

14. Where the Court has power to fine without imprisonment, the Court may, if it thinks fit, direct that the person sentenced to fine be imprisoned, with or without hard labour, until the fine be paid : Provided that the Court may, at its discretion, suspend such imprisonment in such terms as it thinks fit, or may limit the period of such imprisonment : Provided also that in no such case shall anyone be imprisoned for non-payment of a fine for more than one year.

15. Where the Court has power to fine and imprison, the term for which the Court may direct the offender to be imprisoned in default of payment of a fine shall not in any case exceed the maximum term of imprisonment fixed for the offence ; and where such fine is given in addition to any term of imprisonment which the Court may have the power to impose, the term of imprisonment in default of payment of the fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence ; and in such case this last term of imprisonment shall take effect from and after the termination of the imprisonment which may have been awarded in addition to fine.

Portion of Fines may be paid to Persons assisting in bringing Offenders to justice.

16. The Courts empowered to pass sentence on any persons for any offence under this Code may order and direct that a portion of any fine imposed by the Court shall be paid to the person or persons on whose information the conviction of any offender may have been obtained, or who materially assisted in bringing such offender to justice.

Portion of fines
may be paid to per-
sons assisting in
bringing offenders to
justice.

Fines to be levied in restitution of, or as compensation for, Property stolen or injured.

17. Any Court empowered to pass sentence under the provisions of this Code on any person for any offence may, in passing such sentences, include therein, under the punishment of fine, a sufficient amount to cover reasonable compensation for loss, costs, damages, or injury caused by the offence for which the offender shall have been convicted ; such fine, if not paid, to be levied on the movable property of the said offender, under and by virtue of a warrant under the hand of the Judge or Magistrate imposing such fine, together with the costs of levy ; and out of such fine aforesaid, when paid or levied, it shall be competent for the Judge or Magistrate to direct payment to be made to the person injured for such reasonable compensation as aforesaid ; and any balance shall be paid into the Public Treasury : Provided that any Magistrate may suspend the levying of any fine imposed as above until the record of the proceedings in the case shall have been reviewed by the Chief Magistrate of the territory who shall be empowered to reduce or disallow the same, as shall seem to him to be most in accordance with real and substantial justice.

Fines to be levied
in restitution of, or
as compensation for
property stolen or
injured.

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Fines recoverable
in money, stock, or
grain.

Fines recoverable in Money, Stock, Grain, or other Produce.

18. All fines which may be imposed under this Code may be imposed, paid or recovered in money, or in cattle, or in grain, or other produce of the soil, at the discretion of the Judge or Magistrate who shall determine the number of cattle or quantity of grain or other produce of the soil to be paid in lieu of money.

Discharge without Verdict.

Discharge without
verdict.

19. In any case in which the Court considers that the offence deserves no more than a nominal punishment, the Court may in its discretion direct the discharge of the accused, and such discharge shall have all the effects of an acquittal.

Placing under Recognizances.

Placing under re-
cognizances.

20. Every one who under any provision of this Code is convicted of any offence, for which he is liable to be sentenced to imprisonment, may in addition to any term of imprisonment or instead of any punishment hereby authorized, be required to enter into his own recognizances or to find sureties or both for such amount and for such time as the Court by which he is tried considers reasonable, that he shall keep the peace and be of good behaviour. Every one required to find sureties as aforesaid shall be liable, if the Court thinks fit, to be imprisoned till he find such sureties: Provided the Court may in its discretion suspend such last mentioned imprisonment on such terms as it thinks fit, or may limit the period of such imprisonment: Provided also that no one shall be imprisoned for not finding sureties for more than one year, exclusive of any other period for which he may be imprisoned by the sentence of the Court.

Sentences may be cumulative.

Sentences may be
cumulative.

21. When an offender is convicted of more offences than one before the same Court, at the same sitting, or when any offender undergoing punishment for one offence is convicted of another, the sentences passed upon him for his several offences shall take effect one after the other, or after the expiration of the punishment which he is undergoing at the time of his last conviction.

Limit of punishment of offence made up of several offences.

Limit of punish-
ment of offence made
up of several offences

22. When anything which is an offence is made up of parts, any of which part is itself an offence, defendant shall not be punishable with a punishment for more than one of such offences, unless it be so expressly provided.

Punishment of Person guilty of several offences.

Punishment of per-
son guilty of several
offences.

23. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided; if the same punishment is not provided for all.

*CHAPTER III.*JUSTIFICATION AND EXCUSE FOR ACTS WHICH
WOULD OTHERWISE BE OFFENCES.*Common Law Principles.*

24. All rules and principles of the law in force in the Cape Colony which render any circumstance a justification or excuse for any act or a defence to any charge, shall be in force and be applicable to any defence to a charge under this Code, except in so far as they are thereby altered or are inconsistent therewith. The matters hereby provided for are declared and enacted to be justifications and excuses for all charges to which they apply.

Children exempted.

25. No one whose age does not exceed seven years shall be convicted of any offence.

No one whose age exceeds seven and does not exceed fourteen years, shall be convicted of any offence, unless it appear that at the time he committed the offence he had sufficient intelligence to know the nature and consequences of his conduct, or to appreciate that it was wrong.

Insanity.

26. If it be proved that a person who has committed an offence was, at the time he committed it, insane, so as not to be responsible for that offence, he shall not therefore be simply acquitted, but he shall be found not guilty on the ground of insanity, and in such case the Court before which such trial shall take place shall order such person to be kept in strict custody in such gaol, lunatic asylum, or other place of confinement either in the said territories or in the Cape Colony, and in such manner as to the Court shall seem fit, until the pleasure of the Governor shall be known, and the Governor may thereupon give such order for the safe custody of such person in such place, in such manner, and for such time as to the Governor shall seem fit.

To establish a defence on that ground it must be proved that the offender was at the time he committed the act labouring under natural imbecility or disease of or affecting the mind to such an extent as to render him incapable of appreciating the nature and quality of the act or that the act was wrong. A person labouring under specific delusions but in other respects sane, shall not be found guilty on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which if it existed, would justify or excuse this act: Provided that insanity before or after the time he committed the act, and insane delusions though only partial, may be evidence that the offender was at the time that he committed the act in such a condition of

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mind as to entitle him to be found not guilty on the ground of insanity.

Everyone committing an offence shall be presumed to be sane until the contrary is proved.

Intoxication.

Intoxication.

27. Nothing is an offence which is done by a person who, at the time of doing it, is by reason of intoxication incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

28. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will: Provided, however, that if the existence of a specific intention is essential to the commission of a crime the fact that an offender was drunk when he did the act which if coupled with that intention would constitute such crime shall be taken into account by the Judge or Magistrate in deciding whether he had that intention.

Compulsion.

Compulsion.

29. Compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of an offence, shall be an excuse for the commission of any offence other than high treason, murder, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson: Provided that the person under compulsion believes that such threat will be executed: Provided also that he was not a party to any association or conspiracy, the being party to which rendered him subject to such compulsion. No presumption shall be made that a married woman committing an offence in the presence of her husband does so under compulsion.

Ignorance of Law.

Ignorance of Law.

30. The fact that an offender is ignorant of the law is not an excuse for any offence committed by him; but nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law, believes himself to be justified by law in doing it.

Act of Judicial Officer.

Act of Judge.

31. Nothing is an offence which is done by a Judge, or any other judicial officer, when acting judicially in the exercise of any power which is or which in good faith he believes to be given him by law.

Execution of Lawful Sentence.

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32. Every officer of any Court authorized to execute a lawful sentence, and every gaoler, and every person lawfully assisting such officer or gaoler, is justified in executing such sentence. Execution of lawful sentence.

Execution of lawful Process and Warrants.

33. Every officer of any Court duly authorized to execute any lawful process of such Court, whether of a civil or criminal nature, and every one duly authorized to execute a lawful warrant issued by any Court or Justice of the Peace, or other person having jurisdiction to issue such warrants, and every person lawfully assisting them respectively, is justified in executing such process or warrant respectively, and every gaoler who is required under such process or warrant respectively to receive and detain any person, is justified in receiving and detaining him. Execution of lawful process and warrants.

Execution of erroneous Sentence or Process.

34. If a sentence is passed or process issued by a Court having jurisdiction under any circumstances to issue such warrant, the sentence passed or process or warrant issued shall be sufficient to justify the officer or person authorized to execute such warrant, and every gaoler and person lawfully assisting, although the Court passing the sentence or issuing the process had not in the particular case authority to do so, or although the Court or the person in the particular case had no jurisdiction to issue or exceeded its or his jurisdiction in issuing the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district for which such person was entitled to act. Execution of erroneous sentence or process.

Effect of Sentence or Process without jurisdiction.

35. Every officer, gaoler, or person executing any process, sentence, or warrant, and every person lawfully assisting such officer, gaoler, or person, shall be protected from criminal responsibility, if he acts in good faith under the belief that the sentence or process was that of a Court having, or that the warrant was that of a Court, Justice of the Peace, or other person having authority to issue warrants, and if it be proved that the person passing the sentence, or issuing the process acted as such a Court, under colour of having some appointment or commission lawfully authorizing him to act as such Court, or that the person issuing the warrant acted as a Justice of the Peace or other person having such authority, although in fact such appointment did not exist or had expired, or although in fact the Court or the person passing the sentence or issuing the process was not the Court or the person authorized by the commission to act, or the person issuing the warrant was not duly authorized so to act. Effect of sentence or process without jurisdiction.

Arresting the wrong Person.

36. Every one duly authorized to execute a warrant to arrest, who thereupon arrests a person, believing in good faith and on Arresting the wrong person.

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reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent, and subject to the same provisions, as if the person arrested had been the person named in the warrant. Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person shall be protected to the same extent, and subject to the same provisions, as if the arrested person had been the person named in the warrant.

