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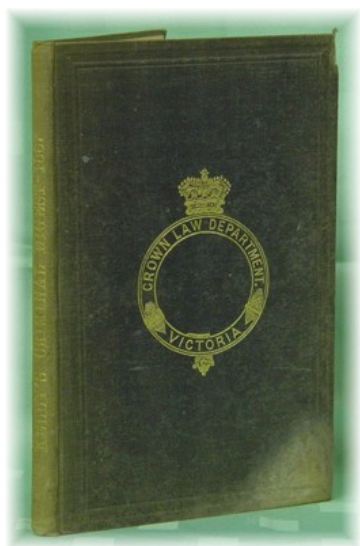
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A DIGEST

OF THE LAW OF

Crimes and Offences

IN VICTORIA,

AS DECIDED ON APPEAL FROM THE CENTRAL CRIMINAL COURT, COURT
OF ASSIZE, COURT OF INSOLVENCY, COURTS OF GENERAL AND
PETTY SESSIONS, NAVAL AND MILITARY COURTS, ETC.,
IN THEIR CRIMINAL JURISDICTION ; TOGETHER
WITH SOME SELECTED DECISIONS OF
JUDGES IN CHAMBERS.

BY

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BARRISTER-AT-LAW.

Melbourne and Sydney :

CHARLES F. MAXWELL, LAW BOOKSELLER AND PUBLISHER.

LONDON : W. MAXWELL AND SON, 8 BELL YARD, TEMPLE BAR.

C W Burford, Printer, 141 Flinders Street west, Melbourne.

PREFACE.

This volume is intended by the author, not only for the use of members of the legal profession, but also for magistrates, police officers who conduct prosecutions, and the public generally.

The author has often felt the want of a handbook of the decisions relating to convictions under the several Acts of Parliament of Victoria, where the decisions under each section could be seen at a glance.

The author hopes this book will meet the want, and especially be of assistance to magistrates who have to decide on the interpretation of Acts of Parliament without time or opportunity to consult the various authorities. Magistrates, though entitled to notice and to some extent protected by the Legislature, are still subject to the principles laid down in *Crepps v. Durdan*,¹ and *liable in damages and costs for acting in excess of or without jurisdiction*—which has actually happened to a friend of the author. According to the *dictum* laid down by the Chief Justice in *R. v. Alley, exp. M'Queen*,² and *R. v. Evans, exp. Deane*,³ magistrates will in future be held liable for the costs of appeal for the errors of the clerks of court.

It is presumed that all persons engaged in legal pursuits are already in possession of the various Statutes under which the following decisions are given. As their inclusion would considerably increase the cost of the work without materially increasing its value, it has been deemed advisable to exclude them.

SELBORNE CHAMBERS,
November, 1887.

1. Cowp. 640 ; Smith's Leading Cases, i. 716.

2. 6 A.L.T. 169.

3. 8 A.L.T. 144.

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A DIGEST

OF THE LAW OF

Crimes and Offences.

ABATTOIRS STATUTE, No. 356 sec. 36.—*Possession of Skin with Defaced Brand.*] The “brand” mentioned in sec. 36, which imposes a penalty upon any one having in his possession a skin from which the brand has been defaced, is a burned brand upon the skin itself, and not a surface brand upon the wool.

Smith v. McGann, 2 V. L. R., L. 264.

ABDUCTION (1).—*Criminal Law and Practice Statute 1864, No. 233 sec. 52—Taking in absence of Father.*] The prisoner was convicted of unlawfully taking an unmarried girl out of the possession and against the will of her father. During the temporary absence of the father the prisoner enticed her away with him. *Held* that the taking must be presumed to have been against the will of her father, if he would have refused his consent if asked. Conviction affirmed.

R. v. West, 5 A. J. R. 19.

————— (2).—*Abduction from motives of lucre or by fraud—Evidence of contingent interest in property—Criminal Law and Practice Statute 1864, No. 233 sec. 50.*] On a charge of abduction of a woman under age and having a future interest in personal estate, the only evidence of such interest was that of the parents, who had been informed that she was entitled under her grandfather’s will to £1000 when she should come of age; that her sister had received a similar sum under such will on coming of age, and that this had been told to the prisoner. *Held*, that the evidence was sufficient to sustain a conviction.

R. v. Taylor, 2 V. L. R., L. 95.

ARSON—*Building—Bark Hut—Criminal Law and Practice Statute 1864, sec. 156, 159.*] A bark hut, which has been used as a dwelling, may be the subject of the offence of arson,

EVIDENCE—

aboriginal woman is receivable under the "*Evidence Consolidation Act*," though she describes herself as the prisoner's "lulbra," and as "married" to him, if there be no other evidence of marriage.

R. v. Neddy Monkey, 1 W. & W., L. 40.

—————(33.)—*Non-professional witnesses.*] The evidence of non-professional witnesses who had opportunities of observing the deponent, is admissible to prove his or her inability, through sickness, injury, or pregnancy, to travel. 11 and 12 Vic. c. 42 sec. 17.

R. v. Hay, 3 A. J. R. 69.

—————(34.)—*Notarial protest—New trial.*] A notarial protest of the presentment and dishonour of the bills drawn by the defendant, who was charged with obtaining money under false pretences, was tendered in support of the prosecution. *Held*, that, although a notarial protest is evidence of the dishonour of a foreign bill, in an action on the bill, it does not therefore follow that it is also receivable in other actions, still less in criminal actions; and that it ought not to have been received, and that the defendant is entitled to a new trial.

