THE CRIMINAL LAW AMENDMENT ACT 1885

MEAD & BODKIN

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THE
CRIMINAL LAW AMENDMENT ACT, 1885.

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Criminal Law Amendment ACT, 1885,

WITH

INTRODUCTION, NOTES, AND INDEX

BY

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"It is too general a vice, and severity must cure it."—*Measure for Measure*, act iii., scene 2.

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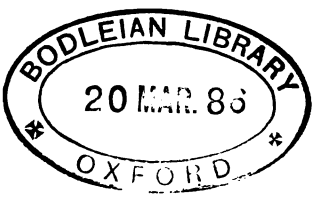

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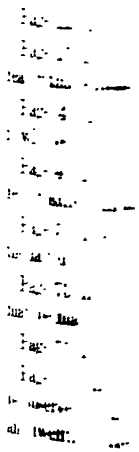

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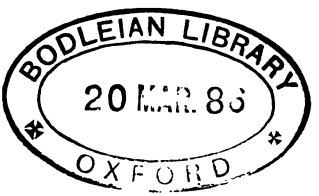

CORRIGENDA.

Page 12, line 5 from top, *for* "under" read "above."

Page 15, line 19 from top, *for* "that the sub-section should," read "that sub-section two should."

Page 43, line 15 from foot, *for* "it will be," read "and that it will be."

Page 46, line 3 from foot, *for* "satisfy the scruples of those," read "satisfy those who have scruples."

Page 50, line 8 from top, *for* "and the last day of," read "thus the last day for ;" and *for* "is," read "will be."

Page 73, line 13 from top, *for* "order be made," read "order may be made."

Page 75, line 7 from foot, *for* "17," read "15."

Page 118, line 3 from foot, *for* "it is observed," read "it is to be observed ;" and *for* "of the first of these," read "of the first and twelfth of these."

THE TEMPLE,
August, 1885.

A. H. B.

PREFACE.

THE Criminal Law Amendment Act, 1885, has effected several important changes both in law and in procedure.

The Editors have, by means of illustrations from decided cases, explained such passages of the Act as seemed to present difficulties.

Sections of the Consolidation Acts of 1861, and other Statutes, are so frequently referred to, both in the Act and Notes, that it was thought convenient to print them *in extenso* in the Appendix.

A Table of Offences under the new Act and their incidents, and some appropriate Forms, have also been prepared, and it is hoped will be found useful.

The Editors are greatly indebted to Mr. H. B. POLAND for many valuable suggestions during the progress of the work.

F. M.
A. H. B.

THE TEMPLE,
August, 1885.

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INTRODUCTION.

PUBLIC attention having about the year 1881 been called to a systematic traffic in English girls, which it was alleged was carried on for the purpose of prostitution in foreign countries, a Select Committee of the House of Lords was appointed to enquire as to the truth of this allegation, and into the question of juvenile prostitution generally. After a quantity of evidence had been taken by the Committee both during the years 1881 and 1882, a report was presented on the 9th August, 1882.

With reference to the first branch of the subject, the Committee found that the alleged system existed, the amount of from 8*l.* to 12*l.* being paid to the agent for the introduction; that with one or two exceptions the girls affected had led antecedent immoral lives; but that on account of their ignorance of a foreign language and institutions, they were practically imprisoned in the brothels to which they had been taken. The Belgian law which forbids the use of brothels by women under the age of 21, was evaded by the production of false certificates of birth, the certificate of an elder sister often being substituted for that of the girl who had been sent abroad. Owing to the zeal of the Belgian authorities there seemed to be no case of a girl so confined at the time of the report. The Committee reported with regard to the other branches of the subject as follows:—

As to the amount of protection at present given by the law to young girls in England—

Paragraph 8. In other countries female chastity is more or less protected by law up to the age of 21. No such protection is given in England to girls under the age of 18.

9. The evidence before the Committee proves beyond doubt that juvenile prostitution, from an almost incredibly early age, is increasing to an appalling extent in England, and especially in London.

10. Various causes are assigned for this—a vicious demand for young girls; overcrowding in dwellings, and immorality arising therefrom; want of parental control, and in many cases parental example, profligacy, and immoral treatment; residence, in some cases, in brothels; the example and encouragement of other girls slightly older, and the sight of the dress and money which their immoral habits have enabled them to obtain; the state of the streets in which little girls are allowed to run about, and become accustomed to the sight of open profligacy; and sometimes the contamination with vicious girls in schools.

11. The Committee think it better to refer at length to the evidence which has been given before them on this painful subject, without attempting to abbreviate it. They are unable adequately to express their sense of the magnitude, both in a moral and physical point of view, of the evil thus brought to light, and of the necessity for taking vigorous measures to cope with it. They will, therefore, at once state the recommendations which they are prepared to make as to all the matters to which they have referred.

Upon these conclusions the Committee based the following recommendations:—

1. That it be made a serious misdemeanor for any person to solicit or endeavour to procure any woman to leave the United Kingdom, or to leave her usual place of abode in the

United Kingdom, for the purpose of entering a brothel, or prostituting herself, in parts beyond the sea, whether he shall or shall not inform the woman of such purpose.

2. That upon every birth certificate issued at Somerset House of the birth of a woman who would at the time of issue be between 20 and 30, there shall be stamped in red a conspicuous notice in French to the effect that these certificates having sometimes got into improper hands and been used abroad for fraudulent purposes, foreigners are warned to require evidence that the person producing a certificate is really the person named in the certificate.

3. That the age up to which it shall be an offence to have or attempt to have carnal knowledge of, or to indecently assault a girl, be raised from 13 to 16.

4. That the age of unlawful abduction (24 & 25 Vict. c. 100, s. 55), with intent to have carnal knowledge unlawfully, be raised from 16 to 21.

5. That it shall be a misdemeanor for any person to receive into any house or into or on to any premises occupied or possessed by him, or of which he has the management or control, any girl under the age of 16 years for the purpose of her having unlawful sexual intercourse with any person, whether such intercourse is intended with any particular man, or generally.

6. That a police magistrate shall have power, on application of a police inspector, and on his affidavit that he has reason to believe that some girl has been so received and is then in such house or premises, to grant a warrant to such inspector to search the house or premises, and to bring before him any person offending as aforesaid, and also the girl, and if the magistrate shall commit any person for trial for such offence, he may also bind over the girl to appear as a witness on such trial.

7. That the soliciting of prostitution in the public streets

be made an offence, and the police authorized to act accordingly, without proof that it is done "to the annoyance of inhabitants or passengers."

8. That the police be authorized to make applications under the Industrial Schools Amendment Act, 1880, as to the children therein mentioned, and that any magistrate before whom a girl under the age of 16 is convicted of soliciting prostitution, may, if it shall appear that she has no friends able to provide a suitable home for her, remit her to a refuge or industrial home until she attains the age of 16.

9. That the court or magistrate may direct any charge, trial, or application, under Nos. 3, 5, 6, 7, and 8, to be heard in private.

In the years 1883 and 1884 bills were carried in the House of Lords, but in neither year did the Lower House find an opportunity of dealing with the subject. In this year, however, the advocates of the measure have been more successful, and the Act which we are considering is the fruit of their continued efforts.

The Act is well arranged and clearly expressed; and but few points are overlooked when it is considered with what haste the bill was passed through, and the exceptional circumstances under which it was passed.

As all points for remark, which have occurred to the Editors, have been dealt with in the notes to the sections, it is sufficient now but to make a few general observations on the scope of the Act.

Section 2 was designed to deal with the first recommendation of the Committee, *i.e.*, to suppress the Continental traffic, and it also constitutes it a criminal offence to procure a girl under 21 to commit an immoral act, to become a common prostitute or an inmate of a brothel for the purposes of prostitution. As is pointed out in the notes to this section, if two or more persons combined to do that act which is now

of itself an offence, they would have been liable to a charge of conspiracy. For the purposes of decoying a girl to the Continent in order that she may become a prostitute, it is almost essential that more than one person should be implicated. The fact therefore that there have been, since public attention was called to the matter, no prosecutions at common law for conspiracy, rather tends to support the conclusion on the part of the Lords, that, owing to the activity of the Belgian police, there has been a cessation, of the worst features at any rate, of the abuse which formerly existed.

The remainder of the section dealing with other acts of procuring is a salutary provision, and one which will, it is hoped, check those offences of procuring which are no doubt committed on the part of individuals not in complicity with others.

Section 3 deals with the case of a man procuring connexion with a woman by intimidation, deceit, or drugging. As the clause was passed by the House of Lords, it contained the proviso that the sub-section should not apply where such woman or girl knew the connexion to be unlawful. This was no doubt designed to meet the case of a common prostitute having connexion under such circumstances, that even if the false representations were true, the act would be unlawful. It was desired, no doubt, to avoid the scandal of the criminal law being put in motion by such a person to enforce her illicit bargains. The proviso was expunged in the House of Commons, but the introduction into the Act of the words, "not being a common prostitute or of known immoral character" was evidently intended to obviate the difficulty which was apprehended.

With regard to section 4, which deals with the defilement of a girl under 13, the only matter, in addition to the notes in the text, to which it is necessary to call attention, is the proviso which renders a witness, too young to be sworn, liable to an indictment for perjury. In 1860 a girl of 11

years of age was found guilty of perjury at the Central Criminal Court, the false evidence having been given upon a charge of indecent assault. The fact that so young a girl may give false evidence which may lead to an innocent man being unjustly convicted, is an argument in support of the contention that if the conduct of the prosecutrix who charges a man with an offence under section 4 is such as to render her an accomplice, she would, as in the case of older witnesses, require some corroborative evidence.

The proviso to section 5, regarding the belief of the prisoner as to the age of the girl, which is found also in sections 6 and 7, is the next point for comment. After consideration, the general opinion will no doubt be that it is to be regretted that so much uncertainty will be introduced with regard to convictions under these sections. The chances which the prisoner has of escape will depend more even than usual upon the character of the advocacy on his behalf, and no questions cause so much perplexity to a jury as those in which the belief on the part of the prisoner is at issue. It seems that the law would have been far more efficacious if the age had been reduced, and the rule which prevails as to abduction, and indeed to the offence under section 4 in this Act had applied, viz., that the prisoner, so far as knowledge of age is concerned, does the unlawful act at his risk.

There is an inconsistency in the absence of such a proviso as to age from section 4 and its presence in section 6, which makes it a felony for a person to permit on his premises the defilement of a girl under 13. Probably it was only intended that the proviso should apply to sub-section 2, but as it stands, if, in the unlikely case of a girl aged 13 appearing to be over 16, the defendant would be entitled, even in the case of the felony, to the benefit of the proviso.

The only other observations, not merely of a technical character, which arise upon the Act are with respect to sections 17 and 20.

It is to be hoped that the effect of forbidding courts of quarter sessions to try offences under the Act, may not work injustice in delaying unduly the trial of innocent persons. If the provision of the section conduces to delay, as it must in many cases, the committing magistrates will, no doubt, mitigate as far as possible the hardship of the clause by dealing as favourably as possible with applications for bail. It is full time that the many arbitrary provisions as to the jurisdiction of quarter sessions should be examined and re-arranged on some intelligible principle.

Of all the sections in the Act the 20th is the most serious. The Commissioners who considered the proposed criminal code reported upon this subject as follows:—

"As regards the policy of a change in the law so important, we are divided in opinion. The considerations in favour of and against the change have been frequently discussed, and are well known. On the whole, we are of opinion that, if the accused is to be admitted to give evidence on his own behalf he should do so on the same conditions as other witnesses, subject to some special protection in regard to cross-examination."

It would certainly seem that some such special protection was required, for in some cases suspicion attaches to a man simply on account of bad character, and that alone may lead to his being charged, and in other cases where the charge is made for the purposes of extortion, a person could be selected as defendant on account merely of his inability practically to offer himself as a witness, because his antecedents would not bear investigation. An innocent man might thus be in a very serious dilemma; either he must abstain from being a witness, and lay himself open to the natural observation, that he cannot deny what is imputed to him, or in becoming a witness, must render himself liable to a damaging cross-examination as to his character. If it be held that the defendant having offered himself as a witness can be cross-examined as to his

credit the above are two obvious instances of the hardship which the section would effect. It is true that already in several cases the principle of the defendant being a witness has been admitted, but it is to be remembered that most of these are summary offences, and, comparatively speaking, of a trifling nature. However, the result of this somewhat bold experiment will no doubt guide the legislature as to whether this new procedure shall be made to apply to criminal offences generally.

There are two omissions from the Act which require comment. In charges of indecent assault it is no defence if a prosecutrix, under 13 years of age, has consented to the indecent act of the defendant. The age has not been raised by this Act to 16, so as to assimilate the law to that of offences under section 5, but it is quite possible that the desirability of further change was considered, and it was thought that it would not be right to further extend that new principle of law. (See Lords' recommendation No. 3.)

As the bill was originally drafted, effect was sought to be given to some extent to the 9th recommendation in the Report, and the court was authorized to exclude women and children from the hearing. As that power has always been recognized, the clause, if it had remained, might have raised doubts as to the rights of the court in cases not within the Act, so that the proposed section can well be spared, and it must not be forgotten that the justices in conducting the examination of a prisoner preliminary to committal have full discretion as to the exclusion or admission of any persons. (11 & 12 Vict. c. 42, s. 19, which is not affected, it would seem, by the combined operation of S. J. Act, 1884, s. 7, and 11 & 12 Vict. c. 43, s. 12, and S. J. Act, 1879, s. 20; see also 48 J. P. 831, Law Officers' Opinion).

TABLE OF SECTIONS.

PART III.

Definitions and Miscellaneous.

CRIMINAL LAW AMENDMENT ACT, 1885.

48 & 49 Vict. Cap. 69.

An Act to make further Provision for the Protection of Women and Girls, the Suppression of Brothels, and other purposes. [14th August, 1885.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Short title.*] This Act may be cited as the Criminal Law Amendment Act, 1885.

PART I.

Protection of Women and Girls.

2. *Procuration.*] Any person who—

(1.) Procures (*a*) or attempts (*b*) to procure any girl or woman under twenty-one years of age (*c*),

not being a common prostitute, or of known immoral character, to have unlawful (*d*) carnal connexion (*e*), either within or without the Queen's dominions, with any other person or persons (*f*), or

(2.) Procures (*a*), or attempts (*b*) to procure any woman or girl to become, either within or without the Queen's dominions, a common prostitute (*g*), or

(3.) Procures (*a*) or attempts (*b*) to procure any woman or girl to leave the United Kingdom, with intent that she may become an inmate of a brothel (*h*) elsewhere; or

(4.) Procures (*a*) or attempts (*b*) to procure any woman or girl to leave her usual place of abode (*i*) in the United Kingdom (such place not being a brothel) (*h*), with intent that she may, for the purposes of prostitution, become an inmate of a brothel (*h*) within or without the Queen's dominions (*k*),

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour (*l*).

Provided that no person shall be convicted of any offence under this section upon the evidence of one

witness, unless such witness be corroborated in some material particular by evidence implicating the accused (*m*).

(*a*) PROCURES.—This is one of the words almost invariably used in describing an accessory before the fact (1 Hale, 615 ; form of indictment, Archbold's Criminal Pleading, 19th ed. p. 1022 ; 24 & 25 Vict. c. 94, s. 2). It is also used in speaking of abettors (24 & 25 Vict. c. 94, s. 8 ; 11 & 12 Vict. c. 43, s. 5). It is therefore not unreasonable to say that to constitute this offence, the conduct of the person charged must be such as at least to render him an accessory before the fact, supposing the acts which he is charged with procuring were of themselves felonies.

A fortiori, if he were aiding and abetting he would be guilty of procuring. The decisions, therefore, upon the subject of accessories before the fact would seem to be in point.

The bare concealment of a felony to be committed will not make the party concealing it an accessory before the fact: 2 Hawk. c. 29, s. 23.

Nor will a tacit acquiescence, or words which amount to a bare permission be sufficient to constitute this offence: 1 Hale, 616.

Knowledge that a person intends to commit a crime, and conduct connected with and influenced by such knowledge, is not enough to make a person who possesses such knowledge, or so conducts himself, an accessory before the fact to any such crime, unless he does something to encourage its commission actively: Stephen's Dig. Crim. Law, Art. 39, p. 25.

Generally on the subject of accessories before the fact, see Archbold's Criminal Pleading, 19th ed., pp. 12, 1022 ; Roscoe's Criminal Evidence, 10th ed., pp. 183–186; 1 Russell on Crimes, 164, *et seq.*

With regard to this offence it will of course be contended that it will not be sufficient for the prosecution to show that the defendant is an accessory before the fact, or aiding or abetting merely, but that it will be necessary to prove that some persuasion or influence has been brought to bear upon the woman or girl herself by the defendant. Thus, a brothel-keeper, who, knowing

the age of the girl, provides accommodation for the unlawful act, would in one sense be guilty of procuring its commission, but as such conduct on his part is dealt with under section 6, and made an offence only when the girl is under the age of 16, the argument would be that "procure" should not have here the more extended interpretation.

It is to be remembered that all persons who directly or indirectly counsel, procure, or command the procuring or attempting to procure in this sub-section, and are guilty of such conduct as would, if the offence were a felony, make them accessories before the fact, are liable to be indicted and tried as principals: Archbold's Criminal Pleading, 19th ed., p. 13, and Stephen's Dig. of Crim. Law, p. 24.

(*b*) ATTEMPTS.—An attempt to commit a crime can only in point of law be made out, where, if no interruption had taken place, the attempt could have been carried out successfully, so as to constitute the offence which the accused is charged with attempting to commit: Archbold's Criminal Pleading, 19th ed., p. 2; *R.* v. *Collins*, Leigh and Cave, 471; 33 L. J. M. C. 177; 9 Cox, 497; 10 L. T. Rep. 581; 12 W. R. 886; 10 Jurist (N.S.), 686; *R.* v. *Carr*, R. & R. 377; *R.* v. *Brown*, 10 Q. B. D. 381; 52 L. J. M. C. 49; 47 J. P. 327; 31 W. R. 460; Stephen's Crim. Dig., Art. 49, p. 29.

To write and send a letter to another person with intent to incite that person to commit an unnatural offence was held to be an attempt to incite, although the person to whom the letter was sent did not read it: *R.* v. *Ransford*, 13 Cox C. C. 9; 31 L. T. Rep. 488.

(*c*) TWENTY-ONE YEARS OF AGE.—The defendant has not the benefit of a proviso similar to that to section 5, so that even if he had good grounds for believing and did believe the woman in question to be over 21, it would not avail him as a defence.

The prisoner was convicted under 24 & 25 Vict. c. 100, s. 55, of unlawfully taking an unmarried girl under the age of 16 out of the possession and against the will of her father. It was proved that the prisoner did take the girl, and that she was under 16, but that he *bonâ fide* believed and had reasonable ground for believing that she was over 16. After argument before 16 judges, it was decided with one dissentient that the latter fact afforded no

defence, and that the prisoner was rightly convicted: *R.* v. *Prince*, L. R. 2 C. C. R. 154; 44 L. J. M. C. 122; 32 L. T. Rep. 700; 24 W. R. 76; 13 Cox C. C. 138; 39 J. P. 676; Treat. 530; see also *R.* v. *Robins*, 1 C. & R. 456; *R.* v. *Olifier*, 10 Cox C. C. 402; *R.* v. *Mycock*, 12 Cox C. C. 28; *R.* v. *Booth*, 12 Cox C. C. 231.

The age may be proved by production of a certificate of birth given at the general registry office under 6 & 7 Will. 4, c. 87, s. 38, together with evidence of identity.