Effect of irregular Warrant or Process.

Effect of irregular warrant or process.

37. Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form apparent on the face of it, if he in good faith and without culpable ignorance or negligence believed that the warrant or process was good in law, shall be protected from criminal responsibility to the same extent, and subject to the same provisions, as if the warrant was good in law, and ignorance of the law shall in this case be an excuse: Provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

Arrest by Peace Officer in case of major offence.

Arrest by peace officer in case of major offence.

38. Every peace officer who on reasonable and probable grounds believes that one of the offences as to which it is provided in this Code that the offender may be arrested without warrant has been committed, whether it has been committed or not, and who on reasonable and probable grounds believes that any person has committed that offence, is justified in arresting such person without warrant whether such person is guilty or not.

Persons assisting Peace Officer arresting in case of major offence.

Persons assisting peace officer arresting in case of major offence.

39. Every one called upon to assist a peace officer in the arrest of a person suspected of having committed any such offence as last aforesaid, is justified in arresting if he knows that the person calling on him to assist him is a peace officer and does not know that there is no reasonable ground for the suspicion.

Arrest of person found committing major offence.

Arrest of person found committing major offence.

40. Every one is justified in arresting without warrant any person whom he finds committing any offence as to which it is provided by this Code that the offender may be arrested when found committing.

Arrest after commission of major offence.

Arrest after commission of major offence.

41. If any offence as to which it is provided in this Code that the offender may be arrested without warrant has been committed,

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any one who no reasonable and probable grounds believes that any person is guilty of that offence is justified in arresting him without warrant, whether such person is guilty or not.

Arrest of Persons believed to be committing major offence.

42. Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable grounds believes he finds committing any offence as to which it is provided by this Code that offenders may be arrested without warrant.

Arrest of persons believed to be committing major offence at night.

Arrest by Peace Officer of Person found committing any offence.

43. Every peace officer is justified in arresting without warrant any person whom he finds committing any offence against this Code.

Arrest by peace officer of person found committing any offence.

Arrest of Person found committing any offence at night.

44. Every one is justified in arresting without warrant any person whom he finds committing in the night time any offence against this Code.

Arrest of person found committing or about to commit any offence at night.

45. Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any kraal, enclosure, cattle yard, premises, or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant.

Arrest of persons lying or loitering in any kraal, &c.

Arrest during flight.

46. Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable grounds believes to have committed an offence against this Code and to be escaping from and to be pursued by those whom on reasonable and probable grounds he believes to have lawful authority to arrest that person for such offence.

Arrest during flight.

What force may be used in executing Process or in Arrest.

47. Every one is justified or protected from criminal responsibility in executing any sentence, warrant or process, or in making an arrest, and every one lawfully assisting him is justified and protected from criminal responsibility as the case may be, in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner.

What force may be used in executing process or in arrest.

Duty of Persons arresting.

48. It is the duty of every one executing any process or warrant to have it with him and to produce it if required.

Duty of persons arresting.

It is the duty of every one arresting another, whether with or without warrant, to give notice where practicable of the process or warrant under which he acts, or of the cause of the arrest.

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A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant or his assistants, or the person arresting of protection from criminal responsibility, but shall be relevant to the enquiry whether the process or warrant might not have been executed or the arrest effected by reasonable means in a less violent manner.

Peace Officer preventing Escape from Arrest for major offence.

Peace officer preventing escape from arrest for major offence.

49. Every peace officer proceeding lawfully to arrest with or without warrant any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, and every one lawfully assisting in such arrest is justified, if the person to be arrested takes flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight unless such escape can be prevented by reasonable means in a less violent manner.

Private Person preventing Escape from Arrest for major offence.

Private person preventing escape from arrest for major offence.

50. Every private person proceeding lawfully to arrest without warrant any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner.

Preventing Escape from Arrest in other cases.

Preventing escape from arrest in other cases.

51. Every one proceeding lawfully to arrest any person for any cause other than such offence as in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner.

Preventing Escape or Rescue after Arrest for major offences.

Preventing escape or rescue after arrest for major offences.

52. Every one who has lawfully arrested any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested, as he believes on reasonable grounds to be necessary for that purpose.

Preventing Escape or Rescue after Arrest in other cases.

Preventing escape or rescue after arrest in other cases.

53. Every one who has lawfully arrested any person for any cause other than one of the offences as to which it is provided in this Code that the offender may be arrested without warrant, is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes on reasonable grounds to be necessary for that purpose.

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Homicide of Persons flying and resisting to be justifiable.

54. If any officer of the law or private person authorized and required to arrest, or assist in arresting, any person who has committed, or who is on reasonable grounds suspected to have committed, any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goats, or any other crime of equal degree of guilt with any of the crimes aforesaid, or desertion or attempted desertion from a gaol or convict station, shall attempt to make such arrest, and the person so attempted to be arrested shall fly or resist, and cannot be apprehended and prevented from escaping by other means than by such officer or private person killing the person so flying or resisting, such homicide shall be deemed in law to be justifiable homicide.

Homicide of persons flying and resisting to be justifiable.

Suppression of Breach of the Peace.

55. Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal of such breach of the peace, and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer: Provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace.

Suppression of breach of the peace.

56. Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he on reasonable and probable grounds believes to be about to join in or renew such breach of the peace.

57. Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace, by one who has, or whom such peace officer upon reasonable and probable grounds believes to have, witnessed such breach of the peace.

Suppression of Riot by Magistrates, &c.

58. Every Justice of the Peace is justified in using and ordering such force as he in good faith and on reasonable and probable grounds believes to be necessary to suppress a riot, and as is not disproportionate to the danger which he on reasonable and probable grounds believes to be apprehended from the continuance of the riot.

Suppression of riot by magistrates, &c.

Suppression of Riot by Persons acting under lawful orders.

59. Every one, whether subject to military or police law or not, acting in good faith in obedience to orders given by a Justice of the Peace for the suppression of a riot, is justified in obeying the

Suppression of riot by persons acting under lawful orders.

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orders so given, unless such orders are manifestly unlawful; and he is protected from criminal responsibility in using such force as he on reasonable and probable grounds believes to be necessary for carrying into effect such orders.

It shall be a question of law whether any particular order is manifestly unlawful or not.

Protection of Persons subject to Military Law.

Protection of persons subject to military law.

60. Every one who is bound by military or police law to obey the lawful command of his superior officer, is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

It shall be a question of law whether such order is manifestly unlawful or not.

Prevention of major offences.

Prevention of major offences.

61. Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of any offence for which if committed the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one; or in order to prevent any act being done which he upon reasonable grounds believes would, if committed, amount to any of such offences.

Self-defence against unprovoked Assault.

Self - defence against unprovoked assault.

62. Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence.

Self-defence against provoked Assault.

Self - defence against provoked assault.

63. Every one who has without provocation assaulted another, or has provoked an assault from that other, may nevertheless justify force, subsequent to such assault, if he uses such force under reasonable apprehension of death, or grievous bodily harm from the violence of the party first assaulted or provoked, and in the belief on reasonable grounds that it is necessary for his own preservation from death or grievous bodily harm: Provided that he did not commence the assault with intent to do grievous bodily harm, and did not endeavour, at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm: Provided, also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable.

Provocation within the meaning of this and the last preceding section may be given by blows, or words.

Defence of Movable Property against Trespasser.

Defence of movable property against trespasser.

64. Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified

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in resisting the taking of such property or thing by any trespasser, or in retaking it from such trespasser, if in either case he does not do grievous bodily harm to such trespasser: and if, after any one having peaceable possession as aforesaid has laid hands upon any such property or thing, such trespasser persists in attempting to keep it, or to take it from the possessor, or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation.

Defence of Movable Property by one having claim of right.

65. Every one who is in peaceable possession of any movable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the possession of such property or thing, if he does not do grievous bodily harm to such person; and if the person so entitled by law to the possession thereof attempts to take it from or otherwise assaults the possessor, or any one acting under his authority, such assault shall be deemed to be without justification or provocation.

Defence of Movable Property by Person not having claim of right.

66. Every one who is in peaceable possession of any movable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against a person entitled by law to the possession of such property or thing; and if the person so entitled attempts to retake any such thing, and the possessor resists and the person entitled thereto thereupon assaults the possessor, such assault shall be deemed to have been provoked, although the possessor may not have assaulted the person entitled by law to the possession.

Defence of House or Kraal.

67. Every one who is in peaceable possession of a dwelling-house, or other building or kraal, and every one lawfully assisting him, or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house, building or kraal either by night or day, by any person with the intent to commit any indictable offence therein.

Defence of Dwelling-house or Kraal at night.

68. Every one who is in peaceable possession of a dwelling-house, or other building or kraal, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house, building or kraal by night by any person, if he believes on reasonable and probable grounds that such breaking and entering is attempted with the intent to commit any indictable offence therein.

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Defence of immovable property.

69. Every one who is in peaceable possession of any house, or other building, kraal, or land, or other immovable properties, and every one lawfully assisting him or acting by his authority, is justified in using force to prevent any person from trespassing on such property, or to remove him therefrom, if he does not do grievous bodily harm to such trespasser; and if such trespasser resists such attempt to prevent his entry or to remove him, such trespasser shall be deemed to commit an assault without justification or provocation.

*Assertion of right to House or Land.*Assertion of right to house or land.

70. Every one is justified in peaceably entering in the daytime to take possession of any house, or other building, kraal, or land, to the possession of which he or some other person under whose authority he acts is lawfully entitled.

71. If any person, not having or acting under the authority of one having peaceable possession of any such house, building, kraal, or land, with a claim of right assaults any one peaceably entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

72. If any person having peaceable possession of such house, building, kraal, or land, with a claim of right or any person acting by his authority, assaults any one entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering.

*Surgical Operations.*Surgical operations.

73. Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, with such person's consent, if in a fit state to give such consent, or, in the case of a minor, with the consent of the parents or guardians of such minor: Provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case

*Act done in good faith for the benefit of a Person without consent.*Act done in good faith for the benefit of a person without consent.

74. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

*Excess.*Excess.

75. Every one authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

Consent to Death.

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Consent to death.

76. No one has a right to consent to the infliction of death upon himself, or of any injury likely to cause death, unless it be an injury in the nature of a surgical operation upon himself; and if such consent is given, it shall have no effect upon the criminal responsibility of any person by whom such death may be caused.

CHAPTER IV.

OF PARTIES TO THE COMMISSION OF OFFENCES.

Parties to Offences.

77. Every one is a party to and guilty of an offence who

Parties to offences.

- (a) Actually commits the offence, or does or omits any act, the doing or omission of which forms part of the offence, or
- (b) Aids or abets any person in the actual commission of the offence, or in any such act or omission as aforesaid; or
- (c) Directly or indirectly counsels or procures any person to commit the offence, or to do or omit any such act as aforesaid.

78. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been, known to be a probable consequence of the prosecution of such common purpose.

Offence committed other than the Offence intended.

79. Every one who counsels or persuades another to be a party to an offence of which that other is afterwards guilty, is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

Offence committed other than the offence intended.

80. Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring.

Accessory after the fact defined.

81. An accessory after the fact to an offence is one who receives, comforts, or assists any one who has been a party to such offence, in order to enable him to escape, knowing him to have been a party thereto: Provided that no married woman whose husband has been a party to an offence, shall become an accessory after the fact by receiving, comforting, or assisting her husband, or by receiving,

Accessory after the fact defined.

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comforting, or assisting, in his presence and by his authority, any other person who has been a party to such offence, in order to enable her husband or such other person to escape.

Attempts to commit Offences.

Attempts to com-
mit offences.

82. An attempt to commit an offence is an act done or omitted with intent to commit that offence, forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted either by the voluntary determination of the offender not to commit the offence or by some other cause.

83. Every one who, believing that a certain state of facts exists, does or attempts an act the doing or omitting of which would, if that state of facts existed, be an attempt to commit an offence, attempts to commit that offence, although its commission in the manner proposed was by reason of the non-existence of that state of facts at the time of the act or omission impossible.

84. The question whether an act done or omitted with intent to commit an offence, is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

TITLE II.

CHAPTER V.

OFFENCES AGAINST THE PUBLIC ORDER.

High Treason, or waging or attempting to wage War against the Queen.

High treason, or
waging or attempt-
ing to wage war
against the Queen.

85. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, may be punished with death, or with imprisonment for a term which may extend to his natural life, with or without hard labour, and with or without fine, and with or without flogging or whipping, or with any two or more of such punishments.

Conspiracy against the Queen or Government of the Territories.

Conspiracy against
the Queen or Gov-
ernment of the Ter-
ritories.

86. Whoever within or without the said Transkeian territories conspires to commit any of the offences punishable by the last section, or to deprive the Queen of her sovereignty in the said territories, or any of Her Majesty's dominions, or conspires to overawe by means of criminal force, the Queen in her government of the said territories or dominions, shall be punished with imprisonment with or without hard labour for a term which may extend to fifteen years, to which fine may be added, or with fine only, or with flogging or whipping, or with any two or more of such punishments.

Collecting Arms with the intention of waging War.

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87. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punishable as in the last section is provided.

Concealing with intent to facilitate a design to wage War.

88. Whoever by any act or by any illegal omission conceals the existence of a design to wage war against the Queen, knowing that it may be likely that he may by such concealment facilitate the waging of such war, shall be punishable as in the eighty-sixth section of this Code is provided.

Waging War against Allies.

89. Any British subject who wages war against the Government of any power in South Africa in alliance or at peace with the Queen, or attempts to wage such war or abets the waging of such war, shall be also punishable as in the said eighty-sixth section is provided.

Abetting Mutiny and Desertion or attempting to seduce a Soldier or Policeman from his duty.

90. Whoever by instigation, conspiracy, or aid, abets the committing of mutiny, or desertion by any person in the military or police service of the Queen, or attempts to seduce any such person from his allegiance or duty, shall be punished with imprisonment with or without hard labour for a term which may extend to seven years, to which fine may be added, or with fine only.

CHAPTER VI.**OFFENCES AGAINST THE PUBLIC TRANQUILLITY.***Unlawful Assemblies.*

91. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons comprising that assembly is :

- (1) To overawe, by criminal force, or show of criminal force, any officer of the Government or any public servant in the exercise of the lawful power of such public servant, or
- (2) To resist the execution of any law, or any legal process.

Being member of unlawful Assembly.

92. Whoever being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

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Punishment.*Punishment.*

93. Every member of an unlawful assembly shall be liable to be imprisoned, with or without hard labour, for a term which may extend to one year, to which a fine may be added.

Fighting in a public place an Affray.

Fighting in a public place an affray.

94. When two or more persons by fighting at any gathering at any kraal or after such gathering away from any kraal or in a public place, disturb the public peace, they are said to commit an affray, and shall be punished with a fine not exceeding five pounds, or in default of payment with imprisonment, with or without hard labour for a term which may extend to three months.

Dispersing an Assembly after an Affray has begun.

Dispersing assembly after an affray has begun.

95. Whenever any five or more persons are assembled together, from whose conduct a breach of the peace may be reasonably apprehended, or when any affray has actually begun, any Justice of the Peace or other peace officer may command such persons to disperse, and on failure so to do they shall each be liable to a fine not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for a term which may extend to three months.

Obstructing or assaulting Magistrates.

Obstructing or assaulting magistrates

96. If after such command as is mentioned in the last preceding section, five or more persons fail to disperse, the Justice of the Peace or other peace officer may use force to compel them so to do, and whoever by force wilfully and knowingly opposes, obstructs, hinders or hurts any such Justice of the Peace or other peace officer or persons authorized by him to compel such dispersion, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine, or both.

Indemnity of Persons authorized to disperse Assembly.

Indemnity of persons authorized to disperse assembly.

97. If any person, assembled as in the last two preceding sections mentioned, is killed or hurt in the apprehension of such persons, or in the endeavour to apprehend or disperse them by reason of their resistance, every person ordering them to be apprehended or dispersed and every person executing such orders shall be indemnified against all proceedings of every kind in respect thereof.

Liability of Members of unlawful Assembly.

Liability of members of unlawful assembly.

98. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing that offence is a member of that assembly is guilty of that offence.

Punishment for drunken, riotous and indecent conduct.

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99. Any person drunk in any street, road, lane, or public place, or in or near any shop, store, hotel or canteen, and any person guilty of any riotous or indecent behaviour in any such place as aforesaid, or in any police office or police station-house, shall be punished with a fine not exceeding two pounds, and in default of payment, with imprisonment, with or without hard labour, and with or without spare diet for any period not exceeding fourteen days; and in case of a second or subsequent conviction, shall be punished with a fine not exceeding five pounds, or in default of payment with imprisonment with or without hard labour and with or without spare diet for any period not exceeding thirty days, unless the fine in any case be sooner paid.

Punishment for
drunken, riotous and
indecent conduct.*For threats, abusive language, &c.*

100. Any person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, in any street, road, public place, or licensed public-house, shall be punished with a fine not exceeding three pounds, or with imprisonment with or without hard labour, and with or without spare diet, for any term not exceeding thirty days, unless such penalty be sooner paid, and such person may further be required to find sureties to keep the peace for such period not exceeding three months, as the Court before which such person is tried may deem necessary.

For threats, abusive
language, &c.*For accepting from Seamen and others Ships' Stores, &c.*

101. Every person who shall, in any port knowingly purchase or take in exchange from any seaman or other person, not being the owner or master of any vessel, anything belonging to such vessel lying in such port, or any part of the cargo of any such vessel, or any stores or articles belonging to the same, shall be punished with a fine not exceeding ten pounds, or with imprisonment with or without hard labour for any term not exceeding three months, but nothing herein contained shall prevent the trial of such person for any other crime of which but for the passing of this Code he would have been guilty.

For accepting from
seamen and others
ships' stores, &c.*For Seamen and others removing Ships' Boats.*

102. If any seaman belonging to any vessel lying in any port, or if any other person shall take away or remove from any such vessel any boat attached or belonging to the same without having obtained permission so to do from the master or some officer of the said vessel, such seaman or other person shall (although such taking or removal may not have been with intent to steal), be punished with a fine not exceeding ten pounds, or with imprisonment with or without hard labour for any term not exceeding three months.

For seamen and
others removing
ship's boats.

TITLE III.

CHAPTER VII.

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE.

Judicial Corruption.

Judicial Corruption. 103. Whoever, holding any judicial office, corruptly accepts, or obtains, or agrees to accept, or attempts to obtain for himself or any other person any money or valuable consideration, office, place, or employment whatever, on account of anything already done or omitted, or to be afterwards done or omitted by him in his judicial capacity, or corruptly gives to any person holding any judicial office, or to any other person, any money or valuable consideration, office, or place of employment, whatever, on account of such act or omission as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

Corruption of Public Officers.

Corruption of Public Officers. 104. Whoever, being a Justice of the Peace, or public officer appointed in any capacity for the prosecution or detection or punishment of offenders, or whoever, being an interpreter in any Court of Justice, corruptly accepts, or obtains, or agrees to accept, or attempts to obtain for himself or any other person, any money, valuable consideration, office, or place whatever, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any offence, or to protect from detection or punishment any person having committed, or intending to commit any such offence, or corruptly gives or offers to any such officer as aforesaid, with any such intent as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both.

Threatening any Person in order to induce him to refrain from applying for legal protection.

