous information and complaint of the keeper of the Goal, or of the House of Correction, or of some other person on

oath, stating the fact of the escape of the prisoner. When the prisoner is arrested and brought before the Justice, his examination and that of the witnesses must be taken in the usual manner, and the prisoner committed.

Warrant of commitment for escaping from Goal or House of Correction.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 ————— } Justices of the Peace in and for the said
 } District.

To the keeper of the Common Gaol (*or of the House of Correction*) for the said District.

Whereas it appears to me, the said Justice, by the information and complaint on oath of you the said A. B. (*if the keeper is the person making the information, but if made by any other person, then state the name of that person,*) that C. D. hath unlawfully and wilfully escaped from the Common Gaol, (*or House of Correction*) of the said District, and from and out of the custody of the keeper thereof before the expiration of the time for which the said C. D. was ordered to be imprisoned, (*or if before trial and condemnation, then say,*) to which the said C. D. stood committed by warrant under the hand and seal of G. H., Esquire, one of Her Majesty's Justices of the Peace in and for the said District, on a charge of *larceny*, (*or whatever the offence may be.*) These are therefore to command you to receive into your custody the body of the said C. D., and him safely keep in the said Goal, (*or House of Correction*) until he shall thence

be delivered by due course of law. Given under my hand and seal at _____ in the said District this _____ day of _____ one thousand eight hundred and _____.

(Signed) W. R., J. P. [SEAL.]

From these forms, warrants may be made to meet any cases of escape of a prisoner, or against persons aiding and assisting such escape.

EXAMINATION.

Mr. Dickinson in his treatise on the law relative to the office and duties of a Justice of the Peace, has made some valuable observations on this title of *examinations* which I consider to be highly useful to the Justice of the Peace in the performance of an essential part of his duty. Of these observations I have already adopted a part, and shall notice more particularly what he states on this head, at the risk of repetition, from a conviction that the subject merits the best attention of the Magistrate.

The duty comprehended under this title imposes one of the most arduous of those which a Justice of the Peace has to fulfill, as well as one of the most important to the interests of society. To execute it with propriety and effect requires some knowledge of the world and of mankind, and also some knowledge of the Criminal Law to guide the Justice in his investigations on this subject. To be able to discover in what instances, accusations are the impulse of malice and persecution, may frequently require the best ability of the Magistrate, to enable him to protect the rights and personal liberty of the subject, which may

be brought into jeopardy, or abridged by such accusations. This is also requisite when the accusation is made by an illiterate countryman, or a feeble woman against a hardened villain, or an accomplished rogue, who is always ready, by bold assertion, or by plausible pretence, to assert his innocence, by any of those artful contrivances which guilt too frequently employs to escape the hands of Justice.

This title resolves itself into three distinct heads of discussion.

1st. The examination of the prosecutor, or party injured.

2. The examination of witnesses.

3d. The examination of the prisoner.

1ST THE EXAMINATION OF THE PROSECUTOR.

This is called the information,—which is to be taken in order to lay a foundation for all the subsequent proceedings, or in other words, for the purpose of stating such a probable ground of suspicion in the mind of the Justice, that an offence within his cognizance and jurisdiction has been committed, as will justify him in calling into action that authority with which he is invested, for the detection of crimes.

This must be reduced to writing, but previous to doing so it is advisable that the Justice should make himself acquainted not only with the principal parts and general outline of the case, but with all its circumstances, and all its bearings, by patiently hearing the informant's narrative in his common way of relating events. This will enable the Justice to comprehend any ambiguous expression,

into which ignorance or timidity may betray the informer. It will make him familiar with local description and collateral circumstances which may happen to be necessary auxiliaries to the perfect comprehension of the principal fact. Above all it will enable him by his observation on the manner, as well as the matter of the examination, nine times out of ten, to discover, without difficulty, whether it is a plain unvarnished tale that merits his utmost assistance towards the encouragement of the prosecutor, and the detection of the offender—or whether it be the well digested fabrication of an inelligent knave, looking for reward, or of a malicious demon panting for revenge.

The next step is to reduce the informant's examination into writing in a plain and intelligible manner, as nearly according to the order in which he has already told his story as perspicuity will admit, and also in the same words, or as nearly thereto as possible. In a few particular offences, the very words, however uncouth to a polished ear, however ungrammatical to an educated understanding, should be strictly adhered to—as in Rape, Sodomy and the like, or an assault with intent to commit any such crime—as on the precision of the description according to the notions of the party informing, may depend the life of the party accused. The information being closed, it should be read over to the party in a distinct and deliberate manner, or carefully perused by him, before he sanctions it with his signature and his oath, both of which are necessary when he can write.

In cases of felony it is unnecessary for the Justice to take any further information or evidence in the first instance, than will be sufficient to satisfy him that the

crime has been committed and that there is sufficient ground of suspicion against the party accused, to require that a warrant should issue for his arrest, because according to our Provincial Act of the 4 and 5 Vic. c. 24, sec. 2, the examination as well of the informer, as of the other witnesses must be taken, or reiterated in the presence of the party accused, who must have full opportunity afforded him of cross-examining all the witnesses produced against him. This constitutes the first step in the proceeding.

2ND. THE EXAMINATION OF WITNESSES.

It generally happens that the informant can apprise the Justice of one or more persons who ought to be examined as to their knowledge general or particular respecting the commission of the offence. In some instances such witnesses attend voluntarily, but should they not be present, or be unwilling to give their evidence, it becomes the duty of the Magistrate in either case, to issue his summons to all such persons, to appear before him and give their evidence. Should they upon such notice refuse to attend at the time and place required, the Justice may in that case issue his warrant to bring them before him, after taking the oath of the person serving the summons, that he duly served the same, either by delivering and leaving a copy thereof with the witness in person, or with some person living at the house and residence of the witness. It generally happens in criminal prosecutions that there are witnesses of two different kinds—willing, and unwilling—with all of them it is a practice to be recommended, but with the latter class absolutely necessary,

that their examinations should be taken separately, and not in the hearing of one another, and that no one who has already passed his examination, should be permitted, if it can be avoided, to inform any other who has still to undergo that process, as to what particulars he was examined, or what information he gave.—2 *H. H.* 282.

This caution presents the best method of preventing any conspiracy to overwhelm a prisoner from motives of interest or resentment, as it does to resist a combination to defeat a prosecution, from those of favour or partiality.

It being required that all examinations of witnesses in criminal proceedings should be upon oath, therefore the affirmation of a Quaker, or a declaration on the honour of a Peer, cannot be admitted. A Jew may be sworn on the Books of Moses, and a Mahometan on the Alcoran.

3RD. THE EXAMINATION OF THE PRISONER.

It is almost unnecessary to premise that the examination of the person accused, if he submit to any, is also to be reduced into writing, and should he even refuse to answer, or to submit to such examination, the Justice will do right to make a statement of that fact, to exonerate himself from any supposed neglect to take such examination. The Magistrate ought first to acquaint the prisoner with the nature of the crime of which he is accused, and after taking the examination of the informant and witnesses, in the presence of the prisoner, as before mentioned, to call upon him to state what he has to say in his defence.

The excessive mildness usually observed in the administration of the English Criminal Law, renders it proper for

the Magistrate to apprise the prisoner that he is at liberty to state what he thinks proper in his defence, that he is not required to criminate himself, and that what he then states in his examination may be produced on his trial against him. No threats or promises of any kind ought to be used by the Magistrate, or be permitted to be used by any person with his knowledge, to influence the prisoner in any statement he may make, as in such case his examination would not be received in evidence.

There are various modes of conduct which a prisoner thus situated may follow—

1st. If he have in his own opinion such a decisive defence to the accusation, as amounts to a physical certainty that he is falsely accused, he will of course prefer to state it in this stage of the prosecution rather than submit to confinement in a prison until the time of trial. If it be a bailable offence, he will tender the necessary bail, if in his power.

2nd. If he be doubtful as to the validity of his defence, or of the impression it may make on the mind of the Magistrate, so as to procure his immediate liberation, the prisoner may reserve what he has thus to offer, to the day of trial, and decline to enter upon any statement or examination, or he may allege generally that he is not guilty. In this respect the Magistrate has no right to control the option of the prisoner.

3rd. If the criminality of the prisoner be manifest, and he feels impressed with a sense of his guilt, he will the more readily yield to examination, or by avowing his crime, submit himself to the laws of his country, and the clemency of his Sovereign. His examination in such case will amount to a confession.

Should the prisoner stand upon his defence and offer evidence in support of it, the Magistrate must then determine how far, under the circumstances of the case, he ought to receive such evidence, as by the above Act of the 4 and 5 Vic. c. 24, s. 1, it is declared—“*that nothing therein contained shall be construed to require any such Justice or Justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such Justice or Justices to be meet and conducive to the ends of Justice to hear the same.*”

If upon the examination of the whole matter it manifestly appears, either that no such crime as that alleged has been committed, or that the suspicion entertained of the prisoner is unfounded, and that there appears no ground for judicial enquiry, it is lawful for the Magistrate wholly to discharge him without examination or bail,—4 *Bl. Com.* 296.—*Hawk.* 62, c. 15, s. 1.—1 *Hale.* 533.—2 *Hale.* 121. A Magistrate is clearly bound in the exercise of a sound discretion not to commit any one, unless a *prima facie* case is made out against him by witnesses entitled to a reasonable degree of credit.

If there be more than one person accused, it is of the greatest importance for the discovery of crimes, that from the moment of their arrest, they should be kept separate from one another, and have no reciprocal communication either verbal or written, that their examination should be taken separately, that no one of them should know what has been said by the other, and that such as may be committed for trial may be confined in different apartments of the prison, and for which purpose special orders should be given to the keeper of the prison. Offences committed by numbers in conjunction are generally dis-

covered by the variations in their respective examinations ; but this cannot be effected, if the parties have an opportunity of communicating with one another, and of fabricating a common defence.

Form of Examination of the Prosecutor or Witnesses in a case of Felony, to be taken in the presence of the prisoner.

DISTRICT OF } The examination of A. B., of the Parish of
 _____ } _____ in the said District, yeoman,
 taken this _____ day of _____ one thousand eight
 hundred and _____ before me W. R., Esquire, (*or
 before us, if two Justices are present, stating the name of
 the other,*) one of Her Majesty's Justices of the Peace,
 in and for the said District, in the presence and hearing of
 C. D., of _____ in the said District, labourer, charged
 before me the said Justice, (*or us the said Justices,*) with
 having feloniously stolen and carried away on the _____
 _____ day of _____ instant, at _____ aforesaid,
 one silver watch of the value of five pounds, the property
 of the said A. B. And the said A. B., being now duly
 sworn doth depose and say, in the presence and hearing
 aforesaid, that &c., (*here state the circumstances of the
 larceny as given by the witness,*) and further saith not ;—
 Whereupon the said C. D. now present and having heard
 the said examination of the said A. B., is asked by me the
 said Justice (*or us, the said Justices,*) if he the said C.
 D., has any questions to propose to the said A. B.,—and
 the said C. D., having declared that he has no questions

taken down, read the same over to him deliberately and distinctly, and if admitted to be correct, require him to sign; but if he cannot write, let it be so stated. If the prisoner refuse to sign his examination, this ought also to be stated. If the prisoner make any observations or refuse to sign on account of any thing incorrectly taken down in his examination, or differently to what he intended, the Justice ought not to obliterate what he had taken down, but to add to what he has already written, as follows,)—and the said examination as above written, having been by me the said Justice, distinctly and deliberately read over to the said C. D., he objected thereto, that it had been incorrectly taken down in the said examination that (*here state the part objected to*) whereas he the said C. D. meant and intended, or did state, (*here take down the amendment proposed by the prisoner, and close the examination.*)

Taken and examined at _____
 aforesaid, the day and year first above
 written, before me, (*or us.*) } (Signed,) C. D.
 (Signed,) W. R., J. P.
 (Signed,) _____ J. P.

The foregoing forms will apply to all cases of examination whether of the witnesses, or of the party accused, the principal object here being, to take down correctly what the witnesses and the parties say.

EXTORTION.

Extortion is an abuse of public justice consisting in the unlawful taking by an officer, by colour of his office of any money or thing of value, in any case where either none at all is due to him,—or not so much is due,—or before any is due,—4 *Bl. Com.* 141.—1 *Hawk. c.* 68.

The punishment for this offence at common law as a misdemeanor, is by fine and imprisonment, and also by a removal from the office in the execution of which it was committed.

It is extortion in a gaoler to obtain money from his prisoner by colour of his office,—*Trem. P. C.* 111,—in a Sheriff to exact his fees, by refusing to execute process till they are paid, except in cases allowed by Statute or the practice of the Court,—for a miller or ferryman to take more toll than is due by law and by custom,—1 *Ld. Raym.* 149.

Justices of the Peace also are bound by their oath of office to take nothing for the execution of their office, but of the King, and fees accustomed and costs limited by Statute. And generally no public officer can take any other fees or rewards than those given him by Statute, or such as have been anciently or accustomably taken, without being guilty of extortion.

Information against a Constable for extortion.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman,
 taken before me, W. R., Esquire, one of Her Majesty's
 Justices of the Peace, in and for the said District. The
 said A. B. being duly sworn, deposes and saith, that C.
 D., of the Parish of _____ in the said District, on the
 _____ day of _____ instant, being then one of the
 Constables and Peace Officers of Her said Majesty, in
 and for the said District, did arrest and take into custody
 the said A. B., by virtue of a warrant of J. G., Esquire,
 then and still being one of the Justices of the Peace of
 Her said Majesty, in and for the said District, directed to
 the Constables and Officers of the Peace in and for the said
 District, and authorising them to arrest and bring the body

of him, the said A. B., before the said J. G., or some other of Her said Majesty's Justices of the Peace, to answer to the complaint of one P. D. for having assaulted and beat him.

And the said A. B. having been arrested by the said C. D. on the day and year aforesaid at the Parish aforesaid, did fraudulently and by extortion demand and obtain of and from the said A. B., the sum of five shillings, under colour and pretence that he the said C. D. would get the said warrant discharged without any further proceedings being had thereon. Whereas the said C. D. did not get the said warrant discharged, to the great damage of the said A. B. Wherefore he prays justice.

Sworn at _____ in the said
 District, this _____ day of }
 _____ 18—, before me. } (Signed,) A. B.

(Signed,) W. R., J. P.

Any other unfounded pretence may form a ground of charge against a public officer for demanding and receiving money or other thing as fees or a reward for pretended services, not required or allowed by law, as,—against the Constable for threatening to take a prisoner to Gaol, instead of carrying him before a Justice of the Peace, and obtaining money in consequence,—against a Constable for fees for his services under pretence of procuring bail for a prisoner, —against a Bailiff for exacting fees and a reward under pretence of granting delay to a debtor on an execution against his effects,—against a Clerk of the Market for exacting more than was due to him for any cart, stall, or bench in the Market Place or for any duty performed by him,—also against a Toll Collector for exacting more than was due to him.

In all these cases, the principal object is to state the ground of complaint in the information in such way as to shew that there has been an imposition or overcharge by the Public Officer under colour of his office. The form of the warrant and other proceedings in this case are the same as in other cases of misdemeanour where the party is entitled to be admitted to bail to answer to the complaint against him.

FALSE PRETENCES.

See *Cheats*.

FEES TO CLERKS AND BAILIFFS EMPLOYED BY JUSTICES.

By the Provincial Act of 6 Wm. 4, c. 19, intituled "An Act to regulate the fees of persons employed by Justices of the Peace in the Country Parishes as Clerks or Bailiffs in certain cases," continued by the Ordinance of the Governor and Special Council of the 3 Vic. c. 15, §, 6, to the first day of November, 1845, no other or greater fees shall be demanded or taken, under any pretext whatsoever, by the said Clerks and Bailiffs, than as therein mentioned, that is to say—

By the Clerk

	<i>s.</i>	<i>d.</i>
For drawing up a deposition - - -	2	6
For drawing up a warrant - - -	2	6
For drawing up a bail bond - - -	2	6
For making out a mittimus - - -	2	6
For a summons - - - - -	1	6
For each copy - - - - -	0	6
For a sub-pœna - - - - -	1	0
For each copy - - - - -	0	6
For the entry of a final judgment - - -	1	3

For each copy of any entry made in the Register kept by such Magistrate, at the rate of sixpence for every hundred words, provided always that the person performing the duty of the Clerk, shall not require any payment for any paper he may prepare in any criminal prosecution, (assaults and batteries excepted,) and shall, under the dictation and order of the Justice of the Peace, keep the Register of such Justice of the Peace without being entitled to any remuneration for so doing; and such Clerk shall likewise, at his own cost, (either by employing a person to do the duty of Crier, or otherwise) cause order to be maintained during the sittings of the Court, and shall execute all the orders which shall be made by any such Justice of the Peace in that behalf.

By the Bailiff—

	<i>s.</i>	<i>d.</i>
For executing any warrant of arrest - - -	5	0
For his assistant, (or record) - - - -	2	6
For a seizure and sale under execution,—the publication included - - - - -	7	6
For his assistant - - - - -	2	6
For a seizure only, not followed by a sale, one half of the said fees - - - - -		
For the service of a summons, sub-pæna, or order - - - - -	1	3
For each league travelled to serve the same, the distance in returning not to be reckoned - - - - -	1	0
For each official return of illegal resistance -	2	6
For his assistant - - - - -	1	3

Provided always, that wherever any Bailiff or Constable shall serve several summonses or sub-pæna for the

same complainant at the same time, and on the same road, he shall only be entitled to travelling expences as for one journey, and the fees for the services.

By sec. 3. Every person who shall contravene this Act, shall be liable to a penalty, not exceeding five pounds recoverable in a Summary way before any Justice of the Peace of the District, on legal proof, and whereof one moiety shall go to the prosecutor, with reasonable costs, and the other moiety shall belong to Her Majesty, for the public use of the Province.

By sec. 4. It shall be lawful for any Justice of the Peace, to appoint one or more Constables, if need shall be, to execute the orders of such Justice of the Peace, to which Constables, such Justice of the Peace, is empowered to administer the requisite oath, which shall be enregistered in the register of such Justice of the Peace.

By sec. 5. No such Clerk or person performing the duty of Clerk, no Bailiff or Constable, executing the orders of a Justice of the Peace, shall in any manner represent either of the parties, or plead before such Justice of the Peace, under a penalty of twenty shillings, to be recovered and applied in the manner mentioned in the third section of this Act.

By sec. 6. All Bailiffs of the Court of King's Bench, are authorised to execute all orders of Justices of the Peace within their respective Districts, without its being necessary that they should be appointed Constables.

No particular form of oath is required by any Statute to be administered to a Constable, and the general form may therefore adopted.

OATH OF A CONSTABLE.

You swear that you will well and faithfully execute the Office of Constable in and for the (*County or District*) of ———— as by law required, and according to the best of your knowledge and ability.—So HELP YOU GOD.

FELO DE SE.

A *Felo de Se* is one that commits felony by deliberately putting an end to his own existence, or by committing any unlawful malicious act, the consequence of which is his own death—as if in the attempt to kill another, he misses his blow and kills himself, or if in shooting at another the gun bursts and he himself is mortally wounded.—1 *Hale*. 413. The party however must be of years of discretion and in his senses, else it is no crime.—1 *Hawk*. 68. But it is not because a man acts contrary to reason, that he must be held to have no reason at all,—otherwise every other criminal might be proved *non compos* as well as the self murderer. The law therefore rightly judges, that every melancholy or hypochondriac fit does not deprive a man of the capacity of discerning right from wrong; for even if a real lunatic kills himself in a lucid interval, he is a *felo de se* as much as another man.—1 *Hale*. 412.—4 *Bl. Com.* 189.

FELONY.

The definition of the word felony, about which some writers have taken much pains, is of little importance in a practical treatise. It is sufficient for my purpose here to

notice, that it comprehends every species of crime which at common law, occasioned the forfeiture of lands or goods, or both. By long use, the term *felony*, came to signify the crime committed, and not the penal consequence, and as this penal consequence was always attached to the higher crimes, the idea of felony became at last generally connected with that of capital punishment, and so much importance became attached to the word, that no periphrasis will express the crime intended by it, in technical language, and therefore in all criminal proceedings, as for a felony committed, it is essential that the offence should be described as having been done *feloniously*.

For the several kinds of felonies see the particular titles.

FENCES.

Stealing—See Act 4 and 5 Vic. c. 25, s. 32.

Breaking or Destroying—See 4 and 5 Vic. c. 26, s. 23.

And forms of conviction on each of these Acts.

FORGERY.

Forgery, is an offence by the common law in falsely and fraudulently making or altering any manner of record or any other authentic matter of a public nature—as a parish register, or any deed, will, privy seal, certificate of holy orders, and the like—1 *Hawk. c.* 70.

Mr. East defines forgery at common law to be a false making—“a making *malo animo*, of any written instrument, for the purpose of fraud and deceit”—the word

making, in this definition being considered, as including every alteration of, or addition to, a true instrument,—2 *East. P. C. c. 19, s. 1. p. 852. 965.*

Besides the offence of forgery at common law, which is of the degree only of misdemeanor, there are a great many kinds of forgery, especially subjected to punishment by a variety of statutes.

The counterfeiting of any writing, with a fraudulent intent, whereby another *may* be prejudiced, (it being immaterial whether the party be actually injured or not) is also a forgery at common law,—as a bill of lading and acquittance—a warrant of Attorney—a marriage register—a bill of exchange, and such like.—2 *Ld. Raym. 1461.*—2 *Str. 747.*—2 *East. P. C. c. 19, s. 7.*

But it is settled that Justices of the Peace have no jurisdiction over forgery at the common law, that is, to try and punish the offence, inasmuch as the chief end of the institution of the office of these Justices, was for the preservation of the Peace against personal wrongs and open violence, or at the most to extend to such other offences only as have a direct and immediate tendency to cause breaches of the peace,—as libels and such like, which on this account have been adjudged indictable before Justices of the Peace,—2 *Hawk. c. 8, s. 38.*—1 *Salk. 406. 1 East. Rep. 173.*

But a Justice of the Peace may take an information thereof, and bind over the informers, examine the offender, certify his examination to the proper Judges, and commit him to prison, or admit him to bail, as the case may require, in order to bring him to his trial.

By the several Acts of the Provincial Legislature of the 4 and 5 Vic. c. 94, c. 97, and c. 98, for the establishment

and regulation of the Banks of Quebec, of the City Bank, and of the Bank of Montreal, it is enacted that any person forging, counterfeiting or altering any bond, bill, or note of any of these Banks, with intent to defraud, or shall offer or pass any such forged or counterfeited instrument knowing the same to be forged, &c., shall be deemed guilty of felony, and punishable by imprisonment and hard labour.

Commitment for Felony in uttering a forged Bank Note under the Act of 4 and 5 Vic. c. 98, sec. 35.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 ————— } Justices of the Peace, in and for the said
 District.

To any Constable, or other Peace Officer in and for the said District,—and to the keeper of the Common Gaol of the said District.

These are to command you the said Constables and Peace Officers, and each and every of you, forthwith to take, and to convey and deliver into the custody of the keeper of the said Common Gaol, the body of C. D., of the Parish of ——— in the said District, pedlar, charged before me the said Justice, on the oath of A. B. of the same place, trader, with having on the ——— day of ——— instant, at the Parish aforesaid, feloniously uttered, and disposed of a certain false forged, and counterfeit Bank note, purporting to be a note of the Bank of Montreal, for the payment of one pound five shillings, he the said C. D. at the time of uttering the said note, well knowing the same to be false, forged, and counterfeited, with intent to defraud the said Bank of Montreal, contrary to the Act in such case made and provided.

And you the said keeper, are hereby required to re-

ceive into your custody the said C. D., and him safely keep in the said Gaol until he be from thence delivered by due course of law.

Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____.

(Signed) W. R., *J. P.* [SEAL]

The information to ground the above warrant, must correspond therewith and contain the facts therein stated,—the other proceedings,—the examination of the prisoner and witnesses may be taken according to the forms before laid down in other cases, observing to include in each the substance of the charge against the prisoner.

Commitment for feloniously altering a Bank note, and uttering the same.

DISTRICT OF } W. R., Esquire, one of Her Majesty's Jus-
 _____ } tices of the Peace, in and for the said Dis-
 trict.

To any Constable, &c,—and to the keeper of the Common Gaol for the said District.

These are to command you the said Constables and Peace Officers, and each and every of you, forthwith to take, and to convey and deliver into the custody of the keeper of the said Gaol, the body of C. D., of the Parish of _____ in the said District, huckster, charged before me the said Justice, on the oath of A. B., of the same place, trader, on suspicion of having on the _____ day of _____ instant, at the Parish of aforesaid, felonious-

ly altered a Bank note of the Bank of Montreal for the payment of five dollars, to make the same resemble a note of the said Bank for the sum of fifty dollars, and that he the said C. D., afterwards to wit, on the same day before mentioned, at the Parish aforesaid, did feloniously utter and put away the said Bank note so altered, as and for a good Bank note for fifty dollars, with intent to defraud the said Band, he the said C. D., then and there well knowing the said Bank note to be altered forged and counterfeited as aforesaid, contrary to the Act in such case made and provided.

And you, the said keeper are hereby required to receive into your custody the said C. D., and him safely keep in the said Gaol until he shall be thence delivered by due course of law.

Given under my hand and seal at ——— in the said District, this, ——— day of ——— one thousand eight hundred and ——— .

(Signed,) W. R., *J. P.* [SEAL.]

The above will suffice to shew the manner of stating the complaint in forgery, whether in the information or other proceedings,—it being impossible, and indeed unnecessary to adapt a form to every case that may occur.

GARDEN.

Stealing any Tree, Shrub, Plant, &c, or vegetable production in a Garden, see 4 and 5 Vic. c. 25, sec. 34.

Injuring or destroying any tree, shrub, plant, &c., or other vegetable production in a garden see 4 and 5 Vic. c. 26, s. 19, 21, 22.

And form of conviction prescribed by these Statutes.

GOOD BEHAVIOUR.

See *Surety for the Peace*.

HABEAS CORPUS.

It is only necessary here to mention the Writ of *Habeas Corpus* and to explain the nature of it, as its operation can rarely come under the notice of a Justice of the Peace.

Whenever a person is restrained of his liberty by being confined in a Common Gaol, or by a private person, whether it be for a criminal or a civil cause, and it is apprehended that the imprisonment or restraint is illegal, he may obtain from the Court of King's Bench, or from any of the Judges thereof in vacation, this writ of *Habeas Corpus*, directed to the person detaining another, and commanding him to produce the body of the person so detained, with the day and cause of his caption and detention, to do, submit to, and receive whatsoever the Court or Judge awarding such writ, shall consider in that behalf. This is called the *Habeas Corpus ad Subjiciendum* (so termed from the language of the writ, to undergo and receive all such things as shall be considered of the party in that behalf.) This is a high prerogative writ, issuing in the Queen's name, who is at all times entitled to have an account, why the liberty of her subjects is restrained. It is the subject's writ of right, to which he may have recourse in every case, when he considers an undue restraint is put upon his personal liberty.

In England, by the Stat. 31, Chas. 2, c. 2, this writ, emphatically styled *The Habeas Corpus Writ*, is granted and secured to all Her Majesty's subjects. It is there considered the second Great Charter, and has extinguished all the resources that oppression might wield, to deprive without just cause, a fellow creature of his liberty.

By our Provincial Statute of the 52nd Geo. 3 c. 8, we enjoy all the benefits of the writ of *Habeas Corpus* in this eastern part of the Province.

HAWKERS AND PEDLARS.

Hawkers and pedlars are a description of persons who are frequently found travelling in the different parts of this Province without having any settled or known domicile, and it is of much importance that the law regarding them should be known and enforced by Her Majesty's Justices of the Peace, in order to check any thing irregular or improper in the conduct of such persons.

By the Provincial Act of the 35 Geo. 3, c. 8, intituled, "An Act for granting to His Majesty duties on licences to hawkers pedlars and petty chapmen, and for regulating their trade, &c," it is provided, that on or before the fifth day of April, 1796, there shall be taken out a licence by every hawker, pedlar, petty chapman, and every trading person or persons going from town to town, or to other men's houses, and travelling either on foot, or with horse or horses, or otherwise within this Province, carrying to sell, or exposing to sale, any goods wares or merchandizes, for which licence there shall be paid two pounds current money of the Province, at the time such

licence shall be taken out. And by Sec. 2, it is required that all such persons shall take out a fresh licence on or before the fifth day of April in every year, before they shall presume to travel and trade as aforesaid, and in the same manner to renew such licence from year to year.

By Sec. 8, it is enacted, that if any such hawker, pedlar, petty chapman, or other trading person travelling as aforesaid, shall be found so travelling without first taking out such licence, and renewing the same as aforesaid every such person shall for every such offence, forfeit the sum of ten pounds current money aforesaid,—and if any person so travelling under and by virtue of such licence so granted upon demand being made by any Justice of the Peace, Officer of Militia, Constable, or Peace Officer of the District, County, Town, or place, where such person shall trade, shall refuse to produce and shew his or her licence or renewed licence for so trading as aforesaid, or shall not have his or her said licence, or renewed licence ready to produce and show unto such Justice of the Peace, Officer of Militia, Constable, or Peace Officer, that then the person so refusing, or not having his or her licence, shall forfeit the sum of ten pounds current money aforesaid.

By Sec. 8, no such licence is required for the servant *accompanying* such hawker, &c, to assist him in carrying his packages of goods, &c.

By Sec. 9, It is enacted that it shall be lawful for any Officer of Militia, Constable or Peace Officer, to seize and detain any such hawker, pedlar, petty, chapman, or other trading person as aforesaid, who shall be found trading without a licence, contrary to this Act,—or who being found trading shall refuse or neglect to produce a licence

according to this Act, after being required so to do for a reasonable time, in order to his or her being carried, and they are hereby required to carry such persons, so seized (unless they shall in the mean time produce their respective licences) before two of Her Majesty's Justices of the Peace, the nearest to the place, where such offence or offences shall be committed--which said two Justices are hereby authorized and strictly required either upon the confession of the party offending, or due proof by Witness, other than the informer, upon oath, which oath they are empowered to administer, that the person or persons so brought before them, had so traded as aforesaid without licence, and in case no such licence shall be produced by such offender or offenders, before such Justices, by warrant under their hands and seals, directed to a Constable or Peace Officer, to cause the said sum of ten pounds, with reasonable costs, to be forthwith levied by distress, and of the goods, wares and merchandizes of such offender or offenders, or of the goods with which such offender or offenders shall be found trading as aforesaid, together with the reasonable charges of taking such distress.

By Sec. 11, it is enacted, that in case any person shall let out, or hire, or lend any licence to him or her granted as aforesaid, or shall so trade with or under colour of any licence granted to any other person whatsoever, or if any licence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, shall each of them forfeit the sum of ten pounds current money aforesaid.

By Sec. 12, it is enacted that if any person having a licence to trade, as aforesaid, shall be convicted in any of Her Majesty's Courts of King's Bench in this Province, of

holding seditious discourses, uttering treasonable words, maliciously spreading false views, publishing or distributing libellous or seditious papers, written or printed, tending to excite discontent in the minds and to lessen the affections of Her Majesty's subjects, or to disturb the peace and tranquillity of this Province, such, his or her licence shall be from henceforth forfeited and void, and he or she shall be utterly incapable of having any licence again granted to him or her for trading, and shall also be subject to such other penalty or punishment as by law may be inflicted for such offence.

By Sec. 13, this Act shall not extend to prohibit any person or persons from selling any Acts of the Legislature, Prayer Books or Church Catechisms, Proclamations, Gazettes, Almanacks, or other printed papers that shall be licensed by authority, or any fish, fruit, or victuals—nor to hinder any person or persons who are the real makers or workers of any goods, wares, or manufactures, or his or their children, apprentices, agents or servants to such real workers or makers of such goods, wares, and manufactures only, from carrying abroad, exposing to sale, and selling by retail or otherwise, any of the said goods, wares, or manufactures, of his, her, or their own making, in any part of this Province ;—nor any tinkers, coopers, glaziers, harness menders, or other persons usually trading in mending kettles, tubs, household goods, or harness whatsoever, from going about and carrying with them proper materials for mending the same, without having a licence as aforesaid.

By Sec. 15, It is enacted, that in all cases where the pecuniary penalty by this Act imposed, doth not exceed the sum of ten pounds currency, it shall be recovered

with costs of suit before any two of Her Majesty's Justices of the Peace of the District wherein the offence shall be committed in the weekly sittings of such Justices, directed by law, to be held at the Cities of Quebec and Montreal, and town of Three Rivers, except where it is otherwise provided, on proof of the offence, either by voluntary confession of the party accused, or by oath of one or more creditable witness or witnesses, other than the informer, which penalty may be levied by warrant of distress on the goods and chattels of the offender, and for want of distress the offender may be committed to Gaol for any time not exceeding six months, nor less than one month.

By Sec. 17, a right of appeal is given to the next Quarter Sessions, on the party appealing giving security to the amount of the conviction together with such costs as shall be awarded in case the conviction be affirmed. But if such Quarter Sessions are to be held within ten days after the conviction, then the appeal may be made to the following Quarter Sessions—who are empowered to summon and examine Witnesses upon oath, and finally to hear and determine the appeal,—and in case the judgment of the Justices be affirmed, it shall be lawful for the Court of Quarter Sessions to award such costs as they shall see fit.

By Sec. 18, Witnesses not attending to give evidence before the Justices, when summoned, to be fined ten pounds, to be recovered in the same manner as other penalties imposed by this Act.

By the Provincial Act of the 3 Geo. 4, c. 12, it is enacted that all and every the powers and authorities, which by the fifteenth Section of the foregoing Act of the 35 Geo. 3, are given to, and conferred upon, and that

may be exercised by any two of Her Majesty's Justices of the Peace in the weekly sitting of such Justices, directed by law at the City of Quebec and Montreal, and in the Town of Three Rivers shall be, and the same are thereby given to, and may be exercised by any two Justices of the Peace residing in the County where the offence may have been committed.

By Sec. 2, it is provided, that when any conviction may take place before such Justices of the Peace, in virtue of the power given to them by this Act, the said Justices of the Peace before whom the conviction shall have been made, shall be bound to take in writing the deposition or evidence upon which the conviction may have been made to the end, that in the event of a revision of the conviction and judgment by a competent authority, the facts upon which such a conviction and judgment may have been made and rendered, may manifestly appear.

By Sec. 3, the right of appeal as granted by the seventeenth section of the aforesaid Act of the 35 Geo. 3, is again repeated.

Information, summary Proceedings, and conviction of a Hawker and Pedlar, for refusing to produce and shew his Licence.

DISTRICT OF } Be it remembered that on the _____
 _____ } day of _____ one thousand eight hundred and _____ personally came and appeared before us, W. R., and J. G., Esquires, two of Her Majesty's Justices of the Peace in and for the said District,—A. B., of the Parish of _____ in the said District, yeoman, who

being duly sworn, doth depose and say, that he is a Captain of Militia in and for the said Parish of ——— and that on the ——— day of ——— instant, he the said A. B., as such Captain of Militia, did demand and require one C. D., then travelling and trading in the said Parish, and selling and exposing to sale therein, divers goods, wares and merchandizes, as a hawker and pedlar, to produce and shew to him the said A. B., his, the said C. D.'s licence as such hawker and pedlar, which the said C. D., then and there neglected and refused to do,—by reason of which offence he the said A. B., complains and alleges, that the said C. D., hath forfeited and become liable to pay the penalty of ten pounds currency, of which one half to be paid to Her said Majesty, and the other half to him the said A. B., the prosecutor in this behalf, together with the costs. Whereupon and in consequence of such refusal by the said C. D., he the said A. B., on the day and year last aforesaid, at the Parish aforesaid, did seize and detain the said C. D., and doth now bring him before us the said Justices, being the Justices nearest to the place and Parish aforesaid where the offence was committed, that the said C. D., may be adjudged and condemned to pay the said penalty and Costs, and be otherwise dealt with according to law.

Whereupon the said C. D. being now personally present before us, the said Justices, and having heard the information and complaint aforesaid of the said A. B., is asked by us, the said Justices what he, the said C. D. hath to answer to the said complaint, doth voluntarily confess and acknowledge that the said complaint is true and well founded, *(should the party accused deny the fact, a witness or witnesses must be produced, sworn, and his or their*

examination taken down in the presence of the party as stated in the general form of conviction, and in case the offending party has any witnesses to produce, they must be examined in the same manner.) Whereupon all and singular the premises aforesaid being by us, the said Justices duly weighed and considered, we are of opinion that the said C. D. is guilty of the offence aforesaid, as charged in the said information and complaint, and we the said Justices in consequence do hereby condemn the said C. D. to pay the aforesaid penalty of ten pounds currency, to be applied according to law, and also the costs taxed and allowed at £———.