By force of 14 & 15 Vict. c. 99, s. 14, a certificate of birth from a district office would suffice: *R.* v. *Weaver*, L. R. 2 C. C. R. 85; 43 L. J. M. C. 13; 38 J. P. 102; see also *R.* v. *Wedge*, 5 C. & P. 298; and *R.* v. *Nicholls*, 10 Cox, 476; 16 L. T. Rep. 466; 15 W. R. 795.

When the full age of 21 is reached is perhaps best explained by an illustration. Suppose A. is born on the 16th February, 1870, she will be of full age any part of the 15th day of February, 1891, for the law does not recognize fractions of a day, and in the last instant of the 15th day of February, 1891, A. will have completed 21 years. See Keb. 589; Sid. 162; Salkeld, 44; Ld. Raymond, 281, 480; Bac. Abridgt. Tit. Infancy (A), and Viner's Abridgt. Enfant. g. 2, 13.

(*d*) UNLAWFUL.—Sexual intercourse is unlawful where no valid marriage exists. Concubinage upon a marriage between parties within the prohibited degrees is unlawful. See Broom's Maxims, 6th ed., pp. 468, 480. *Consensus non concubitus facit matrimonium* and *Hæres legitimus est quem nuptiæ demonstrant.* As to the sense in which fornication is unlawful, see Baron BRAMWELL'S judgment in *R.* v. *Howell*, 4 F. & F. 160. A girl of twelve and a boy of fourteen are capable of contracting a valid marriage: Eversley's Domestic Relations, p. 82.

(*e*) CARNAL CONNEXION.—See 24 & 25 Vict. c. 100, s. 63; Appendix, p. 101; Stephen's Dig. Crim. Law, p. 172; *R.* v. *Russen*, 1 East, Pleas of the Crown, 438; *R.* v. *Hughes*, 2 Moody C. C. 190; 9 C. & P. 752; *R.* v. *M'Rue*, 8 C. & P. 641; *R.* v. *Jordan*, 9 C. & P. 118.

(*f*) OTHER PERSON OR PERSONS.—*i.e.*, other than the person procuring or attempting to procure; so that if the carnal connexion was with the procurer himself, he would not be guilty

under this section, but if the connexion was induced by threats, false pretences, &c., he would be guilty under section 3, sub-sections 1, 2 and 3.

(*g*) SUB-SECTION 2 (GENERALLY).—*R.* v. *Howell*, *ubi supra*, is an instance of an offence, which would now fall within this sub-section.

(*h*) BROTHEL.—A common bawdy house is a house or room, or set of rooms in any house, kept for purposes of prostitution. And it is immaterial whether indecent or disorderly conduct is or is not perceptible from the outside (Stephen's Dig. Crim. Law, p. 110). As to absence of indecency, &c., perceptible from the outside: *R.* v. *Rice*, L. R. 1 C. C. R. 21. See section 13, note (*b*).

(*i*) USUAL PLACE OF ABODE.—As "place of abode" would exclude a mere temporary dwelling place, the phrase is much emphasized by use of the word "usual."

In the case of *Attenborough* v. *Thompson*, 2 H. & N. 559, a decision upon the word "residence" in the Bill of Sale Act (17 & 18 Vict. c. 36, s. 1), many cases are collected upon this subject.

As to dwelling-house for purposes of burglary, *R.* v. *Nutbrown*, Foster, p. 76.

A person may have two places of abode concurrently: *Kerr* v. *Haynes*, 29 L. J. Q. B. 70, and *R.* v. *Exeter* (*Mayor of*), L. R. 4 Q. B. 110; *McDougall* v. *Paterson*, 11 C. B. 755.

For decisions as to the word "residence" used in the statutes relating to "irremovability" under the poor law, see Archbold's Poor Law, 13th ed., p. 605. Compare also cases under the Municipal Corporations Act and the Parliamentary Registration Acts: *R.* v. *Exeter* (*Mayor of*), L. R. 4 Q. B. 110; *Durant* v. *Carter*, L. R. 9 C. P. 261; *Ford* v. *Pye*, *id.* 269; *Ford* v. *Hart*, *id.* 273; *Powell* v. *Guest*, 18 C. B. (N.S.) 72; *Taylor* v. *Overseers of St. Mary Abbotts*, *Kensington*, L. R. 6 C. P. 309; 40 L. J. C. P. 45; *Bond* v. *Overseers of St George's*, *Hanover Square*, L. R. 6 C. P. 312; 40 L. J. C. P. 47; *Whithorn* v. *Thomas*, 8 Scott, N. R. 783. See Fisher's Dig. Election, ed. 1884, vol. 3, cols. 938 and 946; Rogers on Elections, 13th ed., pp. 92 to 95.

(*k*) SECTION 2, SUB-SECTIONS 2, 3 AND 4 (GENERALLY).—The absence in these sub-sections of any limitation as to age, and of such restrictive words as "not being a common prostitute" or "of known immoral character" renders these sub-sections extremely severe. A person who merely attempts to induce a notorious prostitute to leave her private lodging for a brothel would be liable under sub-sect. 4.

(*l*) SECTION 2 (GENERALLY).—It has always been an offence for persons to conspire and combine to commit these acts, which now of themselves are by this section made criminal: Wright on Criminal Conspiracies, p. 32.

In *R.* v. *Delaval*, 1 Wm. Black, 410 and 439, a criminal information was granted by the King's Bench in the case of a confederacy between a master of a female apprentice, an attorney, and a gentleman to assign her over with her own consent for the purpose of her living with the gentleman as his mistress.

Lord MANSFIELD, C.J., in his judgment, says: "Though there are species of indecency and immorality, particularly in cases of incontinency, which are confined to the Ecclesiastical Courts (and I am very glad they are so); yet the general inspection and superintendence of the morals of the people belong to this court as *custos morum* of the nation. So laid down in *Curl's Case*, 2 Stra. 788, and before that in *Sir Charles Sedley's Case*, Sid. 168; 1 Keb. 620. Especially when the offence is mixed with confederacy and conspiracy as in the present case." See also *R.* v. *Mears*, 1 Den. 79.

In *R.* v. *Howell*, 4 F. & F. 160, it was held, per BRAMWELL, B., and the Recorder of London, that, although common prostitution was not an indictable offence, it was unlawful, and that an indictment was therefore good which alleged that the defendants had conspired to procure a girl to become a common prostitute, although it did not aver that the prosecutrix was a chaste woman at the time of the conspiracy. As the court is now able to inflict hard labour the punishment will be more adequate, even in those cases which the criminal law could formerly reach.

(*m*) PROVISO.—There is no guide here as to the course to be pursued by justices or a magistrate, before whom a defendant is

charged under 11 & 12 Vict. c. 42. Their duty as to committal is stated in section 25 of that Act. "If, after hearing all the evidence against the accused, the justice then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, he shall order him to be forthwith discharged, but if the evidence is, in the opinion of the justice, sufficient to put the accused party upon his trial, or if it raise a strong or probable presumption of the guilt of the accused, such justice shall by warrant commit him," &c. It seems that if there is no corroborative evidence offered, or any prospect of there ever being such, it would be the duty of the justice to discharge the accused; but if there is a reasonable probability of such testimony being forthcoming at the trial, and the evidence already given of itself raises so strong or probable presumption of guilt as to justify a conviction in an ordinary case where no corroboration is required, then there should be a committal. The words used in the Bastardy Act (35 & 36 Vict. c. 65, s. 4), are "if the mother be corroborated in some material particular by other evidence to the satisfaction of the said justices." "By evidence implicating the accused" are useful words, as showing clearly the intent of the section, but in their absence it would have been necessary that the evidence should refer to the complicity of the accused in the matter and not merely to the perpetration of the offence by some person or other: 1 Phillipps on Evidence, 10th ed., p. 101, as to corroboration of accomplices. *R.* v. *Webb*, 6 C. & P. 595; *R.* v. *Wilkes*, 7 C. & P. 272; *R.* v. *Farler*, 8 C. & P. 106; *R.* v. *Dyke*, 8 C. & P. 261; *R.* v. *Birkett*, 8 C. & P. 232; *R.* v. *Stubbs*, Dear. C. C. 555; *R.* v. *Hastings*, 7 C. & P. 152; *R.* v. *Boyes*, 5 L. T. Rep. 147; 1 B. & S. 311; *R.* v. *Gallagher*, 15 Cox, 291.

The cases decided upon the Bastardy Act are *R.* v. *Pearcey* (or *Piercey*), 32 J. P. 203 (art.); 18 L. T. Rep. 238; 17 Q. B. 902, note; 16 Jur. 193 (Q. B.); *R.* v. *Berry*, 23 J. P. 82, 86; 28 L. J. M. C. 86; *Hodges* v. *Bennett*, 29 L. J. M. C. 224; and *Cole* v. *Manning*, 46 L. J. M. C. 175; 41 J. P. 469; 2 Q. B. D. 611; 35 L. T. Rep. 941.

"The Evidence Further Amendment Act, 1869" (32 & 33 Vict. c. 68, s. 2), provides that "no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her

testimony shall be corroborated by some other material evidence in support of such promise."

In the case of *Bessela* v. *Stern*, 2 C. P. D. 265; 46 L. J. C. P. 467; 42 J. P. 197, the plaintiff, who had been seduced, swore to a promise of marriage on the part of the defendant. The corroboration was that the plaintiff's sister upbraided the defendant with being the cause of her condition, upon which he said: "I will marry her and give her anything, but you must not expose me." And that after the confinement the witness overheard the plaintiff say to the defendant, "You always promised to marry me, and you don't keep you word," when the defendant said he would give her some money to go away. Held by the Court of Appeal that this was sufficient corroborative evidence to satisfy the section.

Under section 20 of this Act the accused is a competent although not a compellable witness. Would it be proper for the prosecution as a last resource to call the defendant as a witness to supply the necessary corroboration, and if so, and if he were then to refuse so to be a witness, would his refusal be sufficient corroboration? See *Seagar* v. *White*, 48 J. P. 436; 51 L. T. 261; *R.* v. *Cramp*, 14 Cox, 390; *McCloney* v. *Wright*, 10 Ir. C. L. Rep. 514; *Magee* v. *Mart*, 11 Ir. C. L. Rep. 449.

In determining this question the distinction between a compellable witness and one who is not compellable must be remembered.

In perjury it is a general rule that the testimony of a single witness is insufficient to convict the defendant, but if any other material circumstance be proved by other witnesses in confirmation of the witness who gives the direct testimony of perjury a conviction may be supported: "There must be something in the corroboration which makes the fact sworn to not true, if that be true also." See *R.* v. *Boulter*, 2 Den. 396; 21 L. J. M. C. 57; *R.* v. *Shaw*, L. & C. 579, and ERLE, C. J.'s judgment, 590; and cases collected in 3 Russell on Crimes, 5th ed., pp. 72—80. See Best on Evidence, 4th ed., p. 751.

GENERAL SECTIONS OF THE ACT WHICH RELATE TO THE OFFENCES UNDER THIS SECTION.

See section 12, *post*, p. 70.

As to custody of girls under sixteen.

See section 16, *post*, p. 81.

As to liability of defendant to other criminal proceedings.

See section 17, *post*, p. 81.

The provisions of the Vexatious Indictments Act apply to offences under this section.

Courts of Quarter Sessions have no jurisdiction to try offences against this Act.

See section 18, *post*, p. 88.

The Court may allow the costs of the prosecution, as in cases of felony, and the prisoner, if convicted, may be ordered to pay such costs.

See section 20, *post*, p. 91.

The person charged and the husband or wife of such person may be a witness at each enquiry, except before a grand jury.

3. ***Procuring defilement of woman by threats or fraud, or administering drugs.***] Any person who—

(1.) By threats or intimidation (*a*) procures (*b*) or attempts (*c*) to procure any woman or girl (*d*) to have any unlawful (*e*) carnal connexion (*f*) either within or without the Queen's dominions; or

(2.) (*g*) By false pretences or false representations (*h*) procures (*b*) any woman or girl (*d*), not being a common prostitute or of known immoral character, to have any unlawful (*e*) carnal connexion (*f*) either within or without the Queen's dominions (*i*); or

(3.) (*j*) Applies, administers to, or causes to be taken (*k*) by any woman or girl (*l*) any drug, matter, or thing (*m*) with intent to stupefy or overpower so as thereby to enable any person to have unlawful (*e*) carnal connexion (*f*) with such woman or girl (*n*),

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused (*o*).

(*a*) THREATS OR INTIMIDATION.—Threats or intimidation with reference to the immediate bodily harm of a woman would constitute rape (1 *Hawkins*, P. C. c. 41, s. 6), for STEPHEN, J., defines rape to be the act of having carnal knowledge of a woman without her conscious permission, such permission not being extorted by force or fear of immediate bodily harm (Stephen's Dig. of Criminal Law, p. 171 ; *R.* v. *Jones*, 4 L. T. Rep. 154). This subsection is directed against less serious intimidation than that in the above definition.

In *R.* v. *Walton*, L. & C. p. 288, where the prisoner was indicted under section 45 of 24 & 25 Vict. c. 96, for having demanded money with menaces, WILDE, B., in giving the judgment of the Court for Crown Cases Reserved, defined the degree of intimidation required to constitute the offence as follows :—"It must be of a nature and extent to unsettle the mind of the person upon whom it operates, and take away from his acts that element of free, voluntary action that alone constitutes consent :" (p. 298).

In applying that principle to the case then under consideration, WILDE, B., went on to say that the threat used was not *necessarily* of a character to excite fear or alarm, but on the other hand a menace may be made with such gesture and demeanour, or with such unnecessarily violent acts, or under such circumstances of intimidation as to have that effect. This is a question which should be decided by a jury.

See also *R.* v. *Lovell*, 8 Q. B. D. 185; 45 J. P. 407; 50 L. J. M. C. 91; 44 L. T. Rep. 319; 30 W. R. 416; *R.* v. *Robertson*, L. & C. 483; 10 Cox C. C. 9; 34 L. J. M. C. 35; 11 Jur. (N.S.) 96; 11 L. T. Rep. 386; 13 W. R. 101; *R.* v. *McGrath*, L. R. 1 C. C. R. 205; 37 L. J. M. C. 7; 21 L. T. Rep. 543; 11 Cox C. C. 347; 18 W. R. 119; *R.* v. *Copeland*, C. & M. 516.

The word "intimidate" is used in the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86). Cases upon that Act, or prior Acts on the subject, may be of some assistance.

(*b*) PROCURES.—See section 2, note (*a*.)

(*c*) ATTEMPTS.—See section 2, note (*b*.)

(*d*) ANY WOMAN OR GIRL.—The repealed section 49 of 24 & 25 Vict. c. 100, it will be seen, was limited to women or girls under the age of 21 years.

(*e*) UNLAWFUL.—See section 2, note (*d*).

(*f*) CARNAL CONNEXION.—See section 2, note (*e*).

(*g*) Sub-section 2 is founded upon section 49 of 24 & 25 Vict. c. 100, which is repealed by this Act. The following are the terms of that section:—"Whosoever shall by false pretences, false representations, or other fraudulent means, procure any woman or girl under the age of 21 years to have illicit carnal connexion with any man shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour."

(*h*) FALSE PRETENCES OR FALSE REPRESENTATIONS.—No cases seem to have been decided upon these words in the old section 49 above quoted. Having carnal knowledge of a woman by a fraud which induced her to suppose that the man was her husband, did

not formerly amount to a rape (*R.* v. *Jackson*, R. & R. 487; *R.* v. *Saunders*, 8 C. & P. 265; *R.* v. *Williams*, 8 C. & P. 286; *R.* v. *Clarke*, Dearsley C. C. 397; 6 Cox, 412; 24 L. J. M. C. 25; 18 Jur. 1059; *R.* v. *Sweenie*, 8 Cox, 223; *R.* v. *Barrow*, L. R. 1 C. C. R. 156; 38 L. J. M. C. 20). Such conduct, however, was always an indecent assault, and, in addition, would now clearly fall within this sub-section. Moreover, by force of the last clause of section 4 of this Act, it would now be a rape. Where the woman was asleep when the act of connexion took place, and therefore incapable of consent, it was held that a rape was committed: *R.* v. *Mayers*, 12 Cox, 311; *R.* v. *Young*, 38 L. T. Rep. 540.

Cases have arisen as to whether, if a person, on pretence of treating a woman medically, induce her to have carnal connexion with him, that is rape. The result of the decisions seems to be that if the prosecutrix, although deceived by the man's representations, consents, thoroughly understanding the nature of the act, that would not be rape; but if the prosecutrix is so young or inexperienced as to really believe that the act is merely a surgical operation, a rape would certainly be committed: *R.* v. *Case*, 1 Den. C. C. 580; 4 Cox, 220; T. & M. 318; 4 N. S. Cases, 347; 19 L. J. M. C. 174; 14 Jur. 489; *R.* v. *Stanton*, 1 C. & R. 415; *R.* v. *Flattery*, 2 Q. B. D. 410; 46 L. J. M. C. 130; 36 L. T. Rep. 32; 25 W. R. 398; 13 Cox, 388.

Under the sub-section now being considered, the defendant would be guilty under either set of facts.

There can be no doubt that the "false pretences" must be of an existing fact (*R.* v. *Goodhall*, R. & R. 461; *R.* v. *Lee*, L. & C. 309; 8 L. T. Rep. 437; 9 Cox, 304; 11 W. R. 761; *R.* v. *Speed*, 15 Cox, 24; 46 J. P. 451; 46 L. T. Rep. 174); but it is doubtful whether the same doctrine applies to the other words, "false representations." If it does not, it is difficult to see what assistance the clause derives from the additional words.

It is possible that the words "false representations" might be held to include cases similar to *R.* v. *Larner*, 14 Cox, 497; *R.* v. *Willot*, 12 Cox, 68; 24 L. T. 758; *R.* v. *Bryan*, 2 F. & F. 567; *R.* v. *Gardner*, D. & B. 40; 7 Cox, 136; 25 L. J. M. C. 100; 2 Jur. (N.S.) 598, in which the false pretences were held to be too remote to support a charge of obtaining goods upon them.

It may be that if the prosecutrix is acting under a misconception, not induced by the defendant, but which he knows to exist and does not remove, it is intended that such passive conduct on his part shall render him guilty of this offence.

To obtain money from a woman upon a threat to bring an action for breach of promise of marriage, where the defendant was then already married, has indeed been held to be a valid "false pretence" of an existing fact—viz., that he was then legally in a condition to marry her : *R.* v. *Copeland*, C. & M. 516.

Where a man, knowing that he had a foul disease, induced a girl, who was ignorant of his condition, to consent to sleep with him, and he infected her, it was held that he might be convicted of an indecent assault (*R.* v. *Bennett*, 4 F. & F. 1105). In *R.* v. *Sinclair* (13 Cox, 28), and under similar circumstances, the prisoner was found guilty of assault occasioning actual bodily harm. See *Hegarty* v. *Shine*, 14 Cox C. C. 124 and 145 ; 2 L. R. Ir. 273 ; 4 L. R. Ir. 288 (Q. B. D.), where the above cases were held not to apply to civil proceedings.

It is possible that in both these cases the defendant would be punishable under this sub-section.

In section 11, sub-sections 13 and 16, of The Debtors' Act, 1869 (32 & 33 Vict. c. 62), the words "false representation or other fraud" are used ; and in section 13, sub-section 1, the words "false pretences or any other fraud" are used. In *Ex parte Brett, In re Hodgson* (1 Ch. D. 151 ; 45 L. J. Bk. 17 ; 33 L. T. Rep. 711 ; 24 W. R. 101 ; 13 Cox, 128), a decision upon section 11, MELLISH, L. J., says that to satisfy the words of that sub-section, he thought that there must be some *active fraud* on the part of the bankrupt similar to the making of a false representation, not simply the purchase of goods, when he knows that he is not able to pay for them.