Threatening any person in order to induce him to refrain from applying for legal protection. 105. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any Magistrate or other public officer or servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with a fine not exceeding ten pounds, and in default of payment thereof, with imprisonment with or without hard labour for a term which may extend to three months.

Perjury and Subornation of Perjury.

Perjury and subornation of perjury. 106. Perjury is an assertion as to a matter of fact, opinion, belief or knowledge made by a witness in a judicial proceeding as

part of his evidence, either upon oath, or in any form allowed by law to be substituted for an oath, whether such evidence is given in open Court or by affidavit or otherwise, such assertion being known to such a witness to be false.

Every person is a witness within the meaning of this section who actually gives his evidence upon oath, or in such form as aforesaid, whether he was competent to be a witness or not. Subornation of perjury is counselling any person to commit any perjury which is actually committed.

107. Whoever is guilty of perjury, or subornation of perjury, shall be punished with imprisonment for a term which may extend to seven years, or fine, or flogging or whipping, or any two of such punishments; and if an innocent person be convicted and executed in consequence of any false evidence, the person who gives or counsels such evidence shall be punished with imprisonment, with or without hard labour, for a term which may extend to the term of his natural life, or with such term of imprisonment and flogging or whipping.

False Statement on Oath.

108. Whoever being required or authorized by law to make a statement, either on oath or in any form permitted to be substituted for an oath, thereupon makes a statement which would amount to perjury if made in a judicial proceeding, shall be deemed to be guilty of perjury, and punished accordingly.

False Declaration.

109. Whoever makes a statement as to any matter of fact, opinion, or belief, which would amount to perjury if made on oath upon any occasion on which he is permitted by law to make any statement or declaration in lieu of an oath before any officer authorized by law to permit it to be made before him, shall be punished in the same manner as if he had committed the crime of perjury.

False declaration.

Fabricating Evidence.

110. Whoever, with intent to mislead any Court of Justice or person holding any such judicial proceeding as aforesaid, fabricates or contrives evidence by any means other than perjury and subornation of perjury, shall be punished with imprisonment, with or without hard labour, for a term of not exceeding seven years, or with fine, or both.

Fabricating evidence.

Conspiring to bring False Accusations.

111. Whoever conspires with any person to prosecute any one for any offence, knowing such other person to be innocent thereof, shall be liable upon conviction to be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or flogging or whipping, or with fine, or any two or more of such punishments: Provided, however, that where such

Conspiring to bring false accusations.

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innocent accused is convicted and executed, such conspirator may be punished with death, or imprisonment with or without hard labour, for a period which may extend to the term of his natural life.

Conspiring to defeat Justice.

Conspiring to defeat justice.

112. Whoever conspires with any person to obstruct, prevent, or defeat the course of justice, or who wilfully attempts in any way, not otherwise criminal, to obstruct, prevent, pervert or defeat the course of justice or the administration of the law, shall be punished as in the last section provided.

Bribery or Corruption of Witnesses, Jurors, Assessors, or Interpreters.

Bribery or corruption of witnesses, jurors, assessors, or interpreters.

113. Every one shall be liable to the punishment provided in section 104 of this Code who (a) dissuades or attempts to dissuade any person by threats, bribes, or other corrupt means, from giving evidence in any cause or matter, civil or criminal; or (b) influences or attempts to influence by threats or bribes or other corrupt means any juryman, assessor, or interpreter in his conduct as such, whether such juryman, assessor, or interpreter has been sworn or not; (c) or accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as juryman, assessor, or interpreter.

CHAPTER VIII.

ESCAPES AND RESCUES.

Escapes and rescues

114. Whoever by force or violence breaks any gaol or prison with intent to set at liberty himself or any other person lawfully confined therein on any criminal charge, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years.

115. Whoever, being convicted of any offence, escapes from gaol or prison, or from any lawful custody in which he may be under such conviction, or attempts or conspires to make his escape from such custody, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or flogging or whipping.

116. Whoever, being in lawful custody on any criminal charge, escapes from such custody, shall be liable to imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

117. Whoever rescues any prisoner, or assists any prisoner in escaping or attempting to escape from lawful custody, whether in gaol or prison or not, or being a gaoler or other officer having the lawful custody of such prisoner, voluntarily and intentionally permits him to escape, or aids him in escaping or attempting to

escape, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or fine, or both.

118. Whoever, by failing to perform any legal duty, permits a person in his lawful custody on a criminal charge to escape therefrom, shall be punished with imprisonment for a term which may extend to six months, or fine, or both.

119. It shall be lawful for the Governor to make such rules and regulations for the several gaols and prisons of the territories to which this Code applies, and for the discipline therein, as shall to him seem expedient, and thereby to impose any punishment for the breach of such regulation, under a penalty of imprisonment, with or without hard labour, or with or without spare diet, or flogging, or whipping: Provided that in no case shall any unconvicted person be sentenced to flogging or whipping.

TITLE IV.

CHAPTER IX.

OFFENCES AGAINST RELIGION, MORALITY, DECENCY, AND THE PUBLIC HEALTH.

Disturbing a Religious Assembly.

120. Whoever wilfully and without lawful justification or excuse, the proof whereof shall be on him, disquiets or disturbs any meeting, assembly, or congregation of persons lawfully assembled for religious worship, and whoever in any way disturbs, molests, or misuses any preacher, teacher, or person lawfully officiating at such meeting, assembly, or congregation, or any persons there assembled, shall be punished with a fine not exceeding ten pounds sterling, and in default of payment with imprisonment, with or without hard labour, for a term which may extend to three months, unless such fine be sooner paid.

Unnatural Offences.

121. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with flogging, or whipping, or fine, or with any two or more of the said punishments. This offence is complete upon penetration.

122. Whoever attempts to have carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or flogging, or whipping, or fine, or to any two or more of such punishments.

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Incest.

Incest.

123. Incest is the carnal connection of persons related by consanguinity within the third degree.

Incest shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with flogging, or fine, or any two or more of these punishments combined.

Indecent acts.

Indecent Acts.

124. Whoever commits any nuisance in any street or public place, or in view of any dwelling-house whereby public decency may be offended, shall be punished with a fine not exceeding two pounds, and in default of payment thereof with imprisonment with or without hard labour for a term which may extend to one month, unless such fine be sooner paid.

Insufficient Clothing in Towns and other Public Places.

Insufficient clothing in towns and other public places.

125. Whoever indecently exposes his person or appears in any street or public thoroughfare without such articles of clothing as decency requires shall be punished with a fine not exceeding two pounds, and in default of payment with imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Burial, Disinterment, or Indignity to Human Remains.

Burial, disinterment, or indignity to human remains.

126. Whoever neglects to perform any legal duty, either imposed upon him by law, or undertaken by him, with reference to the burial of any dead human body or human remains, or without lawful authority disinters a dead body, or improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not, shall be liable to a fine of twenty pounds, or in default of payment, to imprisonment with or without hard labour for a term which may extend to six months, unless such fine be sooner paid.

Common Nuisances.

Common nuisances.

127. Whoever is guilty of an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, or health of the public, or which occasions injury to the person of any individual, may be convicted and punished with a fine not exceeding twenty pounds, and in default of payment thereof with imprisonment, with or without hard labour, for a term which may extend to six months, unless such fine be sooner paid.

General Police Provisions.

General Police provisions.

128. Any person guilty of any of the following acts or offences shall, upon conviction in respect of each act or offence, be punished with a fine not exceeding five pounds, or in default of payment be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine be sooner paid:

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- (1) Any driver of any vehicle injuring any person or property by negligence or driving on the wrong side of the road.
- (2) Any driver of any vehicle being away from his horse or cattle so as to be unable to have the full control of them.
- (3) Driving any vehicle or riding any animal, and when meeting any other vehicle or animal being ridden not keeping on the left or near side of the road or street, or when passing any other vehicle or animal going in the same direction, not going or passing or not allowing any person desirous so to do to pass when practicable on the right or off side of such other vehicle or animal being ridden.
- (4) Leaving upon any street, public road or thoroughfare, any stone, timber, bricks, or other thing, calculated to damage or endanger any animal or vehicle ridden or driven thereon.
- (5) Any driver or guard of a public vehicle for the conveyance of passengers wilfully delaying on the road, using any abusive or insulting language to any passenger, or by reason of intoxication, negligence, or other misconduct, endangering the safety or property of any passenger or other person, or demanding or exacting more than the proper fare due from any passenger.
- (6) Leaving upon any public road or thoroughfare any vehicle, plough or harrow without any horse or animal harnessed thereto, unless in consequence of some accident having occurred.
- (7) Having any timber, iron, or boards laid across any vehicle going along any public road so that either end projects more than two feet beyond the wheels or sides of such vehicle.
- (8) Slaughtering or skinning any beast upon any public road or thoroughfare, or leaving any dead beast on any such road or thoroughfare.
- (9) Setting or urging or permitting any dog or other animal to attack or worry any person, horse or other animal, or by ill-usage or negligence in driving any cattle causing any damage or hurt to be done by such cattle.
- (10) Wilfully breaking any pane of glass in any building.
- (11) Wilfully breaking or extinguishing or injuring any lamp, or damaging any lamp-post.
- (12) Wilfully trespassing in any place, and neglecting or refusing to leave such place after being warned to do so by the owner or occupier, or any person authorized by or on behalf of the owner or occupier.
- (13) Playing or betting in any street or other open and public place, at or with any table or instrument of gaming or pretended game of chance.