Given under our hands and seals at —— aforesaid, this —— day of —— one thousand eight hundred and ——.

W. R., J. P. [SEAL.]

J. G., J. P. [SEAL.]

Warrant of Distress on the above Conviction.

DISTRICT OF } W. R. and J. G., Esquires, two of Her
 ————— } Majesty's Justices of the Peace in and for
 the said District.

To any Constable or Officer of the Peace in and for the said District.

Whereas C. D. of the Parish of —— in the said District, hawker and pedlar, hath this day been convicted before us the said Justices, for that he the said C. D. on the —— day of —— at the Parish aforesaid, was travelling and trading, and exposing to sale and selling sundry goods, wares and merchandizes as a hawker and pedlar, and then and there refused to produce and shew A. B. a Captain of Militia in and for the said Parish, his

the said C. D.'s licence as such hawker and pedlar, whereby he the said C. D. hath forfeited and hath been by us the said Justices condemned to pay the penalty of ten pounds currency, and £ ——— for the costs accrued in this behalf. These are therefore to command you, and each and every of you to levy the said sum of ten pounds, and also the said sum of £ ——— for the costs, to be paid and applied according to law, by distress and sale of the goods and chattels of the said C. D. and we the said Justices do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within six days, unless the said penalty and costs for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid. And you are hereby also commanded to certify to us the said Justices what you shall have done by virtue of this our warrant.

Given under our hands and seals at ——— aforesaid this ——— day of ——— one thousand eight hundred and ———

W. R., *J. P.* [SEAL.]

J. G., *J. P.* [SEAL.]

The foregoing conviction and proceeding are the more summary from the authority given by the Act for the immediate arrest of the hawker and pedlar, without any previous information or warrant: the information when given, being produced with the person of the prisoner, he is thus called upon immediately to defend himself.

Complaints however may arise under this Act where a previous information and warrant to bring the party before Justices may be necessary, according to the ordinary course of proceeding.

HIGHWAYS.

The principal law on this subject is the Act of the Provincial Legislature of the 36 Geo. 3, c. 9, intituled, "An Act for making repairs and altering the highways and bridges within this Province, and for other purposes." Occasional alterations have been made in this Act, but it still constitutes the principal law regarding the highways in this part of the Province. The provisions of the Act are too numerous and too lengthy to be here inserted, nor is it necessary, as from its general interest, and the length of time it has been enforced, the public is sufficiently acquainted therewith. I shall therefore only notice some of its principal features, and of the other Acts and Ordinances made on this subject, so as to give a concise view of the whole.

The principal object of the above Act was to put all the highways and public bridges under the direction and control of a Grand Voyer, and it is thereby enacted, "That all the King's highways and public bridges shall be made, repaired, and kept up, under the direction of the Grand Voyer in each and every District in this Province, or his deputy to be appointed by him."—36 Geo. 3 c. 9, s. 1.

Sec. 25, that the Grand Voyer or his deputy, may divide every Parish, Seigniory, or Township into any number of divisions not exceeding nine, and to each of which divisions there shall be allowed by him an overseer (*sous Voyer*) of the highways and bridges, who shall be chosen every second year by a majority of the householders of every such Parish Seigniory or Township. The duty of every

such overseer is, to oversee and direct the different persons within his division, in the performance of the duties required of them for making and keeping in repair the roads and bridges thereof, and to prosecute every person who shall refuse or neglect to perform their duty in this respect. Every person so appointed as overseer who shall refuse to accept the office, or to notify within eight days his assent thereto, shall forfeit the sum of five pounds, or when accepting shall refuse to obey the lawful orders of the Grand Voyer, or his deputy, or to oversee and perform the duties required of him, shall for every such refusal or neglect, forfeit the sum of twenty shillings. And every Officer of Militia whose duty it may be to call the meeting for the election of such overseer, who shall neglect to do so, or to make a return of the election, shall forfeit the sum of five pounds.

Sec. 26, that the Grand Voyer shall nominate and appoint a fit and proper person in each Parish, Seignior, or Township, in his District, as Surveyor (*Inspecteur*) of highways and bridges therein, who shall serve for two years, and whose duty it shall be to superintend and direct the overseers within his Parish, Seignior, or Township, in the performance of their duties, and to communicate to such overseers, the orders they may occasionally receive from the Grand Voyer or his deputy, &c. Every person so appointed as Surveyor, who shall refuse to accept the office shall forfeit and pay the sum of five pounds, or when accepting, shall refuse to execute any of the duties of the office, shall forfeit and pay twenty shillings for every such offence.

That all occupiers of lands, whether proprietors or farmers, adjoining the King's highways, commonly called

front roads shall make and keep in good repair the said highways and ditches upon the breadth of their lands respectively. And shall also make and keep in repair the bridges over ditches and streams of water.

By Sec. 15 and 17, in certain soils, and in cases where extra labour is required, also when any difficulties occur respecting the making or repairing of public bridges or otherwise, the whole to be regulated and determined by the Grand Voyer or his Deputy. And any person who shall either on horseback or in a carriage, trot or gallop over a public bridge exceeding twenty feet in length, shall for every such offence pay a fine of five shillings.

By Sec. 36, any Ox, Bull, Horse, Goat, or Hog straying on the highway, is liable to be seized and detained by any Peace Officer, Surveyor or Overseer, until, the owner thereof shall have paid for every such animal so seized, the sum of two shillings and sixpence, over and above one shilling a day for every day that every such animal shall remain in the custody of any such Peace Officer, &c.

By Sec. 37, and if after three publications at the Church door of the Parish during three Sundays next after the detention of such animal, no person shall appear to claim the same, such Peace Officer so detaining such animal, is authorized to make a public sale thereof, deducting from the proceeds the sum or sums before directed,—the surplus, to be paid to the road Treasurer or Grand Voyer. And in case of dispute between any such Peace Officer, &c, and the owner of any such animal, the same shall be determined in a summary manner by any Justice of the Peace for the District, after hearing the parties and the evidence by them respectively produced. Provided always, that if the owner of any animal so sold shall ap-

pear and prove his property before a Justice of the Peace within twelve calendar months from the time such animal shall have been sold, in such cases the Grand Voyer, or Road Treasurer, shall on the order of such Justice, repay to such owner a sum equal to the monies by him received for such animal to be taken out of any monies in his hands arising from this Act.

Sec. 38. This Act not to extend to the Parishes of Quebec and Montreal.

Every person or persons who shall offend against this Act in any matter or thing, for the breach of which a penalty is not herein specially imposed, shall forfeit and pay for every such offence a sum not exceeding ten shillings, nor less than five shillings, currency, and that all penalties and forfeitures by this Act imposed for any offence against the same, and all expences laid out, and all costs and charges to be allowed under the authority thereof, shall be levied by distress and sale of the goods and chattels of the offender by warrant under the hand and seal of any Justice of the Peace for the District or limit where such offence, neglect or default, or expence laid out, shall happen, or such order for payment of such expences laid out, shall be made. Which warrant such Justice of the Peace is empowered and required to grant after complaint or information to him made or given, upon conviction of the offender by confession, or upon the oath of one or more credible witness or witnesses, other than the informer. And the penalties and forfeitures when levied, shall be paid, one half to the informer, and the other half to the Road Treasurer, if such offence happen within the Cities and Parishes of Quebec and Montreal, or to the Grand Voyer of the District, or his Deputy, if

the same shall happen in a Parish or place, other than the said Cities or Parishes.

By Sec. 75, no suit shall be commenced or brought unless within three months after the offence committed, and the Grand Voyer on his deputy or any surveyor or overseer, is deemed in all cases touching this Act, a competent witness, notwithstanding he may be the prosecutor or informer.

By an Act of the 39th Geo. 3, c. 5, intituled "An Act to amend an Act, passed in the thirty-sixth year of His present Majesty's Reign, intituled "*An Act for making repairing and altering the highways and bridges within this Province and for other purposes,*" it is provided that the aforesaid Act of the 36 Geo. 3, c. 9, shall not extend to the Parishes of Quebec and Montreal, beyond the limits of these Cities respectively, but that these Cities shall respectively form a particular District, to be called the *Town District*, and the parts of the said Parishes beyond the limits of the said Cities, to be called the *Country District*, but made subject to the rules and regulations to be made by the Justices of the Peace of the said respective Cities.

By the Act of the 3d Geo. 4, c. 19 intituled "*An Act to explain and extend the provisions of an Act passed in the 36th year of the Reign of His late Majesty,*" intituled, "*An Act for making, repairing and altering the highways and Bridges within this Province, and for other*

purposes," in so far as respects townships the mode of making and keeping in repair the road commonly called front roads, is provided and applied to lands in the townships.

This Act expired on the 1st May, 1828.

By the Act of the 5th Geo. 4, c. 3, intituled, "*An Act to make certain alterations to the Road Laws*" further changes were made as to the powers and authorities of the Grand Voyer and his officers, and the course of proceeding under the aforesaid Road Act, in some respects varied.

This Act was first limited to the 1st May, 1829, and afterwards by Act of the 9 Geo. 4 c. 34, continued to the 1st May, 1833, when it expired.

By the Act of the 9th Geo. 4 c 33, intituled, "*An Act for regulating the fees of Grand Voyers, and the costs of proceedings relating to Procés Verbaux,*" a change was made as to the mode and manner of laying out roads, and of drawing up *Proces Verbaux* thereon. Also in regard of the fees of the Grand Voyer.

This Act expired on the 1st May, 1833.

By Act of 9th Geo. 4, c. 34, intituled, "*An Act to amend and continue for a limited time, a certain Act passed in the fifth year of His Majesty's Reign,*" intituled, "*An Act to make certain alterations to the road laws*"

the Streets in the Villages were considered as front roads, and the proprietors of lots thereon bound to keep them in repair.

This Act expired on the 1st May 1833.

By Act of 2d Wm. 4, c. 44, intituled, "*An Act to amend the Act passed in the thirty sixth year of the Reign of His Majesty King George the Third,*" intituled, "*An Act for making, altering and repairing the Highways and Bridges in this Province, and for other purposes, and to make further regulations concerning Roads and Bridges,*" the powers of the Grand Voyer are vested in certain Road Commissioners, to be elected by the proprietors in each Parish, and a course of proceeding directed thereon.

This Act expired on the 1st May, 1835.

By an Ordinance of the Governor and Special Council of the 2d Vic. 4 sess. c. 7, intituled, "*An Ordinance to amend the Act passed in the 36th year of the Reign of George Third, c. 9, commonly called the Road Act,*" certain powers and authorities are vested in the Grand Voyer and his deputy, and certain directions given in regard of their proceedings, and the mode and manner of making, repairing and keeping up the public Highways in the Province,—and by sec. 24, it is enacted and ordained, that each and every person who shall in any way offend against the provisions of this Ordinance, or shall disobey any order of the Grand Voyer, or other Road

Officer,—and any Road Officer who shall refuse or neglect to comply with the requirements of this Ordinance, shall thereby incur the penalty attached to the like offence of disobedience or refusal by the before mentioned Act of 36th Geo. 3, c. 9.

This Ordinance was to expire on the 1st November, 1842, but by Act of the Provincial Parliament of the 6th Vic. c. 11, it is continued in force unto the end of the Sessions of Parliament next after the 1st May, 1845.

By the Ordinance of the Governor and Special Council of the 4th Vic. c. 4, intituled "*An Ordinance to provide for the better internal Government of this Province, by the establishment of local or municipal authorities therein,*" it is by the 37th sec. ordained and enacted that it shall be lawful for the respective District Councils thereby established to make Bye-Laws for the following, among other purposes, that is to say :—

For making, mantaining or improving of any new or existing road, street, or other convenient communication and means of transit within the limits of their respective Districts, or for the stopping up, altering or diverting of any road, street or communication within the limits aforesaid, also for the erection preservation and repair of new or existing bridges, and public buildings.

By Sec. 45 of this Ordinance it is further Ordained and Enacted, that all and every the powers and authorities, which by any Act or Acts, Ordinance or Ordinances of the Legislature or any Law or Laws of this Province have been, and are now, vested in, and may be lawfully exercised by the *Grand Voyer* of the several Districts of this

Province, or any Magistrates with regard to any highways or bridges, (except in so far as the same are inconsistent with, or repugnant to the provisions of this Ordinance) shall from and after the first election of Councilors under the provisions of this Ordinance become and be vested in the several District Councils aforesaid, within the limits of their respective Districts, and in the exercise of such powers and authorities, it shall in no case be requisite, that a *proces verbal*, for turning an old, or opening a new highway, or a new bye road, or to change an old bridge, or make out a new one, or for making of ditches and outlets, or for any other purpose whatsoever, should be drawn up, or that the same should be confirmed or homologated in any Court of Quarter Sessions as now by law required, when such powers and authorities are exercised by the *Grand Voyers*:—nor shall the intervention of any such Court or the exercises of its powers be in any manner required, for or in respect of the legal and effectual exercise of the said powers and authorities by the said District Councils respectively as aforesaid—any law, usage or custom to the contrary thereof notwithstanding.

By Sec. 46, all records, &c, appertaining to the Office of *Grand Voyers*, or relating to Highways or Bridges, are directed to be delivered to the Prothonotaries of the Court of King's Bench of the several Districts of this Province, there to remain for the use and benefit of all concerned, and the Grand Voyer refusing to deliver over such records &c., to be guilty of a misdemeanor and liable to damages.

There would seem to be a principle of collision between this latter Ordinance and that of the 2 Vic. c. 7, as con-

tinued by the Provincial Act of the 6 Vic. c. 11, but it is not the object here to suggest difficulties that may never arise.

The proceedings before the Magistrate on the Road Acts are generally very simple and very summary, as the complaints in this respect are for the most part founded on a neglect of a party to do his share of labour, or some refusal, as not being liable to it,—in such cases, a verbal complaint laid before the Magistrate, is all that is requisite, as it may be embodied in the summons which generally issues in cases of this kind. But when the contending parties come before the Magistrate to try the case, he must have satisfactory evidence, founded either upon some *Act* or *Proces Verbal*, or the testimony of a surveyor or overseer, or some other, that the complaint is well founded, before he can inflict the penalty of five or ten shillings directed by the Road Act. Of all which evidence the Magistrate must retain a correct note or memorandum, in case of a removal of his proceedings to the superior Courts.

For form of Summons,—see title, *Summons*.

HOMICIDE.

Homicide signifies any killing of a human being by his fellow creature.

The different ways by which death may be inflicted come under this description of *Homicide* and are to be distinguished according to their several degrees of culpability.

1st Murder, or the felonious killing of another with *malicious* intent, or intent to kill without sufficient cause or provocation. (*Under this head may be included the crime of killing one's self, or of Felo de Se.*)

2nd Manslaughter, or the felonious killing of another, but without design or malicious intent.

3rd. Excusable Homicide, 1st., by *misadventure*, when in doing a lawful act, and without proper precaution, a man kills any person. 2nd. By *Self-defence*, when a man is driven to the necessity of killing his adversary to save his own life. This is sometimes called *chance-medley* as when done on a sudden affray.

4th. Justifiable Homicide, is of various kinds, as:—
1st. In the execution of malefactors according to their sentence. 2nd. In the advancement of justice, by an officer in the execution of his office when assaulted and resisted. 3rd. To prevent the escape of Felons. 4th. In cases of riot, or rebellious assemblies, who refuse to disperse. 5th. In resisting a theft or burglar attempting to commit a felony.

It is not the intention here to enter upon the consideration of the law on these different heads, and the distinctions that have been taken in the numerous cases to be found in the books. A complete knowledge of this branch of the law, so interesting and so necessary to every Criminal Lawyer can be acquired only by a close and studious application to the works of those learned jurists who have treated the subject in the fullest manner. The present Manual has no pretension of this kind, being limited, as already observed, to aid the Magistrate in those summary

and other proceedings which fall within his jurisdiction out of Sessions. And here I do not consider it necessary that the Magistrate should be able to draw all the nice distinctions that may arise on the discussion of a case in a Court of Justice, it is sufficient for him to know, that a crime has been committed, to warrant his interference so that the accused may be made amenable to the laws of his country.

Information for murder for feloniously killing in a duel, against the *principals* in the first and second degree.

DISTRICT OF } Information of A. B. of the Parish of ——
 ————— } —— in the said District, gentleman, taken
 before me W. R., Esquire, one of Her
 Majesty's Justices of the Peace in and
 for the said District.

The said A. B. being duly sworn deposeth and saith, that on the ——— day of ——— instant, in a certain field in the said Parish, he saw C. D. of the said Parish, gentleman, and E. F. of the same place, surgeon, with apparent hostile intentions towards each other, and severally armed with pistols as if to fight a duel. That after some previous arrangements the said C. D. and E. F. took their stand opposite to, and at a short distance from each other, and on some signal given the said C. D. and E. F. presented their pistols at each other and fired the same, then loaded with powder and ball as this deponent verily believes, when the said E. F. immediately fell mortally wounded, the ball from the pistol of the said C. D. having penetrated the body of the said E. F. who expired imme-

diately. That G. H. of the same place, gentleman, was present at the same time and place aiding and abetting the said C. D. as his second.

Sworn at _____ in the said
 District, this _____ day of } (Signed,) A. B.
 _____ 18—, before me. }
 (Signed,) W. R., J. P.

In the examinations to be taken on the arrest of the parties accused, it will be necessary to establish, by the opinion of some medical man the nature of the wound given to the deceased, and that it was the necessary or probable cause of his death.

The form of the warrant to apprehend, or to commit, is nearly the same, changing only the conclusion.

WARRANT TO COMMIT.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District.

Whereas, C. D., of the Parish of _____ in the said District, Gentleman, stands charged on oath before me the said Justice, of having at the Parish aforesaid, on the _____ day of _____ instant, feloniously killed and murdered E. F., of the same place, Surgeon, and that G. H., of the said Parish, gentleman, was then and there present, aiding, and abetting the said C. D., in committing the said felony and murder. These are therefore to charge and command you to receive into your custody the said C. D. and G. H., and them safely keep in the said Gaol, until they shall be thence delivered by due course of law.

Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____ .

(Signed) W. R., J. P. [SEAL.]

Information against the Driver of a Caleche, Cab or Cart, for Manslaughter.

DISTRICT OF } Information of A. B., &c. The said A.
 _____ } B., being duly sworn deposeth and saith,
 that on the _____ day of _____ C. D., of the City
 of _____ in the said District, carter, while driving his
 (*Caleche, Cab or Cart,*) through _____ street, in the
 said City, did, without due care or precaution drive his
 said (*Caleche, Cab or Cart,*) upon and against a child
 named E. F., then quietly and peaceably passing in and
 through the said street, whereby the said E. F., was
 thrown down, and one of the wheels of the (*Caleche,*
Cab or Cart,) passed over and upon the head of the said
 E. F., and so bruised and mangled the same, that the
 said E. F., was thereby killed, and died immediately.

Sworn at _____ in the said
 District, this _____ day of }
 _____ 18 — , before me. } (Signed,) A. B.
 (Signed,) W. R., J. P. }

WARRANT OF COMMITMENT.

DISTRICT OF } W. R., Esquire, one of Her Majesty's Jus-
 _____ } tices of the Peace, in and for said Dis-
 trict.

To the Keeper of the Common Gaol of the said District.

Whereas, C. D., of the City of ——— in the said District, carter, stands charged on oath before me, the said Justice, of having on the ——— day of ——— instant, in the said City of ——— feloniously killed a child named E. F., by driving without due care or precaution, (*a Caleche, Cab or Cart,*) upon and against the said E. F., by means whereof the said E. F., was so bruised and mangled, that (*he or she*) expired immediately.

These are therefore to command you to receive into your custody the said C. D., and him safely keep in the said Gaol, until he shall be thence delivered by due course of law.

Given under my hand and seal at ——— in the said District, this ——— day of ——— one thousand eight hundred and ——— .

(Signed,) W. R., J. P. [SEAL.]

The warrants to be issued and the examinations to be taken in these, as in all other cases are in the usual form, stating in each the ground and cause of accusation against the prisoner.

HOP-BINDS.

Unlawfully and maliciously to cut, or otherwise destroy any Hop-Binds growing on poles, is felony by Act 4 and 5 Vic., c. 26, s. 18, and punishable by imprisonment.

HORSES.

Unlawfully and maliciously to kill, maim, or wound any cattle is felony by Act of 4 and 5 Vic., c. 26, s. 16, and to steal any horse, mare, &c. is also felony by Act of 4 and 5 Vic., c. 25, s. 29, and punishable by imprisonment and hard labour.

HOUSE-BREAKING.

See Burglary.

There may however be house-breaking, without burglary, as in the case of breaking into a dwelling house in the day time, or breaking into any shop, warehouse or countinghouse (*not being part of the dwelling house,*) even in the night time, and stealing therein,—see Act 4 and 5 Vic., c. 25, s. 17, 19, and 20.

IDLE AND DISORDERLY PERSONS.

By the Ordinance of the Governor and Special Council of the 1st and 2d Vic., c. 2, amended and made permanent by the Ordinance of the 4th Vic., c. 47, loose, idle and disorderly persons are described to be, persons who being able to work, and able to maintain their families, but who wilfully neglect and refuse to do so,—persons openly exposing or exhibiting in any street or highway, any indecent exhibition, or openly and indecently exposing their persons,—persons loitering in the streets or high-

ways and obstructing passengers, or using insulting language to them,—persons tearing down or defacing signs—breaking windows,—breaking doors, or door plates, or the walls of houses, yards or gardens—destroying fences—causing a disturbance or noise in the streets, by screaming, swearing or singing,—being drunk and impeding or incommoding the peaceable passengers and all common prostitutes or night walkers, wandering in the fields, streets, or highways, not giving a satisfactory account of themselves—persons in the habit of frequenting houses of ill fame, and not giving a satisfactory account of themselves,—persons tipping in taverns or tap-rooms after the hours of ten at night, and before five in the morning, between the twenty-first day of March and the first day of October,—and after the hour of nine at night, and before the hour of six in the morning, from the first of October to the twenty-first of March,—persons winning money or other valuable thing in playing at cards, dice, or other chance game in taverns.

By Sec. 10. Any Justice of the Peace may, upon oath made before him, that any of the above persons are harboured or concealed in any house, authorize the Constable by his warrant, to enter every such house, and to apprehend and bring before him, or any other Justice, all such disorderly persons, who may be committed to gaol, or the House of Correction, there to be dealt with, as directed for all such persons.

By Sec. 8, any Justice of the Peace may commit all loose, idle and disorderly persons being convicted before him on his own view, or on his, her or their confession, or by the oath of one credible witness, to the Common Goal or House of Correction, there to be kept at hard labour

for any time not exceeding two calendar months,—it being however in the discretion of the Justice, to discharge such vagrant persons, or to bind them by recognizance, to appear at the next Quarter Sessions.

INDIANS.

By the Ordinance of the Governor and Special Council, of the 4 Vic. c. 44, intituled "*An Ordinance to repeal certain parts of an Ordinance therein mentioned, and to amend certain other parts of the said Ordinance, and to provide for the further protection of the said Indians of this Province,*" it is ordained and enacted that it shall be lawful for the Governor of this Province, by a written instrument, to order any person, who heretofore hath been, or who now is, or hereafter may become resident in any of the Indian Villages in this Province, to remove from such Village, and in case of default by the said person or persons so to remove within seven days from such order being signified to him, he shall forfeit the sum of five pounds currency, for each and every day after the said seven days which he shall continue to reside or remain in such Indian Village with all the costs of prosecution, and shall suffer imprisonment for a period not less than one month, and not exceeding two months, and further until he shall have paid the said last mentioned penalty and costs.

By the Sec. 3, it is further ordained and enacted, that all the penalties imposed by the second and third clauses, of the Ordinance passed in the 17th year of the Reign of

His late Majesty King George the Third, intituled, "*An Ordinance to prevent the selling of strong liquors to the Indians in the Province of Quebec, as also to deter persons from buying their arms or clothing, &c.*," and all the penalties and forfeitures imposed by this Ordinance, shall be recovered by information on behalf of Her Majesty before any two or more Justices of the Peace, who are thereby authorized and required to hear and determine such information in a summary manner, and upon the oath of one credible witness, and to levy said penalties together with the costs of suing for the same by a warrant to seize and sell the goods and chattels of the offender and to inflict the said imprisonment in the manner herein before provided.

By Sec. 4, all informations under and by virtue of this Ordinance shall be brought within six calendar months from the time that the offence shall have been committed and not afterwards.

By the second clause of the before mentioned Ordinance of the 17 Geo. 3, c. 7, it is provided that no person or persons whatsoever shall purchase or receive in pledge or exchange any clothes, blankets, fire-arms or ammunition belonging to any Indian or Indians within this Province, under a penalty of five pounds and imprisonment for any time not exceeding one month, for the first offence and of ten pounds and imprisonment for any time not exceeding two months for the second and every subsequent offence.

And by the third clause of the said before mentioned Ordinance, it is provided and ordained, that it shall not be lawful for any person to settle in any Indian Village or in any Indian Country within this Province, without a

licence in writing from the Governor, Lieutenant Governor, or Commander in Chief of the Province, for the time being, under a penalty of ten pounds for the first offence, and twenty pounds for the second and every subsequent offence.

INFORMATION.

See title *Conviction*.

JURISDICTION.

By the term *Jurisdiction*, is understood an authority or power which a man has (by virtue of a Commission or Patent from the Crown,) to do justice in certain cases of complaint brought before him, and to give judgment therein.

The extent of Jurisdiction must be determined by law, for no Court shall be presumed to have Jurisdiction where it doth not appear to have one.

Where a party is convicted by an inferior Court or Judge who exceed their jurisdictions, the mode of gaining redress is to remove the conviction, and the proceedings, into the Court of King's Bench by *Certiorari*, that the same may be quashed. And where a party is committed to Prison by an inferior jurisdiction, exceeding its authority in this respect, the proper remedy is to apply for a writ of *Habeas Corpus*.

LARCENY.

Larceny, is defined to be, the wrongful or fraudulent taking and carrying away by any person, of the mere personal goods of another, from any place, with a felonious intent, to convert them to his, (the taker's) own use, and make them his own property, without the consent of the owner.—2 *East. P. C.* 553.—4 *Bl. Com.* 229.—*Fost.* 123, 4.

Mr. Justice Blackstone, says that the taking must be *felonious*, that is, done *animo furcandi*, or as the civil law expresses it, *lucris causa*.

It has however been held as not essential that the taking should be strictly *lucris causa*, for a taking *fraudulenter*, with intent wholly to deprive the owner of his property, or with intent to destroy it, is sufficient, if the object is to effect some supposed advantage accruing either to the party committing the offence, or to a third person,—*Russ. & Ry*, 292. 307, 470.

Larceny is distinguished by the law into two kinds,—the one called *simple larceny*, or theft unaccompanied with any aggravating circumstance,—the other *compound larceny*, when aggravated by taking from the house, or person.

Simple larceny was again divided into *grand* and *petit* larceny, the former signifying the stealing of goods above the value of twenty shillings, in this part of the Province, the latter, a stealing of goods under that value, and between these two offences, there was till lately a wide distinction, as to the punishment annexed to each by law. But now by the Act of the 4th and 5th Vic. c. 25, sec. 2,

all former distinctions between *grand* and *petit* larceny are abolished, and every larceny, whatever be the value of the property stolen, is deemed to be of the same nature, and is subject to the same incidents in all respects, (except as regards the degree of punishment,) as grand larceny was before this alteration in the law ; and every Court whose power, as to the trial of larceny, was before limited to *petit larceny*, is now authorised to try every case of larceny, the punishment of which does not exceed the punishment inflicted for simple larceny, and also to try all accessaries to such larceny.

The crime of larceny, in its various features, is one of most frequent occurrence, from the great variety of objects to its depredations. Were it consistent with my present plan, it might here be proper, to take a view of the law, in all its various relations, on this important subject, which so frequently calls for the interference of the Magistrate, both in and out of Sessions, but this would extend the present manual beyond its proposed limits. As however the before mentioned Act of the 4th and 5th Vic. c. 25, has made considerable alterations in the law, both with regard to the nature of the offence, and of its punishment, as it extends the jurisdiction of the Justice of the Peace in many instances, and contains directions for his guidance in this respect useful to be known, I have deemed it the best means of imparting a more ready knowledge of this law, especially to those concerned in the administration of it, by here giving a short summary of the whole Act.

The before mentioned Act of the 4th and 5th Vic. c. 25, intituled "*An Act for the consolidating and amending the Laws in this Province, relative to larceny and other offences connected therewith,*" contains the following clauses and dispositions.

Commencement of the Act.

By Sec. 1, this Act to commence from and after the first day of January one thousand eight hundred and forty two.

Distinction between Grand and Petty Larceny abolished.

By Sec. 2, the distinction between Grand and Petty larceny is abolished and every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and subject to the same incidents in all respects as Grand Larceny was before the commencement of this Act ; and every Court whose power as to the trial of larceny was, before the commencement of this Act, limited to petty larceny, shall have power to try every case of larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple larceny and also to try accessaries to such larceny.

Punishment for Simple Larceny or Felony, punishable as such.

By Sec. 3, every person convicted of simple Larceny or of any felony made punishable like simple larceny, shall be liable to imprisonment and hard labour at the discretion of the Court.

For all offences under this Act, hard labour or solitary confinement may be added to imprisonment.

By Sec. 4, Where any person shall be convicted of any felony or misdemeanor punishable under this Act, for

which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the Common Gaol or House of Correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

Stealing public or private securities for money, or warrant for Goods, &c.

By Sec. 5, the stealing of public or private security for money in any public stock or fund—or any warrant or order for the delivery or transfer of any goods or valuable thing, is declared to be *felony* of the same nature and of the same degree, and punishable in the same manner, as if any chattel of like value with the share, interest, or deposit, to which the security stolen relates, or with the money due thereon, or with the value of the goods or other valuable thing, mentioned in the warrant or order.

Punishment of Robbery attended with wounding.

By Sec. 6, whosoever shall rob any person, and at the same time shall cut, stab, or wound any person, shall be guilty of felony, and shall suffer death.

Of Robbery attended with violence.

By Sec. 7, whosoever shall with any offensive weapon, rob, or assault with intent, to rob any person, or

shall beat, or use any personal violence to any person shall be guilty of felony, and liable to be punished with imprisonment and hard labour at the discretion of the Court.

Punishment for obtaining property by threat of accusation of unnatural crimes.

By Sec. 8, whosoever shall accuse or threaten to accuse any person of the abominable crime of Buggery, or of making any solicitations, promise or threat to any person whereby to move or seduce such person to commit, or permit such crime, or shall by intimidating such person by such accusation to extort or gain property, shall be guilty of felony, and liable to be punished by imprisonment and hard labour at the discretion of the Court.

Punishment for stealing from the person.

By Sec. 9, whosoever shall rob any person, or shall steal any money, chattel, or valuable security from the person of another, shall be liable to imprisonment and hard labour for a term of years.

Punishment for an assault with intent to rob.

By Sec. 10, whosoever shall assault any person with intent to rob, shall be guilty of felony, and liable to imprisonment.

Attempting to obtain Property by menaces.

By Sec. 11, whosoever shall, by force or menaces, demand any chattel, money, or valuable security of any

person, with intent to steal the same, shall be guilty of felony, and be liable to imprisonment.

Sending threatening Letters to extort Money, &c.

By Sec. 12, whosoever shall knowingly send, or deliver any letter or writing demanding of any person with menaces any chattels, money, or valuable security, or any writing threatening to accuse any person of a crime punishable with death or transportation, or of any assault with intent to commit any rape, with a view or intent to extort from such person any chattel, money, or valuable security, shall be guilty of felony, and be liable to imprisonment and hard labour at the discretion of the Court.

Of Sacrilege.

By Sec. 13, if any person shall break and enter any Church or Chapel, and steal therein any chattel,—or having stolen any chattel, money, or valuable security therein, shall break out of the same, he shall be liable to imprisonment and hard labour, at the discretion of the Court.

Burglars using violence.

By Sec. 14, whosoever shall break and enter any dwelling house and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat, or strike, any such person, shall be guilty of felony, and shall suffer death.

Burglary, punishment of.

By Sec. 15. whosoever shall be guilty of burglary, shall be liable to imprisonment and hard labour, at the discretion of the Court.

Hours within which Burglary may be Committed.

By Sec. 16, Night shall be considered, and is declared to commence at nine o'clock in the evening, and to conclude at six o'clock in the morning; and if any person shall enter the dwelling house of another with intent to commit a felony, on being in such dwelling house, shall commit any felony, and shall in either case *break out* of the said dwelling house in the night time, such person shall be guilty of burglary.

Stealing in a dwelling house with menaces.

By Sec. 17, whosoever shall steal any chattel, money, or valuable security, in any dwelling house, and shall by menace or threat, put any one being therein in bodily fear, shall be guilty of felony, and be liable to imprisonment and hard labour.

What shall constitute a dwelling house, in which Burglary can be committed.

By Sec. 18, no building, although within the same curtilage with the dwelling house, shall be deemed to be part of such dwelling house, for the purpose of burglary,

unless there shall be a communication between such building and dwelling house, either immediate or by means of a covered and inclosed passage, leading from the one to the other.

Robbery in any building within the curtilage, not being part of the dwelling house.

By Sec. 19, if any person shall break and enter any building being within the curtilage of the dwelling house, but not being part thereof, and steal therein any chattel, money, or valuable security, shall be liable to imprisonment and hard labour.

Robbery in a shop, warehouse, &c.

By Sec. 20, if any person break and enter any shop, or counting house and steal therein any chattel, &c., he shall be liable to any of the punishments hereinbefore last mentioned.

Of stealing from a Vessel in Port.

By Sec. 21, if any person shall steal any goods, &c., in any Vessel, Barge, or Boat in any port, or upon any navigable river or canal, or from any dock or wharf adjacent to such port, he shall be liable to the same punishment as hereinbefore last mentioned.

Stealing from a Ship wrecked, or in distress.

By Sec. 22, whosoever shall plunder or steal any part of a ship wrecked or in distress, or any goods, &c., of any kind belonging to such ship, shall be liable to imprisonment and hard labour.

Persons in possession of wrecked goods.

By Sec. 23, if any goods, &c., belonging to any ship wrecked or in distress, shall, by virtue of a search warrant be found in the possession, or on the premises of any person, who shall not be able to satisfy a Justice of the Peace, that he came lawfully by the same, the Justice shall order the same to be delivered up to the proper owner, and the offender upon conviction of such offence before the Justice, shall forfeit and pay such sum of money, not exceeding twenty pounds, as to the Justice may seem meet.

Persons offering Ship-wrecked Goods for sale.

By Sec. 24, if any person shall offer for sale, any articles suspected to have been taken unlawfully, from any ship or vessel wrecked, or in distress—in such case the person to whom the articles are offered for sale, or any Custom House or Peace Officer, may lawfully seize the same and give notice thereof to some Justice of the Peace, and if the person who offered the articles for sale upon being summoned by the Justice, shall not appear and satisfy the Justice that he came lawfully by such articles, then the same shall be ordered by the Justice to be forthwith delivered over to, or for the use

of the owner, upon payment of a reasonable reward to the person who seized the same, and the offender on conviction of such offence by the Justice shall forfeit and pay such sum of money, not exceeding twenty pounds, as to the Justice shall seem meet.

Stealing of Records, &c.

By Sec. 25, if any shall steal, obliterate or destroy any record, writ, return, pannel, process, interrogatory, deposition, affidavit, rule, order, or warrant of Attorney, or any original document whatever, of, or belonging to any Court of Justice, every such offender shall be guilty of a misdemeanour, and on conviction shall be liable to imprisonment and hard labour, or to fine and imprisonment as the Court may award

Stealing of Wills, &c.

By Sec. 26, if any person shall during the life, or after the death of a Testator, or Testatrix, steal, or for any fraudulent purpose destroy or conceal any will or codicil, he shall be guilty of a misdemeanor, and liable to the punishment above last mentioned.

Stealing of Writings relative to Real Estates.

By Sec. 27, if any person shall steal any original papers, &c., being evidence of the title to any Real Estate, he shall be guilty of a misdemeanor, and liable to the same punishment as last before mentioned.

The above Provisions as to Wills and Writings, not to lessen other Remedies.

By Sec. 28, no Conviction or Judgment for any of the above misdemeanors, shall prevent any remedy at Law or Equity which the party aggrieved by such offence would have had, if this Act had not been passed.

Stealing Horses, Cows, Sheep, &c.

By Sec. 29, if any person shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb, or shall wilfully kill any such cattle, with intent to steal the carcass or skin—he shall be guilty of felony, and be liable to imprisonment and hard labour at the discretion of the Court.