In *R.* v. *Bell* (12 Cox, 37), where the defendant was indicted for obtaining credit by means of fraud other than by false pretences, without setting out the nature of the false pretences, the indictment was quashed as being too general.

(*i*) SUB-SECTION 2 (GENERALLY).—See note (*n*), section 3, sub-section 3, *infra*, p. 37.

As the Bill was introduced into the House of Commons, there was the following qualifying clause to the part of the sub-section dealing with false pretences, &c.: "Provided that this sub-section shall not apply where such woman or girl knew such connexion to be unlawful." Supposing the facts in the two cases of *R.* v. *Sinclair* (13 Cox, 28) and *R.* v. *Bennett* (4 F. & F. 1105) otherwise constitute an offence under this sub-section, this clause would have furnished a defence to the prisoner. A woman suffering a man to have carnal connexion with her, not believing it to be a mere surgical operation, but knowing at the same time the act to be unlawful, would be another instance in which the clause would have protected the defendant.

(*j*) SECTION 3, SUB-SECTION 3.—It is desirable to compare this sub-section with sections 22 & 24 of 24 & 25 Vict. c. 100.

Section 22—Whosoever shall unlawfully apply or administer to or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing any indictable offence, shall be guilty of felony.

Section 24—Whosoever shall unlawfully and maliciously administer to, or cause to be administered to or taken by any other person, any poison or other destructive or noxious thing with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanor.

(*k*) APPLIES, ADMINISTERS TO, OR CAUSES TO BE TAKEN.—"Administer" (*R.* v. *Cadman*, 1 Moody C. C. 114; Carr, Supp. 237).

Where a servant put poison in a coffee-pot which contained coffee, telling her mistress that the coffee was there for her breakfast, and the mistress drank it, this was held to be causing the poison to be taken (*R.* v. *Harley*, 4 C. & P. 369, wherein *R.* v. *Cadman* is stated to be incorrectly reported); and it was so held in an abortion case, even where the person who

prepared the poison and delivered it to the woman who was to take it was absent at the time it was taken : *R.* v. *Wilson*, D. & B. 127 ; 7 Cox, 190 ; 2 Jur. (N.S.) 1146 ; 26 L. J. M. C. 18 ; *R.* v. *Farrow*, D. & B. 164 ; 3 Jur. (N.S.) 167 ; *R.* v. *Fretwell*, L. & C. 161 ; 9 Cox, 152 ; 31 L. J. M. C. 145 ; 8 Jur. (N.S.) 466 ; 6 L. T. Rep. 333 ; 10 W. R. 545.

(*l*) ANY WOMAN OR GIRL.—No limit as to age.

(*m*) ANY DRUG, MATTER, OR THING.—It is not necessary, as in section 22 above quoted, that the drug, &c., should be of a recognised stupefying or overpowering character—indeed a person who administered an entirely innocent thing, in ignorance of its harmless nature, with the intent to stupefy, &c., would be within the section (*R.* v. *Phillips*, 3 Campb. 75 ; *R.* v. *Isaacs*, L. & C. 220 ; 9 Cox, 228 ; 32 L. J. M. C. 52 ; 9 Jur. (N.S.) 212 ; 7 L. T. Rep. 365 ; 11 W. R. 95). As it has been held that it is rape to have connexion with a woman whilst unconscious through sleep (*R.* v. *Young*, 38 L. T. Rep. 540, and *R.* v. *Mayers*, 12 Cox, 311), or through intoxication (*R.* v. *Camplin*, 1 C. & R. 746 ; 1 Den. C. C. 89), to intend to have carnal connexion whilst the woman is overpowered by the drug, would be "to intend to enable himself to commit an indictable offence ;" so that, except for the distinction as to the character of the drug which has been pointed out, there is in this sub-section no extension of section 22 above quoted.

The effect on the girl of the thing proved to have been administered by the prisoner is some evidence of his having administered a drug, &c., with the intent mentioned in the sub-section (*R.* v. *Hollis*, 28 L. T. Rep. 455). A drug, &c., given to a woman for the purpose of exciting her passions would not probably fall within this section, but it would perhaps be an offence under section 24, set out on the previous page.

Administering cantharides to a woman with intent to excite her sexual passion, in order that the prisoner might then have connexion with her, was held to be within section 24, where the quantity was so large as to cause great sickness : *R.* v. *Wilkins*, L. & C. 89 ; 9 Cox C. C. 20 ; 31 L. J. M. C. 72 ; 7 Jur. (N.S.) 1128 ; 5 L. T. Rep. 330 ; 10 W. R. 62.

Cases as to what would be a noxious thing under section 24: *R.* v. *Perry*, 2 Cox, 223; *R.* v. *Isaacs*, *ubi supra*; *R.* v. *Hennah*, 13 Cox, 547; *R.* v. *Cramp*, 5 Q. B. D. 307; 44 J. P. 411; 49 L. J. M. C. 44; 42 L. T. Rep. 442; 28 W. R. 701; 14 Cox C. C. 401. Intoxicating liquor would be within the section if given with the necessary intent (*R.* v. *Camplin*, 1 C. & K. 746, 1 Den. 89).

If the thing administered be a poison or other destructive or noxious thing, and the life of the person to whom it is administered is endangered or grievous bodily harm is inflicted, the prisoner would be liable to an indictment under section 23 of 24 & 25 Vict. c. 100, although he may have the intent only to have carnal connexion under this sub-section (*Tully* v. *Corrie*, 10 Cox, 584 and 640; 17 L. T. Rep. 140).

(*n*) Woman or Girl.—No restriction as to age.

Unlike sub-section 1, an attempt is not included in sub-sections 2 and 3. An attempt, however, would be a common law misdemeanor, punishable by imprisonment without hard labour. Where poison was given by the prisoners to a guilty agent to administer, but he repented and disclosed the design, it was held that they were not guilty of an attempt (*R.* v. *Williams*, 1 Den. C. C. 39). They were, however, guilty of soliciting another to commit a felony or of conspiracy.

(*o*) See section 2, note (*m*).

General Sections of the Act which Relate to Offences under this Section.

See section 9, *post*, p. 61.

Power to jury on indictment for rape or felony under section 4, *post*, p. 34, to convict of misdemeanor under this section.

See section 12, *post*, p. 70.

As to custody of girls under 16.

See section 16, *post*, p. 81.

As to liability of defendant to other criminal proceedings.

See section 17, *post*, p. 81.

The provisions of the Vexatious Indictments Act apply to offences under this section. Courts of quarter sessions have no jurisdiction to try offences against this Act.

See section 88, *post*, p. 88.

The court may allow the costs of the prosecution as in cases of felony, and the prisoner, if convicted, may be ordered to pay such costs.

See section 20, *post*, p. 91.

The person charged, and the husband or wife of such person may be a witness at each inquiry, except before a grand jury.

4. *Defilement of girl under thirteen years of age* (*a*).] Any person who—

unlawfully (*b*) and carnally knows (*c*) any girl under the age of thirteen years (*d*)

shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Any person who attempts (*e*) to have unlawful (*b*) carnal knowledge (*c*) of any girl under the age of thirteen years (*d*) shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour (*f*).

Provided that in the case of an offender whose age does not exceed sixteen years, the court may, instead of sentencing him to any term of imprisonment, order him to be whipped (*g*) as prescribed by the Act of the twenty-fifth and twenty-sixth Victoria, chapter

eighteen, intituled "An Act to amend the law as to "the Whipping of Juvenile and other Offenders," and the said Act shall apply, so far as circumstances admit, as if the offender had been convicted in manner in that Act mentioned; and if, having regard to his age and all the circumstances of the case, it should appear expedient, the court may, in addition to the sentence of whipping, order him to be sent to a certified reformatory school (*h*), and to be there detained for a period of not less than two years and not more than five years.

The court may also order the offender to be detained in custody for a period of not more than seven days before he is sent to such reformatory school.

Where upon the hearing of a charge under this section, the girl in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the court or justices (*i*), understand the nature of an oath, the evidence of such girl or other child of tender years may be received, though not given upon oath, if, in the opinion of the court or justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth: Provided that no person shall be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution shall be corroborated by

some other material evidence in support thereof implicating the accused (*j*). Provided also, that any witness whose evidence has been admitted under this section shall be liable to indictment and punishment for perjury (*k*) in all respects as if he or she had been sworn.

Whereas doubts have been entertained whether a man who induces a married woman to permit him to have connexion with her by personating her husband is or is not guilty of rape, it is hereby enacted and declared that every such offender shall be deemed to be guilty of rape (*l*).

(*a*) The section (50) of 24 & 25 Vict. c. 100, dealing with this offence placed the age at ten, and in addition to the phrase "unlawfully and carnally know" used the word "abuse." This section was repealed by "The Offences Against the Person Act, 1875" (38 & 39 Vict. c. 94), when by section 3 twelve years was substituted for ten.

That Act is repealed by section 19 and schedule of this Act.

If it be proved that the defendant is under the age of 14 years he must be acquitted, whatever may be the nature of the evidence against him, for a boy under the age of 14 years is presumed by law incapable, on the ground of impotence, to commit a rape, &c.: 1 Hale, 631; see *R.* v. *Groombridge*, 7 C. & P. 582. He could, however, be convicted of being a principal in the second degree.

(*b*) UNLAWFULLY.—See section 2, note (*d*).

(*c*) CARNALLY KNOWS.—See section 2, note (*e*). "Abuse," which was in the former sections, is omitted, but it seems to have been superfluous.

(*d*) UNDER THE AGE OF 13 YEARS.—See section 2, note (*c*), on "under 21 years of age."

(*e*) ATTEMPTS.—See section 2, note (*b*).

The attempt to commit this offence, at least up to the age of twelve, was provided for by section 52, which is so far repealed by this Act. See section 19 and schedule.

(*f*) If it were not that the tender age of the girl would in many cases render such prosecutions inexpedient, it might be contended that she could if she were an active and willing party to the outrage be charged with aiding and abetting the commission of the offence.

If a girl solicited a man to commit this offence, it seems that she would be liable to an indictment for soliciting him to commit a felony: *R.* v. *Higgins*, 2 East, 5; *R.* v. *Quail*, 4 F. & F. 1076; *R.* v. *Gregory*, L. R. 1 C. C. R. 77; 36 L. J. M. C. 60.

(*g*) WHIPPED.—25 Vict. c. 18, sect. 1. "Where the punishment of whipping is awarded for any offence by order of one or more justice or justices made in exercise of his or their power of summary conviction, or in Scotland by the court of justiciary or by any sheriff or magistrate, the order, sentence, or conviction awarding such punishment shall specify the number of strokes to be inflicted and the instrument to be used in the infliction of them, and in the case of an offender whose age does not exceed 14 years the number of strokes inflicted shall not exceed twelve and the instrument used shall be a birch rod."

(*h*) CERTIFIED REFORMATORY SCHOOL.—Section 14 of 29 & 30 Vict. c. 117, contains the regulations applicable to this power.

(*i*) JUSTICES must refer to the magistrate, justice, or justices (now called a court of summary jurisdiction, "Summary Jurisdiction Act, 1884" (47 & 48 Vict. c. 43), s. 7) holding the prepreliminary enquiry under 11 & 12 Vict. c. 42. It seems that "court" includes "grand jury." See decisions upon section 17 of 11 & 12 Vict. c. 42, which provides for the reading "upon the trial" of the deposition of a witness too ill to travel, &c. These words were held applicable to the inquiry before the grand jury (*R.* v. *Clements*, 2 Den. 251; T. & M. 579; 5 Cox C. C. 191; 20 L. J. M. C. 193; 15 Jur. 407; *R.* v. *Scaife*, 17 Q. B. 238; 5 Cox C. C. 243; 2 Den. 281; 15 J. P. 581; 20 L. J. M. C. 229; 15 Jur. 607 (compare section 20). Before the grand jury can read the deposition of the witness, the question as to his being unable to travel, &c., must be referred to the judge. (*R.* v. *Beavor*, 10 Cox C. C. 274.) See also upon this subject *Tomlin's Law*

Dictionary, "Grand Jury," 6 C. & P. 90; 1 Chitty Crim. Law, 313; and 19 & 20 Vict. c. 54.

The questions to be decided are:—

1. Is the child of tender years?

2. If so, does he understand the nature of an oath?

3. If not, is he possessed of sufficient intelligence to justify the reception of the evidence?

4. If so, does he understand the duty of speaking the truth?

At the trial these questions must be decided by the judge alone, without the intervention of the jury.

"The ordinary mode of ascertaining whether a witness is competent is by examining him on what is called the *voir dire*, *i.e.*, a sort of preliminary examination by the judge, in which the witness is required to speak the truth with respect to the questions put to him; when if incompetency appears from his answers, he is rejected, and even if they are satisfactory, the judge may receive evidence to contradict them or establish other facts showing the witness incompetent (*R.* v. *Hill*, 2 Den. 254). It sometimes happens that the incompetency of a witness is not discovered until after he has been sworn and his examination proceeded with a considerable way, or perhaps even brought to a close; under which circumstances the judge ought, it seems, to erase the witness's evidence from his notes and tell the jury to pay no attention to it. It has been said, also, that although in regular order the examination on the *voir dire* precedes the examination in chief; yet when a ground of incompetency is thus unexpectedly discovered, the judge may stop the proceedings and examine on the *voir dire* with the view of ascertaining the fact:" Best on Evidence, 6th ed., p. 190; *R.* v. *Whitehead*, L. R. 1 C. C. R. 33; 35 L. J. M. C. 186.

Although this practice is an innovation in English procedure, that of allowing children to give evidence, not under the sanction of an oath, is well established in Scotland. There is a fixed rule in that country that no child under the age of twelve shall in any case be sworn, nor between twelve and fourteen, unless it appears to the court that the child has sufficient intelligence or education to understand the solemnity of an oath, but in all criminal cases every child between twelve and fourteen who is not fit to be sworn, and every child under twelve, may, if the court

think right, be admitted to give evidence, the weight to be attached to such testimony being left to the judgment of the jury: 2 Alison, 433 (1833), and cases there cited; Bell's Dictionary, 356.

The clause seems to be a material improvement in the law of evidence, and prevents the recurrence of so great a scandal as the case of *R.* v. *Hall* (Old Bailey Sessions Papers, vol. 31, 1st session, p. 72), where a father "by neglecting his moral duty as to the education of his child and thus rendering her incompetent, obtained an immunity for the commission of a heinous crime." See also the cases collected: 1 Phil. Ev., 10th ed., pp. 8 to 12.

The trial must not be postponed to enable the child to receive the necessary education to qualify him as a witness: *R.* v. *Williams*, 7 C. & P. 320; *R.* v. *Wade*, 1 R. & M. 86; 1 Leach, 430, note; *R.* v. *Nicholas*, 2 C. & K. 246; *R.* v. *Pike*, 3 C. & P. 598.

(*j*) See section 2, note (*l*). Even if sworn, a child whose share in the matter has been that of an active and willing participator, so as to constitute her an accomplice, would fall within the general rule as to corroboration.

The Act recognizes the depravity that may exist in a child of that age by providing that, although not sworn, she may be indicted for perjury.

(*k*) PERJURY.—Considering the tender age of the offender, it will be necessary to prove that he is *doli capax* (*R.* v. *Owen*, 4 C. & P. 236; *R.* v. *York*, Foster, 70; 4 Bl. Com. 24; Broom's Maxims (6th. ed.), 308; Archbold's Criminal Pleading, 19th ed., p. 17), prosecutions under this clause will be very rare.

(*l*) See section 3, note (*h*).

GENERAL SECTIONS OF THIS ACT WHICH RELATE TO THE OFFENCES UNDER THIS SECTION.

See section 9, *post*, p. 61.

Power to jury on indictment for rape or felony under this section to commit for misdemeanors under sections 3, *ante*, p. 30; 4, *ante*, p. 38; and 5, *post*, p. 44, or of an indecent assault.

See section 12, *post*, p. 70.

As to custody of girls under 16.

See section 17, *post*, p. 81.

The provisions of the Vexatious Indictments Act apply to misdemeanors under this section. Courts of quarter sessions have no jurisdiction to try offences against this Act.

See section 18, *post*, p. 88.

The court may allow the cost of the prosecution in cases under this section, and the prisoner, if convicted of the felony charged, or of a misdemeanor under sections 3, 4, and 5, or of an indecent assault, may be ordered to pay such costs.

See section 20, *post*, p. 91.

The person charged and the husband or wife of such person may be a witness at each enquiry, except before a grand jury.

5. *Defilement of girl between thirteen and sixteen years of age.*] (*a*) Any person (*b*) who—

(1.) Unlawfully (*c*) and carnally knows (*d*) or attempts (*e*) to have unlawful (*c*) carnal knowledge of any girl being of or above the age of thirteen years and under the age of sixteen years (*f*); or

(2.) Unlawfully (*c*) and carnally knows (*d*), or attempts (*e*) to have unlawful (*c*) carnal knowledge of any female idiot or imbecile woman or girl (*g*), under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission

of the offence that the woman or girl was an idiot or imbecile,

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that it shall be a sufficient defence to any charge under sub-section one of this section if it shall be made to appear to the court or jury (*i*) before whom the charge shall be brought that the person so charged had reasonable cause (*j*) to believe that the girl was of or above the age of sixteen years (*k*).

Provided also, that no prosecution shall be commenced for an offence under sub-section one of this section more than three months (*l*) after the commission of the offence.

(*a*) Section 51 of 24 & 25 Vict. c. 100, provided that whosoever shall unlawfully and carnally know and abuse any girl above the age of ten years and under the age of twelve years shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years (afterwards five years), or to be imprisoned for any term not exceeding two years, with or without hard labour.

By section 2 of the Offences Against the Person Act, 1875 (38 & 39 Vict. c. 94), section 51 was repealed, and it was enacted by section 4 in lieu thereof, "Whosoever shall unlawfully and carnally know and abuse any girl being above the age of twelve years and under the age of thirteen years, whether with or without her consent, shall be guilty of a misdemeanor, and being con-

victed thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour."

With regard to the words "with or without her consent," Mr. Justice STEPHEN, in Dig. of Crim. Law, p. 173, anticipated a point which was afterwards taken in *R.* v. *Ratcliffe*, 10 Q. B. D. 74; 15 Cox C. C. 127; 47 L. T. Rep. 388, viz., that even if the girl did not consent, the defendant could not be convicted of a rape. It was held, however, that notwithstanding the words of the section, the prisoner's conduct amounted to rape (*R.* v. *Dicken*, 14 Cox 8, per MELLOR, J., followed).

The Act of 1875 is repealed by section 19 and schedule of this Act.

The attempt to commit the offence in section 51 was made a substantive misdemeanor, punishable by two years' imprisonment with hard labour; but the attempt to commit the offence under the section of the Act of 1875 was merely a common law misdemeanor. It will be observed, that under the present sub-section the attempt is placed in the same rank with the substantive offence.

As this sub-section is considerably modified by the proviso dealing with the belief as to the age, the alteration in the age from 13 to 16 is not so substantial as at first sight appears.

(*b*) PERSON.—As to boy under 14, see section 4, note (*a*).

(*c*) UNLAWFULLY.—See section 2, note (*d*).

(*d*) CARNALLY KNOWS.—The word "abuse," which appeared in the former sections, is omitted; see section 2, note (*e*).

(*e*) ATTEMPTS.—See section 2, note (*b*).

(*f*) UNDER THE AGE OF 16 YEARS.—See section 2, note (*c*).

As to aiding and abetting and soliciting, see section 4, note (*g*).

On account of the greater age of the girl, the question of aiding and abetting and soliciting becomes important, and this liability of a girl to punishment would satisfy the scruples of those with regard to a boy who being younger than the girl, may have been more sinned against than sinning. The fact, when more

generally known, that the girl herself is by inciting to the commission of the offence and submitting to it when committed, guilty of a crime, may to some extent discourage trumped-up charges. If shown to be an accomplice, the ordinary rule as to corroboration would apply. See section 2, note (*e*), sub-section 2.