R. v. Levey, A. R., 8th Sept., 1858.

—————(35.)—*Official signature.*] The signature of a public officer may be proved by a person whose knowledge of it is derived from seeing it on many official documents which he has known to be genuine, though he may never have seen such officer write.

Kosminski v. Schurman, 7 V. L. R., L. 474.

—————(36.)—*Evidence of other acts.*] Evidence is admissible of other acts of the prisoner of a like nature, to show the intent with which the crime was committed.

R. v. Davis, 3 A. J. R., 52; 3 V. R., L. 95.

—————(37.)—*Other acts—Indecently exposing the person.*] Evidence of conduct at other times admissible to give a colour to dubious acts, and to rebut a defence of infirmity.

Vernon v. Mollison, 5 A. J. R., 123.

—————(38.)—*Possession of stolen property—Statement of counsel.*] Upon a summons to satisfy justices that the defendant has lawfully come by property found on his premises, and alleged to have been stolen, the justices may be satisfied, in the absence of evidence to the contrary, by

FALSE PRETENCES—

she might as well spend it all, and get to the full amount of it. *Held*, that the judge was right in directing the jury that her conduct amounted to a false pretence within the statute. *Semble*, an objection which appears on the face of an information, not having been taken by demurrer, cannot be taken afterwards.

R. v. Henning, A. R., 7th Sept., 1858.

—————(3.)—*Cash and credit—Letters of credit.*] It appeared that the manager of the bank was induced to advance money on the faith of a letter of credit purporting to have been signed by Smith, Payne and Smiths, London; and this advance was obtained by the defendant drawing bills to the amount of this letter, and discounting them with the Oriental Bank, who placed the proceeds to the credit of defendant in the usual way. The proceeds were subsequently drawn out by cheques of the defendant. It was objected on behalf of the defendant, that he only obtained *credit* and not *cash*, and that therefore the information could not be supported. *Held*, that the objection could not be sustained. The discount of the bills, and the payment of the proceeds may, for the purpose of this information, be so far considered one transaction as to hold that the defendant actually received moneys by false pretences.

R. v. Levey, A. R., 8th Sept., 1858.

—————(4.)—*Variance—Contract not “false pretence.”*] Where the prisoner was charged with obtaining money under false pretences, the false pretence being that he had sold to the prosecutor a chain as “all made of gold;” but the pretence proved was the chain was sold as “gold,” and some of its links were proved to be gold and others brass; it was contended that this was a fatal variance, and that if it were not so the matter was one of contract and not of false pretence. *Held*, that neither the allegation nor the case was proved. The conviction quashed.

R. v. Goodrich, A. R., 3rd Sept., 1859.

—————(5.)—*Existing fact.*] M. S. was convicted of falsely pretending to Mary H. that he had taken a house in order that they should live together there after their marriage, and that he required a sum of money to furnish and stock the house. At the trial it was proved that M. S. pretended he was about to marry Mary H., and had taken a house in M’Crae-street, Sandhurst, for them to live in; and he induced her to hand over to him £3, and a deposit receipt for £55, on representations that he would with the money furnish and stock the house for them to live in; that, in

the shire in which the land is situated for the purpose of procuring materials for forming a public road.

Bell v. Wade, 9 V. L. R., L. 5.

See, however, Rotherly v. Patterson, *Infra* (Local Gov. 10).

—————(19.)—No. 360 sec. 104—*Disqualifying interest of justices.*] The managers of a common are disqualified from adjudicating upon a complaint for trespassing upon the common, although the penalties go into the consolidated revenue.

R. v. Horsfall, *exp. Husband*, 4 V. L. R., L. 53.

See also Conspiracy 2.

Evidence 24.

Local Government 10.

Police Offences 14.

LARCENY (1.)—*Valuable security—Practice.*] In a case of larceny, a request by prisoner's solicitor to Crown solicitor that the latter should instruct and fee counsel for the defence, *Held*, that this could only be done in capital cases. Where a cheque on a banker was feloniously taken, it was held unnecessary for the prosecution to show that there was anything still due upon the cheque so as to make it a "*valuable security*" in the fullest sense.

R. v. Warren, A. R., 22nd March, 1861.

—————(2.)—*By wife—Husband receiving stolen goods.*] Where a wife and husband acted in concert for a theft, the wife taking and the husband receiving, and on their trial the wife was acquitted of the stealing, because of the presumption that she had acted under her husband's coercion, but yet the husband was convicted of the receiving from his wife, *Held*, on a question reserved, that there was a stealing by the wife in fact, and that the presumption of law by which she was not here amenable to punishment did not alter the fact. Conviction affirmed. *Seemle*, that where a wife steals goods at the instigation of her husband, he is himself guilty of stealing.

R. v. Bailey, 1 W. W. & A'B., L. 20.

—————(3.)—*Stealing bank notes—Evidence to support.*] W. was tried at General Sessions for stealing £24 of the moneys of H. The evidence was as follows:—They met at the railway station at Echuca. H., a waggon owner, had three £5 notes "of the Colonial Bank." One £5 note of a bank unknown, and seven £1 notes "received from" the Colonial Bank. W. complained of poverty, saying he had only eaten one bit of bread for two days, and asked H. to take him to some station. H. showed his money, and treated W. to

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 - › what churches were there and what time were services held?
 - › what other activities were there in the community?
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