Stealing Dogs, Birds, &c.

By Sec. 30, if any person shall steal any dog, bird, or beast, ordinarily kept in a state of confinement, and being convicted thereof, before a Justice of the Peace, shall for every such offence, forfeit and pay over and above the value of the dog, &c., such sum of money, not exceeding five pounds as to the Justice shall seem meet.

Stealing Trees, Shrubs, &c.

By Sec. 31, if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, any part of any tree, sapling or shrub, or any

underwood, wheresoever the same may be growing, the stealing of such things, or the injury done, being to the amount of one shilling at the least, every such offender being convicted before a Justice of the Peace, shall for every such offence forfeit and pay, over and above the value of the articles stolen, or the amount of injury done, such a sum of money, not exceeding five pounds, as to the Justice shall seem meet.

Stealing any Fence, Stile, or Gate.

By Sec. 32, if any person shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale or rail, set up and used as a fence, or any stile or gate, or any part thereof, upon conviction before a Justice of the Peace, he shall for every such offence forfeit and pay, over and above the value of the articles stolen, or the amount of the injury done, such sum of money, not exceeding five pounds, as to the Justice shall seem meet.

Suspected persons in possession of any Trees, &c., not satisfactorily accounting for the same.

By Sec. 33, if the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile or gate, or any part thereof, being of the value of two shilling at the least, shall by virtue of a search warrant, be found in the possession of any person, or on the premises of any person, with his knowledge, and such person being carried before

a Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, he shall, on conviction by the Justice, forfeit and pay over and above the value of the article or articles so found, any sum not exceeding two pounds.

Stealing, &c., any vegetable productions in a garden.

By Sec. 34, if any person shall steal, or shall destroy or damage with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production, growing in any garden, orchard, nursery ground, hot house, green house or conservatory, and being convicted thereof before a Justice of the Peace, shall forfeit and pay over and above the value of the article or articles stolen, or amount of the injury done, such sum of money not exceeding five pounds, as to the Justice shall seem meet; and upon a subsequent conviction shall be liable to be punished as for simple larceny.

Stealing, &c., any vegetable productions not growing in a garden.

By Sec. 35, If any person shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man, or beast, or for medicine, distilling or dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard &c., every such offender being convicted thereof before a Justice of the Peace, shall forfeit and pay over and above the value of the article or articles so stolen,

or the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the Justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, he shall be committed to the House of Correction for any time not exceeding one calendar month, unless payment be sooner made.

Stealing glass, wood-work or fixtures of any kind from buildings, and metal fixtures from grounds.

By Sec. 36, if any person shall steal or rip, cut or break with intent to steal, any glass or wood work belonging to any building, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, fixed in or to any building or any thing made of metal fixed in any land, being private property, or in any square, street, or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and liable to be punished as in the case of simple larceny.

Tenants or Lodgers stealing from apartments let to them.

By Sec. 37, if any person shall steal, any chattel or fixture, let to be used in or with any house or lodging, he shall be guilty of felony, and punished as for simple larceny.

Clerks, or Servants stealing the property of their Masters.

By Sec. 38, if any clerk or servant shall steal the property of his master, he shall, in cases not capitally punish-

able, be liable to imprisonment and hard labour at the discretion of the Court.

Clerks or Servants embezzling money, &c., received by them, on their Masters account.

By Sec. 39, if any clerk or servant shall fraudulently embezzle any chattel, money, &c., he may receive on account of his master, every such offender shall be deemed to have feloniously stolen the same from his master, and shall be liable to any of the punishments hereinbefore last mentioned.

Mode of proceeding against such offenders.

By Sec. 40, distinct acts of embezzlement may be charged in the same indictment which may have been committed within six calendar months from the first to the last of these acts.

Agents embezzling money, &c., entrusted to them for any special purpose.

By Sec. 41, if any money or security for the payment of money, be entrusted to any banker, merchant, broker, attorney or other agent with directions in writing to apply the same to any particular purpose, and he shall in violation of good faith, convert the same to his own use, every such offender shall be guilty of a misdemeanor, and liable to imprisonment and hard labour. So also in the case of

any power of attorney for the sale or transfer of any share or interest in any public stock or fund, should such banker, merchant, &c., convert the same to his own benefit.

Exception as to Trustees, Mortgagees, &c.

By Sec. 42, it is declared that nothing before mentioned, relating to agents shall affect trustees or mortgagees, nor to restrain any bankers, &c., from receiving money due on securities, or of disposing of securities, on which they have a *lien*.

Factors, &c., pledging Goods, &c., entrusted to them.

By Sec. 43, factors, &c., pledging for their own use, any goods, &c., entrusted to them for the purpose of sale, or any warrant or order for the delivery of goods, are declared guilty of a misdemeanor, and liable to fine, imprisonment, and hard labour at the discretion of the Court,—not to extend to cases where the pledge does not exceed the amount of the lien of such factor, &c.

These provisions as to Factors, Agents, &c., not to lessen any other remedy against them.

By Sec. 44, no conviction or judgment had against any banker or other agent, to lessen any remedy which any party aggrieved might have had, if this act had not been passed.

Of obtaining money under false pretences.

By Sec. 45, if any person shall by any false pretence, obtain from any other person, any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, such offender shall be guilty of a misdemeanor, and be liable to imprisonment and hard labour.

Accessaries to Felony, how and when to be tried.

By Sec. 46, if any person shall receive any chattel, money or other property, the stealing whereof would amount to a felony, such person knowing the same to have been stolen, shall be guilty of felony, and may be tried and convicted, either as an accessory after the fact, or for a substantial felony, and be liable to imprisonment and hard labour.

When the original offence is a misdemeanor, receivers may be prosecuted for a misdemeanor.

By Sec. 47, if any person shall receive any chattel, money, or other property, the stealing, taking, obtaining or converting whereof, would be a misdemeanor by this act, such person, knowing the same to have been unlawfully stolen, taken, obtained or converted, shall be guilty of a misdemeanor, and shall be liable to imprisonment and hard labour.

Receivers may be tried where the property is found.

By Sec. 48, all persons charged as receivers of stolen property, whether as accessory after the fact, to the felony,

or with a substantive felony, or with a misdemeanor, may be tried and punished in the district or place, in which he shall have, or shall have had, such property in his possession, or wherever the party guilty of the principal felony or misdemeanor may be tried.

The owners of stolen property, how to obtain restitution.

By Sec 49, if the person guilty of stealing, or of receiving stolen property, shall be prosecuted to conviction, by or on behalf of the owner, he, or his legal representative shall have restitution of the property by order of the Court.

Taking reward for helping to recover Stolen Goods.

By Sec. 50, if any person shall corruptly take any reward under pretence of helping the owner of stolen property to recover it, unless he cause the offender to be apprehended and brought to trial, he shall be guilty of felony, and punishable by imprisonment and hard labour.

Advertising a reward for the return of stolen property without enquiry.

By Sec. 51, if any person shall publicly advertise a reward for the return of any stolen property, and that no question will be asked, without seizing, or making any enquiry after the person producing such property, or shall promise or offer to return, to any pawnbroker or other person, who may have bought, or advanced money,

on the property stolen, the money so paid or advanced, every such person shall forfeit the sum of twenty pounds to any person who will sue for the same with full costs.

When stealing is punishable on Summary Conviction, receivers to be punished in the same manner.

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By Sec. 52, when the stealing of any property is by this Act punishable on Summary Conviction, the person receiving such property, knowing the same to be unlawfully come by, shall on conviction thereof before a Justice of the Peace, be liable to the same forfeiture and punishment to which the person guilty of stealing, is by the said Act made liable.

Principals in the second degree and accessaries before and after the fact—how punished.

By Sec. 53, every principal in the second degree, and every accessory before the fact to any felony punishable under this Act, shall be punishable with death or otherwise in the same manner as the principal in the first degree is by this Act punishable, and every accessory after the fact, (except only a receiver of stolen property) shall on conviction, be liable to imprisonment for any term not exceeding two years, and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender.

Abettors of offences punishable on summary conviction.

By Sec. 54, if any person shall aid, abet, counsel or procure the commission of any offence, by this act punishable on summary conviction, every such person, shall on conviction before a Justice of the Peace, be liable to the same forfeiture and punishment to which a person guilty as principal offender is made liable.

Persons found in the act of committing an offence,—of granting a search warrant,—of arresting persons offering stolen property for sale.

By Sec. 55, any person found committing any offence, may be immediately apprehended without a warrant, by any Peace Officer, or by the owner of the property on which the offence is committed or by his servant, or by any person authorised by such owner, and taken forthwith before some neighbouring Justice of the Peace, to be dealt with according to law, and if any witness shall prove upon oath before a Justice of the Peace, that there is a reasonable cause to suspect that any property whatsoever connected with the offence committed, is in any dwelling house, out house, garden, yard, croft or other place, the Justice may grant a warrant to search such dwelling house, &c., for such property as in the case of stolen goods. And any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect, that any such offence has been committed in regard of such property, is hereby authorised, and (if in his power) is required to apprehend, and forthwith to carry before a Justice of the Peace, the party offering the same, together with such property, to be dealt with according to Law.

Limitation as to summary proceedings.

By Sec. 56, the prosecution of every offence punishable on summary conviction, shall be commenced within three calendar months after the commission of the offence and not otherwise—and the evidence of the party aggrieved shall be admitted in proof of the offence.

Mode of compelling the appearance of persons punishable on summary conviction.

By Sec. 57, where any person shall be charged on the oath of a credible witness before any Justice of the Peace of any offence punishable on summary conviction under this act, the Justice may summon the person charged to appear at a time and place to be named in the summons, and if he shall not appear accordingly, then upon due proof of the service of the summons upon such person by delivering the same to him personally, or by leaving the same at his usual place of abode, the Justice may either proceed to hear and determine the case *ex parte* or issue his warrant for apprehending such person and bringing before himself, or some other Justice or Justices of the Peace,—or the Justice before whom the charge shall be made, may if he shall see fit, without any previous summons (unless when otherwise specially directed,) issue such a warrant, and the Justice or Justices before whom the person charged shall appear, shall proceed to hear and determine the same.

Application of forfeitures and penalties on Summary conviction.

By Sec. 58, every sum of money which shall be forfeited for, or as the value of any property stolen or taken,

or for, or as the amount of any injury done, (such value or amount to be assessed in each case by the convicting Justice or Justices,) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty. Provided always, that where several persons shall join in the commission of the same offence, and shall upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums, forfeited by the other offender or offenders, shall be applied in the same manner as any penalty imposed by the Justice of the Peace, is by this act directed to be applied.

Persons summarily convicted, not paying, may be committed.

By Sec. 59, every case of a Summary Conviction under this Act where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by any Justice or Justices, together with the costs, if awarded (which costs such Justice or Justices, is and are by this Act authorised to award, if he or they shall think fit, in any case of a Summary Conviction under this Act) shall not be paid, either immediately after the conviction, or within such period as the Justice or Justices shall at the time of the conviction appoint, which he, or they, is and

are authorized to appoint, it shall be lawful for the Convicting Justice or Justices (unless when otherwise specially directed) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour according to the discretion of the Justice or Justices, for any time not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or both, as the case may be, together with the costs, shall not exceed five pounds; and for any term not exceeding six calendar months, where the amount with costs shall exceed five pounds, and shall not exceed ten pounds. The commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs.

The Justices may discharge the Offender in certain cases.

By Sec. 60, where any person shall be summarily convicted before a Justice or Justices of the Peace of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice or Justices, if he, or they shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by such Justice or Justices.

The Crown may pardon in case of imprisonment on conviction.

By Sec. 61, it shall be lawful for the Queen, and for the Governor, Lieutenant Governor, or person administering the Government of this Province, to extend the royal mer-

cy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

Summary conviction, a bar to any other proceeding for the same offence.

By Sec. 62, in case any person convicted for any offence punishable upon summary conviction under this Act, shall have paid the sum adjudged together with the costs, if awarded under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

Form of Conviction.

By Sec. 43, a form of conviction is prescribed for offences under this act.

See, under title *Conviction*.

When and how one or more Justices are authorised to act.

By Sec. 64, in all cases where, by this act, two or more Justices of the Peace are authorised and required to hear and determine any complaint, one Justice shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties

to appear before two or more Justices of the Peace, and after examination upon oath into the merits of the said complaint and the adjudication thereupon by any such two Justices being made, all and every the subsequent proceedings to enforce obedience thereto or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing relating to the offence, may be enforced by either of the said Justices, or by any other Justice of the Peace for the same district, county, city, town or place, in such and the like manner as if done by the same two Justices who so heard and adjudged the said complaint; and when the original complaint or information shall be made to any Justice or Justices of the Peace, different from the Justice or Justices before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact.

When and how an Appeal may be had.

By Sec. 65, in all cases where the sum adjudged to be paid upon any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction take place before one Justice only, any person who shall think himself aggrieved by any such conviction, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction for the district, county, or place wherein the cause of complaint shall have arisen, provided that such person shall give to the complainant, notice in writing of such appeal, and of the cause and matter thereof, within three days

after such conviction, and seven clear days at the least, before such Sessions, and shall also either remain in custody until the Sessions, or enter into recognizance with two sufficient securities before a Justice of the Peace, conditioned, personally to appear at the same Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the said Court awarded. And on such being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such prisoner, if in custody.

Convictions to be returned to the Quarter Sessions.

By Sec. 66, every Justice of the Peace before whom any person shall be convicted of any offence against this act, shall transmit the conviction to the next Court of General or Quarter Sessions, which shall be holden for the district, county, or place wherein the offence shall have been committed, there to be kept by the proper officer among the Records of the Court.

Notice and limitation of actions.

By Sec. 67, all actions and prosecutions to be commenced against any person for any thing done in pursuance of this act, shall be commenced six calendar months after the fact committed, and not otherwise, and notice in writing of such action, and of the cause thereof, shall be given to the defendant, one calendar month at least, before the commencement of the action.

The Justice of the Peace on perusing this act, will readily perceive the many instances, where a summary conviction may be had before him, (which also I have noticed under the title *Conviction*,) and he must consequently feel the necessity of his making himself acquainted with the law in this respect, and with the course of proceeding to be had thereon, from the first complaint or information to the final levy of the penalty or commitment of the offender. Forms cannot be found, nor devised, for all the variety of complaint and proceeding that may arise, or be requisite on this, or any law, before the Magistrate, nor is it necessary,—enough of the mere formal part, as regards informations, warrants, examinations, &c., may be collected from the instances already noticed, to enable him to adapt it to any other case ;—his great object must be, to acquire a system of regularity in all his proceedings, and to attend, that every thing be done with caution and in order, so as to leave no room for carping at his judgment.

When a complaint is made to the Magistrate, the first thing he has to consider, is, whether it is within the time, that is, within the three months from the time of the offence committed, according to the 56th Section of the Act? The next is, on what clause or section of the Act, the complaint is founded, and whether it falls within his jurisdiction? if it does—how the offender is to be cited before him?—by summons, or by warrant?—generally by summons, unless the offender be a person of idle and vagrant character, without a known and certain habitation, and one likely to evade the claims of justice. In the latter case, a warrant may issue in the first instance, observing however, that in this, and in every instance, where a warrant issues to apprehend an offender, the Justice must first take

the deposition or information on oath of the complainant, or of some other person, to ascertain the nature of the offence. If the proceeding be by summons, and the party should not appear, the Magistrate may proceed *ex parte*, and convict the offender, according to the 57th Section.

When the parties appear, the answer or defence of the defendant must be taken down, and the witnesses examined in the usual course. Should the defendant require time to adduce witnesses to substantiate his defence, the Justice must be satisfied on two points,—1st, that the defence if true would be sufficient to exculpate the defendant, and 2d, that the delay sought for, is not a mere subterfuge: he may therefore require the defendant to state the name and residence of his witness, and what he expects to prove by him, and this upon oath, to entitle him to the delay he requires.

Should a conviction take place, the Justice may condemn the offender, to pay the penalty and damages immediately, or to be committed to the common gaol or house of correction, according to the 59th Section. This is certainly the preferable course, where the offender has been arrested in the first instance; but if the offender be a known resident of the parish or place, a delay may be given for this purpose. Of this however the Justice must determine according to circumstances.

The foregoing act contains a short form of conviction to be followed in the several cases of summary proceeding before the Justices. Of this form however, such parts only are to be followed as will apply to each particular case, and a certain latitude is even allowed in this respect, as independant of the form prescribed the act permits "*any other form of words to the same effect as the case shall require.*"

To facilitate the application of this form, I will here suppose a conviction on a particular case, say, on the 32d Section of the act, and that the offender, C. D. has been condemned to pay two pounds of a penalty, one pound to A. B. for his damages, and fifteen shillings for the costs. The form of conviction would run thus:—

DISTRICT OF } Be it remembered that on the _____
 _____ } day of _____ in the year of our Lord
 one thousand eight hundred and _____ at _____
 in the said District, C. D., is convicted before me, W.
 R., Esquire, one of Her Majesty's Justices of the Peace,
 in and for the said District, for that, he the said C. D.,
 did at _____ in the said District, on the _____
 day of _____ instant, cut, break and throw down,
 with intent to steal the same, part of a dead fence the
 property of A. B., of _____ in the said District, yeo-
 man, and I the said Justice, adjudge the said C. D., for his
 said offence to forfeit and pay the sum of two pounds as a
 penalty, also the sum of one pound as the amount of the
 injury done, and fifteen shillings for the costs,—and in
 default of immediate payment of the said several sums, to
 be imprisoned in the House of Correction of the said Dis-
 trict and there kept to hard labour for the space of one
 month, unless the said several sums of money shall be
 sooner paid, that is to say, the said sum of two pounds for
 the said penalty shall be paid to me the said Justice, that
 the said sum of one pound shall be paid to the said A. B. the
 proprietor of the said fence, and I order that the said sum
 of fifteen shillings, be paid also to the said A. B., the com-
 plainant. Given under my hand and seal, the day and
 year first above written.

(Signed) W. R., J. P. [SEAL]

For forms of Summons, or Search Warrants, to be granted under this Act,—see the respective titles of *Summons* and *Search Warrant*.

In regard of the other offences of felony and misdemeanor noticed by this Act, and triable only before the Court, every Justice is competent to take the necessary informations and other proceedings to secure the trial of the party accused, in the manner hereinbefore noticed for offences of a similar kind.

LIBEL.

A libel, taken in its largest and most extensive sense, signifies any writing or printed paper, picture or the like, of an immoral or illegal tendency, and in a more limited sense, a malicious defamation of any person, either living or dead, and especially a Magistrate, made public, either by writing, signs or pictures in order to provoke him to wrath, or to expose him to public hatred, contempt and ridicule.—*Hawk. c. 73, s. 1.*—4 *Bl. Com.* 150.

See also *Religion*—the *Christian*.

A Justice has authority to issue his warrant, for the arrest of a party charged with the publication of a scandalous and seditious libel, and on default of his finding sureties, to commit him to prison, until he be delivered by due course of law.—4 *Moore Rep.* 195.—1 *B. and B.* 548.—*Gow.* 84.

LODGERS.

By the Act of the 4th and 5th Vic. c. 25, sec. 37, tenants and lodgers stealing from apartments let to them, shall be guilty of felony and punished as for simple larceny.

Information against a lodger, for stealing goods let to him and to be used with a lodging.

DISTRICT OF } Information of A. B., of the Parish of —
 ————— } ————— in the said District, yeoman, taken
 before me, W. R., Esquire, one of Her
 Majesty's Justices of the Peace, in and for
 the said District.

The said A. B., being duly sworn, deposeth and saith, that on the ——— day of ——— instant, at the Parish aforesaid, C. A., late of the said Parish, labourer, did feloniously steal, take and carry away, one iron metal stove of the value of three pounds, and one sheet iron stove pipe of the value of ten shillings, of the goods and chattels of the said A. B., the said goods and chattels being in a certain lodging room in the dwelling House of the said A. B., there situate, let by contract by him the said A. B. to the said C. D., and to be used by the said C. D., with the lodging aforesaid, contrary to the Act in such case made and provided, wherefore prays justice.

Sworn at ——— in the said
 District, this ——— day of }
 ——— 18 —, before me. } (Signed,) A. B.
 (Signed,) W. R., J. P.

The other proceedings on this information, of the warrants for the examination of the prisoner, of the witnesses, and commitment for trial, are the same as noticed in other cases of felony, stating in each the ground of complaint as contained in the information. Should the goods stolen be suspected to be concealed in any house or place, which might render it desirable to obtain

a search warrant in order to secure them, it will be necessary that the Informant should add as follows, to his information :—“ And the said A. B. further saith, that he has reasonable cause to suspect, and doth really suspect and believe that the aforesaid goods and chattels are now concealed in a certain (*dwelling-house, out-house, barn, or place, &c.—describing it, as the case may be—*) in the parish aforesaid, and therefore prays that a search warrant may be granted to him in this respect.”

MAIMING OR MAYHEM.

Maiming of a person, or Mayhem as it is usually termed in the law books, was formerly defined to be, the violently depriving another of the use of such of his members, as might render him the less able in fighting, either to defend himself or to annoy his adversary.

It is to be observed, that all maiming is felony. Statutes have been passed at different times in England, touching this crime and its punishment; but the law upon this subject is now rendered more simple and intelligible by the Act of the 4th and 5th Vic., c. 27, s. 11, by which it is enacted;—That whoever unlawfully and maliciously shall shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut, or wound any person, with intent in any of the cases aforesaid, to *maim, disfigure, or disable* such person, or to do some grevous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of Felony, and

liable at the discretion of the court; to imprisonment and hard labour for the term of his natural life or for years.

Information for unlawfully shooting at another.

DISTRICT OF } Information of A. B., of the Parish of—
 _____ } — in the said District, yeoman, taken
 before me, W. R., Esquire, one of Her
 Majesty's Justices of the Peace, in and for
 the said District.

The said A. B., being duly sworn deposeth and saith, that on the _____ day of _____ instant, at the Parish aforesaid (*or the Parish or place in the District, where the offence was committed, as the case may be,*) C. D., of the said Parish of _____ labourer, did, unlawfully and maliciously with a gun loaded with powder and leaden shot, shoot at him, the said A. B., with intent to kill, maim, or disable him, the said A. B., or to do him some other grievous bodily harm, and whereby the said A. B., was greatly hurt and disabled, many of the leaden shot so fired by the said C. D., having lodged in the head, face and arms of the said A. B., (*or whatever other injury may have been done,*) to the great damage of him the said A. B., wherefore he prays Justice.

Sworn at _____ in the said
 District, this _____ day of }
 _____ 18 _____ before me. } (Signed) A. B.
 (Signed) W. R., J. P.

The warrants, examinations and other proceedings before the Magistrate in this case are the same as in all other cases of felony.

MALICIOUS MISCHIEF, OR MALICIOUS INJURIES TO PROPERTY.

See the Acts of the 4th and 5th Vict. c. 26, made for consolidating and amending the Laws in this Province, relative to *malicious injuries to property*.

This is another of those Acts passed by our Provincial Legislature, for the improvement of our Criminal Code, modelled upon the British Statute of the 7th and 8th Geo. 4, c. 30. By this Act all former Laws and Statutes heretofore in force, relating to malicious injuries to property are annulled, and a more humane and effective system is introduced. By it, punishment for the higher crimes is moderated, and a more ready means of redress is given for the lesser offences, than heretofore provided. As by this Act the authority of the Justice of the Peace, is frequently required, and is extended to a variety of cases, which were formerly cognizable by a different jurisdiction, an acquaintance with its provisions as a useful and beneficial Law therefore becomes necessary, and actuated by the same view and motive that induced me to give a short summary of the Act of the 4th and 5th Vict. c. 25, (also made for the improvement of our Criminal Law,) I shall here give a summary of this Act, in the hope that it may prove useful to the Magistrate in the administration of the Law, as a ready reference to its enactments.

Commencement of the Act.

By Sec. 1, this act to commence and be in force from and after the first day of January, one thousand eight hundred and forty-two.

Setting Fire to a Dwelling House.

By Sec. 2, whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of felony, and suffer death.

Setting Fire to any Church, Chapel, House, Warehouse, &c.

By Sec. 3, whosoever shall unlawfully and maliciously, set fire to any church, chapel or meeting house—or to any house, stable, coach house, out house, warehouse, office, shop, mill, malt-house, hop-cast barn, or to any other building or erection, whether in the possession of the offender, or of any other person, shall be guilty of felony, and liable to imprisonment and hard labour at the discretion of the Court.

Destroying Silk or other Goods in the Loom, or any machinery belonging to those manufactures.

By Sec. 4, if any person shall unlawfully and maliciously break or destroy any goods of silk, woolen, linen or cotton, or any frame work, knitted piece, stocking, hose or lace, in the loom or frame, or in any stage or progress of manufacture, &c., or shall by force enter into any house, shop or building, with intent to commit any of the above offences, he shall be guilty of felony, and liable to imprisonment and hard labour.

Destroying threshing or other machines.

By Sec. 5, if any person shall unlawfully and maliciously cut, break, or destroy any threshing machine, or

any machine or engine, prepared for or employed in any manufacture, (except the manufacture of Silk, &c.) he shall be guilty of felony, and liable to imprisonment and hard labour.

Riotously demolishing a Church, &c., or any machinery used in any manufacture.

By Sec. 6, if any persons riotously assembled, shall unlawfully and with force, demolish &c., or begin to demolish &c. any Church, Chapel, or Meeting-house, or any House, Stable, Coach-house, Out-house, &c., or any building or erection, used in carrying on any trade or manufacture, or any machinery &c., such offender shall be guilty of felony, and liable to imprisonment and hard labour.

Setting Fire to Ships or Vessels, with intent to commit murder.

By Sec. 7, whosoever shall unlawfully and maliciously set fire to, or in anywise destroy, any ship or vessel, either with intent to murder any person, or whereby life shall be endangered, shall be guilty of felony, and suffer death.

Hanging out false lights to cause Shipwreck.

By Sec. 8, whosoever shall unlawfully exhibit any false light or signal with intent to bring any Ship or Vessel into danger; or do anything to bring a Ship or Vessel to damage or distress, shall be guilty of felony and suffer death.

Setting fire to Ships or Vessels with intent to destroy them.

By Sec. 9, whosoever shall unlawfully and maliciously set fire to, or in anywise destroy, any Ship or Vessel, being in a complete or in an unfinished state, or set fire to, or cast away any Ship or Vessel, with intent to prejudice any owner of such ship or vessel, or any person that hath underwritten any policy of Insurance thereon, or on the freight of the goods therein, shall be guilty of felony, and liable to imprisonment and hard labour.

Impeding any person endeavouring to save life from any Ship wrecked.

By Sec. 10, whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress or wrecked, shall be guilty of felony and liable to imprisonment and hard labour.

Destroying any wrecks, or any articles belonging thereto.

By Sec. 11, whosoever shall unlawfully and maliciously destroy any part of any Ship or Vessel in distress or wrecked, or any goods or articles of any kind belonging thereto, shall be guilty of felony, and be liable to imprisonment and hard labour.

Destroying any Sea Bank, &c., or work on any River or Canal.

By Sec. 12, if any person shall unlawfully and maliciously break down any sea bank, or the bank or wall of

any River, Canal or Marsh, whereby any land shall be overflowed or damaged, or destroy any lock or floodgate or other work on any navigable River or Canal. And if any person shall unlawfully and maliciously cut off or remove any piles, chalk, or other materials fixed in the ground and used for securing any sea bank, or the bank or wall of any river, canal, or marsh, or shall unlawfully and maliciously open or draw up any floodgate, or do any injury or mischief to any navigable river or canal, with intent to obstruct the carrying on or maintaining the navigation thereof, every such offender shall be guilty of felony, and liable to imprisonment.

Injury to Public Bridges.

By Sec. 13, if any person shall unlawfully and maliciously pull down or in any wise destroy, any public bridge, or do any injury thereto, so as to render it dangerous or impassable, such offender shall be guilty of felony and liable to imprisonment.

Destroying a Turnpike Gate, Toll House, &c.

By Sec. 14, if any person shall throw down, or otherwise destroy in whole or in part any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or any house, building, or weighing engine, erected for the better collection of the tolls, such offender shall be guilty of a misdemeanor, and punished accordingly.

Breaking down the Dam of a Fishery, &c., or Mill Dam.

By Sec. 15, if any person shall unlawfully, &c., break down or destroy the dam of any fish pond, or of any water in which there shall be any private right of fishery, with intent to take or destroy the fish in such pond or water, or to cause the loss or destruction of any fish, or shall put any lime, or noxious material in any such ponds or water with intent to destroy any of the fish therein, or shall break down or destroy the dam of any mill pond, such offender shall be guilty of a misdemeanor and punished accordingly.

Killing or Maiming Cattle.

By Sec. 16, if any person shall unlawfully, &c., kill, maim, or wound any cattle, every such offender shall be guilty of felony, and liable to imprisonment and hard labour.

Setting fire to Agricultural Produce.

By Sec. 17, whosoever shall unlawfully, &c., set fire to any stack of corn, grain, pulse, peat, charcoal or wood, shall be guilty of felony, and liable to imprisonment and hard labour.

Destroying Hop-Binds.

By Sec. 18, if any person shall unlawfully, &c., cut, or otherwise destroy any hop-binds growing on poles in any plantation of hops, he shall be guilty of felony, and liable to imprisonment.

Destroying, damaging Trees, &c., growing in certain situations.

By Sec. 19, if any person shall unlawfully, &c., cut, break, bark, root up, or otherwise destroy, or damage, the whole, or any part of any tree, sapling or shrub, or any underwood, growing in any park, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house, or growing elsewhere than in any of the above situations, such offender, in case the injury done shall exceed the sum of one pound, shall be guilty of a misdemeanor, and punished accordingly.

Destroying or damaging trees, &c., to an amount of one shilling.

By Sec. 20, if any person shall unlawfully, &c., cut, break, bark, root up, or otherwise destroy, or damage, the whole, or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be growing, the injury done being to *the amount of one shilling at the least*, and being thereof convicted before a Justice of the Peace, shall forfeit and pay, ever and above the amount of the injury done, such sum of money *not exceeding one pound* as to the Justice shall seem meet.

Destroying any fruit, or vegetable production in a Garden.

By Sec. 21, if any person shall unlawfully, &c., destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot-house, green-house, or conservatory, every

such offender being convicted thereof, before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding two pounds, as to the Justice shall seem meet.

Destroying vegetable productions not growing in Gardens.

By Sec. 22, if any person shall unlawfully, &c., destroy, &c., any cultivated root or plant, used for the food of man or beast, or for medicine, or for distilling or dyeing, and growing in any land, open or enclosed, not being a garden, &c., every such offender being thereof convicted before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding one pound, as to the Justice shall seem meet.

Destroying any Fence, Wall, Stile, or Gate.

By Sec. 23, if any person shall unlawfully, &c., cut, break, throw down, or any wise destroy, any fence of any description whatsoever, or any wall, stile or gate, every such offender being thereof convicted before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding one pound, as to the Justice shall seem meet.

Damage done to Property not previously provided for.

By Sec. 24, if any person shall unlawfully or maliciously commit any damage or injury to any real or personal

property, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person, being convicted thereof, before a Justice of the Peace, shall forfeit and pay such sum of money, as shall appear to the Justice to be a reasonable compensation for the damage so committed, not exceeding the sum of five pounds ; which sum of money shall in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence,—then, and in case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a Justice of the Peace under this Act, is directed to be applied.

Malice against the owner, not essential.

By Sec. 25, every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether punishable by indictment, or by summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property injured or otherwise.

Principals in the Second Degree and Accessaries.

By Sec. 26, in the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable. And every

accessary after the fact to any felony punishable under this Act, shall on conviction, be liable to be imprisoned for any term not exceeding two years. And every person who shall aid, abet, counsel, or procure, the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender.

Hard Labour and Solitary Confinement may be ordered by the Court.

By Sec. 27, in all cases where imprisonment may be awarded for any offence, the Court may sentence the offender to be kept at hard labour in the common gaol, or house of correction, and also, that he shall be kept in solitary confinement for any portion of his imprisonment, not exceeding one month at any one time, nor three months in any one year.

Persons taken in the act may be apprehended without a Warrant.

By Sec. 28, any person found committing any offence against this Act, may be immediately apprehended without a warrant, by any Peace Officer, or the owner of the property injured, or his servant, or any person authorized by him, and carried immediately before some neighbouring Justice of the Peace, to be dealt with according to law.

Limitation as to Summary Proceedings,—Competency of Witnesses.

By Sec. 29, the prosecutions for every offence punishable on summary conviction, shall be commenced within

three calendar months after the commission of the offence, and not otherwise. And the evidence of the party aggrieved, shall be admitted in proof of the offence, (provided no part of the forfeiture be adjudged to him) and also the evidence of any inhabitant of the district, county, or place where the offence was committed, although the forfeiture be payable to any public fund of such district.

Mode of compelling the appearance of parties, in cases of Summary Conviction.

By Sec. 30, where any person shall be charged on the oath of a credible witness before any Justice of the Peace with any offence punishable on Summary Conviction, the Justice may summon the person charged, to appear at a time and place to be mentioned in such summons, and if he shall not appear accordingly, the Justice may (upon proof of the due service of the summons upon such person, by delivering the same to him personally or by leaving the same at his usual place of abode,) either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other Justice of the Peace,—or the Justice before whom the charge shall be made, may, if he thinks fit, without any previous summons, (*unless where otherwise specially directed*) issue such warrant,—and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

Abettors in Offences punishable on Summary Conviction.

By Sec. 31, where any offence is by this Act punishable on Summary Conviction, any person who shall aid,

abet, counsel or procure the commission of such offence, shall on conviction before a Justice of the Peace, be liable for every such offence of aiding, abetting, counselling or procuring, to the same forfeiture and punishment to which a person guilty of such offence as principal offender is by this Act made liable.

Application of Forfeitures and Penalties upon Summary Conviction.

By Sec. 32, every sum of money which shall be forfeited for the amount of any injury done, (such amount to be assessed in each case by the Convicting Justice,) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, and where the party aggrieved is unknown, such sum shall be applied in the same manner as the penalty,—and every sum which shall be imposed as a penalty by any Justice of the Peace, whether in addition to such amount, or otherwise, shall be paid to the Convicting Justice. Provided always that where several persons shall join in the commission of the same offence, and shall upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case, no further sum shall be paid to the party aggrieved, than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums, forfeited by the other offender or offenders, *together with all penalties*, shall be applied in the same manner as any penalty is by law directed to be applied.

The party convicted may be committed for non payment.

By Sec. 33, in every case of summary conviction under this Act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Justice, shall not be paid, either immediately after the conviction, or within such period as the Justice shall at the time of conviction appoint, it shall be lawful for the convicting Justice, (unless where otherwise specially directed) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the direction of the Justice, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both, (as the case may be,) together with the costs shall not exceed five pounds,—and for any term not exceeding four calendar months, where the amount with costs shall exceed five pounds and not exceed ten pounds, and for any term not exceeding six calendar months, where the amount with costs shall exceed ten pounds, the commitment to be determinable, in each case, upon the payment of the amount and costs.

The Justice may discharge the offender in certain cases.

By Sec. 34, where any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the Justice.

Pardon for non-payment of money.

By Sec. 35, The Queen or Governor may extend the royal mercy to any person imprisoned by virtue of this Act, although for the non-payment of money to some party other than the Crown.

Summary conviction to be a bar to other proceedings for the same cause.

By Sec. 36, in case any person convicted of any offence punishable upon summary conviction, by virtue of this Act, shall have paid the sum adjudged to be paid, together with the costs under such conviction, or shall have received a remission thereof from the crown, or shall have suffered the imprisonment awarded for the non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case, he shall be released from all further or other proceedings for the same cause.

Term of Conviction.

By Sec. 37, the term of summary conviction is given.
See title, *Conviction.*

Appeal how and when granted.

By Sec. 38, in all cases where the sum adjudged to be paid on summary conviction, shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar

month, or the conviction shall take place before one Justice only, any person who shall think himself aggrieved by any such conviction, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction for the district, inferior district, county or place, wherein the cause of complaint shall have arisen. Provided that such person shall give to the complainant, a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Sessions, and shall also, either remain in custody until the Sessions, or enter into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the said Court awarded. And upon such notice being given, and such recognizance entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in custody.

Convictions to be returned to the Quarter Sessions.

By Sec. 39, every Justice of the Peace before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General or Quarter Sessions, which shall be holden for the district, county, or place, wherein the offence shall have been committed, there to be kept by the proper officer, among the Records of the Court.

Notice and Limitation of Actions.