(*g*) FEMALE IDIOT OR IMBECILE WOMAN OR GIRL.—An idiot is one who is of non-sane memory from his birth by a perpetual infirmity and without lucid intervals (Coke, Litt. 247), and those are said to be idiots who cannot number twenty or tell the days of the week, or who do not know their own fathers or mothers, or the like; but these instances are mentioned as tests of insanity only, and are not always conclusive, and although idiocy or natural fatuity is in general sufficiently apparent, the question whether idiot or not is a question of fact, triable by a jury (Bac. Abridg. Idiot, a.), and ought to be clearly made out in order to exempt the party from punishment (*R.* v. *Arnold*, 1 Russ. 9). One deaf and dumb from his birth was by presumption of law an idiot, but if it could be shown that he had sufficient understanding by signs, &c., then he could be treated as if sane (*R.* v. *Jones*, 1 Leach, 120; *R.* v. *Steel*, *id.* 451; Archbold's Criminal Pleading, 19th ed., p. 18; Roscoe's Crim. Ev. 10th ed., pp. 199, 999).

"Idiocy is known by lawyers as the *dementia naturalis*. The term idiot is applied to one who from original defect has never had mental power. Idiocy differs from the other states of insanity in the fact that it is marked by congenital deficiency of the mental faculties. There is not here a perversion or a loss of what has once been acquired, but a state in which from defective structure of the brain the individual has never been able to acquire any degree of intellectual power to fit him for his social position. It commences with life and continues through it, although idiots are said rarely to live beyond the age of thirty. The deficiency of intellect is marked by a peculiar physiognomy, an absence of all expression, and a vague and unmeaning look. There is no power of speech, or only the utterance of a cry or sound; there is no will, but the actions of these beings appear to depend upon impulse, a power of imitation, or mere animal instinct. They

recognize no one, they remember no one, and the mind seems to be a blank. Such is the picture of what may be termed a perfect idiot. . . . A confirmed idiot may in almost all cases be recognized by the expression of countenance and the form of the skull.

"Idiocy is not always so complete as this description would represent. There is a state, scarcely separable from idiocy, in which the mind is capable of receiving some ideas, and of profiting to a certain extent by instruction. Owing, however, either to original defect, or to a defect proceeding from arrested development of the brain as a result of disease or other causes operating after birth, the minds of such persons are not capable of being brought to a healthy standard of intellect, like that of an ordinary person of similar age and social position. This state is called imbecility; it is nothing more than idiocy in a minor degree. In common language, persons labouring under it are often called idiots, but for the sake of precision in medical language they are more correctly described as imbeciles. In imbecility the physical organization differs but little from the ordinary standard; the moral and intellectual faculties are susceptible of cultivation, but to a less degree than in a perfect man, and even this capacity does not exist beyond a certain point. Imbeciles never attain a normal standard of intellect, and when placed in the same circumstances as other men they never make a similar use of their intellectual powers. They can form no abstract ideas, and sometimes their capacity to receive instruction is limited only to a certain subject, as, for instance, arithmetic. Their memory and judgment are limited, although sometimes the former is remarkably strong. They express themselves in a hesitating manner, and differently from other men; they require time to perceive the relations of objects which are immediately perceived by sane persons. The degree in which imbecility exists is well indicated by the power of speech. In idiots there is no speech, or only an utterance of single words. In the better class of imbeciles the speech is often easy and unaffected, while there is every grade between these two extremes:" Taylor's Medical Jurisprudence, by Stephenson, 3rd ed., p. 489.

The words in the section are not sweeping enough to include *lunatics*.

This sub-section was designed to meet a defect in the law, which is illustrated by the case of *R.* v. *N. Fletcher*, L. R. 1 C. C. R. 39; 35 L. J. M. C. 172; 12 Jur. (N.S.) 505; 14 L. T. Rep. 573; 14 W. R. 774; 10 Cox, 248, where the prosecutrix, although imbecile, was described by the medical man to be a fully developed woman, in whom strong animal instincts might exist. POLLOCK, C. B., in giving judgment, said, "No evidence was given on behalf of the Crown that what was done to the girl was against her will or without her consent. We are all of opinion that some evidence of that kind ought to have been given, and in its absence there was no case to go to the jury."

Where the jury find that the prosecutrix is incapable of expressing assent or dissent to the act done, the law as to rape would apply: *R.* v. *R. Fletcher*, Bell C. C. 63; 8 Cox C. C. 131; 28 L. J. M. C. 85; 5 Jur. (N.S.) 179; 7 W. R. 204; and *R.* v. *Barratt*, L. R. 2 C. C. R. 81; 43 L. J. M. C. 7; 29 L. T. Rep. 409; 22 W. R. 136; 12 Cox, 498).

The court or jury may decide as to the mental condition of the woman or girl upon her appearance and demeanour in court, without extraneous evidence as to her real condition: *R.* v. *Goode*, 7 A. & E. 536.

If it is proposed to call a prosecutrix alleged to be imbecile, for procedure to determine her competency as a witness, see *R.* v. *Hill*, 2 Den. 254; *Ruston's Case*, 1 Leach, 408; *R.* v. *O'Brien*, 1 Cox, 185.

(*i*) COURT OR JURY.—Court would be the court of summary jurisdiction holding the preliminary inquiry under 11 & 12 Vict. c. 42. The "jury" of course refers to the trial, the question as to the occasion for belief on the part of the defendant being for them, and not for the judge.

(*j*) REASONABLE CAUSE.—The appearance of the prosecutrix would be an important matter, upon which the defendant would found his belief. Under the Vagrant Act (5 Geo. 4, c. 83, s. 3), it is an offence to procure a child to beg, &c. Upon that section it was decided that the justices might form their judgment from the appearance of the child, or receive evidence as to the age of a

child. It is a matter of fact, on which they must judge (*R.* v. *Viasani*, 30 J. P. 758). See also definitions of "child" and "young person" in section 49 of 42 & 43 Vict. c. 49.

(*k*) See section 2, note (*c*), and the case of *R.* v. *Prince*, and other cases there quoted.

(*l*) THREE MONTHS.—In computing the period of limitation, the day upon which the offence was committed should be excluded, and the last day of commencing the prosecution is the last day of the time limited by the statute (*Higgins* v. *McAdam*, 3 Y. & J. 1, 16; *Pellew* v. *East Wanford Inhabitants*, 9 B. & C. 134; *Williams* v. *Burgess*, 12 Ad. & E. 635).

By 13 & 14 Vict. c. 21, s. 4, "month" shall be taken to mean "calendar month" unless the word "lunar" be added.

Limitation of a time within which a prosecution is to be commenced is provided for by—

1. Treason Coining Act (8 & 9 Will. 3, c. 26), three months. (See *R.* v. *Phillips*, R. & R. 369.)
2. Sedition Act (60 Geo. 3 and 1 Geo. 4, c. 1, s. 7), six months.
3. Game Act (9 Geo. 4, c. 69, s. 4), twelve months.
4. Summary Jurisdiction Act (11 & 12 Vict. c. 43, s. 11), six months.
5. Prisons Act (28 & 29 Vict. c. 126, s. 150), six months.
6. Births Registration Act (37 & 38 Vict. c. 88, s. 46), three years.
7. Public Health Act (38 & 39 Vict. c. 55, s. 252), six months.
8. Customs Act (39 & 40 Vict. c. 36, s. 257), three years.
9. Corrupt Practices Prevention Act (46 & 47 Vict. c. 51, s. 51), one year from offence, or three months after commissioner's report.

The laying of the information upon which a warrant or summons is issued, or giving the accused in charge, is the commencement of the prosecution.

The following cases have been decided upon this point:

Indictment under section 9 of 9 Geo. 4, c. 69; offence proved to have been committed on 12th January, 1844; indictment preferred 1st March, 1845; warrant of commitment dated 11th December, 1844—Held, that prosecution was commenced within twelve months (*R.* v. *Austin*, 1 C. & K. 621); but the mere

issuing of the warrant of apprehension is not a commencement of proceedings under this statute unless the defendant be apprehended upon that warrant (*R.* v. *Hull*, 2 F. & F. 16).

Offence committed 4th December, 1845; information laid and warrant issued 19th December, 1845; apprehension and committal of B. 5th September, 1846, and of G. 21st October, 1846; indictment preferred 5th April, 1847—Held, prosecution commenced in time (*R.* v. *Brook*, 1 Den. 217; 2 C. & K. 402; 2 Cox, 436).

Quære, whether preferring an indictment ignored by the grand jury is a commencement of the prosecution within the above statute, so as to warrant the conviction of the party upon another indictment four years after the offence (*R.* v. *Kilminster*, 7 C. & P. 228).

The production of the warrant without the information is not legal evidence that the proceedings have been commenced within the time limited (*R.* v. *Parker*, 9 Cox, 475; L. & C. 459; 33 L. J. M. C. 135; 12 W. R. 765; 10 Jur. (N.S.) 596; 10 L. T. Rep. 463).

Under the Old Coinage Act (8 & 9 Will. 3, c. 26) the time limited was three months; proof by parol that the prisoner was apprehended within three months; but the indictment was preferred after three months—Held, that proof was not sufficient (*R.* v. *Phillips*, R. & R. 369). Where the prisoner pleaded *guilty*, but it was afterwards discovered that the prosecution was not within the time of limitation, he was allowed to withdraw his plea (*R.* v. *Casbolt*, 21 L. T. Rep. 263). See also *R.* v. *Willace*, 1 East P. C. 186; *Tilladam* v. *Inhabitants of Bristol*, 2 A. & E. 389; 4 L. J. M. C. 35.

As a matter of precaution, at any rate, it will be advisable for the information upon which process is asked, and for the indictment to show clearly that the prosecution has been commenced within the time limited. But see *Wray* v. *Toke*, 12 Q. B. 501, 507, as to a summary conviction.

If upon an indictment for rape, the facts show that instead of that offence, one under this section has been committed, the prisoner would be entitled to be acquitted, unless the prosecution had been commenced within three months.

GENERAL SECTIONS OF THIS ACT WHICH RELATE TO THE OFFENCES UNDER THIS SECTION.

See section 9, *post*, p. 61.
Power to jury on an indictment for rape or felony under section 4, *ante*, p. 38, to convict of misdemeanor under this section.

See section 12, *post*, p. 70.
As to custody of girls under 16.

See section 16, *post*, p. 81.
Liability of defendant to other proceedings.

See section 17, *post*, p. 81.
The provisions of the Vexatious Indictment Act apply to offences under this section. Courts of quarter sessions have no jurisdiction to try offences against this Act.

See section 18, *post*, p. 88.
The court has power to allow the costs of the prosecution in cases under this section; and the prisoner, if convicted, may be ordered to pay such costs.

See section 20, *post*, p. 91.
The person charged, and the husband or wife of such person, may be a witness at each inquiry except before a grand jury.

6. ***Householder, &c., permitting defilement of young girl on his premises.***] Any person who, being the owner (*a*) or occupier (*b*) of any premises, or having, or acting or assisting in, the management or control (*c*) thereof—

induces or knowingly suffers any girl of such age as is in this section mentioned to resort to (*d*) or be

in or upon such premises for the purpose of being unlawfully (*e*) and carnally known (*f*) by any man (*g*), whether such carnal knowledge is intended to be with any particular man or generally,

(1) shall, if such girl is under the age of thirteen years (*h*), be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour; and

(2) if such girl is of or above the age of thirteen and under the age of sixteen years (*i*), shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of sixteen years (*j*).

(*a*) OWNER.—There is no definition of owner in this Act, but interpretations in other Acts may well be referred to, in order to gather its meaning:—

Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4: "Owner

means the person for the time being receiving the rack-rent of the lands and premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such land or premises were let at a rack-rent." Compare also Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), s. 2; Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 250; Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 3. See cases collected upon this definition in Lumley's Public Health, 2nd ed. p. 6. See also definition of "Owner" in Licensing Act, 1874, 37 & 38 Vict. c. 49, s. 29. As to the responsibility of an owner for keeping a brothel, see 25 Geo. 2, c. 36, s. 8; *R.* v. *Barrett*, L. & C. 263; and *R.* v. *Stannard*, L. & C. 349.

(*b*) OCCUPIER.—In the absence of proof of actual occupation and also in addition to it, the occupation may be proved by the production of the rate book, together with evidence that the person in question has paid the rates.

(*c*) HAVING, OR ACTING OR ASSISTING IN THE MANAGEMENT OR CONTROL.—Somewhat similar words are used in the Act above referred to in 8 & 9 Vict. c. 109, s. 4, relating to gaming, in the Betting Act, 1853 (16 & 17 Vict. c. 119, s. 3), and in the Licensing Act, 1872 (35 & 36 Vict. c. 94, s. 17); but no cases, except those above quoted, seem to have been decided upon them.

(*d*) RESORT TO.—As it is an offence to suffer the girl to be in or upon the premises, as it seems on one occasion only, it is difficult to see the purpose of the words "resort to," but the expression may include visits to the house on the part of the girl where she does not actually enter the premises. Upon the word "frequenting" in section 4 of the Vagrant Act (5 Geo. 4, c. 83), it has been held that one occasion does not amount to a "frequenting:" *Clark* v. *The Queen*, 48 J. P. 773; 14 Q. B. D. 92.

(*e*) UNLAWFULLY.—See section 2, note (*d*).

(*f*) CARNALLY KNOWN.—See section 2, note (*e*).

(*g*) MAN.—"Person," used in the preceding sections, for some reason is abandoned. A question will arise as to whether "man"

will include a male person under 21. The doubt is justified by the use of the expression "woman or girl under 21." See fo instance section 2, sub-section 1.

(*h*) THIRTEEN YEARS.—See section 2, note (*c*), "21 years."

(*i*) SIXTEEN YEARS.—See section 2, note (*c*), "21 years."

(*j*) See section 5, notes (*i*), (*j*), and (*k*).

The object of this section is to punish those persons who afford facilities for the commission of the offences of having connection with girls under 13 and 16 respectively, but who, in the case of the offences not being committed, would not of course be liable as accessories or principals in the second degree. See section 2, note (*a*), and the remarks there upon this section.

GENERAL SECTIONS OF THIS ACT WHICH RELATE TO OFFENCES UNDER THIS SECTION.

See section 12, *post*, p. 70.
As to custody of girls under 16.

See section 16, *post*, p. 81.
Liability of defendant to other proceedings.

See section 17, *post*, p. 81.
The provisions of the Vexatious Indictment Act apply to misdemeanors under this section. Courts of quarter sessions have no jurisdiction to try offences under this section.

See section 18, *post*, p 88.
The court may allow the costs of the prosecution in cases under this section, and the prisoner if convicted of the felony or misdemeanor may be ordered to pay such costs.

See section 20, *post*, p. 91.
The defendant, and the husband or wife of such defendant, may be a witness at each enquiry, except before a grand jury.

7. ***Abduction of girl under eighteen with intent to have carnal knowledge.***] Any person who—

with intent that any unmarried (*a*) girl under the age of eighteen years (*b*) should be unlawfully (*c*) and carnally known (*d*) by any man, whether such carnal knowledge is intended to be with any particular man (*e*), or generally—

takes or causes to be taken such girl out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her (*f*),

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury that the person so charged had reasonable cause to believe that the girl was of or above the age of eighteen years (*g*).

(*a*) UNMARRIED.—See section 2, note (*d*), and Broom's Legal Maxims, 6th ed., p. 468—*Consensus non concubitus facit matrimonium;* and p. 480—*Hæres legitimus est quem nuptiæ demonstrant.*

(*b*) EIGHTEEN YEARS.—See section 2, note (*c*).

(*c*) UNLAWFULLY.—See section 2, note (*d*).

(*d*) CARNALLY KNOWN.—See section 2, note (*e*).

(*e*) MAN.—See section 6, note (*g*).

(*f*) See section 8, note (*b*). See 1 East, Pleas of the Crown, 457, as to temporary charge.

Section 55 of 24 & 25 Vict. c. 100, enacts that whosoever shall unlawfully take or cause to be taken any unmarried girl being under the age of 16 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, shall be guilty of a misdemeanor.

The present section would have been clearer had the words been "girl of or above the age of 16 years and under the age of 18 years," because, as section 55 is unrepealed, and indeed is incorporated for certain purposes with this Act under section 20, the more stringent law as to girls under the age of 16 remains. It is more stringent, as no corrupt intent need be proved (*R.* v. *Booth*, 12 Cox, 321; *R.* v. *Tinckler*, 1 F. & F. 513; *R.* v. *Green*, 3 F. & F. 274); and secondly, ignorance or misconception as to the age of the girl is no defence. (*R.* v. *Prince*, and other cases quoted, note (*c*) to section 2.) With regard to a girl under 14, section 56, which is not repealed or affected by this Act, makes it a felony, punishable with seven years penal servitude, to take away, &c., a child under 14. (*R.* v. *Johnson*, 50 L. T. Rep. 759; 48 J. P. 759; and 15 Cox, 481.) "Father" includes putative father (*R.* v. *Cornfield*, 2 Str. 1162; *R.* v. *Sweeting*, 1 East, P. C. 457.) As to a widowed mother, see *Ratcliffe's Case*, 3 Co. 38.

(*g*) See section 5, notes (*i*), (*j*), and (*k*).

Section 7, generally.

In *R.* v. *Howes*, 30 L. J. M. C. 47; 3 E. & E., 332, which was an application for a writ of *habeas corpus*, it was held that a girl under 16 had no right to withdraw herself from the custody of her father against his will, and the fact that section 55 had fixed the age of 16 as that under which children were protected from being taken away by strangers, even with the best of motives, guided the court in coming to that decision. We should think that if the court were applied to with respect to a girl over 16 but under 18, they would interfere if the girl had been removed with the intent mentioned in the section. See *Alicia Race*, 26 L. J. Q. B. 169.

A father can no longer obtain at common law a writ of *habeas*

corpus for the possession of a child where there are equitable reasons against it (*Re Goldsworthy*, 2 Q. B. D. 75).

If the girl were shown to be an accomplice, the rule as to corroboration would seem to apply. See section 2, note (*l*) for cases on that subject.

GENERAL SECTIONS OF THIS ACT WHICH RELATE TO OFFENCES UNDER THIS SECTION.

See section 12, *post*, p. 70.
As to custody of girls under 16.

See section 16, *post*, p. 81.
As to liability of defendant to other proceedings.

See section 17, *post*, p. 81.
The provisions of the Vexatious Indictments Act apply to offences under this section. Courts of quarter sessions have no jurisdiction to try offences under this Act.

See section 18, *post*, p. 88.
The court has power to allow the costs of the prosecution in cases under this section, and the prisoner if convicted may be ordered to pay such costs.

See section 20, *post*, p. 91.
The person charged, and the husband or wife of such person, may be a witness at each enquiry, except before a grand jury.

8. ***Unlawful detention with intent to have carnal knowledge.***] Any person who detains (*a*) any woman or girl against her will (*b*)—

(1.) In or upon any premises with intent that she may be unlawfully (*c*) and carnally known (*d*) by any man (*e*), whether any particular man or generally, or

(2.) In any brothel (*f*),

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connexion, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel, if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or, where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the direction of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel (*g*).

(*a*) DETAINS.—This word is used in the abduction sections (53, 54, 55) of 24 & 25 Vict. c. 100 (see Appendix, p. 95), but in section 54 it is used in conjunction with "by force"—"Whosoever shall by force take away or detain against her will any woman." This, of course, leads to the inference that there may be detention

without force, and that therefore under the present section, to render a person guilty, there need be no force or violence employed.