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129. Any person guilty of any of the following acts or offences shall upon conviction in respect of each act or offence be punished with a fine not exceeding twenty pounds, or in default of payment be imprisoned with or without hard labour, for a period not exceeding six months, unless such fine be sooner paid, or either to such penalty or such imprisonment, that is to say:

- (1) Any person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person) any pick-lock, key, crow, or other implement of housebreaking.
- (2) Any person found by night, having his face blackened or wearing felt or other slippers, or being dressed or otherwise disguised with a criminal intent.
- (3) Any person found by night, without lawful excuse (the proof of which excuse shall be on such person) in or upon, or loitering in the neighbourhood of any dwelling-house, warehouse, coach-house, stable, cellar, or out-house, or in or loitering in the neighbourhood of any enclosed yard, garden, or area, or in any kraal, or in or on board any ship or other vessel when lying or being in any port, harbour, or place in these territories.
- (4) Any person found by night armed with any gun, pistol, sword, bludgeon, or other offensive weapon or instrument with a criminal intent, and who being thereto required shall not assign a valid and satisfactory reason for being so armed.
- (5) Any person who shall resist, or incite, or aid, or encourage any person to resist, and any person who shall hinder or disturb any constable, policeman, or officer of any local authority in the execution of his duty.

TITLE V.

CHAPTER X.

OFFENCES AGAINST THE PERSON.

Duties tending to the Preservation of Life.

Duty to provide Necessaries.

- Duties tending to the preservation of life.*
130. Whoever has charge of any other person, unable either by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessities of life, is under a legal duty to supply that person with the necessities of life, and is criminally responsible for omitting without lawful excuse to perform it, if death is caused thereby; or if the life of such person is endangered, or his health permanently injured, whether such charge is imposed upon him by law, or if undertaken by him under any contract, or by reason of any unlawful act.
- Duty to provide necessities.*

Duty of Persons doing dangerous acts.

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131. Every one who undertakes, except in cases of necessity, to administer surgical or medical treatment, or to do any other lawful act, the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill, care, and caution in doing any such act, and is criminally responsible for omitting to discharge that duty, if death is caused thereby.

Duty of Persons in charge of dangerous things.

132. Every one who has in his charge, or under his control, anything whatever, whether animate or inanimate, or who erects, makes, or maintains anything whatever which, in the absence, of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting without lawful excuse to take such precautions or to use such care.

Duty to avoid omissions dangerous to Life.

133. Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to discharge that duty.

Homicide defined.

134. Homicide is the killing of a human being by another directly or indirectly by any means whatsoever.

A child becomes a human being within the meaning of this Code, when it has completely proceeded in a living state from the body of its mother, whether in a case of suspended respiration, it has breathed or not, and whether it has an independent circulation or not, and whether the navel string is severed or not; and the killing of such a child is homicide when it dies after birth in consequence of injuries received before, during, or after birth.

Culpable Homicide.

135. Homicide is culpable when it consists in the killing of any person either by an unlawful act or by a culpable omission to perform or observe any legal duty, or by both combined, or by causing a person by threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or sick person.

Homicide which is not culpable is not an offence.

Death must be within a year.

136. No one is criminally responsible for the killing of another unless the death take place within a year of the cause of death. The period of a year shall be reckoned inclusive of the day on

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which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased. Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened first.

Acceleration of Death.

Acceleration of death. of 137. Every one who by an act or omission of a legal duty causes the death of another shall be deemed to kill that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death, while labouring under some disorder or disease arising from some other cause.

Causing Death which might have been prevented.

Causing death which might have been prevented. 138. Every one who by an act or omission of a legal duty causes the death of another shall be deemed to kill that person, although death from that cause might have been prevented by resorting to proper means.

139. Every one who causes a bodily injury to any person from which death results shall be deemed to kill that person, although the immediate cause of such death be treatment applied in good faith for the purpose of cure, even if such treatment was improper : Provided that if the injury was not in itself of a dangerous character, and the improper treatment was the cause of death, that shall be a defence to a charge of murder or culpable homicide.

Murder, &c.

Murder, &c.

140. Culpable homicide becomes murder in the following cases :

- (a) If the offender means to cause the death of the person killed.
- (b) If the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and if the offender, whether he does or does not mean to cause death, is reckless whether death ensues or not.
- (c) If the offender means to cause death or such bodily injury as aforesaid to one person, so that if that person be killed the offender would be guilty of murder, and by accident or mistake the offender kills another person, though he does not mean to hurt the person killed.
- (d) If the offender for any unlawful object does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one.

Provocation.

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Provocation.

141. Homicide which would otherwise be murder may be reduced to culpable homicide if the person who causes death does so in the heat of passion occasioned by sudden provocation.

Any wrongful act or insult of such a nature as to be sufficient to deprive any ordinary person of the power of self-control may be provocation, if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

Whether any particular wrongful act or insult, whatever may be its nature, amounts to provocation, and whether the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact: Provided that no one shall be deemed to give provocation to another only by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person: Provided also that an arrest shall not necessarily reduce the offence from murder to culpable homicide because the arrest was illegal, but if the illegality was known to the offender, it may be evidence of provocation.

Punishment for Murder, &c.

142. Every one who commits murder shall, upon conviction thereof, be sentenced to death. Punishment for murder, &c.

143. Every one who attempts to commit murder shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, fine, or flogging or whipping, or with any two or more of such punishments.

144. Whoever

(a) Conspires or agrees with any person to murder or to cause or procure the murder of any other person, whether the person intended to be murdered is a subject of Her Majesty or not, or is within Her Majesty's dominions or not: or

(b) Counsels or attempts to procure any person to murder any other person, although such person is not murdered in consequence of such counselling or attempted procurement, whether the person whose murder is counselled or attempted to be procured is a subject of Her Majesty or not, or is within Her Majesty's dominions or not:

shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with fine, or flogging or whipping, or any two or more of such punishments.

Accessory after the fact to Murder.

145. Whoever is an accessory after the fact to murder shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both. Accessory after the fact to murder.

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Punishment of Culpable Homicide.

Punishment of culpable homicide. 146. Every one who commits culpable homicide shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with fine, or with flogging or whipping, or any two or more of such punishments.

Aiding and abetting Suicide.

Aiding and abetting suicide. 147. Whoever counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or whoever aids or abets any person in the commission of suicide, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with fine, or both: Provided, however, that for abetment of suicide of a minor or insane or intoxicated person the term of such imprisonment may extend to his natural life.

Attempting Suicide.

Attempting suicide. 148. Every one who attempts to commit suicide shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine or both.

Concealment of Child-birth.

Concealment of child-birth. 149. Whoever disposes of the dead body of any child in any manner, with intent to conceal the fact of its birth, whether the child died before, during, or after birth, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with fine, or both.

Bodily injuries and acts causing danger to the Person.

Bodily injuries and acts causing danger to the person. 150. Whoever with intent to maim, disfigure, disable or do grievous bodily harm to any one, or, to resist or prevent the lawful apprehension or detention of any one, unlawfully wounds or does actual grievous bodily harm to any person, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with fine, or with flogging or whipping, or any two or more of such punishments.

The following kinds of hurt only are designated "grievous" bodily harm, viz.:—1, Emasculation; 2, permanent privation of the sight of an eye; 3, permanent privation of the hearing of an ear; 4, privation of any member or joint; 5, destruction or impairing of the powers of any member or joint; 6, permanent disfiguration of the head or face; 7, fracture or dislocation of a bone; 8, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Administering Poison so as to endanger Life.

Administering poison so as to endanger life. 151. Whoever knowingly and with intent to injure, aggrieve, or annoy any person administers, or causes to be administered to, or be taken by such person, any poison, or other noxious or

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destructive thing, whereby the life of any person is endangered or grievous bodily harm is caused to any person, shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with fine, or with flogging or whipping, or any two or more of such punishments.

Administering Poison with intent.

152. Whoever knowingly and with intent to injure, aggrieve, or annoy any person, administers to, or causes to be administered to, or be taken by such person, any poison or other destructive or noxious thing, although no injury may be caused thereby, shall be punished with imprisonment with or without hard labour for a term which may extend to one year or with flogging or whipping, or any two or more of such punishments.

Administering poison with intent.

Forcing or aiding, or procuring the enforcement of Circumcision or Intonjane.

153. Whoever by force or threats compels any person to submit against his or her will to the act of circumcision, or to take part in the ceremony named *intonjane*, or whoever by force or threats compels any person, male or female, against his or her will, to submit to any other like act or ceremony, shall be punished with fine, and in default of payment, with imprisonment, with or without hard labour, for a term which may extend to one year.

Forcing or aiding, or procuring the enforcement of circumcision or intonjane.

Circumcision without consent.

154. Any person aiding or procuring the circumcision of any youth without the consent of his parent or the person having the lawful custody of such youth, shall be guilty of an assault, and shall be punished as in the last preceding section mentioned.

Circumcision without consent.

Assault defined.

155. An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has or causes the other to believe upon reasonable grounds that he has the present ability to effect his purpose.

Assault defined.

Indecent Assault.

156. Whoever indecently assaults any female shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine or with flogging, or whipping, or any two or more of such punishments.

Indecent assault.

Assaults on Peace Officers, and to resist Apprehension.

157. Whoever

- (a) Assists any person with intent to commit an offence, or to resist or prevent the lawful apprehension or detention of himself, or of any other person for any offence, or to rescue any person from lawful custody;

Assaults on peace officers, and to resist apprehension.

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- (b) Assaults, resists, or wilfully obstructs any peace officer in the execution of his duty, or any person acting in aid of such officer; or
- (c) Assaults, resists, or unlawfully obstructs any person in the lawful execution of any process against any lands or goods, or with intent to rescue any goods, taken under such process, or taken under any lawful distress;
- shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine, or both.

Common Assaults.

Common assaults. 158. Whoever commits a common assault shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine or both.

Rape.

Rape. 159. Rape is the act of a man having carnal knowledge without the consent of a woman who is not his wife: Provided that nothing shall be deemed to be consent which is either extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by falsely and fraudulently misrepresenting the nature and quality of the act. This offence shall be complete upon penetration.

A boy under fourteen years of age shall be conclusively presumed to be incapable of having carnal knowledge of a woman within the meaning of this section.