By Sec. 40, all actions against any person for any thing done in pursuance of this Act, shall be commenced six calendar months after the fact committed, and not otherwise. And notice in writing of such action, and of the cause thereof, shall be given to the defendant, one calendar month at least, before the commencement of the action.

I would here refer the Magistrate to the observations made on the Act of the 4th and 5th Vict. c. 25, as applicable to this Act.

MANDAMUS.

There are some private rights, principally of the person, the specific enforcement of which may be secured by Writ of Mandamus, which commands the completion or restitution of the right. The power of issuing Writs of Mandamus is one of the highest and most important branches of the jurisdiction of the Court of King's Bench, and in general exclusively belongs to that Court in England, and figuratively it has been held as its principal flower,—13 *Geo.* 3, c. 63, s. 14. It is a command issuing in the Queen's name to any person or corporation, or Inferior Court of Judicature, requiring them to do some particular thing therein specified which appertains to their office or duty,—3 *Bla., Com.* 110.

This writ is grounded on a suggestion by the oath of the party injured, of his own right, and of the denial of justice by the Court or person complained of, wherefore,

in order more fully to satisfy the Court that there is a probable ground for such an interposition, a rule is made, (except in some general cases when the probable ground is manifest,) directing the party complained of to shew cause why a Writ of Mandamus should not issue. If he shew no sufficient cause the writ itself is issued, at first in the alternative, either to do the particular thing complained of, or to signify some reason to the contrary, to which a return or answer must be made on a certain day. And if the Inferior Judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues in the second place a preremptory *mandamus* to do the thing absolutely, to which no other return will be admitted but a certificate of perfect obedience and due execution of the writ. If the Inferior Judge or other person make no return, or fail in his respect or obedience, he is punishable for his contempt by attachment,—3, *Bl. Com.* 100. It is a general rule, that this writ is only to be issued when the party has *no other specific remedy*; and for that reason the Court refused a Mandamus to a Bishop to license a Curate, because the party had another specific remedy by *quare impedit*,—1, *T. R.* 396. And on the same ground a Mandamus to the Bank to transfer Stock, was refused because the party might recover the value in an action of *assumpsit*,—*Doug.* 523. And although in the case of a clear *public* right, if it be important to prevent great and *immediate* public damage or inconvenience to many persons that the Court should *immediately* interfere, as in case of a public bridge, or other work being in a very dangerous state, and requiring *immediate* repair or support, if there be no doubt respecting the obligation to repair, a Mandamus may issue, although there be

other remedy by indictment,—2 *B. & A.* 64, *M. & S.* 80, 81. It is not to be considered as a Writ of Right, but is in the discretion of the Court to grant it, and as no Writ of Error lies, it is a jurisdiction to be exercised with great caution,—*Sel. Ni. P.* 6, *Ed.* 1062.

MANSLAUGHTER.

See *Homicide*.

Manslaughter is the unlawful killing of another, without malice either express or implied, either voluntarily upon a sudden heat, or involuntarily in the commission of some unlawful act, done heedlessly and incautiously.

By the Act of 4th and 5th Vic. c. 27, sec. 7, the punishment for manslaughter is imprisonment and hard labour for life or for a term of years at the discretion of the Court.

Information for unlawfully Shooting at the Dog of another person, and killing a Child.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____, in the said District, yeoman,
 taken before W. R., Esquire, one of Her
 Majesty's Justices of the Peace, in and for
 the said District.

The said A. B., being duly sworn, deposeth and saith,
 that on the _____ day of _____, instant, at the

Parish aforesaid, C. D., of the said Parish, labourer, while in the act of unlawfully firing off a loaded gun, at and against a dog belonging to one J. G., then lying quietly and inoffensively at and near the house of the said J. G., at the Parish aforesaid, did feloniously kill a child of the said J. G., named T. G., by means of the shot so fired from the said gun—wherefore prays justice.

Sworn at the Parish aforesaid,
 this _____ day of—
 —, 18 —,
 Before me, W. R. J. P. } (Signed) A. B.

The warrants, examinations, and other proceedings in this case before the Magistrate, are the same as in other cases of felony.

MASTERS AND SERVANTS.

By the Provincial Act of the 6th Wm. 4th, c. 27, (made perpetual by the Ordinance of the Governor and Special Council of 3d Vict. c. 6,) for the more easy and less expensive decision of differences between masters, mistresses, and their servants, apprentices and labourers, in the country parts of this Province, it is declared expedient, that the Justices of the Peace residing in the country parishes, extra-parochial places, seigniories or townships, in each District of this Province, should be empowered to decide the differences which arise between masters and mistresses, and their apprentices, servants and journey-men, in the several country parishes, extra-paro-

chial places, seignories, or townships in this Province, (the parishes of Quebec, Montreal, and Three Rivers, excepted.) It is therefore enacted, that the following Rules and Regulations shall be obeyed and executed in all the country parishes and places aforesaid.

Firstly,—That if any apprentice or servant of either sex, or journey-man, who may be bound by act of indenture or written contract, for a longer time than one month, or by verbal agreement for one month, or for any shorter or longer period, shall be guilty of ill-behaviour, refractory conduct, idleness, absence without leave, or dissipating his or her masters, mistresses, or employers effects, or of any unlawful act that may affect the interest or disturb the domestic arrangements of such master, mistress or employer, such apprentice, servant or journey-men, may upon complaint and due proof thereof, made before two Justices of the Peace, at a Special Sitting, be by such Justices, sentenced to pay a sum not exceeding two pounds ten shillings currency, and in default of payment, to be imprisoned in the common gaol of the District, or in the house of correction, for a term not exceeding fifteen days.

Secondly,—That if any such apprentice, servant, or journey-man, bound or engaged as aforesaid, has any just cause of complaint against his or her master, mistress, or employer, for any mis-usage, defect of sufficient and wholesome provisions, or for cruelty, or other ill-treatment, or other matter of the same kind, such master, mistress or employer, may be prosecuted before two Justices of the Peace, and if the complaint shall appear to be well founded, such Justice of the Peace may condemn such master, mistress, or employer, to pay a penalty not exceeding two pounds ten shillings currency.

Thirdly,—That on complaint made by any master, mistress, or employer, against his or her apprentice, servant, or journey-man, or by any apprentice, servant, or journey-man, against his or her master, or mistress, or employer, of continued mis-usage, and repeated violations of the ordinary and established duties of the parties towards each other, any Justice of the Peace at a Special Sitting, may, on due proof of the fact, annul the agreement or contract, (whether verbal or written,) by which such master, mistress, or employer, and such apprentice, servant, or journey-man, may be bound to each other.

Fourthly,—That any apprentice, servant or journey-man, who shall absent himself or herself without leave, or shall altogether desert the service of such master or mistress, or employer, shall, upon due proof of the fact, be condemned to make such time good to his master, mistress, or employer. Or in case of the default on the part of such apprentice, servant, or journeyman so to do, he or she, may be apprehended on the warrant of the Justice of the Peace and committed to the Common Gaol of the District, or to the House of Correction, for a time not exceeding fifteen days.

Fifthly,—That if any such apprentice, servant, or journeyman shall absent himself, or herself by day or by night without leave, or shall altogether desert the service of his or her master, or mistress, or employer, such apprentice, servant, or journeyman, shall be proceeded against by warrant under the hand and seal of any one Justice of the Peace.

Sixthly,—That if any person shall knowingly harbour or conceal any such apprentice, servant, or journeyman, engaged as aforesaid, who may have deserted from the

service of his or her master, or mistress, or employer, such person shall incur and pay a penalty not exceeding two pounds ten shillings, to be recovered as aforesaid, before any two Justices of the Peace in Special Session.

Seventhly,—That no such master and mistress, shall take and carry out of the district in which they reside any such apprentice or servant, without the consent of such apprentice or servant, or his, or her parents or guardians if a minor, except such as may be bound to the sea service.

Eighthly,—That if any persons shall knowingly entice by any means whatever any such apprentice, servant or journeyman, so engaged as aforesaid, to depart from the service of his or her master, or mistress, or employer, and that in consequence such apprentice, servant or journeyman, shall depart from service, any person or persons so offending, shall be liable to a penalty not exceeding two pounds ten shillings currency, to be recovered as aforesaid, or in default of payment, shall be imprisoned in the Common Gaol of the District or in the House of Correction for a term not exceeding one month.

Ninthly,—That in all verbal agreements between masters, mistresses or employers, and their servants and journeymen, for any longer period than one month, the party who shall not intend to continue the engagement beyond the term so agreed upon, shall be bound to give the other party fifteen days notice at least to that effect, otherwise the agreement shall be held to have been continued for one month from the date of such notice, the whole under a penalty of two pounds, ten shillings currency; and in default of payment, of imprisonment in the common gaol of the district, or in the house of cor-

rection, during a period not exceeding fifteen days.

By Sec. 2, it is enacted, that in case of the non-payment of the penalties aforesaid with costs, within fifteen days after conviction, it shall be the duty of either of the Justices of the Peace, before whom such conviction shall have taken place, to issue his warrant, addressed to any constable or bailiff whomsoever, to cause the amount of such penalty and costs to be levied according to law in the ordinary manner, and in the case of non-payment, by the seizure and sale of the goods and chattels of the defendant; or it shall be lawful for the Justice of the Peace to commit such person to gaol, or to the house of correction, for a period not exceeding fifteen days, and such imprisonment shall be in the place and stead of the penalty.

By Sec. 3, it is enacted, that all the penalties imposed by this act shall be paid into the hands of the Receiver General of the Province, and accounted for to His Majesty, his heirs and successors.

By Sec. 4, every prosecution against the provisions of this act, shall be commenced within three calendar months after the offence committed and not afterwards.

The complaints or information that may be brought before the Justices on this act, need not be in writing unless particular circumstances should require it, but may be stated verbally to them, and by them embodied in the summons to be sued out against the defendant. See title *summons*.

On the case fourthly referred to, when the servant refuses to comply with the order of the Justice, to make

good the time he has lost, this refusal should be ascertained by some affidavit of the fact, before the Justice can issue his warrant to commit such servant ; but if the refusal be made in the presence of the Justice, he may in that case adjudge the person to stand committed immediately for any term not exceeding fifteen days, stating in his judgment the refusal so made in his presence.

Also in the case fifthly referred to, the fact of the servant having absented himself without leave, should be ascertained by some affidavit, before issuing a warrant against him, and as a general principle in all cases, as already observed, whenever a warrant issues in the first instance, it ought to be upon an affidavit of the fact upon which it is grounded.

In all complaints made under this act, however summary they may appear, yet the Justice ought to keep in his memorandum book or register, a note of the evidence heard before him, and of his other proceedings, for although in the return of the convictions to be made by the Justices to every Quarter Sessions, the form prescribed by the ordinance of the Governor and Special Council of the 2nd Vic. c. 20 may be followed, yet should a *Certiorari* be granted to bring the proceeding before the Superior Court, the Justice must in that case draw up a Conviction in the general form before stated, in which all the evidence must be set out.

Complaint on oath, by a Master against his Apprentice for absenting himself without leave.

DISTRICT OF } Complaint of A. B., of the Parish of ———
 ————— } ———, in the said District, carpenter, made
 before me, W. R., Esquire, one of Her
 Majesty's Justices of the Peace, in and
 for the said District.

The said A. B., being sworn, deposeseth and saith, that C. D., of the same Parish, labourer, bound to him, the said A. B., as his apprentice to learn the trade and business of a carpenter, hath at different times been careless and inattentive to his duty as such apprentice, and frequently absenting himself without leave from the service and employment of the said A. B. That particularly on the _____ day of _____, instant, the said C. D., did so absent himself from the service and employment of the said A. B., his master, contrary to his directions, and remained absent for the space of twenty-four hours, (*according as the complaint may be*)—wherefore the said A. B., prays justice.

Sworn at _____ in the said
 District, this _____ day of }
 _____ 18 —, before me, } (Signed,) A. B.
 (Signed) W. R., J. P. }

Warrant on the above complaint.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District.

To any Constable or Peace Officer in and for the said
 District.

Whereas A. B. of the Parish of _____ in the said
 District, carpenter, hath this day made oath before me
 the said Justice, that (*here take in the complaint as
 stated in the foregoing information.*) These are there-
 fore to command and require you and each and every of

you, that you apprehend the said C. D. and bring him before me, or some other of Her Majesty's Justices of the Peace, in and for the said District, to answer to the said complaint, and be further dealt with according to law. Given under my hand and seal at _____ in the said District, this, _____ day of _____, one thousand eight hundred and _____

(Signed,) W. R., J. P. [SEAL.]

Commitment on Conviction of the above complaint.

DISTRICT OF } W. R., Esquire, one of Her Majesty's Jus.
 _____ } tices of the Peace, in and for the said Dis-
 } trict.

To any Constable or Peace Officer in and for the said District, and to the Keeper of the Common Gaol of the said District.

Whereas A. B. of the Parish of _____ in the said District, carpenter, hath made complaint on oath before me the said Justice, that (*here take in the complaint as stated in the preccding information,*) and whereas the said C. D. having been brought before me the said Justice to answer to the said complaint, hath been convicted of the said offence, and hath been by me the said Justice adjudged and condemned to be committed to the Common Gaol of the said District for the space of ten days. These are therefore to command and require you, the said Constables and Peace Officers, and each and every of you, to take the said C. D., and convey him to the said Common Gaol, and there to deliver him to the said gaoler, and you

the said gaoler are hereby commanded to receive into your custody the said C. D., and him safely keep in the said Gaol for and during the space of ten days, for which this shall be your warrant.

Given under my hand and seal at ——— aforesaid, this ——— day of ——— one thousand eight hundred and ———.

(Signed) W. R., J. P. [SEAL.]

Complaint on oath by a master against his journeyman for quitting his service before his contract was completed, and refusing to make good the time lost.

DISTRICT OF } Complaint on oath of A. B., of the Parish
 ——— } of ——— in the said District, shoe-maker, made before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District.

The said A. B., being duly sworn, deposeth and saith, that he had hired and employed one C. D., of the said Parish, shoe-maker, as a journeyman, to work at his said trade and business of a shoe-maker in the service and employment of him the said A. B., for and during the space of six months, that is to say, from the ——— day of ——— last past, to the ——— day of ——— now next ensuing. That the said C. D., hath lately to wit, on the ——— day of ——— instant, before the expiration of his said agreement with the said A. B., and without the leave or consent of the said A. B., quitted and left the service and employment of him the said A. B.,

without any just cause, and doth now refuse to complete his said agreement, wherefore prays Justice.

Sworn at _____ in the said
 District, this _____ day of
 _____ 18 —, before me. } (Signed) A. B.
 (Signed,) W. R., J. P.

Warrant to apprehend, is in the same form as the preceding, changing the ground of complaint.

Warrant of commitment on conviction.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District.

To any Constable or Peace Officer in and for the said District—and to the Keeper of the Common Gaol for the same District.

Whereas A. B., of the Parish of _____, in the said District, shoe-maker, hath made complaint on oath before me, the said Justice, that (*here take in the complaint as above stated.*) And whereas the said C. D., hath been brought before me, the said Justice, to answer to the said complaint, and hath this day been convicted of the said offence, and the said C. D., hath been by me, the said Justice, in consequence ordered and adjudged to make good the time so lost by him, to complete his said agreement, that is to say, the full time of _____ days, (*or as the case may be,*) and to pay the costs laid out by the said A. B., in this behalf, amounting to fifteen shillings, (*or whatever the amount may be,*) and whereas the said C. D.,

hath this day declared in my presence and hearing, upon the rendering of my said judgment, that he, the said C. D., would not make good the time he had so lost, nor comply with my said judgment—in consequence of which declaration and refusal, I, the said Justice did adjudge the said C. D., to be committed to the said common gaol, for and during the space of fifteen days. These are therefore to command you, the said Constables and Peace Officers, and each and every of you, to take the said C. D., and convey him to the said common gaol, and there deliver him to the said Gaoler. And you the said Gaoler are hereby commanded, to receive into your custody the said C. D.,—and him safely keep in the said gaol, for and during the said space of fifteen days, for which this shall be your warrant. Given under my hand and seal at ———, in the said District, this ——— day of ———, one thousand eight hundred and ———.

(Signed) W. R., J. P. [SEAL]

Complaint of an Apprentice against his Master for ill-usage—and claiming that his contract, or articles of apprenticeship, be annulled.

DISTRICT OF } Complaint of A. B., of the Parish of ———
 ——— } ———, in the said District, labourer, made
 before me, W. R., Esquire, one of Her
 Majesty's Justices of the Peace, in and for
 the said District.

The said A. B., by his complaint states, that he was on the ——— day of ——— one thousand eight hundred and ———, by a contract in writing of that

date, (*or by verbal contract as the case may be,*) bound as an apprentice to and with C. D., of the said Parish, Blacksmith, for and during the space of three years, from and after the said ——— day of ——— one thousand eight hundred and ———, to learn the trade and business of a blacksmith, during which time, he, the said A. B. was to be provided sufficient board and lodging by the said C. D.; that the said A. B., accordingly entered into the service and employment of the said C. D., in compliance with his said contract, and hath always hitherto done his duty faithfully as an apprentice as aforesaid. That the said C. D., is a person of harsh and severe character, and hath frequently, without cause, abused and ill-treated him, the said A. B. That the said C. D., doth not provide wholesome or sufficient victuals to the said A. B., nor furnish him with a suitable bed or bedding. That on the ——— day of ——— instant, on the complaint of the said A. B., to him the said C. D., that the victuals set before him the said A. B., were neither wholesome nor sufficient, the said C. D., beat, kicked, and otherwise ill-treated the said A. B., in a violent and outrageous manner (*or whatever the particular cause of complaint may be*) so that the said A. B., is unable any longer to remain in the service and employment of the said C. D., or to perform his duty as an apprentice as aforesaid, and therefore claims that his said contract, or articles of apprenticeship be annulled.

Summons on the above complaint.

DISTRICT OF	}	W. R., Esquire, one of Her Majesty's
—————	}	Justices of the Peace, in and for the said
		District.

To C. D., of the Parish of ——— in the said District,
blacksmith.

You are hereby required and commanded to appear before me, the said Justice at (*here mention the particular house, place and Parish,*) on ——— the ——— day of ——— instant, at nine of the clock in the forenoon, at a special sitting, then and there to be by me held to answer to the complaint, this day made before me the said Justice against you by A. B., your apprentice, that (*here insert the complaint as above stated, or make a copy of it, certified as such by the Justice and annex it to the summons; in which latter case, it will be necessary to say in the summons thus—to answer to the complaint, &c., hereunto annexed.*)

Hereof fail not. Given under my hand at ——— in the said District, this ——— day of ——— one thousand eight hundred and ———

(Signed,) W. R., J. P. [SEAL.]

This summons must be served on the Defendant, either by delivering a copy of it to himself in person, or by leaving it with some of his family at his residence, allowing a sufficient delay, according to the distance, for his appearing to answer. An affidavit should be made before the Justice of the mode and manner in which the summons was served by the person making that service,—this being requisite in case the Defendant should not appear, to enable the Justice to take cognizance of the complaint, and to adjudge on the merits *ex parte*.—Should the Defendant appear, this will be unnecessary.

Whether the Defendant appears, or does not appear, the Justice will proceed to hear the evidence in support

of the complaint, and also in support of the defence, should any be made, and if satisfied that the complaint is well founded and of a nature to warrant the demand for annulling the articles of apprenticeship, the Justice will adjudge accordingly, and condemn the Defendant to pay the costs. This judgment may be pronounced in a summary manner to the parties, and so entered by the Justice in his register, but should a *Certiorari* be granted, the judgment must in this case, as on all other complaints on this act, be drawn up according to the general form of conviction heretofore noticed—this, however, may be done at any time when required, as the Justice retains in his possession, all the evidence and other proceedings in the case.

MISDEMEANOR.

A *Misdemeanor* comprehends all crimes for which no particular name is given, and which does not amount to felony,—4, *Bl.*, *Com.* 5. Persons guilty of misdemeanor are punishable by fine and imprisonment, or both, according to the nature and degree of the offence ; but many offences are *specifically* punishable as *misdemeanors* by Statute.

Perjury, libels, conspiracies, public nuisances, keeping disorderly houses, obtaining money under false pretences, receiving stolen goods, whatever outrages decency, or is injurious to public morals, are misdemeanors, and for every such offence, which subjects the delinquent to corporal punishment, though it does not amount to a breach of the peace, he may on a warrant of a Justice of the Peace be arrested, and held to bail.

Every attempt to commit a crime whether felony or a misdemeanor, is itself a misdemeanor and indictable : to solicit or persuade a child, or a servant to steal from his parent, or master, is an offence of the same nature,—*Cald.* 397.—2, *East.* 5. On complaints for offences of this description, where no particular forms are prescribed, those already given in regard of informations, warrants, examinations, &c., may be followed, observing always to state the particular grounds of offence in each. As in cases of misdemeanor, the accused is entitled to bail, the Justice when sufficient bail is offered will prepare the necessary recognizances for the appearance of the parties and witnesses, and transmit the same with the informations, &c., to the proper Officer of the Court where the trial is to be had. When the proceeding for any misdemeanor is directed by law to be had in a summary manner before the Justice, he will take immediate cognizance thereof, and adjudge therein without delay.

MISPRISION.

The term *Misprision* is in the acceptation of our law, generally understood, as applicable to all such high offences, as are under the degree of a capital felony, but which are nearly bordering thereon.

Misprisions are generally divided into two kinds. 1st, negative, which consists in the concealment of something, which ought to be revealed. And 2d, positive, which consists in the commission of something which ought not to be done.

Of the first or negative kind, is what is called *misprision of treason*, which consists in the bare knowledge and concealment of high treason, without any degree of assent thereto, for any assent makes the party a principal traitor.

Misprision of felony, is also a concealment of felony, or a procuring the concealment thereof, whether it be felony by the common law, or by statute. Thus to observe the commission of a felony, without giving any alarm, or using any endeavours to apprehend the offender, is a misprision ; for a man is bound to apprehend a felon, and to disclose the felony to a Magistrate with all possible expedition, and if he in any wise assents to the felony, he will then be either principal or accessory,—1, *Hale*, 347, 375, 652, 708.

Misprisions of the positive kind, are generally denominated *contempts* or *high misdemeanors*, the first and principal of which is the *mal-administration* of such officers as are in public trust and employment, or embezzlement of the public money.

Other misprisions are in general such contempts of the Executive Magistrate, as demonstrate some arrogant and undutiful behaviour towards the King and his Government. These are classed by Blackstone as, 1,—Contempts against the King's Prerogative. 2,—Contempts against his person and Government. 3,—Contempts against his title. And 4,—Contempts against his places and Courts of Justice.

MITTIMUS.

A *Mittimus*, is a precept, or warrant in writing under the hand and seal of a Justice of the Peace, directed to a particular gaoler, for the receiving and safe keeping of an offender, until he is discharged by law.

MONTHS.

See *Time*,—computation of.

When the word, *Month*, occurs in any Statute it must be taken to mean a *Lunar Month*, unless *Calendar Months* are particularly specified,—6 T. R. 224.

MURDER.

See *Homicide*.

Murder is the voluntarily killing any person under the King's Peace, with *malice aforethought*, either *express*, or *implied*.

Malice, in a legal sense, is somewhat different from the meaning it bears in common speech, in which it implies a desire of revenge or a settled anger against a particular person,—1 *Russel*. 421, 2. But *malice*, in a *legal* sense, imports stubborn wickedness, without any *just cause* or *excuse*. When the law makes use of the term, *malice aforethought* as descriptive of the crime of murder it is not to be understood merely in the sense of a principle of malevolence to particulars, but as meaning, that the fact has been attended with such circumstances, as are the ordinary symptoms of a wicked, depraved, and malignant spirit, a heart regardless of social duty and deliberately bent on mischief.

Malice may be either *express* or *implied*—*express malice* is, where one man kills another with a deliberate fixed design. This may appear by external circumstances

discovering the inward intention—as lying in wait, previous threats, former grudges, and concerted schemes to do the party some bodily harm.—4 *Bl. Com.* 199.

Malice is *implied* by law, from any barbarous act wilfully committed by one man against another, however sudden it may be, as where one person kills another upon a trifling provocation, for no one but of an abandoned heart, would be guilty of such an act upon a slight, or no apparent cause. Malice will therefore be presumed, even though the act be perpetrated recently after the provocation received, if the mode of retaliation be greatly inadequate to the offence given, and cruel and dangerous in its nature,—as if a deadly weapon be used against a man unarmed, to punish a slight affront,—or if the correction, however it may be administered, be by any means unreasonable or excessive.

NUISANCE.

A common Nuisance, is an offence against the public by doing a thing which tends to the annoyance of all the Queen's subjects, or by neglecting to do a thing which the common good requires,—*Hawk. Bl. C.* 32, 3, 4.

But annoyances to the interest of particular persons, are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them.

The following cases have been considered as nuisances and so adjudged.

All trades and manufactures which are set up in a town, and occasion inconvenience to the neighbourhood, in which they are carried on, or so near a public highway as to cause some inconvenience or danger to persons lawfully passing along it; may be indicted as public nuisances,—2, *C. & P.* 483. And to constitute a nuisance proceeding from a noxious trade, it is not necessary that the smell should be unwholesome,—it is enough, if it renders the enjoyment of life and property *uncomfortable*,—1, *Bur.* 333.

If a Brew-house or Glass house cannot be carried on without greatly annoying the neighbourhood, it may be indicted as a nuisance,—2, *Ld. Raym.* 1163.

To steep stinking skins in water near a highway, and also near several dwelling houses, by which the air is corrupted, is the subject of an indictment,—1, *Str.* 686.

All disorderly Inns or Ale-houses, and Gaming-houses are also public nuisances,—4, *Bl. Com.* 167.

Whatever outrages decency, and is injurious to public morals, is a common nuisance, and is indictable as a misdemeanor,—4, *Bl. Com.* 65.

It is also a public nuisance for any common dealer in provisions to sell unwholesome food, or to mix noxious ingredients in any made and prepared for the food of man.

There is no doubt, but that all injuries whatsoever to any highway, as by digging a ditch, erecting a fence, or laying logs of timber on it, or by doing any other act which will render it less commodious to the Queen's people, are public nuisances at Common Law.

OATHS.

An *Oath* is a solemn declaration, vow or promise, the truth or sincerity of which, the Deity is called upon to attest, and which invokes the divine vengeance, if what is stated is untrue. It is administered to every witness in a Court of Justice, and on every examination before a Magistrate, before his testimony can be received. The law rightly judging, that nothing can so well beget faith and confidence in others, or be so binding on the conscience of the party himself, as this solemn invocation of the Almighty to be his witness or avenger.

It is immaterial what the particular opinions are of persons professing Christianity, as far as regards the taking of an oath; it is only necessary that they believe the sanctity of an oath, the existence of a Deity, and a future state of rewards and punishments. But a person having no idea of God, or a future state of retribution, cannot be admitted to take an oath,—*Peake's Rep.* 11.

The individuals of all nations and sects should be sworn according to their creed and belief,—*Burns Jus. Oath.*

Jews should be sworn on the old Testament or Pentateuch, and they are allowed to put on their hats when sworn,—*Str.* 821.

A Mahometan must be sworn on the Koran, and a Gentoo according to his Religion,—1 *Atk.* 21.—*Str.* 1104.

A Scotch Covenanter was allowed to be sworn by holding up his hand instead of kissing the Book, and the form of the oath administered to him was, "*you swear according to the custom of your Country, and the Religion you pro-*

fess, that the evidence you shall give" (and so on in the usual form.)

By Statute 7th and 8th Wm. 3rd. c. 34, sec. 6, no Quaker shall be permitted to give evidence in any criminal cause, or serve on any Juries, or bear any office or place of profit in the Government.

By Sec. 1, every Quaker who shall be required, upon any lawful occasion to take an oath in any case, where by law an oath is required, shall instead of the usual form, be permitted to make his, or her solemn affirmation, or declaration in the words there prescribed.

This form was finally settled by the Act of 8 Geo. 1st. c. 6, and is as follows "*I. A. B., do solemnly, sincerely and truly, declare and affirm, &c.*" this relates to civil matters.

When a witness is brought before a Justice of the Peace to be examined touching any prosecution or other matter, the oath to be previously administered to him, usually is, "*you swear to declare the truth and nothing but the truth to the questions that shall be asked of you, so help you God.*"

Oath of Allegiance according to 1st Geo. 1, St. 2, c. 18, "*I, B. C., do sincerely promise and swear, that I will be faithful, and bear true allegiance to Her Majesty Queen Victoria.*"

ORCHARDS.

Stealing from—See Larceny, 4th & 5th Vict. c. 25, s. 34. Injuries done to—See Malicious Mischief, 4th & 5th Vict. c. 26, s. 21.

PEACE—SURETY FOR,
See Articles of the *Peace*.

PERJURY.

Perjury is the crime of wilful *false swearing* to any matter of fact *material* to the issue or point in question, and when a *lawful oath* is administered to the party, in some *judicial proceeding*,—3, *Inst.* 164,—1, *Cur. Hawk.* 6, 1, c. 27, s. 4.

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 takes such oath,—*Sulk.* 406.

It has been held that Justices of the Peace have no jurisdiction over Perjury at the common Law, but it is otherwise as to Perjury by Statute,—2, *Str.* 1688.

Perjury is a misdemeanor; but whatever may be the power of Justices in respect to Perjury, considered as a misdemeanor, it is not the practice to grant warrants for apprehending persons accused of that offence, before an indictment has been found,—5, *B. Inst.* 174.

PERSON—OFFENCES AGAINST.

See Act of the 4th and 5th Vict. c. 27, intituled, “*An Act for consolidating and amending the Statutes in this Province, relative to offences against the person.*”

Considering this Act, and those of the 4th and 5th Vict. c. 25, and c. 26, already noticed, to constitute a great portion of our Criminal Law, and that the changes and improvements made therein by these Acts, are essential to be known, I shall, in order to facilitate this object, here give a summary of this Act similar to that already given of the last mentioned Acts. The Justice of the Peace, whose ministry is thereby frequently required, will thus have a comprehensive view of all its enactments.

By Sec. 1, this Act shall commence and take effect from and after the first day of January, one thousand eight hundred and forty-two.

Petit Treason to be treated in all respects as Murder.

By Sec. 2, every offence which formerly would have amounted to *Petit Treason*, shall be deemed to be *murder* only, and all persons guilty thereof, whether as principals or accessaries, shall be dealt with as in the case of murder.

Punishment of principals and accessaries in murder.

By Sec. 3, every person convicted of murder, or of being an accessory *before* the fact, shall suffer death as a felon, and every accessory *after* the fact shall be liable to imprisonment at the discretion of the Court.

Sentence for murder may be pronounced as on other convictions.

By Sec. 4, sentence of death may be pronounced after convictions for murder in the same manner, and the Court before which the conviction may be had, shall have the same power in all respects as after convictions for other capital offences.

Prison regulations as to murderers under sentence.

By Sec. 5, every person convicted of murder shall be confined apart from all other prisoners, and shall be fed with bread and water only, except in the case of receiving the Sacrament, or in the case of any sickness or wound, when other necessaries may be ordered by the Surgeon of the prison. No person to have access to such convict, except the Gaoler and his servants, and the Chaplain and Surgeon of the prison, without permission in writing of the Court or Judge before whom such convict shall have been tried, or the Sheriff, or his Deputy.

Of the trial of murder, or manslaughter, where death, or the cause of death, happen within the Province.

By Sec. 6, every person being feloniously stricken, poisoned or otherwise hurt upon the sea, or at any place out of this Province, shall die of such stroke, &c. in this Province, or being feloniously stricken, &c. at any place in the Province, shall die of such stroke &c., upon the sea, or at any place out of this Province,—every offence thus committed, whether it amounts to murder or manslaughter, or being accessory thereto, may be dealt with, enquired of,

tried, determined and punished, in the District, county, or place in this Province in which such death, stroke, &c. shall happen, in the same manner in all respects, as if such offence had been wholly committed in such District, county, or place.

Punishment of manslaughter.

By Sec. 7, every person convicted of manslaughter, shall be punishable by imprisonment and hard labour at the discretion of the Court.

As to homicides, not felonies.

By Sec. 8, no punishment or forfeiture shall be incurred by any person, who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

Punishment for administering poison, &c.

By Sec. 9, whosoever shall administer, or cause to be taken by any person, any poison, or other destructive thing, or shall stab, cut, or wound, any person, or shall by any means whatever cause to any person, any bodily injury, dangerous to life, with intent to commit murder, shall be guilty of felony, and shall suffer death.

Punishment for offences with intent to commit murder, though no injury effected.

By Sec. 10, whosoever shall attempt to administer to any person, any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent to commit murder, shall, although no bodily harm shall be effected, be guilty of felony, and punishable by imprisonment and hard labour at the discretion of the Court.

Punishment for cutting and maiming with intent to disfigure.

By Sec. 11, whosoever shall unlawfully and maliciously shoot at any person, or shall by drawing a trigger, or in any manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut, or wound any person with intent to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and punishable by imprisonment and hard labour at the discretion of the Court.

Punishment for sending explosive substances, or throwing destructive matter, with intent to do harm.

By Sec. 12, whosoever shall unlawfully and maliciously send, or deliver to, or cause to be taken, or received, by any person, any explosive substance, or any other

dangerous or noxious thing, or shall cast or throw upon, or otherwise apply to any person, any corrosive fluid, or other destructive matter, with intent to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm, whereby any person shall be burnt, maimed, disfigured, or disabled, or receive other grievous bodily harm, shall be guilty of felony and punishable by imprisonment and hard labour at the discretion of the Court.

Punishment for trying to procure Abortion.

By Sec. 13, whosoever with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument, or other means whatsoever, with the like intent, shall be guilty of felony, and punishable by imprisonment and hard labour at the discretion of the Court.

A woman secreting the dead body of her child, to conceal its birth.

By Sec. 14, if any woman shall be delivered of a child, and shall by secret burying, or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, she shall be guilty of a misdemeanor, and punishable by imprisonment.

Sodomy.

By Sec. 15, every person convicted of the abominable crime of buggery, committed either with mankind, or any animal, shall suffer death as a felon.

Rape.

By Sec. 16, every person convicted of the crime of Rape, shall suffer death as a felon.

Criminal knowledge of a girl under ten, and above ten, and under twelve years of age.

By Sec. 17, if any person shall unlawfully and carnally know and abuse any girl under the age of ten years, he shall be guilty of felony and suffer death. And if any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years, and under the age of twelve years, he shall be guilty of a misdemeanor and punishable by imprisonment.

What shall be sufficient proof of carnal knowledge in the four preceding cases.

By Sec. 18, it shall not be necessary in any of the cases above mentioned to prove the actual emission of seed, in order to constitute a carnal knowledge, but that the carnal knowledge shall be deemed complete upon proof of penetration only.

Forcible abduction of a woman, with intent to marry her on account of her fortune.

By Sec. 19, where any woman shall have any interest in any real or personal estate, or shall be an heiress presumptive, or next of kin to any one having such interest,

and any person shall from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and punished by imprisonment and hard labour.

Unlawful abduction of a girl from parents or guardians.

By Sec. 20, if any person shall unlawfully take, or cause to be taken, any unmarried girl, under the age of sixteen years, out of the possession or against the will of her father or mother, or any other person having the lawful care or charge of her, such offender shall be liable to fine and imprisonment.

Child stealing.

By Sec. 21, if any person shall maliciously, either by force or fraud, lead or take away, or entice away or detain any child under the age of ten years, with intent to deprive the parent or parents, or any other person, having the lawful care or charge of such child, of the possession of such child; or if any person shall with such intent, receive or harbour any such child, knowing the same to have been by force or by fraud, so taken, enticed away or detained; every such offender, and every person aiding or abetting him, shall be guilty of felony, and punishable by imprisonment.

This is not to extend to a father taking his illegitimate child.

Bigamy.

By Sec. 22, if any person, being married, shall marry any other person, during the life of her former husband or wife, whether the second marriage shall have taken place in this Province or elsewhere, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and punishable by imprisonment and hard labour. This however not to extend to any second marriage contracted out of this Province by any other than a subject of Her Majesty resident in this Province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time ; or shall extend to any person, who at the time of such second marriage shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void, by the sentence of any Court of competent jurisdiction.

Arresting a Clergyman during Divine Service.

By Sec. 23, if any person shall arrest a Clergyman, or Minister of the Gospel upon any civil process, while performing Divine Service, or shall with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor, and punishable by fine and imprisonment.

Punishment for assault on officers, &c., endeavouring to save shipwrecked property.

By Sec. 24, if any person shall assault and strike or wound any Magistrate, Officer, or other person lawfully authorised, on account of the exercise of his duty, in and about the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded, or cast on shore, or lying under water, every such offender shall be punishable by imprisonment and hard labour.