(*b*) AGAINST HER WILL.—If the consent of the woman or girl is obtained by fraud, the detention would be deemed to be against her will: Stephen's Dig. Crim. Law, 179; *R.* v. *Hopkins*, Car. and Mar. 264; *R.* v. *Wakefield*, Lancaster Assizes, 1827; 2 Townsend's Modern State Trials, 112; Archbold's Criminal Pleading, 19th ed. 734.

(*c*) UNLAWFULLY.—See section 2, note (*d*).

(*d*) CARNALLY KNOWN.—See section 2, note (*e*).

(*e*) MAN.—See section 6, note (*g*).

(*f*) BROTHEL.—See section 2, note (*h*).

(*g*) With regard to the law of abduction the effect of the sections of 24 & 25 Vict. c. 100, may be summed up as follows:—

Section 53 provides—

1. That if from motives of lucre and with intent to marry or carnally know an *heiress* of any age, a person shall take away or detain her against her will, he shall be guilty of felony.
2. That if with intent to marry or carnally know an *heiress under* 21, a person shall *fraudulently allure*, take away, or detain her out of the possession and against the will of *her father, &c.*, he shall be guilty of felony.

Section 54 provides—

3. That if with intent to marry or carnally know *any woman of any age*, a person, *by force*, shall take and detain her against her will, he shall be guilty of felony.

See section 55 (p. 100, *infra*) as to girls under 16.

See section 56 (p. 100, *infra*) as to children under 14.

Were it not for this section (8) and the last preceding section (7) women above the age of 16 who were not heiresses would continue to be unprotected by law unless force were used in taking them away.

GENERAL SECTIONS OF THIS ACT WHICH RELATE TO OFFENCES UNDER THIS SECTION.

See section 12, *post*, p. 70.
As to custody of girls under 16.

See section 16, *post*, p. 81.
As to liability of the defendant to other criminal proceedings.

See section 17, *post*, p. 81.
The provisions of the Vexatious Indictments Act apply to offences under this section. The courts of quarter sessions have no jurisdiction to try any offences against this Act.

See section 18, *post*, p. 88.
The court may allow the costs of the prosecution in any misdemeanor under this Act as in cases of felony, and the prisoner, if convicted, may be ordered to pay such costs.

See section 20, *post*, p. 91.
The defendant and the husband or wife of the defendant may be a witness at each enquiry except before a grand jury.

9. ***Power, on indictment for rape, to convict of certain misdemeanors.***] If upon the trial of any indictment for rape (*a*), or any offence made felony by section four (*b*) of this Act, the jury shall be satisfied that the defendant is guilty of an offence under section three (*c*), four (*d*), or five (*e*) of this Act, or of an indecent assault (*f*), but are not satisfied that the defendant is guilty of the felony charged in such indictment, or of an attempt to commit the same, then and in every such case the jury may acquit the defendant of such felony, and find him guilty of such

offence as aforesaid, or of an indecent assault, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such an offence as aforesaid, or for the misdemeanor of indecent assault.

(*a*) 24 & 25 Vict. c. 100, s. 48.

(*b*) SECTION 4.—Having unlawful carnal knowledge of any girl under the age of 13 years.

In the event of the jury finding a prisoner under the age of 16 guilty of indecent assault or one of the other minor offences, the provisions with regard to whipping and a reformatory school would not apply.

(*c*) SECTION 3.—1. By threats, &c., procuring or attempting to procure a woman or girl to have unlawful carnal connexion.

2. By false pretence, &c., procuring a woman or girl to have unlawful carnal connexion.

3. Applying to, &c., a woman or girl any drug, &c., with intent to stupefy or overpower, so as thereby to enable any person to have unlawful carnal connexion with the woman or girl.

(*d*) SECTION 4.—1. Having unlawful carnal knowledge of a girl under the age of 13.

2. Attempt.

(*e*) SECTION 5.—1. Unlawful and carnal knowledge of a girl between 13 and 16.

2. Unlawful and carnal knowledge of a female idiot, &c., under circumstances which do not amount to rape.

(*f*) INDECENT ASSAULT.—24 & 25 Vict. c. 100, s. 52. It is to be noted that the law of indecent assault has not been changed. Thirteen is the highest age at which consent to indecent conduct is no defence: 43 & 44 Vict. c. 45, s. 2. See Appendix, p. 101.

10. *Power of search.*] If it appears to any justice of the peace (*a*), on information (*b*) made before him

on oath (*c*) by any parent, relative, or guardian (*d*) of any woman or girl (*e*), or any other person who, in the opinion of the justice, is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause (*f*) to suspect that such woman or girl is unlawfully detained (*g*) for immoral purposes by any person in any place within the jurisdiction of such justice, such justice may issue a warrant (*h*) authorizing any person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl (*i*) until she can be brought before a justice of the peace; and the justice of the peace before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

The justice of the peace issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice, and proceedings to be taken for punishing such person acording to law (*j*).

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man (*k*), whether any particular man or generally, and—

(*a.*) (*l*) Either is under the age of sixteen years; or

(*b.*) If of or over the age of sixteen years, and under the age of eighteen years, is so detained against her will, or against the will of her father or mother or of any other person having the lawful care or charge of her; or

(*c.*) If of or above the age of eighteen years is so detained against her will.

Any person authorized by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) (*m*) any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom.

Provided always, that every warrant issued under this section shall be addressed to and executed by some superintendent, inspector, or other officer of police (*n*), who shall be accompanied by the parent, relative, or guardian or other person making the information, if such person so desire, unless the justice shall otherwise direct.

(*a*) JUSTICE OF THE PEACE.—Now a court of summary jurisdiction. Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43, s. 7.)

(*b*) INFORMATION.—The information is not required to be in writing, and therefore may be merely verbal; still it is more prudent to take it in writing: Greaves's Criminal Statutes, 2nd ed., p. 398. *R.* v. *Hughes*, 4 Q. B. D. 614; 48 L. J. M. C. 151; 40 L. T. Rep. 685.

(*c*) OATH.—Or affirmation, where such is allowed by statute (Greaves's Criminal Statutes, 2nd ed., p. 398). See statutes allow-

ing affirmations in certain proceedings: 9 Geo. 4, c. 32, s. 1 (Quakers and Moravians); 3 & 4 Will. 4, c. 49 (Quakers and Moravians); 1 & 2 Vict. c. 77 (Quakers and Moravians); 3 & 4 Will. 4, c. 82 (Separatists); 24 & 25 Vict. c. 66, s. 1 (generally); 32 & 33 Vict. c. 68, s. 4 (generally).

(*d*) PARENT, RELATIVE, OR GUARDIAN.—A strict interpretation of these words is unnecessary, as if any doubt should arise as to whether the informant is in one or other of these positions, the justice could receive the information as from one who in his opinion is *bonâ fide* acting in the interest of the woman or girl. As to putative father and widowed mother, see section 7, note (*f*).

(*e*) WOMAN OR GIRL.—A married woman would be within the section.

(*f*) REASONABLE CAUSE.—The same phrase is used in the Metropolitan Police Act (2 & 3 Vict. c. 71, s. 25); the Coinage Act (24 & 25 Vict. c. 99, s. 27); the Larceny Act (24 & 25 Vict. c. 96, s. 103); the Forgery Act (24 & 25 Vict. c. 98, s. 46). It is certainly better, if it be not absolutely necessary that the information should state the facts which show that there is such reasonable cause of suspicion, and whether there be an information in writing or not, the justice ought always to take care before he grants the warrant to ascertain that there really are facts which constitute such a reasonable cause of suspicion: Greaves's Criminal Statutes, 2nd ed., p. 399.

(*g*) UNLAWFULLY DETAINED.—No actual force need be used to constitute detention. See 3rd paragraph of the section.

(*h*) WARRANT.—Whether the information be in writing or not, the warrant ought to recite that it has been proved on oath, or affirmation, as the case may be, that there is such reasonable cause to suspect as has just been mentioned; but it does not seem necessary to state in the warrant the facts which constitute such reasonable cause (Greaves's Criminal Statutes, 2nd ed., p. 399). A search warrant may be issued on Sunday (11 & 12 Vict. c. 42, s. 4), but it should only authorize a search in the daytime, for it does not seem settled that a warrant can be issued to search even

for stolen goods in the night (Greaves's Criminal Statutes, p. 400). The officer must have the warrant in his personal possession at the time of the search, and produce it if required: *Codd* v. *Cabe*, 45 L. J. M. C. 101; 40 J. P. 506. See "Warrant," Stone's Justices Manual, 22nd ed., p. 815.

(*i*) To Search for, &c., such Woman or Girl.—The information should also specify the name, &c., of the woman or girl to be searched for, as accurately as the nature of the case will allow; and the description must be followed in the warrant, for the officer executing a warrant can generally only lawfully seize such things as are specified in the warrant, and to enable him properly to perform his duty, the description should be as accurate as may be practicable: *Crozier* v. *Cundey*, 6 B. & C. 232; *Price* v. *Messenger*, 2 B. & P. 158; *Bell* v. *Oakley*, 2 M. & S. 261; Greaves's Criminal Statutes, 2nd ed., p. 400.

(*j*) The proceedings would then be under 11 & 12 Vict. c. 42, if the charge is for an indictable offence, and c. 43 for a summary offence.

(*k*) Any Man.—See section 6, note (*g*).

(*l*) These distinctions as to age have in view the offences under the Act which apply to such ages respectively—

(*a*) Sections 4, 5, and 6.

(*b*) Section 7.

(*c*) Sections 2, 3, and 8.

(*m*) As to power to break doors, see Stone's Justices' Manual, 22nd ed., p. 816.

Before resorting to this extreme measure the officer should signify to those in the house the cause of his coming, and request them to give him admittance: 2 Hawk. c. 14, s. 1; *Lannock* v. *Brown*, 2 B. & A. 592. See also 24 J. P. 396.

No precise form of words is required, it being sufficient if the party have notice that the officer claims to act under a proper authority and has a legal warrant (Fost. 137). See note in 1 Smith's L. C. 123, *Semayne's Case*, 5 Rep. 91, and Broom's Legal Maxims, 6th ed., 404.

(*n*) OTHER OFFICER OF POLICE.—This would not include an ordinary constable, else it would have been sufficient to have used that word alone, which would *a fortiori* have included those of a superior grade. It would refer to a person having a rank equivalent to superintendent or inspector although differently styled, but would not, we should think, include a sergeant for example. See Prevention of Crime Act, 1871 (34 & 35 Vict. c. 112, s. 20). "Chief officer of police" means "the chief constable, or head constable, or other officer, &c."

Below is set out a complete list of statutes in which power to issue search warrants is given. Language there used and cases upon it may furnish some guide if a difficulty arises in the interpretation of the present section :—

39 & 40 Geo. 3, c. 89, s. 11 (Marine and Queen's Stores).
5 Geo. 4, c. 83, s. 13 (Vagrant Act).
6 & 7 Will. 4, c. 37, s. 11 (Adulterated Bread).
2 & 3 Vict. c. 71, s. 25 (Police Act).
7 & 8 Vict. c. 22, s. 11 (Goldsmiths' Company [Forged Hallmarks]).
8 & 9 Vict. c. 109, s. 3 (Gaming Act).
16 & 17 Vict. c. 119, s. 11 (Betting House Act).
20 & 21 Vict. c. 83, s. 1 (Obscene Books).
24 & 25 Vict. c. 96, s. 103 (Larceny Act).
24 & 25 Vict. c. 97, s. 55 (Malicious Injuries Act).
24 & 25 Vict. c. 98, s. 46 (Forgery Act).
24 & 25 Vict. c. 99, s. 27 (Coining Act).
24 & 25 Vict. c. 110, s. 4 (Metal Dealers).
34 & 35 Vict. c. 105, s. 13 (Petroleum Act).
34 & 35 Vict. c. 112, s. 16 (Prevention of Crimes).
35 & 36 Vict. c. 93, s. 36 (Linen Unlawfully Pawned).
37 & 38 Vict. c. 49, s. 17 (Licensing Act).
38 Vict. c. 17, s. 73 (Explosives Act).
38 & 39 Vict. c. 25, s. 6 (Government Stores).
38 & 39 Vict. c. 55, s. 119 (Public Health Act).

Under all of the above acts, except 6 & 7 Will. 4, c. 37 (Adulterated Bread), a sworn information is required.

11. *Outrages on decency.*] Any male person who, in public or private, commits, or is a party to the commission of or procures (*a*) or attempts (*b*) to procure the commission by any male person of, any act of gross indecency (*c*) with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

(*a*) PROCURES.—See sect. 2, note (*a*).

(*b*) ATTEMPTS.—See sect 2, note (*b*).

(*c*) GROSS INDECENCY.—Such conduct as is at common law, if public, the subject of indictment.

The old law on the subject is stated in Stephen's Dig. of Crim. Law, p. 104, to be as follows :—

"Every one commits a misdemeanor who does any grossly indecent act in any open and public place in the presence of more persons than one ; but it is uncertain whether such conduct in a public place amounts to a misdemeanor if it is done when no one is present, or in the presence of one person only.

"A place is public within the meaning of this article if it is so situated that what passes there can be seen by any considerable number of persons if they happen to look."

The first improvement which the section makes is that even if the misconduct is in private, an offence notwithstanding is committed. The following have been held to be public places :— The inside of an omnibus (*R.* v. *Holmes*, Dearsley C. C. 207 ; 3 C. & K. 360 ; 6 Cox C. C. 216 ; 22 L. J. M. C. 122 ; 17 Jur. 562). The roof of a house visible from the back windows of several houses) *R.* v. *Shallman*, L. & C. 326 ; 9 Cox C. C. 388 ; 33 L. J. M. C. 58 ; 9 L. T. Rep. 425 ; 12 W. R. 88). The inside of a urinal open to the public, and by the side of a footpath in Hyde Park (*R.* v. *Harris*, L. R. 1 C. C. R. 282 ; 40 L. J. M. C. 67 ; 24

L. T. Rep. 74; 19 W. R. 360; 11 Cox, 659). The inside of a booth on Epsom race-course which the public were invited to enter (*R.* v. *Saunders*, 1 Q. B. D. 15; 45 L. J. M. C. 11; 33 L. T. Rep. 677; 24 W. R. 348; 13 Cox, 116). An open place where the public were in the habit of trespassing (*R.* v. *Wellard*, 14 Q. B. D. 63; 54 L. J. M. C. 14; 51 L. T. Rep. 604; 33 W. R. 156; 15 Cox, 559).

There was, too, the uncertainty in the law whether it was necessary that the misconduct should have been witnessed by more than one person, even if in a place accessible to the view of the public if they had been present, *e.g.*, Wandsworth Common: *R.* v. *Elliott*, L. & C. 103, and *R.* v. *Farrell*, 9 Cox C. C. 446.

It is difficult to understand why the section is limited to conjoint acts by two or more persons and to male persons. The offenders in the case of *R.* v. *Elliott* were a man and woman.

One class of cases which this section would meet is where men have been guilty of filthy practices together, which have not been sufficiently public to have constituted indecent exposure, or which have not had sufficiently direct connection with a more abominable crime to allow of an indictment for conspiring or for soliciting one another to commit an unnatural offence. *R.* v. *Middleditch* (1 Den. C. C. 92), *R.* v. *Cooper* (3 Cox, 547), and *R.* v. *Bragnell* (3 Cox, 402) illustrate the difficulty which might exist.

GENERAL SECTIONS OF THIS ACT WHICH RELATE TO OFFENCES UNDER THIS SECTION.

See section 16, *post*, p. 81.

As to liability of other proceedings.

See section 17, *post*, p. 81.

The provisions of the Vexatious Indictments Act apply to the misdemeanors under this section.

The courts of quarter sessions have no jurisdiction to try any offences under this Act.

See section 18, *post*, p. 88.

The court may allow the costs of the prosecution in any misdemeanor under this section, as in cases of felony, and the prisoner if convicted may be ordered to pay such costs.

See section 20, *post*, p. 91.

The defendant or the wife of the defendant may be a witness at any inquiry except before the grand jury.

12. ***Custody of girls under sixteen.***] Where on the trial (*a*) of any offence (*b*) under this Act it is proved to the satisfaction of the court (*c*) that the seduction (*d*) or prostitution (*e*) of a girl under the age of sixteen (*f*) has been caused, encouraged, or favoured by her father, mother (*g*), guardian (*h*), master, or mistress, it shall be in the power of the court (*i*) to divest such father, mother, guardian, master, or mistress of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of twenty-one, or any age below this as the court may direct, and the High Court (*k*) shall have the power from time to time to rescind or vary such order by the appointment of any other person or persons as such guardian, or in any other respect.

(*a*) TRIAL.—This jurisdiction is not exercisable by the court of summary jurisdiction before whom the preliminary inquiry takes place under 11 & 12 Vict. c. 42.

(*b*) OFFENCE.—See list of offences to which this section applies in table, *post*, p. 102.

(*c*) COURT.—This would mean the judge irrespective of the jury, and as the court of quarter sessions have no jurisdiction, the court would be a judge of assize, or a judge sitting at the Central Criminal Court.

(*d*) SEDUCTION.—This does not necessarily mean the particular act of immorality into which the court is inquiring, for it is pos-

sible that that act may not be the occasion upon which the girl was originally seduced, so that although the father or guardian may not be directly responsible for the particular act of immorality the subject of the trial, yet if the girl's original seduction was attributable to the father's conduct, the court could still make the order mentioned in the section. Of course, if there is a series of immoral acts caused by the father, &c., the court would have power under the word "prostitution."

(*e*) PROSTITUTION.—This must mean more than one isolated act of immorality.

(*f*) UNDER THE AGE OF SIXTEEN.—As to proof, see section 2, note (*c*).

(*g*) FATHER, MOTHER, would, it seems, include a natural or a step father or mother. See section 7, note (*f*), p. 57.

(*h*) GUARDIAN.—A person having the actual control of the girl, although having no legal right to such a position, would we think be within the section, otherwise, in many extreme cases, *e. g.*, where a girl lives with a brothel keeper, the court would have no power to interfere.

(*i*) POWER OF THE COURT.—This can be exercised, even in the case of an acquittal, if the judge is satisfied that the seduction or prostitution alleged at the trial has occurred. Of course, if the acquittal of the jury involves a disbelief in the whole case against the prisoner, a judge would rarely make an order in the face of that opinion, although he may disagree with the verdict.

There is no appeal from the court to the Court of Appeal against the order, it being in a proceeding of a criminal nature: *R.* v. *Steele*, 2 Q. B. D. 37; *R.* v. *Foote*, 10 Q. B. D. 378.

(*k*) HIGH COURT.—It was a well established part of the jurisdiction of the Court of Chancery to appoint guardians of infants when necessary; and this jurisdiction is now vested in the Chancery Division of the High Court by 36 & 37 Vict. c. 66, s. 34.

Though no court has the power actually to deprive a father of his legal right as a guardian, his exercise of his natural guardian-

ship is subject to the superintendence of the court, which, if necessary, will interfere and appoint a person to act as guardian (see the case of *Wellesley* v. *Beaufort*, 2 Bli. (N.S.) 124). But circumstances must strongly demand it before such interference will be justifiable. Acts amounting to severity, unless by them the children's morals are likely to be corrupted, are not sufficient (*Curtis* v. *Curtis*, 5 Jur. (N.S.) 1147). Where a father was living in adultery, but his children did not associate with the woman, the court refused to interfere: *Ball* v. *Ball*, 2 Sim. 35.

Where the habits of the father were notoriously immoral, or drunken or profane, the court has readily acted and deprived the father of his guardianship: *De Manneville* v. *De Manneville*, 10 Vesey, 62; *Shelley* v. *Westbrooke*, Jac. 266; *Wellesley* v. *Beaufort*, 2 Bli. (N.S.) 124; *Re Goldsworthy*, 2 Q. B. D. 75; *Re Besant*, 11 Ch. D. 513.