Whoever commits rape shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with flogging or whipping or with fine or any two or more of such punishments.

Attempt to Rape.

Attempt to rape. 160. Whoever attempts to commit a rape shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with flogging, or fine, or whipping, or any two or more of such punishments.

Carnally knowing Children.

Carnally knowing children. 161. Whoever carnally knows any girl under the age of twelve years, whether he believes her to be of or above that age or not, and whether she consents or not, shall be imprisoned, with or without hard labour, for a term which may extend to twenty years, or with or without flogging or whipping or fine, or any two or more of such punishments.

162. Whoever attempts carnally to know any girl under the age of twelve years, whether he believes her to be of such age or not, shall be punished with imprisonment with or without hard labour, for a term which may extend to two years, or with fine, or with flogging or whipping, or any two or more of the said punishments.

Age of Children.

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Age of children.

163. It shall be lawful for the Court or Jury by whom the accused is tried to judge from the appearance of the girl in question in such prosecution, and also, if the Court thinks fit from the opinions duly given in evidence of persons skilled in ascertaining the age of such girls, and from any other evidence that may be adduced on the subject, whether the girl was under the age of twelve years at the time the offence was committed or not.

Causing Death of Child by means of Miscarriage.

164. Whoever causes the death of any living child, which has not proceeded in a living state from the body of its mother, in such a manner that he would have been guilty of murder if such child had been fully born, shall be punished with imprisonment with or without hard labour for a term which may extend to seven years or with fine or both: Provided that no one shall be guilty of an offence under this section who by means employed in good faith for the preservation of the life of the mother of the child, causes the death of any such child before or during or after its birth.

Procuring Miscarriage.

165. Whoever, with the intent to procure miscarriage of any woman, whether she be or be not with child, unlawfully administers to, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be punished with imprisonment with or without hard labour, for a term which may extend to five years, or fine or both: Provided that such woman herself shall not be indictable under this section.

Woman procuring her own Miscarriage.

166. Whoever unlawfully administers or permits to be administered to herself, any poison or other noxious thing, or unlawfully uses or permits to be used on herself any instrument with intent to procure her own miscarriage, shall be punished with imprisonment with or without hard labour, for a term which may extend to two years, or fine, or both.

Supplying means of procuring Abortion.

167. Whoever unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child, shall be punished with imprisonment, with or without hard labour, for a period which may extend to one year, or fine or both.

Bigamy.

168. Whoever, having a husband or wife living, marries in any case in which such marriage is and shall be void by reason of its

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taking place during the lifetime of such husband or wife, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with fine or both : Provided, however, that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, or to any person who contracts a marriage during the life of such husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time : Provided that the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same is within his or her knowledge : Provided, further, that this section shall not extend to any person whose previous marriage with a husband or wife living was entered into according to Native custom, whether the same was registered or not.

Stealing or abducting Children under fourteen years of age.

Stealing or abducting children under fourteen years of age.

169. Whoever with intent to deprive any parent or guardian or other person having the lawful care or charge of any child under the age of fourteen, unlawfully leads or takes away or decoys or entices away or detains any such child, or receives or harbours any such child, knowing it to have been dealt with as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both : Provided that nothing herein shall extend to any one who gets or takes possession of any child, claiming in good faith a right to the possession of the child.

Abandoning or exposing Children.

Abandoning or exposing children.

170. Whoever unlawfully exposes or abandons any child under the age of seven years, or who, being lawfully bound to take charge of any such child, knowingly and without lawful excuse leaves it abandoned or exposed, whereby its life is endangered or its health is permanently injured, shall be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or with fine, or both.

CHAPTER XI.

PRETENDED WITCHCRAFT.

Imputations of Witchcraft.

Imputations of witchcraft.

171. Whoever imputes to any other the use of non-natural means in causing any disease in any person or animal, or in causing any injury to any person or property, that is to say, whoever names or indicates another to be a wizard or witch

(*umtakati*) shall be punished with a fine not exceeding forty shillings sterling, or in default of payment with imprisonment, with or without hard labour, for fourteen days unless such fine be sooner paid.

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172. Whoever having named or indicated any person as wizard or witch, shall be proved to be by habit and repute a witch-doctor or witch-finder (*isanusi*) shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine, or flogging, or any two or more of such punishments.

Employing a Witch-doctor.

173. Whoever employs or solicits any witch-doctor or witch-finder (*isanusi*) to name or indicate any person as wizard or witch (*umtakati*) shall be punished with a fine not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for a term which may extend to two months unless such fine be sooner paid.

Employing a
witch-doctor.

Witch-doctors supplying Advice or Witchcraft Materials with intent to injure.

174. Any person professing to a knowledge of so-called witchcraft, or the use of charms, who shall advise any person applying to him how to bewitch or injure persons, property, or cattle, or who shall supply any person with the pretended means of witchcraft, shall be punished with imprisonment, with or without hard labour, for a term not exceeding twelve months, or with fine.

Witch - doctors
supplying advice or
witchcraft materials
with intent to injure.

Persons using Witch Medicine with intent to injure.

175. Whoever, on the advice of a witch-doctor, or of his pretended knowledge of so-called witchcraft, shall, with intent to injure, use, or cause to be put into operation, such means or processes as he believes are calculated to injure any person or property, shall be punished by imprisonment, with or without hard labour, for a period not exceeding twelve months, or with fine.

Persons using with
medicine with intent
to injure.

TITLE VI.

CHAPTER XII.

THEFTS AND SIMILAR OFFENCES.

Inanimate things, fixed or movable, capable of being stolen.

176. Every inanimate thing whatever, which is the property of any person, and which either is or may be made movable, shall be capable of being stolen, as soon as it becomes movable, although it be made movable in order to steal it.

Inanimate things,
fixed or movable,
capable of being
stolen.

Animals capable of being stolen.

177. All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen.

Animals capable of
being stolen.

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Acts 9 of 1869, 12 of
1870, 15 of 1875, 24 of
1875 to be in force
in these territories.

178. All wild living creatures, wild by nature, shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement, or are being actually pursued after escaping therefrom, but no longer. Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen when living; nor shall the taking of their dead bodies by or by orders of the person who killed them before they are reduced into actual possession by the owner or occupier of the land on which they die, be deemed theft. Everything produced by, or forming part of, any living creature capable of being stolen, shall be capable of being stolen: Provided always that nothing in this section contained shall in any way affect or interfere with the provisions of Act 9 of 1869, "For the better protection of Bees," which last-mentioned Act shall be and remain in force as law throughout these territories: and provided, further, that Act 12 of 1870, "For the better preservation of Wild Ostriches," as amended by Act 15 of 1875, or "The Wild Ostriches Act of 1875," shall also have the effect of law within these territories: Provided, further, that the Act 24 of 1875, or "The Domesticated Ostriches Act of 1875," shall have the effect of law within the said territories.

Definition of Theft.

Definition of theft. 179. Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person anything or the use of anything capable of being stolen, with intent to deprive the owner thereof or to deprive any person having any special property or interest therein of such property or interest. It is immaterial whether the thing converted was taken by the thief for the purpose of the conversion or whether it was at the time of the conversion in the lawful possession of the thief: Provided that if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not by reason thereof be deemed guilty of theft.

180. Theft is complete when the offender takes or moves anything capable of being stolen, or causes it to move or to be moved, for the purpose of fraudulently converting it, although such conversion be not completed.

181. Theft is committed when the offender cuts, rips, or otherwise begins to cause to be movable anything part of or growing out of or attached to any real property with intent to steal it.

Theft of Animals.

Theft of animals. 182. Every one commits theft who kills any living creature capable of being stolen with intent to steal the carcase, skin, plumage, or any part of such creature.

*Theft by Agent.*No. 24-1886.
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Theft by agent.

183. Every one commits theft who, having received any money, valuable security, or other thing whatsoever, on terms requiring him to account for or pay the same or the proceeds thereof to any other person, though not requiring him to deliver over in specie the identical money, valuable security, or other thing received, fraudulently converts to his own use or fraudulently omits to account for the same, or to account, for or pay any part of the proceeds which he was required to account for or pay as aforesaid : Provided that if it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of any part of such proceeds in such account shall be deemed a sufficient accounting for the part of the proceeds so entered.

Theft by Person holding Power of Attorney.

184. Every one commits theft who, being entrusted either solely or jointly with any other, person, with any power of attorney, for, the sale, mortgage, pledge, or other disposition of any property, movable or immovable, whether capable of being stolen or not, fraudulently sells, mortgages, pledges, or otherwise disposes of the same or any part thereof ; or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was entrusted with such power of attorney.

Theft by misappropriating proceeds held under direction.

185. Every one commits theft who, having received, either solely or jointly with any other person, any money or valuable security, or any power of attorney for the sale of any stock or shares whatever, with the direction that such money, or any part thereof, or the proceeds or any part of the proceeds of such security or such stock or shares shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person, such proceeds or part thereof : Provided that where the person receiving such money, security, or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply, unless such direction is in writing.

Theft by Co-owner.

186. Theft may be committed by the owner of anything capable of being stolen, against a person having a special property or interest

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therein, or by a person having a special property or interest therein against the owner thereof, or by one of several joint owners, tenants in common, or partners of or in any such thing, against the other person interested therein, or by the directors, public officers, or members of a public company or body corporate against such public company or body corporate.

Husband and Wife.

Husband and wife. 187. No husband shall be convicted of stealing, during cohabitation, the property of his wife; and no wife shall be convicted of stealing, during cohabitation, the property of her husband; but whilst they are living apart from each other, either shall be guilty of theft if he or she fraudulently takes or converts anything which is by law the property of the other in a manner which in any other person would amount to theft.