Assault with intent to commit felony, &c.

By Sec. 25, persons convicted of the following offences, viz : of any assault with intent to commit felony,—of any assault upon any Peace Officer or Revenue Officer in the execution of his duty, or upon any person acting in aid of such Officer,—of any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any person for any offence for which he or they may be liable by law to be apprehended or detained,—of any assault committed in pursuance of any conspiracy to raise the rate of wages—every such offender shall be liable to imprisonment, and to find sureties for keeping the peace.

Assault on any Seaman, &c., Assault with intent to obstruct the buying or selling of grain or of its free passage, &c.

By Sec. 26, if any person shall unlawfully and with force, hinder any seaman from doing his usual business, or use any other violence to him with that intent ; or if any person shall beat, wound, or use any violence to any

person with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal, or malt, in any market or other place, or shall beat, &c., any person having the charge of any wheat, &c., whilst on its way to or from any city, market, town or other place, with intent to stop the conveyance of the same ; every such offender, may be convicted thereof before two Justices of the Peace, and imprisoned and kept to hard labour in the Common Gaol or House of Correction, for any term not exceeding three calendar months.

Common Assault, Battery, &c.

By Sec. 27, where any person shall unlawfully assault or beat any other person, it shall be lawful for any Justice of the Peace, upon complaint of the party aggrieved, praying him to proceed summarily under this Act, to hear and determine such offence, and the offender upon conviction thereof before him, shall forfeit and pay such fine as shall appear to him to be meet, not exceeding, together with costs, if ordered, the sum of five pounds. Which fine shall be paid to the Treasurer of the Municipal District or place, where the offence was committed, and make part of the funds of such District ; or if the conviction be had in any place, not within any Municipal District, then such fine shall be paid to such officer, and be applied to such purposes as other fines and penalties are by law. And the evidence of any inhabitant of the Municipal District shall be admitted in proof of the offence, notwithstanding such application of the fine incurred thereby. And if such fine as shall be awarded by the said Justice, together with the costs if ordered, shall not be paid, either

immediately after the conviction, or within such period, as the Justice shall at the time of the conviction appoint, it shall be lawful for him to commit the offender to the Common Gaol or House of Correction, for any term not exceeding two calendar months, unless such fine and costs be sooner paid. But if the Justice upon the hearing of any such case of assault or battery, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling, as not to merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred. And if the costs be not immediately paid upon dismissal, or within such period as the Justice shall at the time of such dismissal appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount of such warrant shall be so found, to commit the party by whom such costs shall be so ordered to be paid to the Common Gaol of the District, county or division where such offence shall be alledged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs shall be sooner paid.

Effect of the certificate given as above directed.

By Sec. 28, if any person against whom any such complaint shall have been preferred for any common assault or battery, shall have obtained such certificate as aforesaid,

or having been convicted, shall have paid the whole amount adjudged to be paid under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

When the Justice may discharge the offender.

By Sec. 29, when any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, the Justice may discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the said Justice.

On certain complaints for Assault and Battery in which the Justice adjudicates.

By Sec. 30, in case the Justice shall find the assault or battery complained of, to have been accompanied by any attempt to commit felony, or shall be of opinion, that the same is from any circumstance a fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner, as he would have done before the passing of this Act. Nor shall the Justice hear or determine any case of assault and battery, in which any question shall arise as to the title of any lands, tenements or hereditaments, or any interest therein, or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any Court of Justice.

Disturbing persons assembled for religious worship.

By Sec. 31, if any person shall wilfully disturb any assemblage of persons met for religious worship, by profane discourse, by rude or indecent behaviour, or by making a noise, either within the place of worship, or so near it, as to disturb the order and solemnity of the meeting, such person shall upon conviction thereof before any Justice of the Peace, on the oath of one or more credible witness or witnesses, forfeit and pay such sum of money, not exceeding five pounds, as the Justice shall think fit.

Fines how to be levied.

By Sec. 32, in default of payment of any fine imposed under the authority of this Act, on a summary conviction before any Justice of the Peace, together with the costs attending the same, within the period specified for the payment thereof at the time of conviction by the Justice before whom such conviction may have taken place, it shall be lawful for such Justice to issue his warrant, directed to any Constable, to levy the amount of such fine and costs within a certain time to be in the said warrant specified, and in case no distress sufficient to satisfy the amount shall be found, it shall be lawful for him to commit the offender to the Common Gaol of the District wherein the offence was committed, for any term not exceeding one month, unless the fine and costs shall be sooner paid.

Appeal from convictions to the Quarter Session.

By Sec. 33, any person who shall think himself aggrieved by any summary conviction under this Act, may appeal

to the next Court of General or Quarter Sessions, which shall be holden, not less than twelve days after the day of such conviction or decision, for the District wherein the cause of complaint shall have arisen, provided that such person shall give to the other party a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven days at least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance with two sureties before a Justice of the Peace, conditioned, personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded, and upon such notice being given, and such recognizances entered into, the Justice before whom the same shall be entered into, shall liberate such person if in custody, and the Court at such Sessions shall hear and determine the matter of the appeal.

Appeals triable by Jury.

By Sec. 34, authority is given to the Court of Quarter Sessions to summon a Jury to try the matter appealed from, and to determine accordingly.

Punishment of accessaries.

By Sec. 35, in the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise in the same manner as the principal in

the first degree is by this Act punishable, and every accessory after the fact in any felony punishable under this Act, shall be liable to imprisonment for any term not exceeding two years.

Offences punishable by imprisonment.

By Sec. 36, when imprisonment is awarded on conviction, it shall be lawful for the Court to sentence the offender to hard labour in the Common Gaol or House of Correction, and also to direct that the offender be kept in solitary confinement for any portion of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court shall seem meet.

Jury may acquit of felony, and convict of assault.

By Sec. 37, in any felony including an assault against the person, the Jury may acquit of the felony, and convict of the assault.

By Sec. 38, this Act not to affect the laws relating to the Government of Her Majesty's Land or Naval Forces.

Persons imprisoned may be pardoned.

By Sec. 39, the Queen, or Governor, &c., of the Province may extend the royal mercy to any person imprisoned by virtue of this Act, although imprisoned for non-payment of money to some party other than the Crown.

Provision for offences against this Act, punishable on Summary Conviction.

By Sec. 40, where any person shall be charged on the oath of a credible witness before a Justice of the Peace, with any offence punishable upon summary conviction by virtue of this Act, the Justice may summon the person charged, to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then, upon proof of the due service of the summons upon such person, by delivering the same to him, the Justice may either proceed to hear and determine the case *ex parte*, or may issue his warrant for apprehending such person and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge is made, may issue such warrant in the first instance, without any previous summons.

Limitations for Summary Proceedings.

By Sec. 41, the prosecution for every offence punishable on summary conviction by virtue of this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise.

Form of Conviction.

By Sec. 42, a form of summary conviction is given, for which, see title, *Conviction*.

I would here refer the Justice of the Peace, to the observations made on the Act of 4th and 5th Vict. c. 25, title, *Larceny*, as applicable to this Act.

PETIT LARCENY.

By the Act, 4th and 5th Vict. c. 25, Sec. 2, all former distinction between *Grand* and *Petit Larceny* is abolished, and every Larceny is subject to the same incidents, (except as regards the degree of punishment) as Grand Larceny was before. See *Larceny*.

Petit Treason, see *Treason*.

POISONING.

See *Persons—Offences Against*, Act 4th and 5th Vict. c. 27, sec. 9.

POSSE COMITATUS.

The *Posse Comitatus*, or power of the county, includes the aid and attendance of every person above fifteen years old, under the degree of a Peer, except ecclesiastical persons, and such as labour under any infirmity. It may be raised by the Sheriff, or by Justices of the Peace, where a riot is committed, where a forcible entry is made, or where there is any force or rescue contrary to the commands of the King's writ, or in opposition to the execution of justice. Persons refusing to assist in this service, when legally required, may be fined and imprisoned,—1, *Bl. Com.* 343,—4, *Bl. Com.* 122.

POST OFFICE.

By the 7th Geo. 3, c. 50, sec. 1, which re-enacts more at large the provisions of the 5th Geo. 3, c. 25, sec. 17, it is enacted, that if any Deputy, Clerk, Agent, Letter Carrier, post boy, or rider, or any other officer or person whatsoever employed in receiving, stamping, sorting, charging, carrying, conveying or delivering letters or packets, or in any other business relating to the Post Office, shall secret, embezzle, or destroy any letter, packet, bag, or mail of letters, which such person might be entrusted with, or which shall have come to their hand or possession containing any bank note, bank post bill, bill of exchange, exchequer bill, South Sea, East India, or any other company, society or corporation, navy or victualing, or transport bill, ordnance, seaman's ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note or assignment of stock in the funds, letter of attorney for receiving annuities or dividends or for selling stock in the funds, or belonging to any company, society, or corporation, American Provincial bill of credit, goldsmith's or banker's letter of credit, or note for, or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever for the payment of money, or shall steal or take the same out of any letter or packet that shall come to their hands or possession,—such offender or offenders shall be guilty of felony without benefit of Clergy.

By Sec. 2, if any person or persons shall rob any mail, or mails, in which letters are sent or conveyed by the post, of any letter, packet, bag, or mail of letters, or shall steal

or take from or out of any such mail or bag, sent or conveyed by post, or from or out of any Post Office, or house or place for the receipt or delivery of letters, any letter or packet, although such robbery, stealing or taking shall not appear to be a taking from the person, or upon the King's highway, or to be a robbery committed in any dwelling house or outhouse, and although it should not appear that any person or persons were put in fear by such robbery, stealing, or taking, yet such offender upon conviction shall be deemed guilty of felony without benefit of Clergy.

By Sec. 3, if any Deputy, Clerk, Agent, Letter Carrier, Officer, or other person whatsoever, employed in any business relating to the Post Office, shall take and receive into his, her, or their hands, or possession, any letter or letters, packet or packets, to be forwarded by the Post, and receive any sum or sums of money therewith for the postage thereof, shall burn or otherwise destroy any letter or letters, packet or packets, by him, her, or them, so taken in or received, or if any such Deputy, Clerk, Agent, Letter Carrier, Officer, or other person whatsoever, so employed, shall advance the rate or rates of postage upon any letter or letters, packet or packets, sent by the Post, and shall secrete, and not duly account for the money by him, his, or them, received for such advanced postage, every such offender or offenders being thereof convicted, shall be deemed guilty of felony.

Information against a Letter Carrier for stealing a Bank Note from a Letter conveyed by Post.

DISTRICT OF } Information of A. B. of the Parish of ———
 ————— } ——— in the said District, trader, taken
 before me, W. R. Esquire, one of Her
 Majesty's Justices of the Peace in and for
 said District.

The said A. B. being duly sworn, deposeth and saith that on the ——— day of ——— instant, at ——— in the said District, he inclosed in a letter duly sealed, and addressed to J. G. Esq., of ——— in the said District, merchant, a certain bank note, being No. ——— for the sum of fifty dollars of the incorporated Bank of Montreal, which said letter so sealed and containing the said bank note this deponent put into the Post Office, established and kept at the Parish aforesaid, to be forwarded and conveyed to the Post Office at ——— aforesaid, and to be afterwards delivered to the said J. G. That afterwards, to wit, on the ——— day of ——— instant, the said letter arrived and was received at the said Post Office at ——— aforesaid, and was then and there, with various other letters, given and entrusted to C. D. a letter carrier, in the service and employment of the said Post Office, to be by him delivered to the person to whom the same were severally addressed. That afterwards, to wit on the ——— day of ——— instant, the said letter addressed as aforesaid, was by the said C. D. delivered to the said J. G. but the said bank note had been previously stolen and abstracted therefrom. That this deponent hath just reason to suspect and believe, and doth verily believe, that the said bank note was so stolen and abstracted from the said letter by the said C. D. as the said bank note was afterwards seen in the posses-

sion of the said C. D. (*or as the case may be.*) Wherefore prays Justice.

Sworn at _____ aforesaid,
 this _____ day of _____
 _____, 18 ____,
 Before me, W. R. J. P. } (Signed) A. B.

The warrant to apprehend is in the usual form, stating as the ground thereof as contained in the information : so also the examinations and other proceedings, as in case of felony.

PRESENTMENT.

A *Presentment*, as commonly understood, is the notice taken by a Grand Jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the Crown,—as the presentment of a nuisance, a libel, or the like, upon which the officer of the Court must afterwards frame an indictment before the party presented can be put to answer,—2, *Inst.* 739,—4, *Bl. Com.* 301.

PRISON BREAKING.

Prison Breaking, is the offence of a party, who is in legal custody upon any charge, effecting his own escape by force,—1, *Hale.* 607.—4, *Bl. Com.* 130. Breaking prison, or conspiring to do so, seems, according to the best opinions, to have been felony at the Common Law. But by Stat. 1, Edw. 2, Sec. 2, it is declared that none that

should from henceforth break prison, should have judgment of life or member, for breaking of prison *only*, unless the cause for which he was taken and imprisoned required such a judgment, if he had been convicted thereof according to the law and custom of the realm. Every lawful restraint of liberty, is a prison within this Act, whether it be in a Common Gaol, the house of a Constable, or of a private person,—1, *Hale*. 610.—*Hawk. b. 2, c. 18, s. 4*.

There must be a *forcible* escape to constitute a breaking, and a mere escape by doors that have been left open, if effected without violence, will not be felony, but punishable as a misdemeanor,—2 *Inst.* 590. Or if the Gaol be broken by others without the participation of the prisoner, and he escapes—this would amount only to misdemeanor.

But no breach of prison will amount to felony unless the prisoner actually escape.

Information against a prisoner confined in Gaol for Felony for escaping therefrom, and against a third person for assisting him.

DISTRICT OF } Information of A. B. of _____ in the
 _____ } said District, Keeper of the Common Gaol
 for the same District, taken before me W.
 R., Esquire, one of Her Majesty's Justices
 of the Peace, in and for the said District.

The said A. B., being duly sworn deposeth and saith, that by warrant under the hand and seal of J. G., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, bearing date the _____ day of _____ one thousand eight hundred and _____ C. D. of the parish of _____ in the said District, labourer, was committed to the said Common Gaol, charged on oath with

having on the _____ day of _____ at the parish aforesaid, feloniously stolen, taken, and led away, a certain black gelding of the value of ten pounds, the property of one J. B. as by virtue of which said warrant, the said A. B. as such keeper as aforesaid was directed safely to keep and confine the said C. D. in the said Gaol until he should be thence delivered by due course of law. That the said C. D. being in the actual custody of the said A. B. in the said Gaol, by virtue of the said warrant, afterwards (*or whatever the offence charged in the commitment may be*) to wit on the _____ day of _____ with force and violence, and against the will of the said A. B. as such keeper as aforesaid, did unlawfully, forcibly, and feloniously break the said Gaol, and did escape and go at large therefrom out of the custody of him the said keeper, and the said A. B. further saith, that E. H. of the said parish of _____ labourer, did on the day and year last aforesaid at _____ aforesaid, unlawfully and feloniously, aid, abet, and assist the said C. D. to break, and escape from the said Gaol in manner aforesaid, and did for this purpose deliver and cause to be delivered to the said C. D., while a prisoner in the said Gaol by virtue of the said warrant, two steel files, being instruments proper to facilitate the escape of the said C. D., and by means of which said steel files, the said C. D. did cut, saw asunder and break the irons with which he was confined in the said Gaol in manner as aforesaid, and did make his escape therefrom.

Sworn at _____ in the said	} (Signed) A. B.
District, this _____ day of	
_____ 18 —, before me.	
(Signed,) W. R., J. P.	

The warrant to apprehend the parties on this information, as well as all examinations and other proceedings to be had thereon, are in the usual form, observing always to state the ground, upon which such warrant or other proceedings are founded, as contained in the information.

Taking the above information as a model, others may be founded thereon for offences of this description, according to the various circumstances of each particular case.

PUBLIC WORSHIP.

See *Church*.

RAPE.

See *Person—Offences Against*.
4th and 5th Vict. c. 27, s. 16, 18.

Information for Rape.

DISTRICT OF } Information of A. B. of the Parish of ———
————— } ——— in the said District, Spinster, (or
widow, or married woman, as the case
may be) taken before me, W. R., Esquire,
one of Her Majesty's Justices of the Peace,
in and for the said District.

The said A. B., being duly sworn, deposeth, and saith, that on the ——— day of ——— instant, at the Parish aforesaid, C. D., of ——— in the said District, labourer, did violently and feloniously make an assault upon her the said A. B., and her the said A. B.,

did, then and there, violently and against her will, ravish and carnally know. Wherefore prays Justice.

The warrant and other proceedings on this offence are the same as in other cases of felony.

RECEIVERS OF STOLEN GOODS.

See *Larceny*, 4th and 5th Vict. c. 25, s. 46, 47, 48.

Information against a receiver of stolen goods.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman
 taken before me W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in
 and for the said District.

The said A. B., being duly sworn, deposeth, and saith, that on the _____ day of _____ at the Parish aforesaid, three silver table spoons of the value of three pounds, the property of this Deponent, were feloniously stolen, taken and carried away from and out of the dwelling house of this Deponent situate in the said Parish, by some person or persons unknown, and this Deponent further saith, that C. D., of _____ in the said _____ District, labourer, did, on the day and year last aforesaid, at _____ aforesaid, feloniously receive and have the said silver spoons, well knowing the same to have been stolen, taken and carried away as aforesaid.—Wherefore prays Justice.

Sworn at _____ in the said
 District, this _____ day of
 _____ 18 —, before me, } (Signed,) A. B.
 (Signed) W. R., J. P. }

Information against the person suspected of stealing, and against the person suspected of receiving the property stolen.

DISTRICT OF } Information of A. B., of the Parish of
 ————— } ————— in the said District, yeoman,
 } taken before me W. R., Esquire, one of
 } Her Majesty's Justices of the Peace, in and
 } for the said District.

The said A. B., being duly sworn, deposeth and saith, that on the ——— day of ———, at the parish aforesaid, three silver table spoons, of the value of three pounds, of the goods and chattels of this Deponent, were feloniously stolen, taken and carried away from and out of his dwelling house in the said Parish, by some person or persons, and this Deponent further saith that he hath just reason to suspect and believe, and doth verily suspect and believe, that the said silver spoons were so stolen, taken and carried away by one C. D., of ——— in the said District, labourer, he the said C. D., having been seen coming from and out of the said dwelling house, a short time before it was ascertained that the said silver spoons had been so stolen (*or whatever other cause of suspicion there may be*) and this Deponent further saith, that he hath been credibly informed and doth verily believe, that E. F. of ——— in the said District, labourer, on the day and year last aforesaid, at the said Parish of ——— did feloniously receive and have the said silver spoons, well knowing the same to have been stolen, taken and carried away as aforesaid, and that the said E. F. doth now conceal the said silver spoons in his dwelling house, or other his premises as aforesaid. Whereupon this Deponent

prays Justice, and that a search warrant be granted to him, to search for the said silver spoons in the dwelling house and other the premises aforesaid of the said E. F.

Warrant to apprehend, on suspicion of stealing, and search warrant on suspicion of receiving and concealing the property stolen.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 ———— } Justices of the Peace, in and for the said
 District.

To any Constable, or other Peace Officer in and for the said District.

Whereas A. B., of the Parish of ——— in the said District, yeoman, hath this day made oath before me the said Justice, that on the ——— day of ——— at the Parish aforesaid, three silver table spoons, of the value of three pounds, were feloniously stolen, taken and carried away from and out of his dwelling house in the said Parish by some person or persons, and that he the said A. B., had just reason to suspect and believe, that the said silver spoons were so stolen, and carried away by one C. D., — in the said District, labourer, he the said C. D., having been seen coming from and out of the said dwelling house a short time before it was ascertained that the said silver spoons had been so stolen. These are therefore to charge and command you, and each and every of you, that you take the said C. D., and bring him before me, or some other of Her Majesty's Justices of the Peace in and for the said District, to be dealt with according to law, and whereas, the said A. B., hath this day further

made oath before me that he hath been credibly informed, and doth verily believe that E. F., of ——— in the said District, labourer, on the day and year last aforesaid, at the said Parish of ———, did feloniously receive and have the aforesaid silver spoons, knowing the same to have been so stolen, taken and carried away, and that the said silver spoons are now concealed by the said E. F., in his dwelling house, or other the premises of the said E. F., at ——— aforesaid, and therefore praying that a search warrant may be granted to search for the said silver spoons in the said dwelling house, and other the premises of the said E. F., these are therefore further to charge and command you and each and every of you, with necessary and proper assistants, to enter in the day time the said dwelling house, and other the premises of the said E. F., and there diligently to search for the said silver spoons, and if the same, or any of them shall be found upon such search, that you bring the same so found, and also the body of the said E. F. before me, or some of Her Majesty's Justices of the Peace for the said District to be dealt with according to law.

Given under my hand and seal at ——— in the said District, this ——— day of ——— one thousand eight hundred and ———.

(Signed) W. R., J. P. [SEAL.]

In cases of suspicion, it will seldom happen, as here supposed, that the same person will be able to give all the necessary information of the several facts of *stealing*, of *receiving*, and of *concealing*, the property stolen. It is, however, necessary that these facts should be ascertained by such witnesses as can give a reasonable account of their

suspicion and belief, and of the circumstances on which these are founded.

In a case of this kind, where much depends upon the evidence to be elicited from the examination of witnesses, and from the return to be made by the officer, or officers charged with the execution of the search warrant, unless the Justice is satisfied of the guilt of the accused, he is bound by the Act of 4th and 5th Vict. c. 24, s. 1, 2, to call in the aid of a brother Magistrate, and with him to deliberate and determine, whether the parties accused are to be committed, admitted to bail, or discharged.

The above applies to cases of felony, which are to be tried before a Court and Jury, but besides these, there is a number of offences for stealing, which, by the before mentioned Act of the 4th and 5th Vict. c. 25, may be heard and determined before a Justice of the Peace in a summary manner; in all such cases, the receiver may be tried and convicted in the same manner. See s. 52.

RECOGNIZANCE.

A Recognizance, is a bond or obligation of record, which a man enters into before some Court of Record, or Magistrate duly authorised, thereby acknowledging himself to owe to the Queen a certain sum, with a condition to do some particular act, as to appear at the Sessions or Assizes, to keep the peace, to be of good behaviour, or the like. Some recognizances, Justice of the Peace are enabled to take by the express words of certain statutes, but in other cases, as for the peace and good behaviour, it is rather by reasonable intentment of law, than by any

express authority given them, either by their commission, or under any statute. But whenever a statute gives a Justice power to bind over any man to appear at the Assizes or Sessions, or to take sureties for any matter or cause, he may take a recognizance, and in general, where a Justice has authority on any occasion to order a man to do some particular thing, it seems that he has an implied power to bind the party by recognizance to do it, and upon his refusal to be bound, to commit him for a contempt, but a Justice can take no recognizance of any other matter than what concerns his duty as a Magistrate, and if he do, it is void,—*Dalt. c. 168, 176.*

Every obligation and recognizance taken by Justices of the Peace, must be made to our Lady the Queen, on pain of imprisonment of any person, that shall take it otherwise,—33, *Hen. 8, c. 39.*

And it ought also to contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound,—*Barl. Recog.*

The manner of taking a recognizance is, to call the parties by their names, thus :—“ You A. B., acknowledge “ to owe to our Sovereign Lady the Queen, the sum of “ £——, and you C. D., and E. F., acknowledge “ severally to owe to our Sovereign Lady the Queen, the “ sum of £——, to be levied of your respective goods “ and chattles, lands and tenements for the use of our said “ Lady the Queen, her heirs and successors, if default shall “ be made in the condition following, that is to say, if you “ the said A. B., shall make default in appearing and “ answering, &c.”

The parties need not sign the recognizance, but the Justice, in order to expedite the business at the moment,

merely makes a memorandum of it at the foot of the examination, as A. B., £—— C. D., and E. F., £—— each, that A. B. appear, &c., and afterwards draws up the recognizance in proper form, so as to make a record of it, and subscribes his name, without his seal. Every recognizance must be returned to the next Sessions, or to the Court, where proceedings upon it may be had.

In general the party's own recognizance, without sureties, is all that is required from witnesses to appear, and prosecute or give evidence, but a married woman cannot bind herself, neither can one under age, and must therefore enter into recognizance with sureties. The usual course, where a married woman is a material witness, is to join her husband, or some other competent person, in the recognizance with her, as surety for her appearance.

Recognizance by husband and wife, for the appearance of the wife, to give evidence.

DISTRICT OF } Be it remembered, that on the —— day
 ———— } of ——, in the year of our Lord one
 thousand eight hundred and ——, A. B., of the Parish
 of —— in the said District, yeoman, and E. B., his
 wife, personally came and appeared before me, W. R.,
 Esquire, one of Her Majesty's Justices of the Peace, in
 and for the said District, and acknowledged themselves to
 owe to our Lady the Queen, that is to say, the said A. B.,
 as well for himself as for his said wife, the sum of £——
 to be made and levied of his goods and chattels lands, and
 tenements, to the use of our said Lady the Queen, her
 heirs and successors, if default shall be made in the follow-
 ing condition :—

The condition of the above recognizance is such, that if the said E. B., shall personally appear at the next ensuing Court of (*Quarter Sessions of the Peace, or Court of King's Bench, holding criminal jurisdiction in and for the said District, as the case may be,*) and then and there give evidence of all she knows on a certain complaint and accusation against one C. D., for having feloniously stolen, taken and carried away certain goods and chattels, the property of J. G., and that the said E. B., shall not depart the said Court without leave—then the above recognizance to be null and void, otherwise to remain in full force and virtue.

Taken and acknowledged the
 day and year above written }
 before me. }
 (Signed,) W. R., J. P. }

Recognizance with sureties by a person accused of any crime or misdemeanor.

DISTRICT OF } Be it remembered that on the ——— day
 ————— } of ——— in the year one thousand
 eight hundred and ——— A. B., of the Parish of ———
 ———, in the said District, carpenter, C. D., of ———
 in the same District, yeoman, and E. F. of the said District, yeoman, personally came and appeared before me W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, who acknowledged themselves to owe and to be indebted to our Sovereign Lady the Queen, in the sum of £———, that is to say, the said A. B., in the sum of £———, and the said C. D. and E. F. each in the sum of £——— to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lady

the Queen, her heirs and successors, if default shall be made in the following condition :—

The condition of the above recognizance is such, that if the above bounden A. B., shall personally appear at the next ensuing Court of (*Quarter Sessions of the Peace, or Court of King's Bench holding criminal jurisdiction in and for the said District, as the case may be,*) to be holden at _____ in the said District, on the _____ day of _____ next, at nine of the clock in the forenoon, then and there to answer to all such charges and accusations as may then and there be made against him on the part and behalf of our said Lady the Queen, for (*here state the particular crime or offence of which the party is accused*) and that the said A. B., shall not depart the said Court without leave,—then the above recognizance to be null and void, otherwise to remain in full force and virtue.

Taken and acknowledged the
 day and year above written }
 before me. }
 (Signed,) W. R., J. P.

Recognizance without sureties by several persons to appear and give evidence.

DISTRICT OF } Be it remembered that on the _____
 _____ } day of _____ in the year of our Lord
 one thousand eight hundred and _____ A. B. of the
 Parish of _____ in the said District, labourer, C. D.
 of the same place, carpenter, E. F. of the same place,
 yeoman, and G. H. also of the same place, yeoman, personally came and appeared before me, W. R. Esquire,

one of Her Majesty's Justices of the Peace in and for the said District, who acknowledged themselves severally to owe and to be indebted to our Sovereign Lady the Queen, that is to say, the said A. B. in the sum of £ ——— the said C. D. in the sum of £ ———, the said E. F. in the sum of £ ———, and the said G. H. in the sum of £ ———, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if default shall be made in the following condition.

The condition of the above recognizance is such,—that if the above bounden A. B., C. D., E. F., and G. H.—shall severally appear in their proper persons at the next ensuing Court of (*Quarter Sessions of the Peace, or Court of King's Bench holding criminal jurisdiction in and for the said District, as the case may be,*) to be holden at ——— in the said District, on the ——— day of ——— next, at nine of the clock in the forenoon, and then and there severally give evidence, of all they severally know, on a certain complaint and accusation against one J. K. for (*here state the crime or offence with which the party is charged,*) and that the said A. B., C. D., E. F., and G. H., shall not depart the said Court without leave, —then the above recognizance to be null and void, otherwise to remain in full force and virtue.

Taken and acknowledged the
 day and year above written
 before me. }
 (Signed) W. R., J. P. }

Recognizance, with sureties, to keep the peace, or be of the good behaviour.

DISTRICT OF } Be it remembered, that on the —— day
 —— } of —— in the year of our Lord one
 thousand eight hundred and ——, A. B., of the
 Parish of —— in the said District, yeoman, C. D.,
 of the same place, yeoman, E. F., also of the same place,
 yeoman, personally came and appeared before me, W.
 R., Esquire, one of Her Majesty's Justices of the Peace,
 in and for the said District, and acknowledged themselves
 to owe, and to be indebted to our Sovereign Lady the
 Queen, that is to say, the said A. B., in the sum of
 £——, and the said C. D., and E. F., each in the sum
 of £——, to be made and levied of their goods and
 chattels, lands and tenements respectively, to the use of
 our said Lady the Queen, her heirs and successors, if de-
 fault shall be made in the following condition.

The condition of the above recognizance is such, that
 if the above bounden A. B., do and shall personally ap-
 pear at the next Court of Quarter Sessions of the Peace, to
 be holden at —— in and for the said District on the
 —— day of —— next, to do and receive what
 shall be then and there enjoined him by that Court, and
 in the meantime shall keep the peace (*or be of the good
 behaviour*) towards our said Lady the Queen, and all her
 liege people, and especially towards G. H., of ——
 in the said District, yeoman, (*the complainant*)—then the
 said recognizance to be null and void, otherwise to remain
 in full force and virtue.

Taken and acknowledged the
 day and year above written }
 before me. }
 (Signed,) W. R., J. P.

It may be advisable for the Justice in most cases on complaints made, to obtain surety of the peace, for threats, or other violent language or behaviour, to bind the party complained of, to keep the peace for a certain space of time, as for three, six, or twelve months, without requiring his appearance before the Sessions, for unless the complaint is there intended to be renewed, this appearance is unnecessary, and loss of time and trouble thereby incurred.

Recognizance with sureties, to enter and try an appeal from a summary conviction before a Justice.

DISTRICT OF } Be it remembered, &c., (*as in the preceding forms.*)

The condition of the above recognizance is such, that if the above bounden A. B., do and shall personally appear at the next Court of General or Quarter Sessions of the Peace, to be holden at ———, in and for the said District, and shall then and there enter and try his appeal, whereof he hath given notice, against a conviction of him the said A. B., bearing date the ——— day of ——— instant, (*or last*) under the hand and seal of J. G., Esquire, one of Her Majesty's Justices of the Peace, (*or under the hands and seals of J. G., P. R., Esquires, two of Her Majesty's Justices of the Peace, as the case may be*) in and for the said District, for the said A. B., having (*set forth the offence for which the conviction was made,*) and that the said A. B., shall abide the order of and pay such costs as shall be awarded by the said Court of General or Quarter Sessions of the Peace, then this recognizance shall be void, otherwise to remain in full force and virtue.

Taken and acknowledged the }
 day and year first above }
 written, before me. }
 (Signed,) W. R., J. P. }

RELIGION—THE CHRISTIAN.

The preservation of Christianity as a national religion, is, not merely a spiritual concern, but one which vitally affects the temporal interests of the community also; for the entertaining just ideas of the moral attributes of the Supreme Being, and a firm persuasion that he superintends every action in human life, and the belief of a future state of rewards and punishments, (all which are clearly revealed and forcibly inculcated by the Christian religion,) are not only calculated to control the moral conduct of man and restrain those crimes which disturb the peace and good order of society, but are also the grand foundation of all judicial oaths. Every affront therefore to Christianity, by denying its truth, or deprecating its efficacy is highly deserving of temporal punishment, as well as spiritual censure, by reason of their tendency to destroy all moral obligation, and all confidence in human veracity,—4, *Bla. Com.* 43. Therefore all publications, blaspheming the Almighty, or turning the doctrines of the Christian religion into contempt and ridicule, are indictable at common law as public libels,—1, *East. P. c.* 3.—4, *Bla. Com.* 44.

A publication stating, that our Saviour was an impostor, a murderer in principle, and a fanatic, is a blasphemous and scandalous libel, and indeed must always be so, while the Christian religion is considered to be the basis of the law of the land,—1, *B. and C.* 26.

In like manner where a defendant published a book,—attacking the truth of both the Old and New Testament, arguing that there was no genuine revelation of the will of God, existing in the world, and that reason was the only

true faith which laid any obligation on the conduct of mankind,—and in other respects ridiculing and vilifying the Prophets, our Saviour, his Disciples, and the Holy Scriptures—it was held to be an infamous and blasphemous libel. Although the Almighty does not require the aid of human tribunals to vindicate his precepts, it is nevertheless incumbent on the law to shew its abhorrence of doctrines, which are not only an offence against God, but subversive of all law and government, from their direct tendency to dissolve all the bonds and obligations of civil society. It is upon this ground indeed that the Christian religion constitutes the law of the land—for if the truths of revelation and the existence of a God were suffered to be openly impugned, the solemnity of an oath, on which the administration of Justice mainly depends, would be utterly destroyed, and the law thus be stripped of one of its principal sanctions for the discovery of truth, namely the dread of future punishment,—1, *East. P. C.* 5.—*Holt on Libel*, 60 note.—*Vint.* 293.—3, *Keb.* 607.

All publications tending to vitiate and corrupt the minds and morals of the people, whether by writing, print, picture, or symbol, are likewise indictable as libels at common law. For any attempt of this nature to destroy morality, is an attempt to destroy the very bonds of society and government, since government is no more than public order, and that is founded on morality,—such an offence also is in technical language against the peace of the Queen, for peace includes good order and government, and that peace may be broken in many instances without any actual force, as in the case of every act openly committed against religion or morality,—2, *Str.* 783.

The Christian religion, according to high legal authority,

is part and parcel of the law of England. To reproach, or blaspheme it therefore, is to speak in subversion of the law—and to say, that religion is a cheat, manifests plainly a wish and endeavour to dissolve all those obligations whereby civil society is preserved, and is held to be an indictable offence at common law,—*Vent.* 293,—3, *Keb.*, 607.

It is to be hoped that there will be few, or no occasions for prosecutions on this head,—but should any offences of the above description arise, which from the informations and depositions, laid before the Justice of the Peace, shall appear to him to be of that notorious and infamous character, as to require his interference, he will issue his warrant to arrest the offender, and on default of good and sufficient bail, commit him to gaol, to abide his trial before the Court. There is no specific form required for drawing the informations, warrants, &c. in this case—a detail of the circumstances by the witnesses in their depositions, establishing in a satisfactory manner the extent of the offence, will in this, as in other cases, be a sufficient ground for the proceedings of the Justice, according to the forms used in other cases of misdemeanor.

RESCUE.

Rescue, signifies the forcibly setting any man at liberty from legal arrest or imprisonment, and it is generally the same offence in a stranger so rescuing, as it would have been in a gaoler to have *voluntarily* permitted an *escape*,

or in the prisoner himself to have *broken prison*. A *Rescue* therefore of one apprehended for *felony* is said to be *felony* ; for treason, *treason* ; and for a *misdemeanor*, a *misdemeanor* also. But here likewise, as upon voluntary escapes, the principal must first be convicted, before the rescuer can be punished to the same extent as the law provides for the crime of the party rescued—and for the same reason, because it may probably turn out in fact, that there has been no offence committed,—1, *Hale*, 607, *Foster*. 344.—4, *Bl. Com.* 131, *R. & R.* 458.

By the Act of 4th and 5th Vict. s. 25, an assault with intent to resist or prevent the apprehension, or *detainer* of the party so assaulting, or of any other person, for any other offence, for which he or they may be liable by law to be arrested or *detained*, is a misdemeanor, punishable by fine and imprisonment.

Information for rescuing a prisoner in the custody of an officer.

DISTRICT OF } Information of A. B., of the Parish of ——
 } —— in the said District, yeoman, taken
 before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District.