Under Order 55, Rule I. 2 (12), applications as to the guardianship and maintenance, or the advancement of infants, are to be made to a judge of the Chancery Division in chambers.

The section does not give the right of appeal to the High Court against the appointment of a guardian, for the words of the section seem to imply that the rescission or variation of the order of the Criminal Court before which the offence is tried, is only to be entertained by a judge of the Chancery Division, when immorality or other misconduct, or altered circumstances of the guardian already appointed, *e.g.*, bankruptcy, imprisonment, absence abroad, &c., leave the child without proper protection.

The court would vary the order by appointing another guardian in similar cases to those in which a father has been removed from his natural guardianship (see the cases above quoted). A judge of the Chancery Division would require a strong case to induce him to alter the order made by a judge of assize or of the Central Criminal Court who has had before him full materials for the selection of the guardian. This is not the first instance in which a Criminal Court has had given to it the power of making an order divesting the father of authority over his children, for under 41 Vict. c. 19, the Matrimonial Causes Act, 1878, a court of summary jurisdiction has power to order that the legal custody

of children under ten years of age shall be given to their mother upon conviction of her husband for an aggravated assault upon her.

See also the Elementary Education Act, 1876 (39 & 40 Vict. c. 79, s. 12) which provides that any child whose parent has disobeyed an attendance order made by a court of summary jurisdiction may be sent to an industrial school.

A child under the age of 14 may by an order of a court of summary jurisdiction be sent to a certified industrial school, if such child be found living or lodging with common or reputed prostitutes, or in a house resorted to by prostitutes, or who frequents the company of prostitutes (43 & 44 Vict. c. 15, s. 1). Even though the child be living with its mother who is not a prostitute, such order be made against her consent: *Hiscocks* v. *Jermonson*, 52 L. J. M. C. 42; 10 Q. B. D. 360; 48 L. T. Rep. 225; 31 W. R. 656; 47 J. P. 183.

By 3 & 4 Vict. c. 90, if an infant under 21 is convicted of felony, any person willing to take charge of such infant on showing reasons to the Court of Chancery that such a course is for the infant's benefit, may have the custody of such child assigned to him, and such order is binding on the father and every natural guardian of the infant. The order is not to interfere with the sentence.

PART II.

Suppression of Brothels.

13. *Summary proceedings against brothel keeper, &c.*] Any person who—

(1.) keeps or manages or acts or assists in the management of a brothel (*a*), or

(2.) being the tenant, lessee, or occupier (*aa*) of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution, or

(3.) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel (*b*),

shall on summary conviction in manner provided by the Summary Jurisdiction Acts (*c*) be liable—

(1.) to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment for any term not exceeding three months (*d*), with or without hard labour, and

(2.) on a second or subsequent conviction to a penalty not exceeding forty pounds, or, in the discretion of the court, to imprisonment for any term not exceeding four months, with or without hard labour (*e*);

and in case of a third or subsequent conviction such person may, in addition to such penalty or imprisonment as last aforesaid, be required by the court to enter into a recognizance, with or without sureties, as to the court seems meet, to be of good behaviour for any period not exceeding twelve months, and in default of entering into such recognizance, with or without sureties (as the case may be), such person may be imprisoned for any period not exceeding three months, in addition to any such term of imprisonment as aforesaid (*f*).

Any person on being summarily convicted in pursuance of this section may appeal to a court of general or quarter sessions against such conviction (*g*).

The enactments for encouraging prosecutions of disorderly houses contained in sections five, six, and seven of the Act passed in the twenty-fifth year of the reign of King George the Second, chapter thirty-six, as amended by the enactment contained in section seven of the Act passed in the fifty-eighth year of the reign of King George the Third, chapter seventy, shall, with the necessary modifications, be deemed to apply to prosecutions under this section, and the said enactments shall, for the purposes of this section, be construed as if the prosecution in such enactments mentioned included summary proceedings under this section as well as a prosecution on indictment (*h*).

(*a*) BROTHEL.—See section 2, note (*h*). *R.* v. *Pierson*, 2 Ld. Raymond, 1197.

(*aa*) OCCUPIER.—See *R.* v. *Smith*, 30 L. J. M. C. 74; 3 E. & E. 383; *Roads* v. *Trumpington*, 40 L. J. M. C. 35.

(*b*) SECTION 13 (GENERALLY).—The object of this section is that brothel keepers may be, by means of summary jurisdiction, more expeditiously prosecuted and at a less expense than under the more cumbrous method of indictment. Licensed persons have, since the Licensing Act, 1872 (35 & 36 Vict. c. 94), by section 17 been liable to a summary conviction for this offence; and under local Acts in some of the larger boroughs provisions are in force permitting prosecutions before courts of summary jurisdiction. The words of the first sub-section are similar to those in 25 Geo. 2, c. 36, s. 8, and their object is to punish all persons who directly or indirectly are responsible for keeping brothels, by

whatever "subtle and crafty contrivances" they may seek to evade the law.

The second sub-section is very sweeping in its terms, and would include the case of an occupier of a house sub-letting even one room to a prostitute to be used solely by her in pursuing her avocation. There is a doubt whether a more promiscuous use would not be necessary to constitute the room or the house a brothel, but it would clearly be used for the purposes of "habitual prostitution" (see section 6, note (*a*); *R.* v. *Stannard*, 33 L. J. M. C. 61, and L. & C. 349, and *R.* v. *Barratt*, 32 L. J. M. C. 36, and L. & C. 263).

It has been found that landlords have knowingly let houses for use as brothels under agreements or leases, and have, in consequence, received increased rents; yet because they have parted with the legal possession of the premises, they have not hitherto been amenable to the law. The tenants have been successively prosecuted and convicted, only to be followed by tenants of the same class selected by the landlord. The third sub-section seems designed, and is certainly wide enough to include this class of offenders, who have hitherto escaped with impunity.

(*c*) SUMMARY JURISDICTION ACTS.—They are: Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43); Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49); and any Act, past or future, amending the Summary Jurisdiction Act, 1848, or the Summary Jurisdiction Act, 1879. The Acts passed since are Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24); Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

(*d*) MONTHS means calendar months (13 & 14 Vict. c. 21, s. 4).

(*e*) Where a person is charged with a second or subsequent offence, he has the option of being tried by a jury under section 17 of the Summary Jurisdiction Act, 1879.

(*f*) For procedure as to sureties of the peace, see "Stone's Justices' Manual," 22nd ed., pp. 761 and 764.

(*g*) APPEAL TO QUARTER SESSIONS.—The procedure will be under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31.

(*h*) The court of summary jurisdiction has, upon conviction or order of dismissal, power to inflict costs, to be paid in the first case by the defendant to the prosecutor, and in the second case by the prosecutor to the defendant (11 & 12 Vict. c. 43, s. 18).

By the provisions of 25 Geo. 2, c. 36, which are made applicable by this Act to this procedure, it is enacted (section 5) that the constable who prosecutes shall be allowed all the reasonable expenses of such prosecution, and shall be paid the same by the overseers of the poor of the parish, so that the constable, if the costs ordered to be paid by the court of summary jurisdiction are insufficient to recompense him, may claim the balance from the overseers (25 Geo. 2, c. 36).

SECTION 5.—[The brackets show those parts of the section which, referring to quarter sessions and assizes, are not applicable to courts of summary jurisdiction. The words below in italics, it is suggested, should be substituted for those that are inapplicable.]—"And in order to encourage prosecutions against persons keeping bawdy houses [gaming houses or other disorderly houses], be it enacted by the authority aforesaid, that if any two inhabitants of any parish or place, paying scot and bearing lot therein, do give notice in writing to any constable (or other peace officer of the like nature where there is no constable) of such parish or place of any person keeping a bawdy house [gaming house, or other disorderly house] in such parish or place, the constable, or such officer as aforesaid so receiving such notice, shall forthwith go with such inhabitants to one of His Majesty's justices of the peace of the county, city, riding, division, or liberty in which such parish or place does lie, and shall upon such inhabitants making oath before such justice that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of twenty pounds each to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of thirty pounds to prosecute with effect such person for such offence [at the next general or *at such court of*
quarter session of the peace or at the next assizes to be holden *summary jurisdiction at which the trial of the said charge of keep-*

for the county in which such parish or place does lie as to the *ing the said bawdy house shall be fixed to take place.*
said justices shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of ten pounds to each of such inhabitants; and in case such overseer shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of ten pounds, and ten pounds, such overseers, and each of them, shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid."

SECTION 6.—Provided always, and be it enacted by the authority aforesaid, that upon such constable or other officer entering into such recognizance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warrant to bring the person so accused of keeping a bawdy house [gaming house, or other disorderly house] before him, and shall bind him or her over to appear at [such general or quarter sessions or assizes.]
such court of summary jurisdiction at which the trial of the said charge of keeping the said bawdy house shall be fixed to take place
there to answer to such [bill of indictment as shall be found]
charge as shall then be preferred
against him or her for such offence, and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the meantime, and until such [indictment] shall be [found] heard and determined [or
charge
be returned by the grand jury not to be a true bill.]

SECTION 7.—Provided also, that in case such constable shall neglect or refuse, upon such notice, to go before any justice of

the peace, or to enter into such recognizance, or shall be wilfully negligent in carrying on the said prosecution, he shall for every such offence forfeit the sum of twenty pounds to each of such inhabitants so giving notice as aforesaid.

58 Geo. 3, c. 70, s. 7 . . . therefore be it enacted, and it is hereby enacted, that a copy of the notice which shall be given to such constable shall also be served on or left at the places of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned, or have reasonable notice to attend before such justice of the peace before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall then and there enter into such recognizances to prosecute such offender as the constable is in and by the said Act required to enter into, then it shall not be necessary for, nor shall such constable be required to enter into such recognizance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend, and shall decline or refuse to enter into such recognizance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expenses, to be allowed as in and by the said Act is directed.

See section 16, *post*, p. 81.

As to liability of defendants to other proceedings.

See section 20, *post*, p. 91.

The defendant and the husband or wife of the defendant may be a witness at the hearing of a charge under this section.

PART III.

Definitions and Miscellaneous.

14. *Definitions.*] In this Act—

The expression "The Summary Jurisdiction Acts" (*a*)—

(*a.*) as regards England means the Summary Jurisdiction (English) Acts within the meaning of the Summary Jurisdiction Act, 1879, and

(*b.*) as regards Ireland means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace of such district or of the police of such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same.

(*a*) See section 13, note (*c*).

15. *Application of Act to Scotland.*] In the application of Act to Scotland—

The expression "misdemeanor" shall mean a crime and offence.

The expression "felony" shall mean a high crime and offence.

The expression "a justice of the peace," and the expression "two justices," shall include sheriff and sheriff substitute.

The expression "The Summary Jurisdiction Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same.

The expression "enter into a recognizance with or without sureties" shall mean "grant a bond of caution."

The expression "High Court or court of general or quarter sessions" shall mean the High Court or a circuit court of justiciary.

16. *Saving of liability to other criminal proceedings.*] This Act shall not exempt any person from any proceeding for an offence which is punishable at common law, or under any Act of Parliament other than this Act, so that a person be not punished twice for the same offence.

See maxim *Nemo bis puniri debet pro uno delicto*, commented on in Broom's Legal Maxims, 6th edition, pp. 316 and 330; and also Archbold's Crim. Pl., 19th edition, p. 141, Autrefois Acquit. and p. 145, Autrefois Convict.

17. *Procedure on indictments under Act.*] Every misdemeanor under this Act (*a*) shall, in England and Ireland, be deemed to be an offence within, and subject to, the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain

misdemeanors," and any Act amending the same (*b*), and no indictment under the provisions of this Act shall in England be tried by any court of quarter sessions (*c*).

(*a*) It seems that an attempt (where not expressly constituted an offence under this Act), a conspiracy, or soliciting another to commit any offence under this Act would not be a "misdemeanor under the Act," so that sections 17, 18, and 20 would not apply. It is not the practice of the criminal courts to allow costs in a charge, *e.g.*, of attempting to obtain money by false pretences, almost similar words being used in 24 & 25 Vict. c. 96, s. 121.

22 & 23 Vict. c. 17, provides that no bill of indictment for any of the offences following; viz.—

Perjury,
Subornation of perjury,
Conspiracy,
Obtaining money or other property by false pretences,
Keeping a gambling house,
Keeping a disorderly house, and
Any indecent assault,

shall be presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence, if charged to have been committed in England, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law at Westminster (now High Court of Justice), or of Her Majesty's Attorney-General or Solicitor-General for England, or unless such indictment for such offence, if charged to have been committed in Ireland, be preferred by the direction or with the consent in writing of a judge of one of the

superior courts of law in Dublin (now High Court of Justice), or of Her Majesty's Attorney-General or Solicitor-General for Ireland, or (in case of an indictment for perjury) by the direction of any court, judge, or public functionary authorized by an Act of the session holden in the 14 & 15 Vict. c. 100, to direct a prosecution for perjury.

SECTION 2.—That where any charge or complaint shall be made before any one or more of Her Majesty's justices of the peace that any person has committed any of the offences aforesaid within the jurisdiction of such justice, and such justice shall refuse to commit or to bail the person charged with such offence to be tried for the same, then in case the prosecutor shall desire to prefer an indictment respecting the said offence, it shall be lawful for the said justice, and he is hereby required to take the recognizance of such prosecutor to prosecute the said charge or complaint, and to transmit such recognizance, information, and depositions, if any, to the court in which such indictment ought to be preferred, in the same manner as such justice would have done in case he had committed the person charged to be tried for such offence.

According to *R.* v. *Hargreaves*, 2 F. & F. 790, the court ought not to allow the recognizances to be discharged, where the prosecutor elects not to go on with the prosecution, but they ought to be forfeited, otherwise the object of the statute would be defeated.

In *R.* v. *Heane*, 4 B. & S. 947; 9 Cox, 433; 33 L. J. M. C. 115; 28 J. P. 500; 9 L. T. Rep. 719; 10 Jur. (N.S.) 724, BLACKBURN, J., inclined to the opinion that, considering the language of the last part of section 1, the Act only referred to offences actually committed in England or Ireland, and would not include offences committed on the high seas.

The direction or consent of a judge, or the Attorney or Solicitor-General, may be given on an *ex parte* application without the defendant being summoned in any way to appear, and it is entirely in their discretion as to the materials upon which they will grant the application: *R.* v. *Bray*, 3 B. & S. 255; 11 W. R. 7; 9 Cox, 215; 7 L. T. Rep. 248; 32 L. J. M. C. 11. See also *Bradlaugh* v. *Reg.* (*ubi infra.*)

It has been decided that it is unnecessary to state upon the face of the indictment, that the preliminaries required by the Act had been complied with : *Knowlden* v. *R.* 33 L. J. M. C. 219 ; 5 B. & S. 532; 9 Cox C. C. 483 ; 10 Jur. (N.S.) 1177; 10 L. T. Rep. 691; 12 W. R. 957.

For the purpose of ascertaining what offences the recognizances of the prosecutor cover, the court may refer to the depositions in the case : *R.* v. *Bell*, 12 Cox, 37.

A prisoner having been committed for trial upon a charge of obtaining goods by false pretences, was indicted in addition in a second count for a similar offence upon a subsequent date. His counsel moved to quash the second count upon the ground that the Vexatious Indictments Act had not been complied with. The motion was refused, and upon the trial proceeding, objection was made whenever evidence was offered upon the second count. The prisoner was convicted. The Court for Crown Cases Reserved quashed the conviction on the ground that the second count should have been quashed, and evidence having been admitted upon it, it prejudiced the prisoner with regard to the first count : *R.* v. *Fuidge*, L. & C. 390; 9 Cox, 430; 33 L. J. M. C. 74; 10 Jur. (N.S.) 160; 9 L. T. R. 777; 12 W. R. 351; 28 J. P. 132.

(*b*) The Vexatious Indictments Act has been amended by 30 & 31 Vict. c. 35, the preamble and first section of which are as follow :—

"Whereas it is found that delay and inconvenience are frequently caused by the provisions contained in the first section of the Act, 22 & 23 Vict c. 17, in cases not within the mischief for remedy whereof the same Act was made and passed, and it is expedient to restrict the operation thereof:" Be it enacted that the said provisions of the said 1st section of the said Act shall not extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences mentioned in the said Act, if such count or counts be such as may now be lawfully joined with the rest of such bill of indictment, and if the same count or counts be founded (in the opinion of the court in or before which the same bill of indictment be prefered) upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the

peace, in the presence of the person accused or proposed to be accused by such bill of indictment, and transmitted or delivered to such court in due course of law, and nothing in the said Act shall extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment, if such bill be presented to the grand jury with the consent of the court in or before which the same may be preferred."

It would seem that under the first part of the section, where the proposed additional counts are founded upon the depositions, it is not strictly necessary to obtain the leave of the court before preferring the indictment, although in practice it is often done, but the court at any stage may give effect to its "opinion" that the additional counts are not founded upon the facts or evidence so disclosed and quash such counts. Where, however, the proposed additional counts are not founded upon the depositions, it would appear that the court under the last part of the section would have the same power with reference to them as they have with respect to a whole indictment, and upon the application of the prosecutor would have power to grant leave to prefer the bill containing such additional counts.

The effect of section 17 of the "Criminal Law Amendment Act, 1885," will be that all misdemeanors under that Act will be subject to the Vexatious Indictments Act as controlled by the amending Act above quoted: *R.* v. *Bell*, 12 Cox C. C. 37.

See also as to the materials which the court should have as to the preferring of additional counts not founded upon the depositions, *R.* v. *Bradlaugh*, 47 L. T. Rep. 477; 31 W. R. 229; 47 J. P. 71; 15 Cox, 156.

Section 2 of 30 & 31 Vict. c. 35, provides that whenever any bill of indictment shall be preferred to any grand jury, under the provisions of the 22 & 23 Vict. c. 17, against any person who has not been committed to or detained in custody, or bound by recognizance to answer such indictment, and the person accused thereby shall be acquitted thereon, it shall be lawful for the court before which such indictment shall be tried in its discretion to direct and order that the prosecutor or other person by or at whose instance such indictment shall have been preferred shall pay unto the accused person the just and reasonable costs,

charges, and expenses of such accused person and his witnesses (if any) caused or occasioned by or consequent upon the preferring of such bill of indictment, to be taxed by the proper officer of the court; and upon non-payment of such costs, charges, and expenses within one calendar month after the date of such direction or order it shall be lawful for any of the superior courts of law at Westminster (now the High Court), or any judge thereof, or for the justices and judges of the Central Criminal Court (if the bill of indictment has been preferred in that court) to issue against the person on whom such order is made such and the like writ or writs, process or processes, as may now be lawfully issued by any of the said superior courts (now the High Court) for enforcing judgments thereof.

With reference to the mode of raising the objection that an indictment has been found in face of the Vexatious Indictments Act, it has been held that the point may be taken with propriety, even after plea has been pleaded, by motion to quash the count or indictment, as the case may be, but in a doubtful case the court will refuse to quash and leave the defendant to his remedy by writ of error: *R.* v. *Heane*, 33 L. J. M. C. 115; 4 B. & S. 947.

(*c*) Reference should be made to 5 & 6 Vict. c. 38, which prohibits the trial of certain offences at quarter sessions. See the cases quoted thereon and on similar statutes in Archbold's Quarter Sessions, 4th ed., pp. 913 and 936.

It is clear that section 17 does not prohibit the grand jury at quarter sessions finding a true bill for any offence under the Act. The indictment upon being sent to the assizes can be tried there, as if it had been there found.