188. Every one commits theft who, whilst a husband and wife are living together, knowingly (a) assists either of them in dealing fraudulently with anything which is the property of the other, in a manner which would amount to theft if they were not married; or (b) receives from either of them anything the property of the other, obtained from that other by such fraudulent dealings as aforesaid.

Obliterating Documents Fraudulently.

Obliterating documents fraudulently. 189. Every one who destroys, cancels, conceals, or obliterates any document for any fraudulent purpose, shall be punished as if he had stolen that document.

Theft outside of the Territories.

Theft outside of the territories. 190. Every one who having obtained any property by any act which if done in these territories would have amounted to theft, brings such property into these territories, shall be guilty of theft.

Theft by False Pretences.

Theft by false pretences. 191. A false pretence is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

192. Every one shall be guilty of theft by false pretences, and shall be liable, upon conviction thereof, to the penalties provided for the crime of theft, who by any false pretence obtains with intent to defraud, either directly or through the medium of any contract obtained by such false pretence, anything capable or the use of anything capable of being stolen, or who with intent to defraud or injure any person by any false pretence, causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of valuable security, or to impress or affix any name or seal on any paper or parchment, in order that it may afterwards be made or converted into or used or dealt with as a valuable security.

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193. Every one who by any false pretence causes or procures anything capable of being stolen to be delivered to any other person than himself with intent to defraud, obtains, that thing by a false pretence within the meaning of this section, and shall be punishable with the penalties provided for the crime of theft.

Theft of Ostrich Feathers, Hides, Skins, Wool, Mohair, &c.

194. All and singular the provisions of the Acts No. 32 of 1883, No. 19 of 1884 and No. 13 of 1885 shall be in force in the Transkeian Territories.

Theft of Ostrich
Feathers, Hides,
Skins, Wool, Mo-
hair, &c.

Wrongful possession of and Illicit Dealing in Diamonds.

195. All and singular the provisions of every law which shall, at the time of the taking effect of this Code, be in force in any part of this Colony other than Griqualand West, in regard to the wrongful possession of and illicit dealing in diamonds and other precious stones, shall be in force in the Transkeian Territories.

Obtaining Value or Credit by Fraud.

196. Whoever obtains any money or things, or who in incurring any debt or liability, obtains credit by means of any fraud, though not amounting to a false pretence as hereinbefore defined, may be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Wrongful posses-
sion of and illicit
dealing in diamonds.

Obtaining value or
credit by fraud.

Punishments for certain Thefts.

197. Whoever steals any testamentary instrument, post letter bag, post letter, postal packet, or anything from such post letter bag, post letter, or postal packet, or who being a clerk or servant, or being employed in the capacity or for the purpose of a clerk or servant, steals anything belonging to or in the possession of his master or employer, or being employed in the public service of Her Majesty, or in the service of any public department, or public body, or being employed as a constable, steals anything in his possession by virtue of his employment, shall be punished with imprisonment, with or without hard labour, for a period which may extend to a term of seven years, or fine, or both; and, in case of subsequent conviction, with imprisonment, with or without hard labour, which may extend to a term of ten years, or fine, or both.

Punishments for
certain thefts.

Punishments for Cattle Thefts.

198. Whoever steals anything from the person of another, or from any dwelling-house, or steals any horse, ass, mule, sheep, horned cattle, goat, or domesticated ostrich, or the feathers thereof, or who wilfully kills any such animal, with intent to steal the carcase, or any part thereof may, upon conviction, be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both; and in case of

Punishments for
cattle thefts.

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subsequent conviction, with imprisonment, with or without hard labour, for a term which may extend to seven years, or flogging or whipping, or fine, or any two of such punishments.

Punishment for Thefts otherwise not provided for.

Punishment for
thefts otherwise not
provided for.

199. Whoever steals anything for the stealing of which no punishment is hereinbefore provided, shall be punished with imprisonment with or without hard labour, for a term which may extend to three years, or fine or both, and in case of a subsequent conviction with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, with flogging or whipping, or any two or more of such punishments.

Responsibility for value of Stolen Property under Spoor Law.

Responsibility for
value of stolen pro-
perty under Spoor
Law.

200. When the spoor of any stolen animals is traced to any kraal or locality responsibility in respect of the value of such stolen animals shall be determined as is hereinafter provided ; that is to say :

- (A) When such spoor originates and terminates within the limits of a magisterial district or tribal area, then—
 1. The head of any kraal (*umninimizi*) shall be responsible for the value and damages of any stolen animals the spoor of which is traced to such kraal, when corroborative evidence is forthcoming to the satisfaction of the Resident Magistrate that the theft in question was committed by some person belonging to such kraal.
 2. The owner of any stolen animals the spoor of which has become lost or obliterated, has a right of search for any traces of such animal in any hut, kraal, enclosure or lands in that neighbourhood ; and any person refusing to permit such search is responsible for the value of the animal stolen, with damages.
 3. When the owner of any stolen animals is on the spoor of such animal, it shall be lawful for such owner to demand from the persons living in the neighbourhood all reasonable assistance in following up such spoor, and whoever neglects or refuses to give such assistance, and by such neglect or refusal causes the loss or obliteration of such spoor, or whoever by wilful obstruction or malice causes the loss or obliteration of such spoor, is liable for the value of the animal stolen with damages.
- (B) When the spoor originates in one magisterial district or tribal area and passes into and terminates in another magisterial district or tribal area, then—
 1. When such spoor is traced to any kraal or kraals, the owners (*abaninimizi*) shall be held responsible for the value of the animal stolen, and upon the order of the Resident Magistrate of the district, shall forthwith pay such value into Court for the benefit of the owner.

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2. When such spoor cannot be traced to any specific kraal or kraals, but is lost, or becomes obliterated on any lands, then the responsibility for the value of such stolen animal shall devolve upon the heads (*abaninimizi*) of the kraals adjacent to and surrounding the spot where such spoor has been lost or obliterated ; and for the purpose of compensating the owner of such stolen animal, it shall be lawful for the Resident Magistrate so to fix such responsibility by an assessment not exceeding two head of cattle (or their money value), to be by such Magistrate levied on each kraal, to make up the whole value, or as near as possible the whole value, of the stolen animal or animals.
3. Whenever a spoor is traced to, or within, the confines of any locality occupied by any kraal or kraals, or to or within any area occupied by any community or section of a tribe, if the persons occupying such kraal or kraals or locality, or constituting such community or such section of a tribe, without lawful excuse, neglect or refuse to receive to take over and follow up such spoor, they are responsible for the value of the stolen animal whose spoor shall have been so traced, and are to be compelled to make good such value to the owner in like manner as is provided for with reference to "lost spoor" cases in the preceding sub-section.

Creating False Spoor.

201. Whoever fraudulently and with intent to injure another shall create any spoor, shall be punished with fine not exceeding fifty pounds sterling, and in default of payment with imprisonment with or without hard labour for a term which may extend to twelve months.

Creating false spoor.

Mode of procedure in Spoor Cases.

202. It shall be lawful for the Resident Magistrate of any district, whenever any claim is made against any person or persons in respect of the spoor traced to any kraal or locality, upon request of the owner of the animal or animals stolen, or of any person authorized by such owner, to inquire summarily and without pleading, but in the presence of the heads of the kraals upon whom responsibility is sought to be attached, into the circumstances of the case, and the value of the animal or animals alleged to have been stolen, together with the damage which the owner or owners shall have sustained by the loss, or by the cost of search or other endeavour to recover the same, and may give judgment in favour of such owner as hereinbefore provided.

Mode of procedure in spoor cases.

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CHAPTER XIII.
FRAUD AND BREACH OF TRUST.

Fraudulent Accounting by Directors.

Fraudulent accounting by Directors.

203. Whoever being a director, manager, public officer, or member of any body corporate or public company, with intent to defraud, destroys, alters, mutilates any book, paper, writing, or valuable security belonging to the body corporate or public company, or makes or concurs in making any false entry, or omits or concurs in omitting to enter any material particular in any book of account or other document, or being a director, public officer, or manager of any body corporate or public company, as such receives or possesses himself of any of the property of such body corporate or public company, and with intent to defraud omits to make, or to cause and direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, shall be liable, upon conviction, to imprisonment with or without hard labour, for a term which may extend to five years, or fine, or both.

False Statements by Directors.

False Statements by Directors.

204. Whoever being a promoter, director, public officer, or manager of any body corporate or public company, either existing or intended to be formed, makes, circulates, or publishes any prospectus, statement, or account which he knows to be false in any material particular, with intent to induce persons, whether ascertained or not, to become shareholders, or partners, or with intent to deceive or defraud the members, shareholders, or creditors, or any of them, whether ascertained or not, of such body corporate or public company, or with intent to induce any person to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be liable to the punishment in the preceding section provided.

Falsifying Accounts by Clerks and Servants.

Falsifying accounts by clerks and servants.

205. Whoever being an officer, clerk, or servant, or employed or acting in such capacity, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, document, or account, which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or with intent to defraud makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book, paper, writing, valuable security, or account as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with or without hard labour, or fine or both.

Public Officers making False Statements and Returns.

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206. Whoever, being an officer, collector, or receiver entrusted with the receipt, custody, or management of any part of the public revenues, knowingly makes or renders any false statement or return of any money collected by him or entrusted to his care, or of any balance of money in his hand, or under his control, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Public Officers
making false state-
ments and returns.*Conspiracy to Defraud.*

207. Whoever conspires with any other person by deceit or falsehood, or other fraudulent means, to defraud the public, or to affect the public market, price of shares, merchandize, or anything else publicly sold, or who conspires by deceit and falsehood or other fraudulent means, to defraud any person, ascertained or unascertained, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretence, as herein-before defined, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or to fine, or to both; and whoever after a previous conviction for any offence involving dishonesty, commits an offence under this section, may be sentenced to a term of imprisonment, with or without hard labour, which may extend to five years, or fine, or both.