The said A. B., being duly sworn, deposeth and saith, that by virtue of a warrant under the hand and seal of F. G., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District, bearing date the —— day of —— instant, addressed and delivered to him, this deponent, he the said deponent was commanded and re-

quired to take the body of C. D., of the Parish of ——— in the said District, labourer, and to bring him the said C. D., before the said J. G., being Justice as aforesaid, in order to be examined touching a certain felony, charged on the oath of one E. F., of the said Parish of ——— yeoman, to have been committed by the said C. D., for having on the ——— day of ——— at the Parish, last aforesaid, feloniously stolen, taken, and led away, a certain black gelding of the value of ten pounds, the property of the said E. F. That afterwards, to wit, on the ——— day of ——— instant, at the Parish last aforesaid, he this Deponent, by virtue of the said warrant, did arrest and take the said C. D., and while he the said C. D., was by virtue of the said warrant held and detained in the custody of this Deponent, he the said C. D., and G. H., late of ——— in the said District, labourer, and J. K., late of the same place, labourer, well knowing the said C. D., to be arrested and detained as aforesaid, afterwards to wit, on the said ——— day of ——— at the said Parish of ——— did violently assault, beat, and ill treat this Deponent, and with force and violence, him the said C. D., did rescue out of the custody of this deponent and against his will, by means whereof the said C. D., did escape and go at large where he pleased. Wherefore prays Justice.

Sworn at ——— in the said District, }
 this ——— day of ——— 18 —, } (Signed) A. B.
 before me. }
 (Signed) W. R., J. P.

The warrant to apprehend the offenders, is in the usual form, reciting in it the above information. In the examinations of the parties, and of any other witnesses to be

taken in their presence, it is not necessary to recite the whole of the information but to state the charge generally thus:—"Examination of G. H., of ——— brought before me, W. R., Esquire, one of Her Majesty's Justices, &c., on a charge of having violently and forcibly rescued and set at large one C. D., from the custody of A. B., while arrested and detained by virtue of a legal warrant for felony."

In the warrant of commitment, however, it will be proper to set out the information, so as to show the nature and extent of the offence and the legality of the arrest.

From the above, other informations may be drawn for any offence committed under this head, the main objects to be attended to for this purpose, are to set out a legal warrant regularly granted, by competent authority, for some criminal offence, committed within the jurisdiction of the Magistrate granting it, the time and place of arrest or detention within that jurisdiction, the mode and manner of the rescue, and when, where, and by whom committed.

RIOT, ROUT, &c.

A *Riot* is a tumultuous meeting of three or more persons, who actually do an unlawful act of violence, either with, or without a common cause or quarrel—or even do a lawful act with force and violence,—2, *Deacon*, 1113. —4, *Bl. Com.* 146.

A *Rout* is where three or more meet to do some unlawful act, upon a common quarrel, as forcibly to break down a fence upon a right claimed of common or of way—and make some advances towards it, but without actually

executing it,—a Rout may be said to agree with a Riot in all particulars, except that the offence of the Rout may be complete without the execution of the intended enterprise,—1, *Hawk. c. 6, s. 8.*

Sec. 9, an *unlawful assembly*, is where three or more assemble themselves together with intent to do an unlawful act, as to pull down enclosures, &c., but separate without doing it, or making any movement towards it.

Sec. 12, the punishment for offences of this kind at common law, is fine and imprisonment, which the Court may apportion according to the circumstances of the offence.

To constitute a riot, there must be some circumstances of actual force or violence, or at least an apparent tendency thereto, which are calculated to strike terror among the people, such as the show of offensive weapons; threatening speeches, or, turbulent gestures, but it is not necessary that personal violence should actually have been committed,—1, *Hawk. c. 65, s. 5.*—2, *Camp. Rep. 369.*

It seems also that the violence and tumult must be in some degree premeditated in order to convict the defendants of a riot. For if a number of persons, being met together on any lawful occasion, happen on a sudden quarrel to fall together by the ears, this is not a riot, but only a sudden *affray*, of which none are guilty but those actually engaged in it, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention,—*Salk. 595.*

Whoever encourages, or promotes, or takes part in a riot, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, is himself to be consider-

ed a rioter, for in this case all are principals,—1, *Hale*. 463.—2, *Camp. R.* 370.

By Stat. Geo. 1, st. 2, c. 5, s. 1, commonly called the *Riot Act*, persons to the number of twelve or more, unlawfully, riotously, and tumultuously assembled, to the danger of the public peace, remaining together for one hour, after being commanded to disperse by proclamation by one or more Justices, shall be adjudged felons.

By Sec. 2, of this Statute, the Justice is required to make the Proclamation among the rioters, or as near to them, as he can safely come, and with a loud voice command, or cause to be commanded silence to be kept, while the Proclamation is making, and then with a loud voice make, or cause to be made Proclamation in these words, or like in effect.

“ *Our Sovereign Lord the King, (or Lady the Queen,)*
 “ *chargeth and commandeth all persons being assembled*
 “ *immediately to disperse themselves, and peaceably to de-*
 “ *part to their habitations, or to their lawful business,*
 “ *upon the pains contained in the Act made in the first*
 “ *year of King George, for preventing tumults and*
 “ *riotous assemblies,”—God save the King (Queen.)*

Every Justice is required, upon notice of any such assembly, to resort to the place and make Proclamation as aforesaid.

The Proclamation must be read correctly, for any variance will be fatal,—*Burns J.*

Should the rioters, to the number of twelve or more, continue and remain together by the space of one hour, after such request or command made by Proclamation, the parties so remaining are guilty of felony punishable with death,—1, *Geo. 1, c. 5, s. 2.*

And by Sec. 5, of the above Statute, if any person shall with force and arms wilfully and knowingly oppose, obstruct or in any manner wilfully and knowingly let, hinder, or hurt, any person that shall begin to proclaim, or go to proclaim, according to the form of Proclamation, thereby directed, whereby the same shall not be made, the offender is guilty of felony and punishable with death.

But before the passing of the before mentioned statute of the 1st Geo. 1st,—17, *R. 2, c. 8.*—13, *Hen. 4, c. 7, s. 1*—the Justices of the Peace, two of them at least, and the Sheriff, or under Sheriff of the county, were authorised to arrest any rioters, and all persons were bound to attend the Justices in suppressing a riot, and that any battery, wounding or killing of the rioters, that may happen in suppressing the riot, is justifiable,—1, *Hale. 495.*—1, *Hawk. c. 65, s. 1.*—4, *Bl. Com. 146.*

Independently, however, of these Statutes, the common law authorises the Sheriff, under Sheriff, Constable, or any other Peace Officer, to do all that lies in their power to suppress a riot, and to command any other person to assist him, and any private person also, may lawfully endeavour to appease all such disturbances, by staying those, whom he sees engaged therein, from executing their purpose, and by stopping those who come to join them; private persons may likewise arm themselves in order to suppress a riot, and may make use of arms, if there be a necessity either in defence of their own lives and property, or to protect the lives and property of other persons,—2, *Bos. and P. 265.*

Information for riotously assembling together and committing outrages.

DISTRICT OF } Information of A. B. of the Parish of ———
 ————— } ——— in the said District, yeoman, taken
 before me, W. R. Esquire, one of Her
 Majesty's Justices of the Peace in and for
 said District.

The said A. B., being duly sworn, deposeth and saith,
 that on the ——— day of ——— at the Parish of
 ——— in the said District, C. D., of ——— in the
 same District, labourer, E. F., of the same place, labourer,
 G. H., of the same place, labourer, and divers other per-
 sons to the number of (twenty,) and more did unlawfully,
 riotously, and tumultuously assemble and meet together to
 the disturbance of the public, and that they the said C.
 D., E. F., G. H., and others aforesaid being so assembled
 and met together, did wilfully and maliciously break and
 destroy the windows of the dwelling house of the said A.
 B., in the said Parish of ——— and did then and
 there, forcibly and with violence, enter the said dwelling
 house and break and destroy the goods, chattles and fur-
 niture of the said A. B., being therein, and did then and
 there assault, beat and ill treat the said A. B., to his great
 injury and damage and against the peace. Wherefore
 prays Justice.

Sworn at ——— in the }
 said District, this ——— day } (Signed,) A. B.
 of ——— 18 —, before me. }
 (Signed,) W. R., J. P.

The proceedings before the Justice on this complaint
 are in the usual form for a misdemeanor.

Information for felony, in continuing a riot for an hour,
 after the Riot Act has been read.

DISTRICT OF } Information of A. B. of the Parish of ——
 ————— } —— in the said District, yeoman, taken
 before me, W. R., Esquire, one of Her
 Majesty's Justices of the Peace in and for
 the said District.

The said A. B. being duly sworn, deposeth and saith, that on the —— day of —— at the Parish of —— in the said District, C. D. of the same Parish, labourer, E. F. of the same place, labourer, and G. H. of the same place, labourer, together with divers other persons to the number of (twenty) and more, being then and there unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, (*and for any particular purpose, as the case may be,*) and being then and there commanded by J. G. Esquire, one of the Justices of Her said Majesty, assigned to keep the peace in and for the said District, by proclamation made in Her Majesty's name, in the form directed by the Statute in that case made and provided, to disperse themselves and peaceably to depart to their habitations, or to their lawful business, the said C. D., E. F., G. H., and others aforesaid to the number of (twenty) and more, notwithstanding such proclamation made, did feloniously, riotously, and tumultuously continue and remain together by the space of one hour and upwards after such proclamation made as aforesaid, contrary to the said Statute and against the peace.

Sworn at —— in the said
 District, this —— day of
 —— 18 — , before me. } (Signed) A. B.
 (Signed,) W. R., J. P.

The proceedings on this information by the Justice are the same as in the cases of felony.

Information for riotously beginning to demolish (or for demolishing a house) under Act 4 and 5 Vic. c. 26. s. 6.

DISTRICT OF }
 _____ } Information of A. B., &c.

The said A. B. being duly sworn, deposeth and saith, that on the _____ day of _____, at the parish aforesaid, C. D. of the parish of _____ in the said District, labourer ; E. F. of the said parish, labourer, G. H. of the same parish, labourer, together with divers other persons, to the number of (twenty) and more, being then and there unlawfully, riotously, and tumultuously assembled and met together to the disturbance of the public peace, and being so assembled and met together, they the said C. D., E. F., G. H., and others aforesaid, to the number of (twenty) or more, did then and there feloniously, and with force and violence, begin to demolish and pull down (*or, demolish and pull down,*) the dwelling-house (*or, any house,*) of one J. G., situate in the said parish of _____, against the form of the act in such case made and provided, and against the peace.

Sworn at _____ aforesaid, }
 this _____ day of _____ } (Signed) A. B.
 _____, 18 __, }
 Before me, W. R. J. P. }

The proceedings on this information by the Justices are the same as in other cases of felony.

ROADS.—RAIL-ROADS.—TURNPIKE ROADS.

Roads,—See *Highways*.

 RAIL-ROADS.

The following Rail-roads are now established by law in this part of the Province :—

By the Statute 2d Will. 4, c. 58, a rail-road is established from Lake Champlain to the River St. Lawrence—amended by the Ordinance of 4th Vic. c. 18.

By Ordinance of 4th Vic. c. 10,—amended by Act of 4th and 5th Vic., c. 47, a rail-road is established from Sherbrooke to a point upon either bank of the River Richelieu.

By Ordinance, 4th Vic. c. 41, a rail-road is established from the city of Montreal to the Province line, at or near Point au Baudet,—extended by Act of 4th and 5th Vic., c. 49.

By Ordinance, 4th Vic., c. 41, a rail-road is established from Carillon to Grenville.

By the above Statute and Ordinances for the establishment of the several Rail-roads therein mentioned, the following matters and things fall within the summary jurisdiction of the Justices of the Peace.

1st. If any person shall in anyway obstruct or interrupt the free use of the rail-road, or of the carriages, engines, or other work incidental or relative thereto, or connected therewith, such person shall for every such offence incur

a forfeiture or penalty of not less than five pounds nor exceeding ten pounds.

See *Stat. 2 Will. 4, c. 58, s. 18.*

Ord. 4th Vic. c. 10, s. 18.

Ord. 4th Vic., c. 41, s. 19.

Ord. 4th Vic., c. 46, s. 18.

2nd. In all cases where the intended rail-road shall cross any public highway, on a level therewith, the rail-road company shall station and constantly keep at least one person as a guard, whose duty it shall be, to prevent any obstruction being or remaining upon the said rail-roads, or upon such public highway, and to watch over the safety of the persons and property passing and conveyed either upon the said highway, or upon the said rail-road—and for each and every neglect or refusal to comply with this provision, the said company shall incur a penalty of five shillings for each offence.

See *Ord. 4th Vic., c. 10, s. 6.*

3rd. When the rail-road crosses any public highway on a level therewith, the Rail-Road Company shall erect, and at all times maintain, a good and sufficient gate on each side of such public highway, which gates shall be constantly kept shut, except at such time as waggons, carts and other carriages pass through, and every driver or person entrusted with the care of any waggon, cart or other carriage, is directed and required to cause the said gates and each of them to be shut, as soon as such carts and other carriages shall have passed through, under a penalty of five shillings for each offence.

See *Stat. 2, Wm. 4, c. 58, s. 6.*

Ord. 4th Vic. c. 41, s. 6.

Ord. 4th Vic. c. 46, s. 6.

4th. All fines and forfeitures as above imposed, or which shall be imposed by virtue of any rule, order or law to be made in pursuance of the authority granted to the said Rail Road Companies, (of which rule, order or by-law, when produced, all Justices are required to take notice) the levying and recovering of which fines, shall, upon proof of the offence before any one or more Justices of the Peace for the District within which such offence shall have been committed, either by the confession of the party or parties, or by the oath or affirmation of any one credible witness, (which oath or affirmation, such Justice or Justices are empowered and required to administer without fee or reward,) be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal, or hands and seals of such Justice or Justices, and all such respective fines, forfeitures and penalties, when not otherwise directed by law, shall be paid into the hands of the Treasurer or Receiver of the monies raised by virtue of the Statute and Ordinances aforesaid, and shall be applied to the use of the said-rail roads, and for want of sufficient goods and chattels, whereof to levy such penalty and expences, the offender shall be committed to the common Gaol of the District, within which such offence shall have been committed, there to remain without bail or main-prize, for such term, not exceeding one month, as such Justice or Justices, shall think proper, unless such penalty or forfeiture, and all costs and expences attending the same, shall be sooner paid and satisfied.

See *Stat. 2, Wm. 4, c. 58, s. 43.*

Ord. 4th Vic., c. 10, s. 46.

Ord. 4th Vic., c. 41, s. 49.

Ord. 4th Vic., c. 46, s. 46.

TURNPIKE ROADS.

The following turnpike roads have also been established by law, in this part of the Provinces.

By Ordinance of 3rd Vic. c. 31, amended and enlarged by Ordinance of 4th Vic. c. 7, and further amended by Act 4th and 5th Vic. c. 35, provision is made for the improvement of the roads in the neighbourhood of, and leading to the city of Montreal, by the establishment of sundry turnpike roads, as therein mentioned.

By Ordinance of 4th Vic. c. 8, means are provided for keeping in repair that part of the road from this Province to New Brunswick, commonly called the Temiscouata Road.

By Ordinance of 4th Vic. c. 11, provision is made for the construction of a Turnpike Road, from the river Richelieu opposite the Town of Dorchester, commonly called St. John's, to the village of Granby.

By Ordinance of 4th Vic. c. 16, provision is made for establishing and maintaining better means of communication between the city of Montreal and Chambly, by the construction of a Turnpike Road.

By Ordinance of 4th Vic., c. 17, provision is made for the improvement of certain roads in the neighbourhood of, and leading to the city of Quebec, and for raising a fund for that purpose.

By Ordinance of 4th Vic., c. 22, provision is made for the improvement of a certain part of the road from the city of Montreal to the Cote St. Michel in the Parish of Sault au Recollet.

By the above Ordinances for the establishment of the several Turnpike roads therein mentioned, the following

matters and things fall within the summary jurisdiction of the Justices of the Peace. In some instances the matter of complaint is cognizable only by two Justices—where this is required, it is noted after each of the Ordinances hereinafter cited—in all other cases, one Justice is competent.

1st. If any person shall forcibly pass, or attempt to pass any Turnpike gate or Toll bar, without having first paid the legal toll thereat, he shall incur a penalty not exceeding forty shillings.

See *Ord. 3d Vic., c. 31, s. 25, before two Justices.*

Ord. 4th Vic., c. 8, s. 4.

Ord. 4th Vic., c. 11, s. 27, before two Justices.

Ord. 4th Vic., c. 16, s. 25.

Ord. 4th Vic., c. 17, s. 33.

Ord. 4th Vic., c. 22, s. 26.

2d. No person shall leave any waggon, cart, or other carriage, nor lay or leave any matter or thing creating an obstruction of any kind, in or upon the said roads, or the ditches, or drains thereof, under a penalty of twenty shillings.

See *Ord. 3d Vic., c. 31, s. 26, before two Justices.*

Ord. 4th Vic., c. 11, s. 27, before two Justices.

Ord. 4th Vic., c. 16, s. 24.

Ord. 4th Vic., c. 17, s. 32.

Ord. 4th Vic., c. 22, s. 26, before two Justices.

3d. If any person, after proceeding upon the said roads with any carriage, animals, or things liable to toll, shall turn out of the same into any other road, so as to evade

payment of the toll at any turnpike gate or toll bar, he shall for every such offence incur a penalty not exceeding ten shillings.

See *Ord. 3d Vic., c. 31, s. 27, before two Justices.*

Ord. 4th Vic., c. 11, s. 27, before two Justices.

Ord. 4th Vic., c. 16, s. 25.

Ord. 4th Vic., c. 17, s. 33.

Ord. 4th Vic., c. 22, s. 26, before two Justices.

4th. If any person or persons, body politic or corporate, occupying or possessing any enclosed lands near any of the said roads, shall, whether in the winter or at any other season, knowingly permit or suffer any person or persons to pass through such lands, or through any gate, passage or way thereon, with any carriage, animal, or thing liable to the payment of toll on such road, for the purpose of avoiding, and so as to avoid, the payment thereof, such person or persons so offending, and the person or persons so unlawfully permitted to avoid such payment, shall each and severally incur a penalty not exceeding ten shillings for each offence.

See *Ord. 3d Vic., c. 31, s. 28, before two Justices.*

Ord. 4th Vic., c. 11, s. 27, before two Justices.

Ord. 4th Vic., c. 16, s. 26.

Ord. 4th Vic., c. 17, s. 34.

Ord. 4th Vic., c. 22, s. 26, before two Justices.

5th. That no more than one full toll on one day (to be computed from twelve o'clock at night to twelve o'clock of the next succeeding night,) shall be taken or demanded at the same turnpike gate or toll house, for or in respect of the same horses, cattle or carriages passing or repassing through any of the gates on the line of the turnpike road

on the same day. But this exemption not to extend to any stage coach, waggon, carriage or cart, conveying passengers or goods for pay or reward, or to any horse or beast drawing the same, in respect of which toll shall be payable and paid every time of passing or re-passing. And if any person shall claim or take the benefit of any exemption, not being entitled thereto, he shall for every such offence forfeit and pay; according to the Ordinance of the 4th Vic., c. 11, and c. 16, any sum not exceeding twenty shillings; according to the Ordinance of the 4th Vic., c. 17, this fine not to exceed five pounds; according to the Ordinance of 4th Vic., c. 22, [this fine is not to exceed ten shillings.

See *Ord. 4th Vic., c. 11, s. 21 & 22, before two Justices.*

Ord. 4th Vic., c. 16, s. 11 & 12.

Ord. 4th Vic., c. 17, s. 13 & 15.

Ord. 4th Vic., c. 22, s. 17 & 18, before two Justices.

6th. In case the road, or any part of it, or the bridge over the River Yamaska, shall at any time be out of repair, it shall be lawful for any person to make complaint thereof in writing to the District Surveyor—or if there be no such officer, to any two Justices of the Peace having jurisdiction within the locality, in which such part of the said road or bridge, so being out of repair, may lie, and such District Surveyor, or Justices, shall thereupon, without delay, view and examine the part of the said road or bridge, so complained of, and shall, if such complaint be found to be just, give notice in writing to the toll gatherer, or gate keeper of the said bridge, as the case may be, to repair the said road or bridge; and in case the same be not repaired within such reasonable time as the said Surveyor, or the Justices may appoint, he or they shall order

the two toll gates nearest to the place so out of repair, or the toll gates on the said bridge, as the case may be, to be thrown open, and the said toll gates shall thereupon be kept open, and no toll shall be collected thereat, untill such part of the said road, or of the said bridge, so out of repair, shall have been sufficiently repaired, and a certificate from the said Surveyor, or Justices of the Peace, be granted to that effect. And every gate keeper, or toll gatherer, who shall not immediately obey such order to throw open such gates, or who, during the time such gates ought to have been kept open as aforesaid, shall hinder or delay any person passing, or take or demand any toll, shall for each offence forfeit the sum of forty shillings to the party aggrieved, to be recovered with costs as hereinafter provided. Provided always, that if the District Surveyor, or such Justices of the Peace, shall, after the part of the said road or bridge, so out of repair, shall have been sufficiently repaired, refuse to grant a certificate to that effect, or if by reason of their absence, application cannot be made to them, the gate keeper of any gate which shall have been so thrown open, may apply to any two Justices of the Peace, having jurisdiction within the locality in which such gate shall be situate, and such Justices shall thereupon examine into the matter in question, (and may, in case the said Surveyor shall have refused such certificate, summon him before them) and shall, if due proof be made of the sufficient repair of the said road or bridge, grant a certificate to that effect, which certificate shall to all intents and purposes have the same effect as the certificate of the District Surveyor, or of the Justices by whose order the gates were thrown open, and may condemn the District Surveyor, if he be found in fault, to pay the costs

of such summons and proceeding thereupon, which costs shall be levied by distress and sale of his goods and chattels under the warrant of the said Justices, or of one of them, if not forthwith paid.

See *Ord. 4th Vic., c. 11, s. 23, before two Justices.*

Ord. 4th Vic., c. 22, s. 22, before two Justices.

7th. If any Gate-keeper or Toll-gatherer shall unwarrantably hinder, or delay any traveller or passenger liable to pay toll, or shall demand more than allowed by law, he shall for every such offence forfeit a sum not exceeding twenty shillings to the person aggrieved.

See *Ord. 4th Vic., c. 11, s. 24.*

Ord. 4th Vic., c. 17, s. 10.

Ord. 4th Vic., c. 22, s. 23.

8th. The penalties imposed upon Gate-keepers and Toll-gatherers shall be recovered with costs, by complaint before any one of Her Majesty's Justices of the Peace having jurisdiction in the locality within which the offence shall have been committed, on the oath of one or more credible witnesses other than the party aggrieved, and may be levied with costs by distress and sale of the offender's goods and chattels, by warrant under the hand of such Justices, or one of them. And whenever goods and chattels of the defendant cannot be found to satisfy the judgment which may be rendered against him, it shall be satisfied by the company of the proprietors of the road, and if on demand, payment of the forfeiture and cost awarded by judgment be refused by the said company, the amount thereof may be recovered with costs, before any two Justices as aforesaid, in the manner aforesaid, from the said company, and may in like manner be levied by distress and sale of the goods and chattels of the

said company, under the warrant of such Justices, or of any one of them.

See *Ord. Vic., c. 11, s. 25.*

Ord. Vic., c. 22, s. 24.

9th. By Ordinance of the 4th Vic., c. 7, s. 11,—no person shall at any season of the year, for hire, or any valuable consideration, ferry, or transport by water carriage, any other person or persons, or any quadruped, vehicle, package of goods or any moveable effects, upon or across the several rivers mentioned in this Ordinance, (*the L'Assomption, Ottawa, and St. Lawrence,*) at any place or places within half a league of the bridges which the Trustees are by the said Ordinance authorized to construct under the penalty of five shillings for each person, quadruped, vehicle, package or moveable effects, which shall be so ferried or transported, which penalty with costs of prosecution to be recovered on the oath of one or more credible witnesses before any one Justice of the Peace for the District, and to be levied by warrant under the hand of such Justice or Justices by distress and sale of the defendant's goods and chattels.

And by Sec. 20, of same Ordinance, it is further ordained and enacted, that all the provisions, enactments, penalties, and other matters and things made and provided in and by the Ordinance of the 3d Vic., c. 31; for the enforcement of any of the powers thereby conferred on the Trustees, or on any person or officer, for the better preservation of the roads thereby placed under the controul of the Trustees, or the collection of the tolls therein imposed, or for the commutation of any such tolls, and not thereby expressly altered or repealed, shall be and are extended and shall apply to like cases, matters and things, touching

the roads and works placed under the controul of the said Trustees by this Ordinance, the tolls thereby imposed or the powers here conferred.

See *Ord. 4th Vic., c. 7, s. 11, & 20.*

The several penalties imposed by the before mentioned Ordinances, not exceeding forty shillings, for each offence, may be sued for and recovered with costs, on the oath of one credible witness before any one Justice of the Peace of the District, where the offence is committed, (in some instances two Justices are required, as before noticed after each Ordinance cited) who may on conviction, in default of payment of the penalty, commit the offender to the common Gaol for a period not exceeding two weeks for each offence, except for any offence committed against the Ordinance of 4th Vic., c. 8, where the commitment is limited to six days. By the Ordinance of 4th Vic., c. 11, and 4th Vic., c. 22, one moiety of the penalty is to be paid to Her Majesty, and the other moiety to the informer, by the other Ordinances, one moiety of the penalty goes to the informer, and the other moiety to the Trustees for the benefit of the road, except by the Ordinance of 4th Vic., c. 8, where the whole penalty is given to the Trustees.

In the complaints that may be made before the Justices of the Peace for the infringement of the enactments of the before mentioned Act and Ordinances, whereby a penalty has been incurred, such complaint, from the summary nature of the proceeding, should be embodied in the summons to be served on the offender, without the formality of a previously written information.

Summons, for obstructing a rail-way, by throwing and leaving impediments on it in the way of the Engine.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 ————— } Justices of the Peace, in and for the said
 } District.

To C. D., of the Parish of ————— in the said District, labourer.

You are hereby required and commanded to appear before the said Justice (*or if before two Justices, then say,*) and J. G., Esquire, another of Her said Majesty's Justices of the Peace, in and for the District, at ————— in the Parish of ————— in the said District, at the hour of ————— in the forenoon, to answer the complaint and information made before me, this day against you by A. B., of the said Parish, Engineer, for having on the ——— day of ————— instant, obstructed and interrupted the free use and communication on the rail-road established (*between the Lake Champlain and the River St. Lawrence*) in the said District, by depositing and leaving on the said rail road, in the Parish aforesaid, sundry packages, bags and bundles, whereby you have incurred a penalty of ten pounds, which penalty the said A. B., prays you may be condemned to pay, with the costs in this behalf, conformably to the law in such case made and provided. Hereof fail not. Given under my hand and seal at ———, in the said District, this ————— day of ———, one thousand eight hundred and —————.

(Signed) W. R., J. P.

This form of summons will apply to most of the complaints that may arise on any of the before mentioned Or-

dinances, and a summary conviction may be had thereon, either by default, should the offender fail to appear, after being duly summonsed, or after hearing him and his witnesses, as the case may be.

The returns to the sessions of these summary convictions, may be made according to the requirements of the Ordinance of the 2d Vic., c. 20, of which a form has been given. But in case of an appeal to the Sessions, the conviction must be drawn up according to the general form given under the title, *Conviction*.

By Act 4th Vic., c. 26, s. 14, if any person shall unlawfully and maliciously break down, level or otherwise destroy, in whole or in part, any turnpike, or any wall, chain, rail, post, bar, or other fence, belonging to any turnpike gate, set up or erected to prevent passengers passing by without paying any toll, directed to be paid by any Act or Acts, Ordinance or Ordinances, relating thereto, in force in this Province; or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll, every such offender shall be guilty of a misdemeanor and punished accordingly.

ROBBERY.

Robbery, signifies a larceny from the person, committed openly and violently, and may be defined to be, the felonious and forcible taking of goods or money, of any value, from the person of another, against his will, by violence, or putting him in fear,—4, *Bl. Com.* 243.—2, *East. P.* c. 797.

The gist of the offence, being the force and terror used by the offender, the value of the property stolen is quite immaterial, for a penny as well as a pound, forcibly taken or extorted, constitutes in law a robbery,—3, *Inst.* 69.—1, *Hale.* 532.—1, *Hawk. c.* 34, s. 16.

To make it a robbery, the taking must in all cases be by means of some *violence*, or *putting in fear*; for if a thief, clandestinely steals a purse, and on its being discovered in his possession, denounces vengeance against the owner, if he should dare to mention it, or to take any step against him, and then makes off with it, this is not robbery, but only larceny from the person, the words of menace being used after taking the purse,—2, *East. P. c.* 726.—1, *Hale.* 534.

Nor will any stealing of property amount to robbery unless it is taken in the presence of the owner,—2, *East. P. C.* 708.

Also, although goods may be taken by violence or putting in fear, sufficient to constitute a robbery, yet, if the *felonious intent*, or *animus furandi*, be wanting, this is no robbery; as when a man with menaces, or violence, demands and obtains property from another, under the *bona fide* impression, that the property is his own, this, although an unlawful act, will amount only to a trespass,—3, *C. and P.* 409.

The principle of robbery being violence, some degree of force is therefore necessary, to constitute the offence, but there may be a *constructive* as well as an *actual* force, for where such a terror is imposed on the mind, as not to leave the party a free agent, and in order to get rid of that terror, a man delivers his money, this is a sufficient force in law. And where actual violence is used, there need

not be an actual fear, for the law, *in odium spoliatoris*, will presume it,—2, *East. P. C.* 727.—*Fost.* 28.

By Act of 4th and 5th Vic., c. 25, robbery is considered under different degrees of aggravation. By Sec. 6, it is enacted that, if at the time of the robbery, the offender shall stab, cut or wound any person, he shall be guilty of felony and suffer death.

By Sec. 7, whoever, being armed with any offensive weapon or instrument, shall rob, or assault with intent to rob, any person, or shall together with one or more person or persons, rob, or assault with intent to rob, and at the time, or immediately before, or immediately after such robbing, beat, strike, or use any other personal violence to any person, shall be guilty of felony, and liable to imprisonment and hard labour at the discretion of the Court.

And by Sec. 10, and Sec. 11, whoever shall assault any person with intent to rob, or shall with menaces or by force, demand any chattel, money, or valuable security of any person with intent to stab, shall be guilty of felony, and liable to imprisonment for three years.

By Sec. 53, every principal in the second degree, and accessaries before the fact, are punishable in the same manner as the principal, and every accessory after the fact, is punishable by imprisonment.

Information for felony, for robbing a person violently in a dwelling house with stabbing, &c.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in and
 for the said District.

The said A. B., being duly sworn, deposeth and saith, that on the _____ day of _____ instant, at the Parish aforesaid, one C. D., of _____ in the said District, labourer, in and upon the said A. B., in the dwelling house of him the said A. B., in the said Parish of _____ did feloniously make an assault, and him the said A. B., did put in bodily fear and danger of his life, and him the said A. B., did then and there with some sharp and dangerous instrument, stab, cut and wound, and fifty pieces of silver coin, of the current coin of this Province called dollars, of the value of twelve pounds ten shillings, and one silver watch, of the value of three pounds, of the monies, goods and chattels of the said A. B., in the said dwelling house, then and there violently and feloniously, did steal, take and carry away against the peace, &c.

Sworn at _____ in the said
 District, this _____ day of
 _____ 18 — , before me. } (Signed) A. B.
 (Signed,) W. R., J. P.

The like for a felonious assault with intent to rob.

DISTRICT OF }
 _____ } Information, &c., (as above.)

The said A. B. being duly sworn, deposeth and saith, that on the _____ day of _____ instant, at the Parish aforesaid, one C. D., of _____ in the said District, labourer, with a certain offensive weapon, called a pistol, which the said C. D., in his right hand then and there held, in and upon the said A. B., unlaw-

fully and feloniously did make an assault, with a felonious intent, the monies of the said A. B., from the person and against the will of him the said A. B., then and there feloniously and violently to steal, take, and carry away, against the peace, &c.

Sworn at _____ in the }
 said District, this _____ day } (Signed,) A. B.
 of _____ 18 —, before me. }
 (Signed,) W. R., J. P. }

The like for a robbery on the highway.

DISTRICT OF }
 _____ } Information of &c., (as above.)

The said A. B. being duly sworn, deposeseth and saith, that on the _____ day of _____ instant, at the Parish aforesaid, on the Queen's highway there, one C. D. late of _____ in the said District, labourer, and C. F. late of the same place, labourer, in and upon him the said A. B. feloniously did make an assault, and him the said A. B. in bodily fear and danger of his life, on the highway aforesaid, then and there feloniously did put, and fifty bank notes, of the incorporated Bank of _____ in the said Province, of the value of one pound five shillings each of the current money of the said Province, and one pocket book, of the value of one shilling like current money, of the monies, goods and chattels of the said A. B., from the person and against the will of him, the said A. B., on the highway aforesaid, then and there feloniously and violently did steal, take, and carry away, against the peace, &c.

Sworn at _____ in the said District, }
 this _____ day of _____ 18 —, } (Signed) A. B.
 before me. }
 (Signed) W. R., J. P. }

Informations for offences of this description will necessarily vary in their circumstances, and the above forms are given merely to show the essential facts upon which the crime of robbery is founded, viz,—*violence*, or *putting in fear*, at the time of the offence committed. On these informations, the warrants for apprehending or committing the offenders, their examinations, the examination of the witnesses, and their recognizances to appear and give evidence, are in the usual form hereinbefore referred to.

SEARCH WARRANT.

By Act of the 4th and 5th Vic., c. 25, s. 55, it is enacted, that if any credible witness shall prove upon oath before a Justice of the Peace, that there is reasonable cause to suspect that any property whatsoever, or with respect to which any (*larceny or felony*) shall have been committed, is in any dwelling house, out house, garden, yard, croft, or other place or places, the Justice may grant a warrant to search such dwelling house, out house, garden, yard, croft, or other place or places, for such property as in the case of stolen goods.

A warrant of this description is a judicial act, and not to be granted without due examination of the fact, and it ought to confine the search to those particular places, which the party swears before the Justice, he has reason to suspect, contain the property. And therefore a general warrant to search *all suspected houses* for stolen goods, is illegal on the face of it, for it would be extremely dangerous to leave it to the discretion of a Common Officer, to arrest what persons, and search what houses, he thinks

fit, and as a Justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party, or to the officer to fill it up, so for the same reason, he cannot grant a general search warrant, which might in its consequences have the effect of a hundred blank warrants,—2, *Hale*. 150.—2, *Hawk. c. 13, s. 10, and 17*.

The warrant ought to be directed to a Constable, or other public or Peace Officer, and not to any private person; yet it is proper that the party complaining should be present and assist in the search, in order that he may identify the goods,—2 *Hale*. 150.

The Officer is justified, in the day time, in entering and searching the house specified in the warrant, whether the stolen goods are found there or not; and if the door be shut, and it be refused to be opened by those within, after demand made by the Officer, he may break it open to make the search—but if the goods are not found in the suspected house, then, although the Officer is excused, yet the party who made the suggestion is liable for the trespass,—for as to him, the breaking of the door is eventually lawful, or unlawful,—lawful if the goods are there, and unlawful if not there,—2 *Hale*. 151.

Where an Officer in the execution of a search warrant, at the desire of the party, delivered it to him for his perusal, and the latter refused to return it,—it was held that the Officer had a right to get it from him by force, and even to coerce his person to regain the possession of it—provided he used no more violence than was necessary,—3 *C. and P.* 34.

On the return of a search warrant, after the execution of it by the Officer, if it appear that the goods seized by him were stolen, they should not be delivered to the pro-

secutor, but ought to be deposited in the hands of the Constable or some other Officer, after some sufficient mark is put upon them, so as to identify them ; in order that the party robbed may proceed by indicting and convicting the offender, and to obtain restitution. But if it turn out that the goods are not stolen, they ought then to be restored to the possessor,—2 *Hale*. 151.

With respect to the party in whose custody the goods are found, if it turns out that they were not stolen, he is of course to be discharged ; and the same if the goods were stolen, if he is ignorant of the theft ; but though he is discharged as an offender, he should be bound over to give evidence as a witness against him who stole them, and if it appear that he knew they were stolen, the Magistrate must then commit him, or bind him over to answer for the felony,—2 *Hale*. 152.

Information to obtain a search warrant for stolen goods.

DISTRICT OF } Information of A. B., of the Parish of
 _____ } _____ in the said District, yeoman,
 taken before me W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in
 and for the said District.