Since the passing of 5 & 6 Vict. c. 38, it was held by Coltman, J., at the assizes at York, in 1843, on motion in arrest of judgment on the ground of mis-trial, that a prisoner might be tried at the assizes on a bill found at the quarter sessions for an offence (conspiracy) among those enumerated in section 1, although the bill having been found was transmitted from the sessions to the assizes without any *certiorari*: *R.* v. *Wrigley*, note to *R.* v. *Dean*, *q. v.*, 2 Q. B. 732; 6 Jurist, 149.

Where the sessions have jurisdiction over the subject matter of the indictment they have also jurisdiction to quash it, and they may do this before plea pleaded (*R.* v. *Wilson*, 6 Q. B. 620; 9 J. P. 167; 8 Jur. 1069; 14 L. J. M. C. 3; 1 New Sess. Cases, 427; *R.* v. *Frith*, 1 Leach, 10; *R.* v. *Heane*, 9 Cox, 433). But where they have no jurisdiction over the subject matter, as *ex. gr.* in the case of forgery, the indictment is simply a nullity, and therefore where indictments for forging requests for the delivery of goods had been found at quarter sessions and transmitted to the assizes, the judge ordered that they should be quashed and new bills preferred before the grand jury at the assizes: *R.* v. *Rigby*, 8 C. & P. 770; *R.* v. *Haynes*, R. & M. 298; *R.* v. *Ramsden*, 8 J. P. 45.

R. v. *Wetherell*, R. & R. 381, is the authority for the removal of indictments from quarter sessions to assizes, where it is necessary under the above statute, or where the former court think it desirable in the interests of justice.

4 & 5 Will. 4, c. 36, s. 19, provides for quarter sessions within the jurisdiction of the Central Criminal Court, sending such indictments to the latter court. If an indictment be preferred at the quarter sessions for an offence which the court is not competent to try, and the court will not provide for the trial by remitting the indictment to the assizes or the Central Criminal Court, as the case may be, the objection to the indictment may be taken by the defendant at the court of quarter sessions in several ways.

The defendant may move to quash the indictment, or he may demur, or he may plead to the jurisdiction, being careful to show by his plea that he is subject to some other jurisdiction which would be competent to deal with the offence (2 Hale P. C. 256; 1 Chit. Crim. Law, 437; 4 Bl. Com. 333, 21st ed.; *R.* v. *Frederick*, 2 Ld. Ken. 16; *R.* v. *Johnson*, 6 East, 583; 2 Smith, 591; *Spooner* v. *Juddon*, 6 Moore, P. C. C. 257; see Stephen's Dig. of Crim. Proced. 172; *R.* v. *Depardo*, 1 Taunt. 26; *R.* v. *Strong*, 1 Burr. 252; *R.* v. *Williams*, 1 Burr. 386).

After a plea of guilty or a verdict of guilty he may move that judgment be arrested; or lastly, the point may be raised upon a writ of error.

If an indictment be presented at sessions for an offence which is out of the jurisdiction of the quarter sessions, as *ex. gr.* for perjury at common law, it may be quashed without putting the party indicted to demur (*R.* v. *Wesley*, cited in *R.* v. *Williams*, 1 Burr. 390; *R.* v. *Beaumont*, Sayer, 278; *R.* v. *Frederick*, 2 Ld. Ken. 16; *R.* v. *Taylor*, 2 Ld. Ray. 767; *R.* v. *Boycot*, 1 Ld. Ken. 318; *R.* v. *Haynes*, R. & M. 298).

Where a clear defect of jurisdiction appears on the face of the indictment or is shown by affidavit, the court will, on the application of the defendant, quash the indictment after he has pleaded, but in a doubtful case the court will exercise its discretion, and leave the defendant to his remedy by writ of error: *R.* v. *Heane*, 33 L. J. M. C. 115; 9 L. T. (N.S.) 719; 4 B & S. 947; 10 Jur. (N.S.) 724; 9 Cox Cr. Cas. 433; 28 J. P. 500.

18. *Costs.*] The court before which any misdemeanor indictable under this Act, or any case of indecent assault (*a*), shall be prosecuted or tried, may allow the costs of the prosecution, in the same manner as in cases of felony (*b*), and may in like manner, on conviction, order payment of such costs by the person convicted (*c*); and every order for the allowance or payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid upon the same terms and in the same manner in all respects as in cases of felony.

(*a*) It was unnecessary to insert "indecent assault," as it is amply provided for by 24 & 25 Vict. c. 100, ss. 52, 77. See section 17, note (*a*).

(*b*) 7 Geo. 4, c. 64, s. 22.

"And with regard to the payment of the expenses of prosecutions for felony, be it enacted, that the court before which (*R.* v. *Trea-*

surer of Exeter, 5 Man. & Ry. 167; *R.* v. *Johnson*, 1 Moody C. C. 173; *R.* v. *Cludevay*, 3 C. & K. 205; *R.* v. *Lewis*, D. & B. 326; *R.* v. *Hornsea*, Dear. 291; *R.* v. *Nolan*, *id.* 436) any person shall be prosecuted or tried for any felony is hereby authorized and empowered, at the request of the prosecutor, or of any other person who shall appear on recognizance or subpœna to prosecute or give evidence against any person accused of any felony (*R.* v. *Butterwick*, 2 M. & R. 196; *R.* v. *Paine*, 7 C. & P. 135), to order payment unto the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment, and also payment to the prosecutor and witnesses for the prosecution, of such sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate or magistrates and the grand jury, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall in the opinion of the court *bonâ fide* have attended the court in obedience to any such recognizance or subpœna, to order payment unto such persons of such sum of money as to the court shall seem reasonable and sufficient to reimburse such person for the expenses which he or she shall have *bonâ fide* incurred by reason of attending before the examining magistrate or magistrates, and by reason of such recognizance or subpœna, and also to compensate such person for trouble and loss of time; and the amount of expenses of attending before the examining magistrate or magistrates, and the compensation for trouble and loss of time therein, shall be ascertained by the certificate of such magistrate or magistrates, granted before the trial or attendance in court, if such magistrate or magistrates shall think fit to grant the same; and the amount of all the other expenses and compensation shall be ascertained by the proper officer of the court, subject nevertheless to the regulations to be established in the manner hereinafter mentioned :" *R.* v. *Hunter*, 3 C. & P. 391.

As to costs of witnesses for the defence, see 30 & 31 Vict. c. 35, ss. 3, 5.

(*c*) As to assaults, see 24 & 25 Vict. c. 100, ss. 74, 75.

33 & 34 Vict. c. 23 (Abolition of Forfeiture for Felony Act, 1870), s. 3.

"It shall be lawful for any court by which judgment shall be pronounced or recorded upon the conviction of any person for treason or felony, in addition to such sentence as may otherwise by law be passed, to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted, if to such court it shall seem fit so to do; and the payment of such costs and expenses, or any part thereof, may be ordered by the court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay or who may have paid the same in such and the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced: Provided, that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this Act had not passed, and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed:" *R.* v. *Roberts*, L. R. 9 Q. B. 77; 43 L. J. M. C. 17; 29 L. T. Rep. 674; 22 W. R. 60; 12 Cox C. C. 574.

19. *Repeal of enactments in schedule.*] The Acts mentioned in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of the said Schedule, except as to anything heretofore duly done thereunder, and except so far as may be necessary for the purpose of supporting and continuing any proceeding taken or of prosecuting or punishing any person for any offence committed before the passing of this Act.

20. ***Person charged and his wife to be competent witnesses.***] Every person charged with an offence under this Act, or under section forty-eight (*a*) and sections fifty-two to fifty-five (*b*), both inclusive, of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter one hundred, or any of such sections, and the husband or wife (*c*) of the person so charged, shall be competent but not compellable (*d*) witnesses on every hearing at every stage of such charge, except an inquiry before a grand jury.

See section 17, note (*a*).

(*a*) Section 48.—Rape.

(*b*) Section 52.—Indecent assault.

Section 53 (1).—Abduction of a woman against her will, from motives of lucre.

(2) Fraudulent abduction of a girl under age against the will of her father, &c.

Section 54.—Forcible abduction of any woman with intent to marry or carnally know her.

Section 55.—Abduction of a girl under 16.

(*c*) By section 3 of 16 & 17 Vict. c. 83, the Act which for the first time made parties and their husbands and wives competent witnesses in *civil* cases, it was provided that no husband should be compellable to disclose any communication made to him by his wife during the marriage, nor the wife that made by her husband. "It is doubtful whether this would apply to a widower or divorced person questioned after the dissolution of the marriage as to what had been communicated to him whilst the marriage lasted:" Stephen's Law of Evidence, 4th ed., note on art. 100, p. 118.

It would seem that these principles would apply to witnesses under sect. 20. Firstly, section 3 may be only declaratory of that

which would be recognized as the law, independently of the statute; and secondly, as defendants under section 20 are now removed from the exception in 16 & 17 Vict. c. 83, that Act would apply, and they would have the same privileges as witnesses in *civil* cases who are parties.

(*d*) COMPETENT, BUT NOT COMPELLABLE.—There will no doubt be some difficulty in settling the practice to be followed. To what extent will the defendant be liable to be cross-examined?

In the *proposed* criminal code he was liable to be cross-examined like other witnesses (section 523), but there was the following proviso: "Provided that so far as the cross-examination relates to the credit of the accused, the court may limit the cross-examination to such extent as it thinks proper;" and the *bill* introduced in 1884 by the Home Secretary and Law Officers into the House of Commons, to render accused persons in any criminal proceedings competent witnesses, contained a proviso to the following effect: "A person called as a witness shall not be asked, and if asked, shall not be required to answer any questions tending to show that any defendant has committed any offence other than that wherewith he is then charged, or that any defendant is of bad character, unless such defendant has given evidence of good character."

In the absence of a similar restriction in section 20, it will soon have to be decided whether such questions should be forbidden.

Since the passing of the Act, one case at least has been heard at the Middlesex sessions, of indecent assault, where the defendant has availed himself of section 20, and tendered himself as a witness. In the case of *R.* v. *Rosewell* (*Times*, 28th August, 1885), tried before Mr. Edlin, Q.C. (Assistant Judge), the defendant was examined, cross-examined, and re-examined as an ordinary witness, although no questions were asked him as to his character for the purpose of impeaching his credit, the cross-examination being merely as to the facts of the case. We learn, however, that there were no materials for cross-examination as to credit. When the prisoner is undefended, we should think that the judge would feel it his duty to inform him of his right to give evidence; and

in all cases, if the prisoner elected not to make himself a witness, the counsel for the prosecution would have the right, in summing up or replying, to comment on that fact in his address to the jury. Where a prisoner was charged with rape, and no witnesses were called on his behalf, counsel for the prosecution, in summing up the case, urged that fact against the prisoner. The learned judge decided that that course was improper, "unless it might be fairly expected" that witnesses should be called. Surely a defendant who abstains from giving evidence would fall within the exception. [*R.* v. *Rudland*, 4 F. & F. 495; and *R.* v. *Puddick*, *id.* 597.] When called, a witness under this section will be able to claim the usual privilege of a witness, and refuse, if he think fit, to answer those questions which may tend to criminate him (Stephen's Dig. Law of Evidence, 4th ed., p. 24, art. 120; *R.* v. *Garbett*, 1 Den. C. C. 236; *Lamb* v. *Munster*, 52 L. J. Q. B. D. 46; *Ex parte Reynolds*, 20 Ch. D. 294; 54 L. J. Ch. 756). For the ordinary existing rules as to the incompetency as witnesses of accused persons in criminal cases, see Stephen's Dig. of Crim. Law, art. 108, p. 117. See *Introduction* upon this subject and p. 29.

For a list of instances where a defendant and the husband or wife are competent witnesses upon a criminal charge, see Appendix, p. 117.

SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
24 & 25 Vict. c. 100	An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person.	Section forty-nine, and in section fifty-two the words "or "any attempt to "have carnal "knowledge of "any girl under "twelve years of "age."
38 & 39 Vict. c. 94	The Offences against the Person Act, 1875.	The whole Act.

APPENDIX.

14 & 15 Vict. Cap. 100.

* * * * *

9. And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commision thereof; for remedy thereof be it enacted that if, on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and whereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

* * * * *

12. If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony

on the same facts, unless the court before which such trial may be had shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

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24 & 25 Vict. Cap. 94.

An Act to consolidate and amend the Statute Law of England and Ireland relating to Accessories to and Abettors of Indictable Offences.

Whereas it is expedient to consolidate and amend the Statute Law of England and Ireland relating to accessories to and abettors of indictable offences: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

As to accessories before the fact:

1. *Accessories before the fact may be tried and punished as principals.*] Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon.

2. *Accessories before the fact may be indicted as such or as substantive felons.*] Whosoever shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been

previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished.

As to accessories after the fact:

3. *Accessories after the fact may be indicted as such, or as substantive felons.*] Whosoever shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

4. *Punishment of accessories after the fact.*] Every accessory after the fact to any felony (except where it is otherwise specially enacted), whether the same be a felony at common law or by virtue of any Act passed or to be passed, shall be liable, at the discretion of the court, to be imprisoned in the common gaol or house of correction for any term not exceeding two years, with or without hard labour, and it shall be lawful for the court, if it shall think fit, to require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to such punishment: Provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

As to accessories generally:

5. *Prosecution of accessory after principal has been convicted, but not attainted.*] If any principal offender shall be in any wise convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding

such principal felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall upon conviction suffer the same punishment as he would have suffered if the principal had been attainted.

6. *Several accessories may be included in the same indictment, although principal felon not included.*] Any number of accessories at different times to any felony, and any number of receivers at different times of property stolen at one time, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

7. *Trial of accessories.*] Where any felony shall have been wholly committed within England or Ireland, the offence of any person who shall be an accessory either before or after the fact to any such felony may be dealt with, inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felony, or any felonies committed in any county or place in which the act by reason whereof such person shall have become such accessory shall have been committed; and in every other case the offence of any person who shall be an accessory either before or after the fact to any felony may be dealt with, inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felony or any felonies committed in any county or place in which such person shall be apprehended or be in custody, whether the principal felony shall have been committed on the sea or on the land, or begun on the sea and completed on the land, or begun on the land and completed on the sea, and whether within Her Majesty's dominions or without, or partly within Her Majesty's dominions and partly without: provided that no person who shall be once duly tried either as an accessory before or after the fact, or for a substantive felony under the provisions hereinbefore contained, shall be liable to be afterwards prosecuted for the same offence.

As to abettors in misdemeanors:

8. *Abettors in misdemeanors.*] Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.

As to other matters:

9. *As to offences committed within the jurisdiction of the Admiralty.*] Where any person shall, within the jurisdiction of the Admiralty of England or Ireland, become an accessory to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, and whether such felony shall be committed within that jurisdiction or elsewhere, or shall be begun within that jurisdiction and completed elsewhere, or shall be begun elsewhere and completed within that jurisdiction, the offence of such person shall be felony; and in any indictment for any such offence the venue in the margin shall be the same as if the offence had been committed in the county or place in which such person shall be indicted, and his offence shall be averred to have been committed "on the high seas;" provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

10. *Act not to extend to Scotland.*] Nothing in this Act contained shall extend to Scotland, except as hereinbefore otherwise expressly provided.

11. *Commencement of Act.*] This Act shall commence and take effect on the first day of November, one thousand eight hundred and sixty-one.

24 & 25 Vict. Cap. 100.

Rape, Abduction, and Defilement of Women.

48. *Rape.*] Whosoever shall be convicted of the crime of rape shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three (now five) years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

* * * * *

52. *Indecent assault.*] Whosoever shall be convicted of any indecent assault upon any female [or of any attempt to have carnal knowledge of any girl under twelve years of age] shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour. *Words in brackets are repealed by section* 19 *of the Criminal Law Amendment Act*, 1875.

53. *Abduction of a woman against her will, from motives of lucre. —Fraudulent abduction of a girl under age against the will of her father, &c. — Offender incapable of taking any of her property.*] Where any woman of any age shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be a presumptive heiress or coheiress, or presumptive next of kin, or one of the presumptive next of kin, to any one having such interest, whosoever shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person; and whosoever shall fraudulently allure, take away, or detain such woman, being under the age of twenty-one 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, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall

be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three (now five) years,—or to be imprisoned for any term not exceeding two years, with or without hard labour; and whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she shall have any such interest, or which shall come to her as such heiress, coheiress, or next of kin as aforesaid; and if any such marriage as aforesaid shall have taken place, such property shall, upon such conviction, be settled in such manner as the Court of Chancery in England or Ireland shall upon any information at the suit of the Attorney-General appoint.

54. *Forcible abduction of any woman with intent to marry her.*] Whosoever shall, by force, take away or detain against her will any woman, of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three (now five) years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

55. *Abduction of a girl under sixteen years of age.*] Whosoever shall unlawfully take or cause to be taken any unmarried girl, being 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, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Child-stealing.

56. *Child-stealing.*] Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away or detain, any child under the age of fourteen years, with intent to deprive any

parent, guardian, or other person having the lawful care or charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, and whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away, or detained as in this section before mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and if a male under the age of sixteen years, with or without whipping: Provided that no person who shall have claimed any right to the possession of such child, or shall be the mother or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child, or taking such child out of the possession of any person having the lawful charge thereof.

* * * * *

63. *Carnal knowledge defined.*] Whenever, upon the trial for any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

CRIMINAL LAW AMENDMENT ACT, 1880.

43 & 44 Vict. Cap. 45, s. 2.

It shall be no defence to a charge or indictment for an indecent assault on a young person under the age of 13 to prove that he or she consented to the act of indecency.

Offences.	Quality of Crime and Punishment.	Section.	Evidence and Witnesses.
I.—Against Girls under 13.			
(1) Unlawful carnal knowledge of such girl.	Felony: p. s. for life; 2 yrs. imp. (h. l.); under 16 imp. or whipping, 5 yrs. reformatory school and 7 days' imp. before school	4	Oath may be dispensed with in case of child of tender years; corroboration of such testimony necessary. Defendant and wife or husband competent witnesses.
(2) Attempt to commit (1).	Misdmr.: 2 yrs. imp. (h. l.); under 16, as above (1).	4	Do.
(3) Householder permitting defilement of such girl on his premises.	Felony: p. s. for life; 2 yrs. imp. (h. l.)	6	Reasonable belief that girl was above 16 a defence. Defendant and wife or husband competent witnesses.
II.—Against Girls above 13 and under 16.			
(1) Unlawful carnal knowledge of such girl or the attempt.	Misdmr.: 2 yrs. imp. (h. l.)	5	Reasonable belief that girl was above 16 a defence. Defendant and wife or husband competent witnesses.
(2) Householder permitting the defilement of such girl on his premises.	Misdmr.: 2 yrs. imp. (h. l.)	6	Do.
III.—Against Unmarried Girls under 18.			
(1) Abduction with intent to carnally know.	Misdmr.: 2 yrs. imp. (h. l.)	7	Reasonable belief that girl was over 18 is a defence. Defendant and wife or husband competent witnesses.