The said A. B., being duly sworn, deposeth and saith, that on the _____ day of _____, one great coat of the value of five pounds, one fur cap of the value of three pounds and one pair of boots of the value of one pound, of the goods and chattels of this deponent, were feloniously stolen, taken, and carried away from and out of the dwelling house of this deponent at the Parish aforesaid, by some person or persons unknown, and that he

hath just and reasonable cause to suspect and doth suspect, that the said goods and chattels, or some part of them, are concealed in the dwelling house of C. D., of _____ in the said District, labourer, (*here add the causes of suspicion whatever they may be, as thus,*) he this deponent having lately seen upon the person of the said C. D., a great coat, which this deponent verily believes to be his property and part of the goods so feloniously stolen, taken and carried away as aforesaid. Wherefore prays that a search warrant may be granted to him to search the dwelling house of the said C. D., as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn at _____ in the said
 District, this _____ day of }
 _____ 18 —, before me, } (Signed,) A. B.
 (Signed) W. R., J. P. }

Search Warrant.

DISTRICT OF } W. R. Esq. one of Her Majesty's Jus-
 } tices of the Peace, in and for the said
 District, to any Constable or Peace Officer
 in and for the said District.

Whereas A. B. of the parish of _____ in the said District, yeoman, hath this day made oath before me, the said Justice, that on _____ day of _____, one great coat of the value of five pounds, one fur cap of the value of three pounds, and one pair of boots of the value of one pound, of the goods and chattels of the said A. B. were feloniously stolen, taken and carried away from and out of the dwelling-house of the said A. B., at the

parish aforesaid, by some person or persons unknown, and that he, the said A. B., hath just and reasonable cause to suspect and doth suspect, that the said goods and chattels, or some part of them, are concealed in the dwelling-house of C. D. of ———, in the said District, labourer. These are therefore in the name of our Sovereign Lady the Queen, to authorize and require you, and each and every of you, with necessary and proper assistants, to enter in the day time into the said dwelling-house of the said C. D., and there diligently search for the said goods and chattels, and if the same or any part thereof shall be found upon such search, that you bring the goods so found, and also the body of the said C. D., before me or some other Justice of the Peace, in and for the said District, to be disposed of and dealt withal according to law. Given under my hand and seal at ——— in the said District, this ——— day of ———, one thousand, eight hundred and ———

(Signed) W. R., J. P. [SEAL]

SEDITION.

Sedition, is understood to comprise within its meaning, all offences against the Queen and Government, which are not capital, and do not amount to the crime of Treason. Thus where there is no *actual design* against the Queen or the Government in contemplation,—a charge of sedition against the Queen, or of exciting sedition, or of writing, or of doing anything *seditionously*, will not amount to a charge of treason.

Sedition includes all offences of like tendency with treason, but without any such *direct intent*, or *overt act*, of the party *formed*, or *executed*, as to bring it within the more serious offence,—1, *East, P. C.* 76.—4, *Bl. Com.* 147.—1, *Hawk. c.* 65, *s.* 6. Thus all contempts of the Queen and Her Government—all riotous assemblies for political purposes, all seditious or other acts tending to obstruct the measures, or disturb the course of the Government, and in general all contemptuous, indecent, and malicious observations upon the person or government of the Sovereign, or of Her Representative and his administration in the Province, whether by writing or speaking, or by any other acts calculated to create jealousies or discontent in the minds of the people, or to weaken the public administration, are highly punishable, by fine and imprisonment.

SERVANTS.

See *Masters and Servants*.

SERVICE OF SUMMONSES, OR NOTICES.

In the course of the proceedings before the Justice of the Peace, he will have frequent occasion to issue a summons or notice to persons to appear before him, either to answer to some complaint, or to give evidence touching some information ; and as on the regularity of the service of such summons or notice, the validity of the subsequent proceedings of the Justice will often depend, it is necessary he should have before him such proofs of that service as

the law requires. Personal service is no doubt the best when it can be had, and it should be the duty of the Officer to endeavour, in all cases, to make such service, but more especially where an attachment may follow upon the default of the party to appear. But as it may often be difficult or impossible to make such personal service, the law considers it to be sufficient in most cases, when made at the usual place of abode of the party, describing the place and person, where and to whom such service is made,—see title, *Conviction*. The Justice should take the affidavit of the person making this service, and note it on the back of such summons or notice, before proceeding further thereon, that there may be evidence to shew the regularity of such proceeding.

SESSIONS.

The Sessions of the Peace is a court of record, holden before two or more Justices, for the execution of their general authority given them by the Commission of the Peace, as well as by certain Acts of the Legislature.

A Commission of the Peace has hitherto generally issued for each of the Districts in this part of the Province, by virtue whereof four General Quarter Sessions of the Peace are by law held in each District, viz : in January, April, July and October. To this Court in its respective sittings, all Justices of the Peace in the different parts of the Districts, are required to send the return of all summary convictions had before them, and all depositions, examinations, recognizances or other proceedings, having reference to any trial, or examination before it.

There are also *Special or Petty Sessions*, which are held on any special occasion for the execution of some particular branch of the authority of the Justices.

SHEEP.

For Sheep Stealing, see *Larceny*, 4th and 5th Vic., c. 25, s. 29.

Maliciously killing or maiming them, see *Malicious Injuries to Property*, 4th and 5th Vic., c. 26, s. 16.

SHIPS.

Stealing from any Ship or Vessel in port, &c., see, *Larceny*, 4th and 5th Vic., c. 25, s. 21.

Stealing from any Ship or Vessel wrecked, or in distress, see *Larceny*, 4th and 5th Vic., c. 25, s. 22.

Having in possession Shipwrecked goods, or offering the same for sale, see as above, s. 23, and 24.

SHRUBS.

Stealing, damaging or destroying them, see *Larceny*, 4th and 5th Vic., c. 25, s. 31, and c. 26, s. 19.

SLANDER.

Slander, is the malicious defaming of a man in his reputation, profession or livelihood, by words spoken as a libel, by words in print or writing. But the law makes an important distinction between merely words *spoken*, and words *published by writing or printing*,—1, *Ld. Raym.*

153.—2, *Ld. Raym.* 1029.—2, *Salk.* 417.—3, *Salk.* 188.—4, *Taunt.* 355. Words spoken only of a private person, however scurrilous, and even though addressed to the individual himself, are not the subject of an indictment, unless they tend directly to a breach of the peace, but words published in *writing* or *print*, though not directly scandalous in themselves, yet if they tend in any degree to the discredit of a man, have been held to be *libellous*, and punishable by indictment.

Although verbal slander affecting a private person, is not the subject of an indictment, yet any contemptuous or contumacious words spoken of a Judge of any Court, in the execution of his office, are properly indictable, so also words spoken to a Magistrate in the execution of his office, are indictable, as a matter that disturbs the public peace, and obstruct the administration of Justice,—4, *Bl. Com.* 124.—1, *Hawk.* c. 21, s. 7.—*Stark. on Libel.* 533. But when they are spoken of him, whilst not in the execution of his office, although they may refer to some particular act committed by him in his magisterial capacity, they are then not indictable,—1, *Str.* 420.

It seems, however, that where a Justice is insulted to his face, in the execution of his duty, he may take the summary mode of punishing the offender by committing him for the contempt, see *Dalt. c.* 173.—1, *Str.* 420.—2, *Salk.* 420.—7, *Taunt.* 63.

SOLDIERS—ENCOURAGING THEM TO DESERT.

By Ordinance of the Governor and Council of the 2d Vict., c. 16, (made perpetual by Ordinance of 3d Vict. c. 16,) made for the more ready and easy conviction of

offenders in this respect, it is ordained and enacted, that every person who shall by words or otherwise, directly or indirectly, persuade, or procure, any soldier in Her Majesty's service to desert and leave the same, or shall go about and endeavour to persuade, prevail on, or procure such soldier to desert, may, be prosecuted in a summary manner before any three Justices of the Peace for the District in which such offence shall have been committed, and if convicted, on the oath of one or more credible witnesses, may, by the said Justice, be condemned to pay a penalty of forty pounds sterling with costs, and may be committed by such Justices to the common gaol of the District, for a period not exceeding six months, and (if such penalty and costs be not forthwith paid,) then for such further time as the same shall remain unpaid, and such penalty when paid shall belong to and be paid to Her Majesty, her heirs or successors, or to the prosecutor, or person suing for the same.

—————

Information for encouraging a soldier to desert.

DISTRICT OF } Information of A. B. of the Parish of ———
 ————— } ——— in the said District, yeoman, taken
 before me, W. R. Esquire, one of Her
 Majesty's Justices of the Peace in and for
 the said District.

The said A. B., being duly sworn, deposeth and saith, that on the ——— day of ——— instant, at ——— in the said ——— this deponent was present and heard one C. D., now, or late of ——— labourer, endeavour to persuade and encourage E. F., a soldier in Her

Majesty's ——— Regiment of Foot, to desert from and leave the said Regiment, and further heard the said C. D., then and there promise and offer to the said E. F., money, and that he the said C. D., would furnish and provide the said E. F., with a suitable change of dress, and such other means as would assist and enable the said E. F., to escape, and desert as aforesaid.

Sworn at ——— in the said
 District, this ——— day of
 ——— 18 — , before me. } (Signed) A. B.
 (Signed,) W. R., J. P.

DISTRICT OF } Information and complaint of D. B., of
 ——— } ——— Esquire, Captain in Her Ma-
 jesty's ——— Regiment of Foot, now
 stationed at ——— in the said District,
 taken before me, W. R., Esquire, one of
 Her Majesty's Justices of the Peace, in
 and for the said District.

The said A. B. being duly sworn, deposeth and saith, that he is a Captain in Her Majesty's said ——— Regiment of Foot, that on the ——— day of ——— instant, E. F., a soldier in the company of this deponent in the said Regiment, deserted from and left the same. That this deponent hath been credibly informed and verily believes, that one C. D., now or late of ——— in the said District, labourer, did encourage, aid and assist the said E. F., so to desert, and did provide and furnish to the said E. F., the necessary means of his escape. That in consequence the said C. D., hath forfeited and become liable to pay to

Her said Majesty the penalty of forty ponnbs sterling and costs, and to be further imprisoned and dealt with as the law directs, for all which this deponent prays judgment against the said C. D., and that he may be condemned accordingly.

Sworn at _____ in the }
 said District, this _____ day }
 of _____ 18 —, before me. } (Signed,) A. B.
 (Signed,) W. R., J. P. }

Warrant to apprehend the offender.

DISTRICT OF _____ } W. R., Esquire, one of Her Majesty's
 _____ } Justices of the Peace, in and for the said
 District.

To any Constable or Peace Officer in and for the said District.

Whereas it appears to me by the oath of A. B., of the Parish of _____ in the said District, yeoman, and by the oath of D. B., Esquire, Captain in Her Majesty's _____ Regiment of Foot, now stationed at _____ in the said District, that on the _____ day of _____ instant, at _____ aforesaid, one C. D., now or late of _____ in the said District, labourer, did encourage, aid and assist E. F., a soldier in the said Regiment, to desert from and leave the same. These are therefore to command and require you, and each and every of you, that you take the said C. D., and bring him before me and others Her Majesty's Justices of the Peace, in and for the said District, to answer to the said complaint, and to be further dealt with according to law.

Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____ .

(Signed,) W. R., J. P. [SEAL.]

Proceedings of the Justices on the above complaint and information, on the defendant's being brought before them, —to be taken down and entered in some of their registers or diaries.

DISTRICT OF } At a special meeting of Her Majesty's Jus-
 _____ } tices of the Peace, holden at _____ in
 the said District, on _____ the _____
 day of _____ 18 _____ were present
 W. R., A. M., and J. S., Esquires, Jus-
 tices of the Peace in and for the said Dis-
 trict.

On the prosecution of D. B., Esquire, } The said C. D.
 Captain in Her Majesty's _____ Rgt. } having this day
 vs. } been brought be-
 C. D. of _____ labourer, Defendant. } fore the said Jus-
 tices on the warrant issued against him by the said W. R. to
 answer to the complaint and information made against him
 by D. B. Esquire, Captain in Her Majesty's _____ Re-
 giment of Foot, for having on the _____ day of _____
 instant, at _____ in the said District, encouraged, aided
 and assisted one E. F. a soldier in the said Regiment to
 desert from and leave the same, whereby the said C. D.
 hath forfeited and become liable to pay to Her said Majes-

ty, a penalty of forty pounds sterling and costs, and to be further imprisoned and dealt with according to law, the said D. B. in consequence praying for judgment against the said C. D. and that he be condemned accordingly.

And the said C. D. having heard the said complaint, as above stated, and being by the Justices asked, what he has to answer thereto, says, that he is not guilty of the offence charged in the said complaint against him.

Whereupon the following witness was (*or witnesses were*) adduced and examined in support of the prosecution.

A. B. of the Parish of ——— in the said District, yeoman, being duly sworn, deposeth and saith, (*his evidence to be taken down, if cross-examined by the defendant,—the cross-examination to be taken down in the same manner, and so of the other witnesses to be adduced. If the defendant produces any witnesses on his defence, their examination and cross-examination to be taken in the same manner; if he offers no evidence on his behalf, this should be mentioned.*)

The evidence being closed, the Justices will either immediately, or after deliberation, pronounce their judgment, either of conviction or acquittal; this may be entered summarily on their minutes, but in case of conviction, it should also be drawn up in the form prescribed by the Ordinance of 2d Vict., c. 20, as hereinbefore stated, and signed by the three Justices, that the same may be forwarded as required to the Quarter Sessions;—but in the case of a *Certiorari* issuing from the Court of King's Bench, the conviction must be drawn up according to the general form of conviction, which requires that all the evidence should be set out. See form, under title, *Conviction*.

Form of conviction on this complaint.

DISTRICT OF } Be it remembered that on the _____
 _____ } day of _____, in the year of our Lord
 one thousand eight hundred and _____ at _____
 in the said District, D. B., Captain in Her Majesty's
 _____ Regiment of Foot, who prosecutes in this be-
 half, came before W. R., Esquire, one of Her Majesty's
 Justices of the Peace, in and for the said District, and gave
 him the said Justice, to be informed, that on the _____
 day of _____ last, at _____ in the said District,
 one C. D., now or late of _____, did encourage, aid,
 and assist one E. F., a soldier in the said Regiment, to
 desert from, and leave the said Regiment, whereby the
 said C. D., hath forfeited and become liable to pay to the
 said D. B., who prosecutes as aforesaid, the penalty of
 forty pounds sterling and costs, and further to be imprison-
 ed and otherwise dealt with as the law directs, and pray-
 ing judgment of condemnation against the said C. D., in
 this behalf, and the said C. D., having been brought before
 us, the said W. R., and A. M., and J. S., Esquires, three
 of Her said Majesty's Justices of the Peace, in and for the
 said District, to answer to the said complaint, which said
 complaint is now here notified and communicated to the
 said C. D., and the said C. D., is by us the said Justices,
 asked, if he has any thing to say why he should not be
 convicted of the said offence as above charged, the said C.
 D., whereupon pleadeth, that he is not guilty of the said
 offence. Whereupon, on the _____ day of _____
 of the year aforesaid, at _____ aforesaid, one A. B.,
 of the Parish of _____, in the said District, yeoman,
 a credible witness, cometh before us the said Justices, and
 being by us the said Justices, in the presence of the said

C. D., duly sworn, he, the said A. B., deposeth and saith, (*here state the testimony of the witness in as far as it relates to the offence in question, and if cross-examined by the Defendant, then state,*) and the said A. B., being cross-examined by the said C. D. saith, (*here set forth the cross-examination. If more than one witness is produced in support of the prosecution, state in the same manner, the swearing, examination, and cross-examination of every such witness, and the evidence for the prosecution being closed, then say*):—And the said D. B., having no further evidence to offer in support of the said complaint, the said C. D., is by us the said Justices, asked what he hath to offer in answer to the evidence aforesaid. (*If the Defendant produces any witness on his defence, then say*):—Whereupon the said C. D., produces and offers as a credible witness on his behalf, one T. B., of ——— in the said District, yeoman, who being by us the said Justices duly sworn, and being examined by the said C. D., touching the premises, the said T. B., doth depose and say, (*here state his evidence, and cross-examination if any, and so with regard to any other witness that may be produced by the Defendant; if the Defendant produces no witness, then say,*) but the said C. D., doth not offer or produce any witness before us the said Justices in his defence aforesaid. (*Then proceed to enter judgment, thus:*) —And forasmuch as upon hearing and fully understanding said complaint, and the evidence given in support of it as aforesaid, and also upon hearing the said parties, and fully understanding all and singular the matters and things alleged and approved touching the premises, it manifestly appears to us the said Justices, that the said C. D., is guilty of the premises as above charged against him in and by

the said complaint, and thereupon we the said Justices do convict the said C. D., of the offence aforesaid, and do adjudge and condemn him the said C. D., to pay to the said D. B., who prosecutes in this behalf, the aforesaid penalty of forty pounds sterling money of Great Britain, and the costs of this prosecution taxed and allowed by us the said Justices at £ ———. And further we the said Justices, do adjudge and condemn the said C. D., to be committed and imprisoned in the Common Gaol of the said District, for the space of six calendar months, and that he the said C. D., do further remain and stand committed to the said Gaol, until the aforesaid penalty and costs shall be paid. In witness whereof, we the said Justices, to this record of conviction, do put our respective hands and seals, at ——— aforesaid, this ——— day of ———, one thousand, eight hundred and ———

(Signed) W. R., *J. P.* [SEAL.]
 A. M., *J. P.* [SEAL.]
 J. S., *J. P.* [SEAL.]

Warrant of commitment on the above conviction.

DISTRICT OF } W. R., A. M., and J. S. Esquires, three
 ——— } of Her Majesty's Justices of the Peace, in
 and for the said District.

To any Constable or Peace Officer, and to the Keeper of the Common Gaol, in and for the said District.

Whereas C. D. now, or late of ——— in the said District, labourer, hath this day been convicted before the said Justices, of having on the ——— day of ——— at ——— in the said District, encouraged, aided, and assisted one E. F. a soldier in Her Majesty's ——— Regiment of Foot, to desert from and leave the said Regiment, by reason whereof the said C. D. hath been by us the said Justices condemned to pay to D. .B Esquire, Captain in the said Regiment, who prosecuted in that behalf, the penalty of forty pounds sterling money of Great Britain, and the costs taxed at ——— and the said C. D. hath also, by us the said Justices, been condemned to stand committed and imprisoned in the said common gaol for and during the space of six calendar months, and further there to remain imprisoned until the said penalty and costs be paid. You the said Constables and Peace Officers, and each and every of you, are therefore commanded and required to take the said C. D., and him safely carry and convey to the said Common Gaol and deliver him into the hands of the said Gaoler,—and you the said Gaoler are hereby charged and commanded to receive into your custody the said C. D., and him safely keep in the said Gaol for and during the space of six calendar months, and further until he the said C. D., shall have paid the aforesaid penalty and costs. Hereof fail not. Given under our hands and seals at ———, in the said District, this ——— day of ———, one thousand eight hundred and ———.

(Signed) W. R., J. P. [SEAL.]
 A. M., J. P. [SEAL.]
 J. S., J. P. [SEAL.]

STOLEN GOODS.

Receiving—knowing them to be stolen.

See *Act 4th and 5th Vic., c. 25, sec. 47.*

See also, *Receivers of Stolen Goods.*

Taking a reward for helping to Stolen Goods.

See *4th and 5th Vic., c. 25, sec. 50.*

Restitution of Stolen Goods.

See *Act 4th and 5th Vic., c. 25, sec. 49.*

Searching for Stolen Goods.

See *Act 4th and 5th Vic., c. 25, sec. 55.*

See also, *Search Warrant.*

SUBORNATION OF PERJURY.

Subornation of Perjury at common law, is the procuring another to commit legal perjury, who, in consequence of the persuasion, takes the oath to which he has been incited,—*Hawk. B. 1, c. 69, sec. 10.*

See also *Stat. 5, Eliz. c. 9.*

To render the offence of subornation complete, either at common law, or on the Statute, the false oath must be actually taken, as no abortive attempt to solicit will bring the offender within its penalties,—3, *Mod. 122.*—1, *Leach. 455.*

But the criminal solicitation to commit perjury, though unsuccessful, is a gross misdemeanor, and punishable by fine and imprisonment, 2, *East. R.* 17.—6, *East.* 464.

In like manner, the dissuading, or attempting to dissuade a witness from giving evidence against a person indicted, is an offence at common law, punishable by fine and imprisonment,—1, *Hawk. c.* 21, *s.* 15.—2, *Stra.* 904.—2, *East.* 362.

SUMMONS.

There are two kinds of process, by which a Justice of the Peace is authorised to call before him, persons accused of any crime or offence, viz,—a summons, and a warrant,

It is almost unnecessary to observe, that when proceedings are under any particular Act or Ordinance, the course thereby directed, must be strictly followed, but if the law is silent in this respect, it is left to the Justice to adopt the course best suited to the circumstances of the case. The rule generally followed is, that in the following instances, a summons, and not a warrant, should be granted.

1st. If the charge be not for some breach of the peace.

2d. If it do not amount to felony, or suspicion of felony.

3d. If it be not so far of a criminal nature, that the Queen must be a party in the prosecution.

4th. When the punishment upon conviction is not corporal.

5th. When the information is not upon oath,—2, *Dick. J.* 927, 8.

The summons should be signed by the Justice, and directed to the party against whom it is issued, and where

any particular form is prescribed by law, that form must be observed.

The substance of the charge against the party should be contained in the summons, and a certain time and place should be fixed for his appearance, allowing him a reasonable delay for the attendance of himself and witnesses. See under the title *Conviction*, "*Summons*."

As to the service of the summons, see title, *Service of Summons*.

In cases of felony, or suspicion of felony, or misdemeanor, the Justices are also authorised to summon before them all such persons, as have any knowledge of the facts complained of, and to examine them on oath touching the same, and to bind them by recognizance to appear and give evidence before the Court, where the trial is to be had; and in case of such persons refusing to submit to such examinations, or to enter into such recognizance, the Justices may commit such person to the Common Gaol, until they shall submit to such examination or to enter into such recognizance, or be discharged by due course of law,—*Act 4th and 5th Vic., c. 24, s. 2.*

Form of Summons, on summary proceeding against a party before the Justices.

DISTRICT OF } W. R., Esquire, one of Her Majesty's
 ————— } Justices of the Peace, in and for the said
 } District.

To C. D., of the Parish of ——— in the said District,
 labourer.

Whereas information and complaint have this day been made before me the said Justice against you, the said C. D., that you (*here take in the charge made against the party, with the time and place, when and where committed.*) These are therefore in Her Majesty's name to command and require you personally to be and appear before me the said Justice, or such other Justice or Justices of the Peace in and for the said District, as may be then present, at _____ in the said District, on *Wednesday*, the _____ day of _____ instant, at the hours of _____ in the forenoon, to answer to the said complaint as the law directs. Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____.

(Signed,) W. R., J. P. [SEAL.]

Summons to a Witness to appear and give evidence before a Justice.

DISTRICT OF } W. R. Esq. one of Her Majesty's Jus-
 _____ } tices of the Peace, in and for the said
 District.

To C. D., of the Parish of _____ in the said District,
 yeoman.

Whereas information and complaint have this day been made before me the said Justice, that A. B., of _____ in the said District, labourer, (*here set forth the substance of the complaint, whether felony, suspicion of felony, or misdemeanor, with the time and place when and where committed,*) and it having been stated to me, the said Justice, that you are a material witness and can give information

in the premises. These are therefore in Her Majesty's name, to command and require you personally to be and appear before me the said Justice, or such other Justice or Justices of the Peace in and for the said District as shall be present, at _____ in the said District, on *Monday* the _____ day of _____ instant, at the hour of _____ in the forenoon, to be examined touching the information and complaint aforesaid. Herein fail not. Given under my hand and seal at _____ in the said District, this _____ day of _____ one thousand eight hundred and _____.

(Signed,) W. R., J. P. [SEAL.]

Affidavit of the Officer or person serving any summons.

DISTRICT OF } Be it remembered that on this _____
 _____ } day of _____ one thousand eight hundred and _____ personally came and appeared before me, W. R. Esquire, one of Her Majesty's Justices of the Peace in and for the said District, J. D. of _____ (*Constable or Peace Officer, or whatever his character may be,*) who, being duly sworn, deposeth and saith, that on *Thursday*, the _____ day of _____ instant, he served a true copy of the (*above or within*) summons on C. D. the person therein named, by delivering the same to himself personally, (*or to the wife, or man, or maid-servant of the said C. D. at his usual place of abode at _____ in the said District, as the case may be.*)

Sworn at _____ aforesaid,
 this _____ day of _____ }
 18 _____ } (Signed) J. D.
 Before me, W. R. J. P.

SURETY FOR THE PEACE.

See *Articles of the Peace.*

TAVERN-KEEPERS.

There have been several Acts and Ordinances made on the subject of Tavern-keepers, and persons keeping houses or places of public entertainment in this Province, subsequent to the British Statute of the 14th Geo. 3rd, c. 88. I shall here refer to the more material parts of those Acts and Ordinances, where the ministry or authority of the Justice of the Peace may be required, and thus far state the law as it now stands on this subject.

By the British Statute Geo. 3rd, c. 88, intituled, "*An Act to establish a fund towards further defraying the charges of the Administration of Justice, and support of the Civil Government within the Province of Quebec, in America,*—a duty of one pound, sixteen shillings, sterling is directed to be paid for every licence granted by the Governor, &c., to any person or persons for keeping a house, or any place of public entertainment, or for the retailing any spirituous liquors within the Province, and that any person keeping any such house or place of entertainment, or retailing any such liquors, without such licence, should forfeit and pay the sum of ten pounds for every such offence, upon conviction thereof. One moiety to such person as shall inform or prosecute for the same, and the other moiety to be paid into the hands of the Receiver General of the Province for the use of His Majesty.

By Act of the Provincial Legislature of the 35th Geo. 3rd, c. 8, intituled, "*An Act for granting to His Majesty Duties on Licences to Hawkers, Pedlars, and Petty Chapmen, and for regulating the trade; and for granting Additional Duties on Licences to persons for keeping houses of public entertainment, or for Retailing Wine, Brandy, Rum, or other Spirituous Liquors in this Province, and for regulating the same, &c.*,"—an additional duty of two pounds, currency, was directed to be paid by every person taking out a licence for keeping a house or any other place of public entertainment, or for retailing any Spirituous Liquors within the Province, in a less quantity than three gallons at one time, over and above the duty directed to be paid by the before mentioned Statute of 14th Geo. 3rd, c. 83. And by s. 7, it is enacted, that if any person or persons shall keep any house or other place of public entertainment, or shall retail any spirituous liquors as aforesaid, without having paid the said additional sum of two pounds, every such person shall, for every such offence, forfeit the penalty of ten pounds, sterling money of Great Britain, imposed by the aforesaid Statute upon any person for keeping such house or place of entertainment, or retailing any such liquors without such licence.

By Sec. 15, where the pecuniary penalty by this Act imposed does not exceed the sum of ten pounds, currency, or if imposed by the aforesaid Act of Parliament, where the same doth not exceed the sum of ten pounds, sterling, it shall be recovered with costs of suit, before any two of His Majesty's Justices of the Peace of the District wherein the offence was committed, in the weekly sittings of such Justices directed by law to be held at the Cities

of Quebec and Montreal, and Town of Three Rivers, except where otherwise provided, and in case of non-payment of the penalty and costs on conviction, the same may be levied by distress and sale of the offender's goods and chattels, and for want of sufficient distress, the offender to be committed to the Common Gaol of the District for a space of time not exceeding six months, nor less than one month, as such Justice may think most proper.

By Act of 45th Geo. 3rd, c. 10, intituled, "*An Act to prohibit the sale of Goods, Wares, and Merchandise, Wine, Spirits, and strong Liquors, on Sundays*;" any Tavern-keeper or other persons who keep a public house of any description whatever, who shall sell, vend, or retail any goods, wares, or merchandise, wines, spirits, or any strong liquors during the Lord's Day, commonly called Sunday, shall incur and pay for the first offence a fine or penalty which shall not exceed five pounds, and for the second and subsequent offence, shall incur a fine or penalty not less than five nor more than ten pounds currency.

By sec. 3, of this Act, the fines and penalties here imposed shall be recovered before one of His Majesty's Justices of the Peace, *nearest the place* where the offence has been committed, who is authorised and required to hear and determine such offence in a summary way, either by voluntary confession of the party, or upon the oath of one or more credible witnesses, other than the informer; and in all cases, where there is a default of payment of the sum forfeited, it shall be recovered by seizure and sale of the offender's goods and chattels, by warrant under the hand and seal of such Justice, addressed to any Peace

Officer, or Serjeant of Militia, and surplus of the money so recovered, after deducting the forfeiture and reasonable charges of seizure and sale, taxed by a Justice of the Peace, shall be returned to the owner.

That no suit or action shall be instituted against any person for any fine or forfeiture imposed by this Act, that shall not be commenced within two months after the offence committed. One moiety of the said fines and forfeitures to belong to the person prosecuting for the same, and the other moiety to belong to His Majesty.

By Act of 57, Geo. 3rd, c. 16, intituled, "*An Act more effectually to provide for the regulation of the Police in the Cities of Quebec and Montreal, and the Town of Three Rivers, and for other purposes therein mentioned,*" it is enacted, if any person licensed to sell spirituous liquors by retail, or to keep a house of public entertainment shall knowingly suffer any gaming in any house, out-house, apartment, or ground, belonging to, or in his or her occupation, for money, liquor, or otherwise, either with cards, dice, &c., or with any other implement or in any other manner of gaming, by any journeyman, apprentice, labourer, or servant, and shall be convicted thereof on the confession, or by the oath of any credible witness, before any Justice of the Peace, if in the Villages, or Country Parishes, within fifteen days after the offence committed, such person or persons so offending, shall forfeit and pay for the first offence the sum of forty shillings currency, and for the second offence the sum of five pounds, and be deprived of his, her, or their licence,

and also of being incapable of obtaining a licence to sell spirituous liquors or to keep a house of public entertainment for the space of one year.

Act of 58th Geo. 3rd., c. 2, intituled, "*An Act to provide more effectually for the security of the Cities of Quebec and Montreal, by establishing a watch and night lights in the said Cities, and for other purposes.*"

This Act expired on 1st May, 1821.

Act of 3rd Geo. 4th, c. 6, intituled, "*An Act to amend an Act passed in the 58th year of the Reign of Geo. 3rd.,*" (as above stated.)

This Act was continued to 1st May, 1827, when it expired.

Act of 3d Geo. 4th, c. 12, intituled, "*An Act to extend the powers of the Justices of the Peace, in certain cases specified in the 15th section of an Act of the Legislature of this Province of the thirty fifth year of the Reign of His Majesty George the Third, chapter 8th.*"

By this Act, the powers that may be exercised by any two of Her Majesty's Justices of the Peace in their weekly sittings to be held in the Cities of Quebec and Montreal, are conferred on any two Justices of the Peace, residing in the County, where the offence may have been committed. Provided always, that when any conviction shall take place before such Justices of the Peace, they shall be

bound to take in writing, the evidence upon which a conviction may have been made, to the end that in case of an appeal, the facts upon which such conviction has been made, may manifestly appear.

Act of 7th Geo. 4, c. 12, intituled, "*An Act to continue and amend certain Acts therein mentioned, establishing a watch, and providing for the lighting of the Cities of Quebec and Montreal.*"

This Act expired on 1st May, 1829.

Act of 9th Geo. 4, c. 7, intituled, "*An Act further to regulate persons who keep Houses of Public Entertainment, and retail spirituous liquors, &c., and for other purposes.*"

This Act expired on 1st May, 1831.

Act of 1st Wil. 4, c. 9, intituled, "*An Act to amend and continue for a limited time, a certain Act passed in the 9th year of the Reign of His late Majesty, &c.*" (*The above mentioned Act.*)

This Act expired on 1st May, 1834.

Act of 2d Wil. 4, c. 19, intituled, "*An Act to amend a certain Act passed in the first year of His Majesty's Reign, for regulating Tavern-keepers.*"

This Act expired on 1st May, 1834.

Act of 4th Wil. 4, c. 9, intituled, "*An Act to continue certain Acts therein mentioned.*"

This Act expired on 1st May, 1836.

Act of 6th Wil. 4, c. 14, intituled, "*An Act for the further regulation of Taverns and Tavern-keepers, and for other purposes therein connected.*"

This Act expired on 1st May, 1838.

Ordinance of 2nd Vic., c. 14, intituled, "*An Ordinance to amend a certain Act therein mentioned, and to provide for the better regulation of Taverns and Tavern-keepers.*"

The preamble to this Ordinance states,—Whereas it is necessary to amend a certain Act passed in the thirty-fifth year of the Reign of King George the Third, chapter eight, in so far as the said Act relates to persons obtaining licences to keep houses of public entertainment in this Province, and to the mode of obtaining such licences.

It therefore enacts, that hereafter, no licence shall be granted to any person for keeping any house or place of public entertainment within any Country Parish or Township, unless the person or persons applying for the same shall produce a certificate, as therein required, from the senior Justice of the Peace, the Officer of Militia highest in grade, and the Church-warden in office in such parish or township: or, where there is not a Justice of the Peace residing or present within such parish or township, from two Officers of Militia the highest in grade: or, where there is no Church-warden nor Justice of the Peace, from

the three Officers of Militia highest in grade, residing within the parish or township, for which such licence is applied for: or, if there be not in such parish or township three persons, who can, under the foregoing provisions, sign such certificate—then from such person or persons resident therein, as shall hold any of the offices or grades as aforesaid. Nor shall any person receive such licence unless the certificate of being a fit and proper person to obtain the same, shall also state, that he has a house, stable, and accommodation for travellers, according to the requirements of this Ordinance, and that he has entered into the bond to Her Majesty, before one or more Justices of the Peace, jointly and severally, with two sureties to the satisfaction of the persons granting such certificate, for the payment of all penalties, which he may be condemned to pay for any offence against the provisions of this Ordinance, or of the Act hereinbefore cited, during the time for which such licence shall be obtained; provided always, that the person or persons demanding such certificate, shall not be at the same time traders in, or retailers of spirits, brandy, wine, or any other kind of spirituous liquors.

By Sec. 2, nothing in the aforesaid provisions to prevent Justices of the Peace in the Cities of Quebec and Montreal, or Town of Three Rivers, from granting certificates as heretofore, but only in Special Sessions of the Peace, to be held between the twentieth and thirtieth of January in every year, and of which public notice to be given.

By Sec. 3, every person holding a licence to keep a house of public entertainment, who shall, at any hour, refuse to receive any traveller, not residing within the Pa-

rish or Township in which such house is situate, or who at any time shall not have in such house, two good beds at least for the accomodation of travellers, in addition to those used by the family, or shall not have, in a stable attached to such house, convenient stalls for at least four horses, with a sufficient quantity of hay and oats,—may be prosecuted in the same manner, and under the same provisions, and shall on conviction be subject to the same penalties and punishment as are by law provided with regard to persons who retail spirituous liquors without a licence for that purpose, and such penalties shall be levied, applied and accounted for, and such punishment awarded in the manner by law provided, with respect to those annexed to the offence last named. And if sufficient goods and chattels belonging to the person offending, shall not be found, the said penalties shall be levied of the goods and chattels of the persons who shall have become sureties for the payment thereof.

By Sec. 4, no person shall receive a licence to keep a house of public entertainment, and to sell spirituous liquors therein, unless to the certificate of his or her being a fit and proper person to obtain such licence, there shall be annexed an affidavit, (*as referred to*) duly made and sworn to by him or her, before some one of Her Majesty's Justices of the Peace (*by the Ordinance authorised and empowered to administer the necessary oath;*) and every person who shall, in making such affidavit, wilfully swear falsely, shall on being convicted thereof, be liable to the pains and penalties of wilful and corrupt perjury.

By Sec. 5, the Justice of the Peace, (*or where there shall be no Justice of the Peace,*) the Officer of Militia, highest in grade, in each Parish or Township, shall, on or

before the fifteenth day of May, in each and every year, transmit to the Clerks of the Peace, within their respective Districts, a list of the persons to whom certificates have been granted, in their respective Parish or Townships. This certificate to be in the form here referred to.

By Sec. 6, that no certificate granted, either under the provisions of this Ordinance or of those of the Act hereinbefore cited and amended, shall give the person or persons obtaining it; any right to obtain a licence to keep a house of public entertainment, or to sell spirituous liquors, but that such licences shall be granted to such persons only among those who shall have obtained such certificates, to whom it shall be deemed meet by the Governor, Lieutenant Governor or person administering the Government of the Province, to grant the same; and any such licence may, at any time, be annualled and cancelled by a letter from any Officer, duly authorised to that effect by the Governor, &c., and delivered before two witnesses to the person holding such licence, who shall thereafter be held in all respects, and to all purposes of law, to have no licence to keep a house of public entertainment, or to retail spirituous liquors.