Procedure and Jurisdiction.	Custody of Girls.	Costs.	Offences not Charged in Indictment, liable to be Convicted of.
Not triable at quarter sessions.	Power to appoint guardian of girl under 16 (see s. 12).	Prosecutor's costs allowed. Defendant may, on conviction, be ordered to pay costs.	Any offence under ss. 3, 4, or 5; or indecent assault.
Vex. Indt. Act applies. Not triable at quarter sessions.	Do.	Do.	—
Not triable at quarter sessions.	Do.	Do.	—
Prosecution to be commenced within 3 months. Not triable at quarter sessions. Vex. Indt. Act applies.	Power to appoint a guardian to girl under 16 (see s. 12).	Prosecutor's costs allowed. Defendant on conviction, may be ordered to pay costs.	—
Not triable at quarter sessions. Vex. Indt. Act applies.	Do.	Do.	—
Not triable at quarter sessions. Vex. Indt. Act applies.	Power to appoint a guardian to girl under 16 (see s. 12).	Prosecutor's costs allowed. Defendant, on conviction, may be ordered to pay costs.	—

Offences.	Quality of Crime and Punishment.	Section.	Evidence and Witnesses.
IV.—Against Woman or Girl under 21.			
(1) Procuring such person (not a prostitute) to have unlawful connexion, or the attempt.	Misdmr.: 2 yrs. imp. (h. l.)	2	More than one witness if such witness be not materially corroborated. Defendant and wife or husband of defendant competent witnesses.
V.—Against any Woman or Girl.			
(1) Procuring such person to become a common prostitute, or the attempt.	Misdmr.: 2 yrs. imp. (h. l.)	2	More than one witness if such witness be not materially corroborated. Defendant and husband or wife of defendant competent witnesses.
(2) Procuring such person to leave [illegible] with intent that she may become a prostitute, or the attempt.	Misdmr.: 2 yrs. imp. (h. l.)	2	Do.
(3) Procuring such person to [illegible] with intent that she may [illegible], or the attempt.	Misdmr.: 2 yrs. imp. (h. l.)	2	Do.
(4) Procuring such [illegible] by false pretences [illegible]	Misdmr.: 2 yrs. imp. (h. l.)	2	Do.
(5) Procuring such [illegible] [illegible]	Do.	2	Do.

Procedure and Jurisdiction.	Custody of Girls.	Costs.	Offences not Charged in Indictment, liable to be Convicted of.
Not triable at quarter sessions. Vex. Indt. Act applies.	Power to appoint a guardian to girl under 16 (see s. 12).	Prosecutor's costs allowed. Defendant, on conviction, may be ordered to pay costs.	—
Not triable at quarter sessions. Vex. Indt. Act applies.	Power to appoint a guardian to girl under 16 (see s. 12).	Prosecutor's costs allowed. Defendant, on conviction, may be ordered to pay costs.	—
Do.	Do.	Do.	—
Do.	Do.	Do.	—
Do.	Do.	Do.	—
Do.	Do.	Do.	—

Offences.	Quality of Crime and Punishment.	Section.	Evidence and Witnesses.
V.—*continued.*			
(6) Applying, &c., to such person any drug, &c., with intent to stupefy and have unlawful connection.	Misdmr: Impr. 2 yrs. (h. l.)	3	More than one witness, if such witness be not materially corroborated. Defendant and husband and wife of defendant competent witnesses.
(7) Unlawfully detaining such person against her will, with intent to carnally know.	Misdmr.; imp. 2 yrs. (h. l.)	8	Defendant and husband and wife of defendant competent witnesses.
(8) Unlawfully detaining such person against her will in a brothel.	Do.	8	Do.
VI.—Offences against Female Idiots and Imbeciles.			
(1) Unlawful carnal knowledge of such person, offender knowing her mental condition, or the attempt.	Misdmr.; imp. 2 yrs. (h. l.)	5	Defendant and husband or wife of such defendant competent witnesses.
VII.—Outrages on Decency.			
(1) Committing, procuring, or attempting to procure commission by a male of any act of gross indecency.	Misdmr.; 2 yrs. imp. (h. l.)	11	Defendant and his wife competent witnesses.

Procedure and Jurisdiction.	Custody of Girls.	Costs.	Offences not charged in indictment, liable to be convicted of.
Not triable at quarter sessions. Vex. Indt. Act applies.	Power to appoint guardian to girl under 16 (see s. 12).	Prosecutor's costs allowed. Defendant if convicted may be ordered to pay costs.	—
Do.	Do.	Do.	—
Do.	Do.	Do.	—
Not triable at quarter sessions. Vex. Indt. Act applies.	Power to appoint guardian to girl under 16 (see s. 12).	Prosecutor's costs allowed. Defendant on conviction may be ordered to pay such costs.	—
Not triable at quarter sessions. Vex. Indt. Act applies.	—	Prosecutor's costs allowed. Defendant on conviction may be ordered to pay such costs.	—

Offences.	Section.	Punishment.
VIII. Suppression of Brothels.		
(1) Keeping or managing, &c., a brothel.	13	*1st offence.* Fine, 20*l.*, or impt. 3 months (h. l.)
(2) Tenant, lessee, or occupier permitting premises or any part to be used as brothel or for habitual prostitution.	13	*2nd offence.* Fine, 40*l.*, impt. 4 months (h. l.)
(3) Lessor, or landlord letting premises as brothel, &c.	13	*3rd offence.* Fine, 40*l.*, impt. 4 months (h. l.), and to enter into recognizance with sureties (if ordered), to be of good behaviour for 12 months; in default 3 months imprisonment in addition.

Procedure at Trial.	Appeal.	Costs and Procedure before Trial.
Summary Jurisdiction Acts.	Summary Jurisdiction Acts, 1879, sect. 31.	The provisions of 25 Geo. 2, c. 36, ss. 5, 6, and 7; and 58 Geo. 3 c. 70, s. 7, are, with necessary modifications, to apply to this section.
Right of defendant to claim to be tried by a jury. S. J. Act, 1879, sect. 17.		

FORMS.

SUPPRESSION OF BROTHELS.

SECTION 13.

FORMS FOR SUMMARY PROSECUTIONS WHEN UNDER 25 GEO. 2, C. 36.

(1.) NOTICE TO CONSTABLE.

To *A. B.*, constable (*or* other peace officer of the like nature where there is no constable) of the parish (*or* place) of C., in the county of D.:

We, *E. F.* and *G. H.*, two inhabitants of the said parish (*or* place), paying scot and bearing lot therein, do hereby give you notice that No. 1, North Street (*or* a certain part, to wit, the room of No. 1, North Street), in the said parish (*or* place), is a brothel (*or* [sub-section 2] is used for the purposes of habitual prostitution), and that *I. J.*—

[(*a*) sub-section 1] keeps (*or* manages, *or* acts, *or* assists in the management of) the said brothel.

[(*b*) sub-section 2] is the tenant (*or* lessee, *or* occupier) of the said house, and knowingly permits the said house (*or* the said part, to wit, the said room of the said house) to be used as a brothel (*or* for the purposes of habitual prostitution).

[(*c*) sub-section 3] is the lessor (*or* the landlord, *or* the agent of the lessor, *or* the agent of the landlord) of the said house (*or* the said part, to wit, the said room of the said house), and that the said *I. J.*—

(i) has let the said house (*or* the said part, &c.) with the knowledge that the said house (*or* the said part, &c.) was to be used as a brothel; *or*

(ii) is wilfully a party to the continued use of the said house (*or* the said part, &c.) as a brothel.

Signed { *E. F.*
G. H.

(2.) FORM OF RECOGNIZANCE ON THE PART OF TWO INHABITANTS TO GIVE OR PRODUCE MATERIAL EVIDENCE.

County of } BE it remembered, that on the ——— day of ———, A.D.
to wit. } 18—, *E. F.*, of ———, and *G. H.*, of ———, both inhabitants of the said parish in the said county, and paying scot and bearing lot in the said parish, personally come before me, the undersigned, one of Her Majesty's justices of the peace in and for the said county, and acknowledge themselves to owe to our said Lady the Queen the sum of 20*l.* each, 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 condition following:

WHEREAS the said *E. F.* and *G. H.*, being two inhabitants of and paying scot and bearing lot in the said parish, have on the ——— day of ———, A.D. 18—, given notice in writing to *A. B.*, the constable of the said parish, of one *I. J.*, then keeping a brothel at No. 1, North Street, in the said parish, and the said *A. B.* now comes before me with the said *E. F.* and *G. H.*, and the said *E. F.* and *G. H.* have made oath before me that they do believe the contents of such notice to be true.

Now the condition of this recognizance is such, that if the said *E. F.* and *G. H.* shall give or produce material evidence against the said *I. J.* for the said offence at the court of summary jurisdiction where the said charge against the said *I. J.* of committing the said offence shall be heard and determined, then this recognizance to be void or else to remain in full force.

Taken and acknowledged the ——— day of ———, A.D. 18—, before me, }

This Form, with the assistance of No. 1, *can be adapted to the different circumstances which may arise under section* 13.

(3.) FORM OF RECOGNIZANCE ON THE PART OF THE CONSTABLE TO PROSECUTE WITH EFFECT.

County of } BE it remembered that on the ——— day of ———, A.D. 18—, *A. B.*, constable of the parish of ———, in
to wit. } the county of ———, personally cometh before me, the undersigned, one of her Majesty's justices of the peace in and for the said county, and acknowledgeth to owe to our said Lady the Queen the sum of 30*l.*, 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 condition following:

Whereas *E. F.* and *G. H.*, being two inhabitants of and paying scot and bearing lot in the said parish, have on the ——— day of ———, A.D. 18—, given notice in writing to the said *A. B.* of one *I. J.*, then keeping a brothel at No. 1, North-street, in the said parish, and the said *A. B.* has come before me with the said *E. F.* and *G. H.*, and the said *E. F.* and *G. H.* have made oath before me that they do believe the contents of such notice to be true, and have entered into a recognizance in the penal sum of 20*l.* each, to give or produce material evidence against the said *I. J.* for such offence at the court of summary jurisdiction, where the said charge against the said *I. J.* of committing the said offence shall be heard and determined.

Now, the condition of this recognizance is such, that if the said *A. B.* shall prosecute with effect the said *I. J.* for the said offence, at the said court of summary jurisdiction, then this recognizance to be void, or else to remain in full force.

Taken and acknowledged the ——— day of ———, A.D. 18—, before me,

This form, with the assistance of No. 1, *can be adapted to the different circumstances which may arise under section* 13, *and if the overseers elect to prosecute (under* 58 *Geo.* 3, *c.* 70, *s.* 7), *a few alterations will render it available.*

(4.) Warrant for Apprehension of Offender.

To ———, constable of ———, and to all other peace officers in the said county of ———.

Whereas *E. F.* and *G. H.*, being two inhabitants of, and paying scot and bearing lot in the said parish, did, on the ——— day of ———, A.D. 18—, give notice in writing to *A. B.*, the constable of the said parish, of one *I. J.*, then unlawfully keeping a brothel at No. 1, North-street, in the said parish, and the said *A. B.*, on the ——— day of ———, A.D. 18—, came before me, one of the justices of the peace in and for the said county, with the said *E. F.* and *G. H.*, and the said *E. F.* and *G. H.* did then make oath before me that they believed the contents of such notice to be true, and then entered into a recognizance in the penal sum of 20*l.* each, to give or produce material evidence against the said *I. J.* for the said offence at the court of summary jurisdiction, where the said charge against the said *I. J.* of committing the said offence should be heard and determined; and the said *A. B.* did then enter into a recognizance in the penal sum of 30*l.*, to prosecute with effect

the said *I. J.* for the said offence, at the said court of summary jurisdiction.

These are therefore to command you in her Majesty's name forthwith to apprehend the said *I. J.*, and to bring him before me to be dealt with according to law.

Given under my hand and seal, this ——— day of ———, A.D. 18—, in the county aforesaid. (L.S.)

See note to No. 3.

(5.) FORM OF RECOGNIZANCE ON THE PART OF THE DEFENDANT TO APPEAR.

County of } BE it remembered that on the ——— day of ——— A.D. 18—, ———, *I. J.*, of No. 1, North Street, in the
to wit. } parish of ———, in the county of ———, is brought on warrant before me, the undersigned, one of her Majesty's justices of the peace in and for the said county, and acknowledgeth to owe to our said Lady the Queen 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 condition following:

WHEREAS *E. F.* and *G. H.* being two inhabitants of, and paying scot and bearing lot in the said parish, did on the ——— day of ———, A.D. 18—, give notice to one *A. B.*, the constable of the said parish, of the said *I. J.* then keeping a brothel at No. 1, North Street aforesaid, and the said *A. B.* on the ——— day of ———, A.D. 18—, did come before me acting as such justice as aforesaid with the said *E. F.* and *G. H.*, and the said *E. F.* and *G. H.* did then make oath before me that they believed the contents of such notice to be true, and did then enter into a recognizance in the penal sum of 20*l.* each to give or produce material evidence against the said *I. J.* for the said offence at the court of summary jurisdiction where the said charge against the said *I. J.* of committing the said offence should be heard and determined, and the said *A. B.* did then enter into a recognizance in the penal sum of 30*l.* to prosecute with effect the said *I. J.* for the said offence at the said court of summary jurisdiction, and I did then make out my warrant to bring the said *I. J.*, so accused as aforesaid, before me, and afterwards, to wit, on the ——— day of ———, A.D. 18—, the said *I. J.* has been brought before me in pursuance of the said warrant.

NOW, the condition of this recognizance is such that if the said *I. J.* shall appear at the court of summary jurisdiction to be held at ———,

on ——— day, the ——— day of ———, A.D. 18—, then this recognizance to be void or else to remain in full force.

Taken and acknowledged the ——— day of ———, A.D. 18—, before me,

If the justice should bind the defendant over to be of good behaviour, the necessary words can be inserted. If he requires sureties upon that recognizance an additional recognizance should be prepared, being framed upon the above form.

(6.) CONVICTION FOR KEEPING A BROTHEL, &c.

In the county of ———, petty sessional division of ———.

Before the court of summary jurisdiction, sitting at ———.

The ——— day of ——— 18—.

I. J. (hereinafter called the defendant), who had on the ——— day of ———, 18—, before ———, one of the justices of the peace in and for the said county, entered into his recognizances under section 6 of an Act passed in the twenty-fifth year of the reign of King George II. c. 36, to appear at the above court to answer the charge hereinafter mentioned, is this day convicted before this court, for that he, between the ——— day of ———, 18—, and the ——— day of ———, 18—, at No. 1, North Street, in the parish of ———, in the said county, unlawfully did keep a brothel against the form of the statute in such case made and provided.

(*In the case of a previous conviction.*)

AND the said *I. J.* having heretofore, to wit, on the ——— day of ———, 18—, been convicted by a court of summary jurisdiction of an offence against the 13th section of The Criminal Law Amendment Act, 1885, to wit, of having unlawfully, on the ——— day of ——— 18—, at ———, &c.

(*In the case of a second previous conviction, similar words.*)

It is adjudged, &c.

(Signed,)

of her Majesty's justices of the peace for the county of ———.

(L.S.)

(L.S.)

(*See note to No. 2.*)

If the prosecution do not avail themselves of 25 *Geo.* 2, *c.* 36, *the information, summons, or warrant and conviction will be in the ordinary form.*

POWER OF SEARCH.

SECTION 10.

(1.) INFORMATION FOR SEARCH WARRANT.

County of } BE it remembered that on the ——— day of ———, A.D. 18—, in the county of ———, *J. S.*, of ———, in
to wit. } the county of ———, personally cometh before me, the undersigned, one of Her Majesty's justices of the peace in and for the said county, and informeth me on oath that he, the said *J. S.*, is the father of one *M. S.*, a girl under the age of ——— years, to wit, of the age of ——— years, and that there is now reasonable cause to suspect that the said *M. S.* is now unlawfully detained for immoral purposes within the meaning of section 10 of the Criminal Law Amendment Act, 1885, by one *S. R.*, of ———, in the parish of ———, in the said county, at the said ———, the said place being within my jurisdiction as such justice of the peace, and that the facts which constitute the said reasonable cause are as follows:—

Wherefore the said *J. S.* prayeth the consideration of me, the said justice, in the premises and that I may issue a warrant authorising a person named therein to search for, and, when found, to take to and detain in a place of safety the said *M. S.* until she can be brought before a justice of the peace in and for the said county, when she may be further dealt with according to law.

And the said *J. S.* also prayeth that I may, by the same or another warrant, cause the said *S. R.*, so accused of unlawfully detaining the said girl, to be apprehended and brought before a justice of the peace of the said county, and that proceedings be taken for punishing the said *S. R.* according to law.

Exhibited }
. }

(2.) SEARCH WARRANT.

To ———, Superintendent of Police of the ———.

County of } WHEREAS it appears to me, the undersigned, one of Her Majesty's justices of the peace in and for the county of
to wit. } ———, by the information on oath of *J. S.*, of ———, in the said county, that the said *J. S.* is the father of one *M. S.*, a girl

under the age of ——— years, to wit, of the age of ——— years, and that there is now reasonable cause to suspect that the said *M. S.* is now unlawfully detained for immoral purposes at 1, North Street, in the parish of ———, in the said county, within the meaning of section 10 of the Criminal Law Amendment Act, 1885, by one *S. R.*, of the said 1, North Street, the said 1, North Street, being within my jurisdiction as such justice of the peace, and it also appears to me, by the said information on oath, that there are facts which constitute reasonable cause for the belief of the said *J. S.*

These are, therefore, in the name of our said Lady the Queen, to authorize and command you, with necessary and proper assistants, to enter, if need be by force, in the daytime into the said No. 1, North Street, there to search for the said *M. S.*; and if the said *M. S.* be found upon such search, to take to and detain her at —— in a place of safety until she can be brought before one of Her Majesty's justices of the peace in and for the said county, to be dealt with according to law.

Given under my hand and seal, at ———, in the said county, this ——— day of ———, A.D. 18—. (L.S.)

These two forms are drawn merely as specimens, and must be adapted to the circumstances of each particular case. If apprehension of offender is contemplated, a separate warrant is desirable; but if it is thought convenient, suitable words may be added to this form. See Sched. I., 8 & 9 *Vict. c.* 109, for form of such a warrant.

HUSBAND AND WIFE AS WITNESSES.

The following is a list of instances where a defendant and the husband or wife are competent witnesses upon a criminal charge:—

Treason—

The husband and wife of the prisoner, but this is extremely doubtful (see Best on Evidence, 4th ed. 249).

35 & 36 Vict. c. 76, s. 63, sub-sect. 4 (Coal Mines Regulation Act, 1872)—

"May, if he think fit, be sworn and examined as an ordinary witness."

35 & 36 Vict. c. 77, s. 34, sub-sect. 4 (The Metalliferous Mines Regulation Act, 1872)—

"May, if he think fit, be sworn and examined as an ordinary witness."

35 & 36 Vict. c. 94, s. 51, sub-sect. 4 (Licensing Act, 1872)—

"The defendant and his wife shall be competent to give evidence."

38 & 39 Vict. c. 63, s. 21 (Food and Drugs Act, 1875)—

"The defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly."

38 & 39 Vict. c. 86, ss. 4, 5, 6, 11 (Conspiracy and Protection of Property Act, 1875)—

"The respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses."

38 & 39 Vict. c. 17, s. 87 (Explosives Act, 1875)—

"May, if he think fit, be sworn and examined as an ordinary witness in the case."

39 & 40 Vict. c. 80, s. 4 (Merchant Shipping Act, 1876)—

"May give evidence in the same manner as any other witness."

40 Vict. c. 14 (Evidence Amendment Act, 1877)—

"The defendant and the wife or husband of any such defendant shall be admissible witnesses, and compellable to give evidence."

44 & 45 Vict. c. 58, s. 156, sub-sect. 3 (Army Act, 1881)—

"Person charged, and the wife or husband of such person may, if he or she think fit, be sworn and examined as an ordinary witness in the case."

44 & 45 Vict. c. 75, s. 16 (The Married Women's Property Act, 1882).

46 Vict. c. 3, s. 4 (The Explosive Substances Act, 1883)—

"Defendant and his wife or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case."

46 & 47 Vict. c. 51, s. 53 (Corrupt Practices Prevention Act, 1883)—

"Defendant and the husband or wife of such person may, if he or she think fit, be examined as an ordinary witness in the case."

47 Vict. c. 14 (The Married Women's Property Act Amendment Act, 1884)—

"The husband and wife respectively shall be competent and admissible witnesses, and except when defendant, compellable to give evidence."

It is observed that with the exception of the first of these, the offences charged are not of the same serious character as those under this Act.

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