By Sec. 7, no licence shall be granted for keeping any such house or other place of public entertainment, until the person or persons applying for the same shall have entered into a bond to Her Majesty, before one or more Justices of the Peace in the sum of forty pounds currency, with two securities, in the sum of twenty pounds each, to do, perform and observe the conditions and requirements of this Ordinance and of the Act hereinbefore cited and amended; which bond shall, within one month, from the time of the taking of the same, be transmitted by the said

Justice or Justices, to the Clerks of the Peace, for their respective Districts.

By Sec. 10, it shall not be lawful for any person or persons who shall have obtained a licence in the manner before mentioned, to proceed to sell or retail spirituous liquors, or to keep a house of public entertainment, until he, she, or they shall have exhibited such licence to the person, or to one of the persons hereby authorised to grant certificates for licences, and such person shall, on the first Sunday thereafter, cause such licence to be publicly read at the Church door of the Parish, Seignory or Township, for which the same shall have been granted immediately after Divine Service in the forenoon, or where there shall be no Church, then at the place of most public resort in the Seignory or Township, for which such licence shall be granted, and shall affix, or cause to be affixed, on the door of such Church, or where there is no Church, at the place of most public resort, a notification, that the person to whom such licence hath been granted, hath been, and is duly qualified and authorised to sell spirituous liquors, or to keep a house of public entertainment in such parish or place, and every such person holding such licence, who shall sell spirituous liquors, or keep a house of public entertainment, before he or she shall have exhibited such licence in the manner hereinbefore provided, shall be liable to the penalty or penalties imposed by law on persons selling spirituous liquors without licence.

By Sec. 11, every person who shall obtain a licence to keep a house of public entertainment, and to retail spirituous liquors therein, shall place upon his house in an exposed situation, a notice in legible characters, shewing

that such person is so licensed as a Tavern-keeper. And every person who shall refuse or neglect so to do, shall incur the penalty of not less than twenty shillings, nor more than forty shillings currency, and shall be liable for a second offence, to the forfeiture of his licence, which he may in such case be condemned to forfeit, on conviction of such offence before any two Justices of the Peace.

By Sec. 12, whenever any person holding a licence to keep a house of public entertainment, and to retail spirituous liquors, shall be convicted of having kept a disorderly house, or convicted before two Justices of the Peace, of knowingly vending spirituous liquors during Divine Service on Sundays or holidays (*except for the use of travellers, not being persons usually resident in that or any adjoining Parish, Township, or extra parochial place,*) or of suffering any seaman, soldier, apprentice, servant or minor, to remain tipping in his or her house after seven o'clock in the evening in winter, or after nine o'clock in the evening in summer, or of having committed any felony; the Court, or such Justice of the Court of King's Bench, or the Provincial Judge, or the Justice of the Peace, before whom such persons shall have been convicted, shall, if he, or they shall think fit, adjudge and order that the licence thus held by any such person so convicted, shall be forfeited, and that he, or she, shall no longer keep a house of public entertainment or retail spirituous liquors in virtue thereof, and that he, or she, shall be incapable of having or holding any licence for such purpose thereafter.

By Sec. 13, all and every the provisions contained in this Ordinance shall extend to and have force and effect in all and every Township and Seignior, and all and

every extra parochial part or parts of Townships and Seigniories in this Province.

By Sec. 14, any person or persons (except such persons as have obtained licences to keep houses, or other places of public entertainment,) who shall sell or retail ale, or other malt liquors, or cider, or spruce beer, ginger beer, or other fermented liquors, to be drank in their house, out-house, yard, garden, orchard, or other place, shall be considered and deemed to be liable to the penalty or penalties which are by law imposed on persons keeping houses or other places of public entertainment without a licence,—and such penalty or penalties may be sued for and recovered, and shall be distributed, applied, and accounted for in the manner and form provided by law, with regard to penalties imposed on persons selling spirituous liquors without a licence.

By Sec. 15, no person shall, in the country parishes, open any house, or put any sign for the sale of beer, or any sort of fermented liquor, or cakes, or shall otherwise publicly sell, or dispose of any such articles, at any stand or place in any such parish, without first obtaining a licence signed by the Church-warden in office, or by the *nearest* Justice of the Peace, (*which licence must be renewed every year,*) and every person obtaining such licence, shall exhibit the same whenever he shall be thereunto required, by any Peace Officer, or Officer of Militia,—and every person who shall in any way offend against the provisions of this Section, or any of them, shall, for every such offence, and being duly convicted thereof on the oath of one credible witness other than the informer, before any Justice of the Peace, incur the penalty imposed for such offence, not exceeding ten pounds, currency, where-

of one moiety shall belong to Her Majesty, and the other moiety shall belong to the informer, and the Justice of the Peace before whom such conviction shall take place, shall, and he is by the said Ordinance authorised, if such penalty be not forthwith paid, to commit the offender to the common gaol of the District, for a period not exceeding thirty days, or until such penalty be paid.

By Sec. 16, it shall be the duty of each and every Serjeant of Militia, in the country part, of this Province, to prosecute each and every person, whom he shall have reasonable cause to believe to have committed any offence whatever for which a penalty is imposed by this Ordinance within the Parish, Seignior, or Township in which such Serjeant shall reside, and for each case in which it shall be proved by the oath of any one credible witness, that any such Serjeant has neglected so to prosecute for any such offence within fifteen days after sufficient information had been laid before him, to give him reasonable cause to believe that such offence had been committed, or after he had himself such personal knowledge as would amount to such reasonable cause, he shall for such neglect incur a penalty not exceeding forty shillings, to be sued for, recovered and levied in the manner provided with regard to the penalties imposed by this Ordinance: Provided always, that any Serjeant of Militia, who shall under the requirements of this Ordinance, prosecute any offender, shall, if the offender be convicted, recover his necessary costs and disbursements actually incurred about such prosecution, but shall have no part of the penalty imposed on the offender, which penalty shall in such cases belong exclusively to Her Majesty for public uses in this Province.

By Sec. 17, that upon complaint before any two Justices of the Peace residing within the Parish, Seignior, or Township, of any offence against this Ordinance, such Justices may issue their Summons, under their hand and seal, enjoining the party complained of to appear before them, and answer such complaint, and upon due proof of such offence, by the oath of any credible witness, other than the informer, such Justices shall adjudge that the offender has forfeited a penalty, equal in amount to that imposed on such offenders, that is to say, a penalty not exceeding ten pounds currency, one moiety thereof to Her Majesty, and the other to the informer, with costs, and may levy such penalty and costs, by warrant of distress to seize and sell the offender's goods and chattels in satisfaction of the said judgment,—and for want of sufficient distress, may issue their warrant to cause the offender to be apprehended and conveyed to the Common Gaol of the District, there to remain in safe custody until the said penalty and costs shall have been paid. Provided always that no person shall be detained in such custody longer than three months, by virtue of any such warrant.

By Sec. 18, no brewer of ale, beer, or other malt liquor, nor any distiller, or vender of spirits, brandy or other spirituous liquors, shall act as Justice of the Peace, or Officer of Militia, or Church warden under this Ordinance, and any order, judgment, or other thing whatsoever given or made by such person, as a Justice of the Peace, Officer of Militia, or Church warden, in or concerning any matter relative to this Ordinance shall be void and of no effect. And any person acting as a Justice of the Peace, or Officer of Militia, or Church warden, in contravention of this Ordinance, shall, for each such offence,

incur the penalty of ten pounds currency, recoverable with costs by civil action in any Court of competent jurisdiction, one moiety of which penalty to belong to the Queen, the other to the person suing for the same.

By Sec. 23, this Ordinance was to continue and remain in force until the first day of November, one thousand, eight hundred, and forty-two, and no longer. (But by a subsequent Ordinance of 4th Vic., c. 42, this Ordinance was made perpetual.)

Form of Affidavit referred to in Sec. 4 of this Ordinance.

DISTRICT OF } I, A. B., of the Parish (or place) of
 _____ } _____, in the County of _____
 in the District of _____, (*yeoman*), being duly sworn,
 do depose and say, that I am duly qualified, according
 to the laws of this Province, to obtain a Licence, to keep
 a house of public entertainment, and to retail spirituous
 liquors therein.—So help me God.

Sworn before me at _____ in the
 District of _____ this _____
 day of _____, one thousand, eight
 hundred, and _____ } (Signed) A. B.
 (Signed) W. R., *J. P.*

Form of Certificate referred to in Sec. 5.

DISTRICT OF } We, (or I), the undersigned, (*state the*
 _____ } *quality or condition in life*), of (*the*
place), in the County of _____, in the District of
 _____, do hereby certify that C. D. of the same

place is a fit and proper person to obtain a licence to keep a house of public entertainment and to retail spirituous liquors in the place aforesaid, and has given the bond required by law from persons applying for such licences ; and further, that we have visited and know the house and premises of the said C. D., and that he has in and on the same, the bedding, stabling, and accommodation for travellers required by law. Dated at ———— aforesaid, this ———— day of ————, one thousand, eight hundred and ————

Signature, }
 or }
Signatures. }

Form of Bond required by Sec. 7, of the above Ordinance.

DISTRICT OF } Know all Men by these presents, that
 ————— } we, A. B., of ————, in the said
 District, *yeoman*, C. D. of the same place, *yeoman*,
 and E. F. of the same place, *yeoman*, are held
 and firmly bound to our Sovereign Lady the Queen,
 in the several sums of money hereinmentioned, that is
 to say, the said A. B. in the sum of forty pounds,
 current money of the Province, and the said C. D. and
 E. F., each in the sum of twenty pounds, like current
 money, to be paid to our said Sovereign Lady the Queen,
 Her Heirs, and Successors,—for which payment well
 and truly to be made in manner as aforesaid, we, the
 the said A. B., C. D., and E. F., do bind ourselves, and
 each of us by himself, doth bind himself, our, and each
 of our heirs, executors, and administrators, firmly by

these presents. Sealed with our seals, dated at _____
 aforesaid, this _____ day of _____, in the year of
 our Lord, one thousand, eight hundred, and _____

Signatures. { A. B., [SEAL.]
 { C. D., [SEAL.]
 { E. F., [SEAL.]

The condition of this obligation is such :—that where-
 as the said A. B., hath applied to obtain a licence to keep
 a house of public entertainment, and to sell and retail spi-
 rituous liquors at _____ aforesaid. Now, if the said
 A. B., shall, during all the time the said licence shall be
 granted to him, well and truly do, perform and observe
 the several conditions and requirements of a certain Ordinance
 of the Governor and Special Council of the late
 Province of Lower Canada, made and passed on the
 eighth day of March, in the second year of the Reign of
 our Sovereign Lady Victoria, and in the year of our Lord
 one thousand eight hundred and thirty nine, and shall
 also well and duly do, perform and observe the conditions
 and requirements of the Act in and by the said Ordinance
 cited and amended, then this obligation shall be
 void, otherwise the same shall remain in full force.

Sealed, delivered and acknowledged before me, (*or us*)
 the subscribing Justice, (*or Justices*) of the Peace in and
 for the said District.

(Signatures) { W. R., J. P.
 { G. S., J. P.

Ordinance of 4th Vic., c. 42., intituled, "*An Ordinance to repeal in part, and to amend, and to render permanent as amended, a certain Ordinance therein mentioned relative to taverns and tavern-keepers, and to make further provision relative to the same subjects.*"

The preamble to this Ordinance, states, whereas it is expedient to amend and render permanent a certain Ordinance passed in the second year of Her Majesty's Reign, and intituled, "*An Ordinance to amend a certain Act therein mentioned, and to provide for the better regulation of taverns and tavern-keepers,*" and proceeds to enact, that by virtue of the power given by the 17th sec. of the Ordinance of the 2d Vic., c. 14, to any two Justices of the Peace residing in the County in which the offence shall have been committed, to hear and determine the same, yet that no offender shall by such Justices be enjoined to appear or to answer any complaint at any place out of the limits of the Parish, Seigniorly or Township in which the offence shall have been committed. And by Sec. 5, it is ordained and enacted, that this Ordinance and the Ordinance hereinbefore referred to (Ord. 2d Vic., c. 14,) shall be and remain permanent and in force, until altered or repealed by competent authority.

The complaints to arise on the law relating to taverns and tavern-keepers may be various and frequent, in all which cases, the power and authority of a Justice, or Justices, to take cognizance of such complaints, and the nature and extent of the penalties to be inflicted, are sufficiently pointed out.

It may, however, be proper to observe upon the 15th and 17th Sections of the above Ordinance of 2d Vic., c.

14, that care should be taken to interpret them in such way as to prevent any discrepancy in their application. By the 15th section of this Ordinance, it is enacted, that for the offence of selling beer, or any sort of fermented liquor, or bakes without licence, a penalty not exceeding ten pounds, may be incurred, and the party may be convicted of that offence before *any Justice* of the Peace, who is authorised, when the penalty is not forthwith paid, to commit the offender to gaol, for a period not exceeding *thirty days*.

Now what may be done by or before one Justice, may unquestionably be done by or before two or more Justices, and should the complaint for this offence be brought before *two Justices* instead of one, they could take cognizance of it and convict the offender, but in case of non-payment of the penalty, the *two Justices* could not inflict a greater punishment, nor commit the offender to Gaol for a longer space of time than *thirty days*, any more than the *one Justice* could do under this section of the law. But by the 17th section, it is enacted, that upon complaint before *two Justices of any offence* against this Ordinance, *they* may convict the offender in a penalty not exceeding ten pounds, and for want of sufficient distress, may commit him to Gaol for *three months*. It cannot certainly be presumed that the Legislature intended by this *general clause*, that by means of a trial before *two Justices*, a greater punishment might be imposed, than that before limited to a *particular* offence when tried before *one Justice*, unless such intention were clearly and positively expressed, nor in penal law would such interpretation be admitted.

The proceedings to be had before the Justices on com-

plaints under these Acts and Ordinances, begin by a summons to the party, in which is set out the matter complained of in plain and clear language, specifying the *time*—the *place*, and the *circumstances*, which bring it within some clause or section of the Law. The service of the summons, and proof of that service when the defendant does not appear, the taking his defence or answer to the complaint when he does appear, the examination on oath of the witnesses, and the judgment, either of conviction, or of dismissal of the complaint if not proved, must follow in their regular order; when costs are allowed, the amount must be taxed and inserted in the Judgment. And as every Summary Conviction before Justices must be returned to the Quarter Sessions, that return should be made out and signed by the Convicting Justice or Justices, according to the form before stated, as required by the Ordinance of 2d Vic., c. 20. Of all these proceedings the Justice ought to make and keep a regular statement in his Register, that he may be prepared to meet any demand that may be made upon him, either in the case of an appeal to the Sessions, (*when such appeal is by law allowed*,) or of a *Certiorari* issuing from the Superior Court, when a conviction must be drawn up according to the general form, in which the evidence must be set out. See what the beforementioned Act of 3d Geo. 4, c. 12, says on this subject.

Of all these proceedings sufficient forms may be drawn from those already given in similar cases, and do not therefore require to be here repeated.

THREATS AND THREATENING LETTERS.

See Act 4th and 5th Vic., c. 25, s. 8 and 12.

If one man threatens another, to deter him from doing some lawful act, or to compel him to do some unlawful one, or with intent to extort money from him, or obtain any other benefit, (*whether real or imaginary*) to the person who makes use of the threat, this has always been considered a *misdemeanor* at common law. Thus to threaten a Plaintiff, for suing a Defendant, or a Counsellor or Attorney, for being employed against any party in a suit, a Juror, for his verdict, or a Gaoler or other Ministerial Officer, for keeping a prisoner in custody, and properly executing his duty, are offences for which the party may be indicted, and punished by fine and imprisonment,—4, *Bl. Com.* 126.—2, *Ch. C. L.* 149.—2, *Dick.* 1292.

The sending or delivering *letters or other writings*, containing threats, with a view, or for the purpose of extorting money, was for a long time treated and punished as a capital felony, by Statute 9, Geo. 1, c. 21, s. 1, and 27, Geo. 2d, c. 15, but now, by the Act 4th and 5th Vic. c. 25, s. 12, if any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing, or threatening to accuse any person of any crime punishable by law with death or transportation; or of any assault with intent to commit any rape, or of any attempt or endeavour to commit rape; with a view or intent to extort or gain from such person any chattel, money, or valuable security, every such person shall be guilty of felony, and liable to imprisonment and hard labour at the discretion of the Court.

Information for sending a threatening letter to extort money, &c.

DISTRICT OF } Information of A. B. of the Parish of ———
 ——— } ——— in the said District, yeoman, taken
 before me, W. R., Esquire, one of Her
 Majesty's Justices of the Peace in and for
 the said District.

The said A. B., being duly sworn, deposeth and saith, that on the ——— day of ——— instant, C. D., of ——— in the said District, labourer, did, knowingly and feloniously, send, or cause to be sent and delivered to this deponent and purporting to be written and signed by the said C. D., (*or in case there be no signature to the letter, or a fictitious one, the contents must be proved, to be in the handwriting of the party suspected, by some person or persons who have seen him write, and who believe the contents of the letter to be in his handwriting,*) by which said letter the following menaces and threats were, without any reasonable or probable cause, expressed towards this deponent, (*here insert the menaces*) against the form of the Act in such case made and provided, and against the peace, &c. Wherefore prays justice.

Sworn at ——— in the said
 District, this ——— day of } (Signed,) A. B.
 ——— 18 —, before me, }
 (Signed) W. R., J. P.

The warrant to apprehend the party,—his examination, and that of the witnesses, and the warrant of commitment, are in the usual form hereinbefore referred to in cases of felony, observing always to state in each document, the facts set out in the information, as the groundwork of it.

TIME.

In the computation of any given period of time in legal proceedings, the general rule is, that one day is to be reckoned inclusive and the other exclusive,—2 *Dick.* 1297.

So where any stated time is limited in a penal Statute for the prosecution of an offender, the day on which the act is done, is to be included in the reckoning.—*Doug.* 465,—3 *T. R.* 632. As where a statute provides, that all prosecutions for offences “shall be commenced within one month after the offence committed,” the month begins with the day on which the offence was committed.—3 *East.* 407.—2 *Camp.* 296.

Where the word, “*Month*” is used in any Statute, without the addition of the word, “*Calendar*,” or other words shewing that a calendar month is meant, it is to be deemed a “*Lunar Month*” of twenty eight days. And in all matters temporal the term *month*, is understood to mean a *lunar month*,—2 *Bl. Com.* 141.—6 *T. R.* 224.—1 *Bing.* 307.

TREASON.

Treason imports a betraying, treachery, or breach of faith, and when levelled against the Queen or Government, is denominated *High Treason*. This being the highest Civil Crime which any man can possibly commit, ought therefore to be the more precisely ascertained. To prevent the inconvenience arising from the multitude of

Constructive Treasons in England, the Stat. of 25th Ed. 3rd, c. 2, was passed, to define what offences only in future should be held to be treason.

This Statute constitutes a part of the Criminal Law of this Province, and comprehends this crime under seven branches :—

1st, When a man doth compass or imagine the death of our Lord the King, of our Lady his Queen, or of their Eldest Son and Heir.

This necessarily includes the Queen regnant, as she is invested with royal power, and entitled to the allegiance of her subjects.

2nd, If a man do violate the King's Companion, or the King's eldest Daughter unmarried, or the Wife of the King's eldest Son and Heir.

3rd, If a man do levy war against our Lord the King in his realm.

4th, If a man be adherent to the King's Enemies in his realm, giving them aid and comfort in the realm or elsewhere.

5th, If a man Counterfeit the King's Great, or Privy Seal.

6th, If a man Counterfeit the King's Money, and if a man bring False Money into the realm counterfeit to the money of England, knowing the money to be false, to make merchandise and trade withal.

7th, If a man Slay the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear and determine, being in their places doing their Offices.

In High Treason there are no accessaries, but all are principals, and therefore whatsoever act or consent will

make a man accessory to a felony, before the act done, the same will make him a principal in case of High Treason,—3, *Inst.* 921.

MISPRISION OF TREASON.

The Misprision of Treason, in legal understanding, signifieth, when one knowing of any Treason, though no party or consenting to it, and doth not reveal it in convenient time which every subject is bound to do, and give information thereof to the Queen's Privy Council or other Magistrate.

Although Treason and Misprision of Treason are not within the letter of the Commission of the Peace, yet inasmuch as they are offences against the peace and quiet of the Province, any Justice of the Peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence, and may take the examination of the person so apprehended, and the information of all those who can give material evidence against him, and put the same in writing, and also bind over such who are able to give any such evidence to the King's Bench or gaol delivery, and to certify his proceedings to such Court, and it is advisable, and the usual practice in cases of this kind, for the Justice to send an account immediately of all the particulars to the Privy Council or Secretary of State.

There may be also cases of suspicion laid before the Magistrate, particularly in times of trouble, or of disaffec-

tion to the Government, grounded upon circumstances that would authorise him to issue his warrant against any person so suspected, either for Treason, Misprision of Treason, or any seditious conduct connected therewith, or leading thereto. The timely interference of the Magistrate in such cases, may often prove instrumental in preventing much disturbance, or in checking its progress.

TREES.

Stealing Trees, see *Larceny*, 4th and 5th Vic. c. 25, s. 31.

Damaging or destroying, see *Malicious injuries to Property*, 4th and 5th Vic., c. 26, s. 19.

TURNPIKES.

See *Roads, Rail Roads, Turnpike Roads.*

VAGRANTS.

See *Idle and Disorderly persons.*

VEGETABLE PRODUCTIONS.

Stealing of,—see *Larceny*, 4th and 5th Vic., c. 25, sec. 34 and 35.

Destroying or Injuring,—see *Malicious Injuries, &c.*, 4th and 5th Vic., c. 26, sec. 21 and 22.

WARRANT.

A Warrant, is a precept under the hand and seal of a Justice of the Peace, or other public functionary, directed to some Officer, or other person, authorising him to do some act, which, by virtue of such warrant, he may lawfully do, within the jurisdiction of such Justice, or of the person granting it. It should set forth the time and place of making, and the cause for which it is made—it should be directed to the Constable or other Peace Officer. Or it may be directed to any private person by name, who is no Officer, for the Justice may authorise any one to be his Officer, whom he pleases to make such, —*Burns J. arrest*,—1 *H. H.* 581,—1 *B. and C.* 291. But a warrant left in blank, to be filled up by a third person, with the name of the Officer, after the warrant is signed and sealed, is illegal,—1 *East. P. C.* 310,—*G. T. R.* 122.

Warrants are of different kinds, the more general are
1st. Warrants to apprehend or arrest a party.

2d. Warrants of Distress.

3rd. Warrants of Commitment.

4th. Search Warrants.

There may also be warrants for other specific objects, unnecessary here to mention. 1st. Warrants to apprehend or arrest a party may be granted on the information on oath laid before a Justice of the Peace in all cases of treason, felony and breach of the peace, to bring the party before him, either for examination, or for such other or further proceedings as circumstances may require. Also for all such offences as by law he has power to punish,

the Justice may issue his warrant, when a different course is not otherwise directed,—1 *Brod and B.* 548.

A Warrant may be granted on suspicion, for the Justice is the competent judge of the probability offered to him of such suspicion,—1 *H. H.* 108,—4 *Bl. Com.* 290.

A Warrant may also be granted against a witness, who refuses, after notice, to appear before the Justice, and give evidence touching any case of felony or suspicion of felony brought before him,—4th and 5th Vic., c. 24.—See *Witness.*

Also in various offences punishable on summary conviction, the Justice may issue his warrant and bring the party accused before him, should he not appear after a summons served on him for that purpose,—4th and 5th Vic., c. 25, sec. 47,——c. 26, sec. 30,——c. 27, sec. 40.

In all light and petty offences, however, the Justice will seldom find it becoming his office to exercise his power to the utmost extent, when justice may be done by a milder course, more especially where the known character of the parties concerned would render such proceeding unnecessary, and as savouring too much of the *summum jus*, or rigour of the law,—13 *East.* 55.

2d. *Warrant of Distress.*—These are granted in execution of some judgment, and in general to levy some fine or penalty, of which a party has been convicted on summary proceeding before a Justice of the Peace.

As to the form of these Warrants,—see *Distress.*

3rd. *Warrants of Commitment*.—These imply the sending a person to prison, by the warrant or order of any Court or Magistrate, where the party has been convicted or is accused of some crime or offence. These are as various as the cases in which they may be granted.

See *Commitment*.

4th. *Search Warrants*.—These are generally granted, to authorise the searching for stolen goods, upon sufficient ground of suspicion being laid before the Justice upon oath.

See form under title, *Search Warrant*.

WIFE.

The wife of a man, (in law language, a *feme covert*,) is so much favoured in law, on account of the matrimonial subjection due by her to her husband, that if she commit theft, or even a burglary, by his coercion, or merely in his company, when the law presumes a coercion, she is held to be exempt from punishment, being considered as acting in either of these instances by compulsion, and not of her own free will,—4 *Bl. Com.* 28.

The presumption of coercion, however, does not amount to more than a *prima facie* presumption of law,—and therefore if it clearly appear in evidence, that the wife was not drawn to the offence by the husband, but that she was in fact the principal instigator of it, or was acting herself as a free and independent agent, she is in this case guilty as well as the husband,—1, *Russ.* 16.—1, *Leach*, 447.

If the wife also procure the husband to commit the offence, she is then an accessory before the fact in the same manner as if she had been *sole*,—1, *Hale*. 516.—2, *Hawk. c.* 29, *s.* 34.

In treason, considered as the highest crime in civil society, no plea of coverture shall excuse the wife, nor any presumption of her husband's coercion extenuate her guilt,—4, *Bl. Com.* 29.

In murder also, and offences of the like description which are prohibited by the law of nature, and are *mala in se*, the wife is held a responsible agent, notwithstanding the coercion of her husband.

In all cases where the wife offends alone, without the company or coercion of her husband, she is then as much responsible for her offence as any *feme sole*. And whenever she commits an offence in the absence of her husband, it will be no excuse, that she committed it by his order and procurement; but in such a case both husband and wife may be indicted together, the wife as principal, and the husband as accessory before the fact,—4, *Bl. Com.* 29.—*R. and R.* 270.

If a woman receive stolen goods into her house, knowing them to be so, or lock them up in her chest or chamber, without the knowledge of her husband, she alone may be indicted, and the husband shall not be charged for the offence. But if the ignorance of the husband be not satisfactorily proved, as by his continued absence from home, or by any other circumstances, this will, in most cases, impute the receiving to him, and not to the wife,—*Dalt. C.* 157.

In some cases where the law imposes a pecuniary penalty for the offence, the wife, although offending alone,

may involve the husband in the consequences of her misconduct, particularly when she is acting in his business, or for his interest, inasmuch as he may be made a co-defendant with her to any action or information for the penalty, and judgment may be given against them jointly,—1, *Hawk. c. 1, s. 13.*

It is said to have been decided that a *feme covert* may be convicted on a penal statute without joining her husband, but in that case the goods of the husband would not be liable to be distrained for the penalty,—*Paley. 60, 178.—2, Str. 1124.*

A wife cannot be convicted of felony in stealing her husband's goods, because she and her husband are considered but as one person in law, and for this cause even a stranger is not guilty of larceny in taking the goods of the husband; when he takes them by the delivery of the wife, or with her privity or consent,—1 *Hale. 514.—1 Leach. 47.*

But it is otherwise, if he take away the wife by force and against her will together with the goods of the husband. And if the wife take the goods of the husband and deliver them to B., who elopes with her and the goods as her adulterer, this too will be felony in B. for here no consent of the husband can with any reason be presumed, the wife and goods, in this case, being both taken away *invito domino*,—*Dalt. c. 10, p. b. 268.—Ry. and M. 243.*

When it is necessary to bind a married woman over as a prosecutrix or a witness, or for any other purpose, she ought not to enter the recognizance herself, inasmuch as a *feme covert* cannot legally bind herself by deed,—but the recognizance should be taken from others as her sureties in this behalf,—*Dalt. c. 117.*

A Justice may commit a woman, who is a material witness upon a charge of felony brought before him, if she refuse to appear at the Court to give evidence, or to find sureties for her appearance, notwithstanding the witness is a *feme covert*,—3 *M. and S.* 4.

See *Commitment*.

Information against a married woman, for receiving stolen goods and concealing the same.

DISTRICT OF } Information of A. B., of the Parish of —
 ————— } ——— in the said District, yeoman, taken
 before me, W. R., Esquire, one of Her Majesty's Justices of the Peace, in and for the said District.

The said A. B., being duly sworn, deposeth and saith, that on the ——— day of ——— last, at the Parish aforesaid, sundry goods and chattels, that is to say, one India shawl, of the value of five pounds, one muslin gown, of the value of two pounds and one pair of shoes, of the value of ten shillings, the property of this deponent, were feloniously stolen, taken and carried away from and out of the dwelling house of this deponent by some person or persons unknown. That this deponent hath just cause to suspect and believe, and verily doth believe that E. D., the wife of one C. D., of ——— in the said District, pedlar, in the absence of the said C. D., her husband and without his knowledge, did receive and take into her possession the aforesaid goods and chattels, knowing the same to have been so stolen, taken and carried away, and that the said goods and chattels or part thereof are, or is, now by the said E. D., concealed in the dwelling house of the

said C. D., at ——— aforesaid. Wherefore this deponent prays justice and that a warrant may be granted to him to search for the said goods and chattels, in the said dwelling house of the said C. D.

Sworn at ——— in the
 said District, this ——— day } (Signed,) A. B.
 of ——— 18 —, before me. }
 (Signed,) W. R., J. P.

The search warrant and other proceedings are in the usual form,—see *Search Warrant*.

WINTER TRAVELLING.

By Ordinance of the Governor and Council of the 3rd Vic., c. 25, intituled, “*An Ordinance to provide for the improvement, during Winter seasons, of the Queen’s highways in this Province, and for other purposes,*” it is, by sec. 4, ordained and enacted, that when two winter vehicles meet, or a winter vehicle meets a person on horse back, travelling on the same beaten track of snow, it shall be the duty of the driver or drivers of such vehicle, or vehicles, to drive their horses, or other beast of draught to the right, so that while passing, but one of the runners of such vehicles, shall occupy the beaten track.

By Sec. 5, the provisions of this Ordinance extend and are applicable to all public roads defined and laid out during the winter season by lawful authority, on the rivers and other waters when frozen and on land.

By Sec. 6, each and every person offending against the provisions of this Ordinance, shall for each such offence

incur a penalty of ten shillings currency, on conviction thereof before any Justice of the Peace for the District, on the oath of one credible witness other than the informer; and such Justice of the Peace may, if such penalty be not forthwith paid, with costs of the prosecution, commit the offender to the Common Gaol of the District, for a period not exceeding eight days,—one moiety of this penalty to belong to Her Majesty, the other moiety to the informer.

Summons on Complaint for refusing to give one half of a Winter Road to a Traveller.

DISTRICT OF } W. R. Esquire, one of Her Majesty's Jus-
 _____ } tices of the Peace, in and for the said
 } District.

To C. D. of the Parish of _____ in the said District,
 yeoman.

Whereas information and complaint have this day been made before me the said Justice, by A. B. of the Parish of _____ in the said District, trader, against you the said C. D. for that you on the _____ day of _____ instant, at the Parish aforesaid, (*or wherever the place may be*) while travelling in a vehicle or sled drawn by two horses on the winter roads defined and established in the said Parish, you met on the said road, the vehicle or sled of the said A. B. also drawn by two horses, but that you the said C. D. although then and there requested by the said A. B. refused to give to the said A. B. one half of the said road and to draw your said horses and vehicle or sled to the right, so that only one of the runners of your said vehicle or sled should occupy the beaten track on the said road,

but that on the contrary you the said C. D. did retain and occupy the whole of the said beaten track with both the runners of your said vehicle or sled, contrary to the Ordinance in such case made and provided, by reason of which offence, you the said C. D. have forfeited and become liable to pay the penalty of ten shillings, one moiety thereof to be paid to Her said Majesty, and the other moiety to the said A. B. the informer, and which penalty the said A. B. as well for Her said Majesty, as for himself, demands and prays, that you the said C. D. be condemned to pay with costs. These are therefore to command and require you the said C. D. to be and appear before me the said Justice at ——— in the said District, on *Monday*, the ——— day of ——— instant, at the hour of ten in the forenoon, to answer to the said information and complaint, and further to be dealt with according to law. Hereof fail not.

Given under my hand and seal at ——— in the said District, this ——— day of ——— one thousand eight hundred and ——— .

(Signed,) W. R., J. P. [SEAL.]

The service of the summons and subsequent proceedings in this case are similar to those prescribed in offences of this description.

WITNESSES.

The attendance of witnesses before the Justices of the Peace, out of Sessions, is an essential object in the administration of Justice, because from their depositions

and examinations he is enabled to take such proceedings against offenders, as the circumstances of the case may require.

In all cases of felony, or suspicion of felony, should witnesses refuse to attend before the Justice, after being summoned, or should refuse to be examined, or to enter into recognizance to appear and give evidence before the Court, the Justice may commit them to gaol, there to remain until they shall consent to their being examined, or to enter into recognizance, or be discharged by due course of law,—*4th and 5th Vic., c. 24, sec. 2.*—*Hale. 284.*

But Justices cannot in general compel the attendance of witnesses before them, except in cases of felony or suspicion of felony, otherwise than by a notice or summons to that effect,—*1 Stark. 81.*

A witness is not bound to find a surety to join with him in a recognizance for his appearance to give evidence, his own recognizance is all that is required.

It is a general principle that no informer, prosecutor or interested person can be a witness in a prosecution on a penal statute, but in several instances of summary conviction before the Justice of the Peace, the law allows the informer or prosecutor to be a witness, on his giving up all claim to any part of the penalty that may be imposed by such conviction,—*Ordinance 3rd Vic., c. 31, sec. 29.*—*Ordinance 4th Vic., c. 41, sec. 49.*—*Ordinance 4th Vic., c. 16, sec. 27.*—*Ordinance 4th Vic., c. 17, sec. 35.*—*Act 4th and 5th Vic., c. 26, sec. 56.*—*Act 4th and 5th Vic., c. 25, sec. 58.*—*Act 4th and 5th Vic., c. 26, sec. 24.*—*Act 4th and 5th Vic., c. 29, sec. 32.*

It is also a general principle, that husband and wife, being considered but one person in law, cannot be a wit-

ness for or against each other. Yet for personal injuries done by the husband to the wife, she may be a witness against him, she may swear the peace against him, and her dying declarations are admissible against him in case of murder and on the same principle, in case of personal injury by the wife to the husband, he may be a witness against her,—*B. N. P.* 287.—2 *Russ.* 606.—1 *Leach.* 500. 504.

ADDENDA.

As the Champlain and St. Lawrence Rail-road Company is the only one in operation, it has been deemed expedient to insert in the volume the Bye-laws of that Association, and to which reference is made *ante*, page 352.

Bye-Laws passed at a General Meeting of the Stockholders of the Champlain and Saint Lawrence Rail-road Company, on Monday, the 8th day of May, 1837 :—

- 1st. No person allowed to go on the engine, under a penalty of 10s. for each offence.
- 2d. No smoking allowed in the first class cars, under a penalty of 10s. for each offence.
- 3d. No person allowed to go on the top of the cars, under a penalty of 25s. for each offence.
- 4th. No dogs allowed in the first class cars, under a penalty of 20s. for each offence.

Bye-Laws passed at a General Meeting of the Stockholders of the Champlain and Saint Lawrence Rail-road Company, on Monday, the 17th day of July, 1843 :—

- 1st. No steam-vessel shall be permitted to make fast to any of the Company's wharves, which, from the construction of her furnaces or flues, may endanger the safety of the Company's property by fire, and all vessels coming-to at any of the said wharves for the purpose of landing or loading freight, shall moor at or remain to such part of the said wharf as the person in charge of the same shall direct, under a penalty of 50s. for every offence against this regulation, besides being liable for all damages which may arise in the premises.
- 2d. No hay, straw, burnt lime, or other combustible material, shall be landed on any of the Company's wharves, except by consent of the person in charge of said wharves, under a penalty of 50s. for every such offence.
- 3d. Any vessel or vessels making fast to any of the Company's wharves, (unless for the *purpose* of landing or loading freight thereon or therefrom,) or in any other way obstructing the free use thereof, will be subjected to the penalty of £10 imposed by the 18th Section of the Act by which the Company is incorporated.
- 4th. Any person or persons behaving in a riotous or disorderly manner in any of the Company's cars, or conveyances, or store houses, or upon any of the Company's wharves, or who shall in any way molest, prevent, or interfere with the servants of the Company in the due discharge of their respective duties, shall be subject to a penalty of 50s. for every such offence.

N. B.—The foregoing Bye-Laws are established in conformity to the powers granted by the 30th Section of the Act 2d Wil. 4, c. 58, and the penalties are to be levied in accordance with the 43d Section of the same Act.

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