Conspiracy to de-
fraud.*Unlawful Gaming and Betting.*

208. Whoever wins or endeavours to win from any other person to himself or to any other any money or valuable thing by any fraud or unlawful device or ill practice in playing at or with cards, dice, tables, or other games, or in bearing a part in the stakes, wages, or adventures, or in betting on the size or hands of the players, or in wagering on the event of any sport, pastime, or exercise, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or fine or both. The offence is complete although the thing won has not been paid or delivered.

Unlawful gaming
and betting.*Criminal Breach of Trust.*

209. Whoever being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, shall be guilty of a criminal breach of trust, and upon conviction shall be punished with imprisonment for a term which may extend to three years, or with fine, or both.

Criminal breach of
trust.

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Fraudulent disposition of property.

210. Whoever dishonestly or fraudulently removes, converts, or delivers to any person, or causes to be transferred to any person without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent the distribution of that property according to law, or among his creditors or the creditors of any other person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XIV.

ROBBERY AND EXTORTION.

Definition of Robbery, and its Punishment.

Definition of Robbery and its punishment.

211. Robbery is theft accompanied with actual violence or threats of violence to any person or property, intentionally used to extort the property stolen, or to prevent or overcome resistance to its being stolen, and shall be punished with imprisonment with or without hard labour for a term which may extend to seven years, or flogging or whipping, or any two of these punishments.

212. Everyone who assaults any person with intent to rob him shall be punished as in the last section provided.

213. Whoever with menaces demands from any person, either for himself or for any other person, anything capable of being stolen with intent to steal it, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years or with fine or both.

214. Whoever with intent to extort or gain anything from any person : (a) accuses or threatens to accuse either that person or any other person, whether the person accused or threatened with accusation is guilty or not, of any offence punishable by law ; or (b) threatens that any person shall be so accused by any other person ; (c) or without lawful excuse sends, delivers, utters, or directly or indirectly causes to be received by any person any document containing any such accusation or threat as aforesaid, knowing the contents thereof ; (d) or by any of the means aforesaid, compels or attempts to compel any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, shall be punished with imprisonment with or without hard labour, for a term that may extend to two years, or with fine, or with both such punishments.

Housebreaking.

Housebreaking.

215. Whoever breaks and enters a building with intent to commit any offence therein, or breaks out of such building either after committing such offence therein, or after having entered it to

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commit an offence, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

Receiving Property stolen or dishonestly obtained.

216. Whoever receives anything obtained by any offence punishable under any law in force for the time being, knowing that thing to have been stolen or dishonestly obtained, or who receives in these territories anything obtained elsewhere than in these territories by any act which if done in these territories would have been an offence punishable under this or any other law in force for the time being, knowing such things to have been stolen or dishonestly obtained, shall be punished for a first offence with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both ; and after a previous conviction of any offence involving dishonesty, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

Receiving property
stolen or dishonestly
obtained.

When receiving is complete.

217. The act of receiving anything stolen or unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it.

When receiving is
complete.

Corruptly taking Reward.

218. Whoever corruptly takes reward, or bargains for any reward, directly or indirectly, on consideration that he will help any person to recover anything obtained by any offence punishable under this or any other law in force, shall, unless he shall have used all due diligence to cause the offender to be brought to trial for the same, be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both.

Corruptly taking
reward.

CHAPTER XV.

FORGERY AND PERSONATION.

Definition of Document.

219. A document is any substance on which is expressed and described by means of letters, figures, or marks, any matter which is intended to be or may be used in a Court of Justice, or otherwise, as evidence of such matter.

Definition of docu-
ment.

False Document defined.

220. A false document means

False document
defined.

(a) A document, the whole or some material part of which purports to be made by or on behalf of any person who

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did not make or authorize the making thereof; or which, though made by or by the authority of the person who purports to make it, is falsely dated as to time or place of making, where either is material; or

- (b) A document which is made in the name of an existing person, either by that person or by his authority, with a fraudulent intent that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it.

It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence.

Forgery defined.

Forgery defined.

221. Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine whether within Her Majesty's dominions or not. Making a false document includes altering a genuine document in any material part, and adding to it any false date, attestation, or other thing which is material, or making any material alteration in it either by erasure, obliteration, removal, or otherwise.

Forgery when complete.

Forgery when com-
plete.

222. A forgery is complete as soon as the document is made, with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced by the belief that it is genuine to do or refrain from doing anything. Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine.

Punishment for Forgery.

Punishment for
forgery. 223. Whoever is convicted of the crime of forgery shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or fine, or both.

Sending False Telegram.

Sending false tele-
gram.

224. Whoever shall without lawful authority or excuse (the proof whereof shall be upon the person accused) cause or procure any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority, with the intent that such telegram should be acted on as being sent by that person's authority, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or fine, or both.

Procuring Execution of Document by False Evidence.

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225. Whoever, with intention to defraud, procures the execution of any document by any person by falsely pretending that the contents thereof are different from what they really are, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or fine, or both.

Procuring execution of document by false evidence.

Using Forged Documents.

226. Whoever, knowing a document to be forged, fraudulently uses or acts upon it or causes or attempts to cause any person to use or act upon it as if it were genuine, shall, upon conviction, be liable to the same punishment as if he had forged that document. It is immaterial whether the document was forged in these territories or elsewhere.

Using forged documents.

Personation.

227. Whoever falsely and deceitfully personates any one, with intent fraudulently to obtain any benefit to himself or any other person, shall be imprisoned, with or without hard labour, for a term which may extend to two years, or fine, or both.

Personation.

*CHAPTER XVI.**COINING.*

228. Coin is metal used for the time being as money, and stamped and issued by authority of some State or Sovereign Power in order to be so used. Coin stamped and issued by authority of the Queen or any Government in the Queen's dominions, is the Queen's coin.

Coining.

229. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both.

230. Whoever

- (a) Makes or begins to make any counterfeit gold, silver, or copper coin ; or
- (b) Gilds or silvers any counterfeit coin ; or
- (c) Gilds, silvers, files, or alters any silver or copper coin, with intent to make it resemble or pass for gold or silver coin ; or imports, receives, or has in his possession, any counterfeit gold, silver or copper coin, knowing such coin to be counterfeit, and with intent to utter it, or whoever utters any counterfeit coin, knowing it to be counterfeit, or has in his possession any stamps, dies or other instruments generally used for the purpose of counterfeiting coin.

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- (d) With intent to defraud, utters pieces of gold, silver, or copper as Queen's coins, which are coins not Queen's coin, or any medal or piece of metal, or mixed metal being of less value than the Queen's coin, as and for which it is uttered, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both.

CHAPTER XVII.

OFFENCES RELATING TO WEIGHTS AND MEASURES.

Standard Weights and Measures.

- Standard weights and measures. 231. The standard weights and measures required by law to be used in the Colony of the Cape of Good Hope, as provided for by Act No. 11 of 1858, shall be the standard weights and measures to be used in the territories to which this Code applies, and all the provisions of that Act as well as of Act No. 15 of 1876 shall be of force and effect in the said territories.

Fraudulent use of False Instruments for Weighing.

- Fraudulent use of false instruments for weighing. 232. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year or with fine, or both.

Fraudulent use of False Weight or Measure.

- Fraudulent use of false weight or measure. 233. Whoever fraudulently uses any false weight, or measures of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year or with fine, or both.

Being in possession of False Weights or Measures.

- Being in possession of false weights or measures. 234. Whoever is in possession of any instrument for weighing, or of any weight or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine, or both.

CHAPTER XVIII.

MISCHIEF AND ARSON.

Mischief.

Mischief.

235. Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happened or not, shall be deemed to cause it wilfully for the purposes of this

part of this Code. Nothing shall be an offence under any provision contained in this part, unless it is done without legal justification or excuse, and without colour of right: Provided that where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, if done with an intention to defraud.

Arson, and Attempted Arson.

236. Whoever wilfully sets fire to any building whatever, or to any erection or structure whatever fixed to the soil, whether such building, erection or structure is completed or not, or to any stock of vegetable produce, or of mineral or vegetable fuel, or to any mine, or to any ship or vessel, or to any crop, whether standing or cut down, shall be guilty of arson, and may be punished with imprisonment, with or without hard labour, for a term which may extend to fourteen years, or with or without flogging or whipping, or fine, or any two or more of such punishments.

Arson, and attempted Arson.

237. Whoever wilfully attempts to set fire to anything mentioned in the last preceding section, shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, and with or without fine, or both.

Damage by Explosive Substances.

238. Whoever wilfully places or throws any gunpowder or other explosive substance in, into, upon, under, against, or near any building, ship, road, or public place, or thoroughfare, so as to endanger person or property, shall be punished as provided for the crime of arson.

Damage by Explosive Substances.

Damage to Public Works.

239. Whoever wilfully breaks down, cuts down, or otherwise damages or destroys any public works, shall be punished with imprisonment, with or without hard labour, for a period which may extend to three years, or fine, or both.

Damage to Public Works.

Unlawful Killing of Animals, &c.

240. Whoever unlawfully and wilfully kills, poisons, or wounds, any horse, ass, mule, horned cattle, sheep, ostrich, goat, or other domesticated animal, shall be punished with fine, and in default of payment, with imprisonment, with or without hard labour, for a period which may extend to one year.

Unlawfully killing of animals, &c.

Damage to Telegraph.

241. Whoever wilfully injures or removes anything whatever forming part of or used in or about any electric or magnetic telegraph, or in the working thereof, or prevents or obstructs in any manner whatever the sending, conveyance, or delivery by any such telegraph of any message or communication, shall be punished with imprisonment, with or without hard labour, for a period which may extend to three years, or fine, or both.

Damage to Telegraph.

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Damage to Tolls.

Damage to Tolls.

242. Whoever unlawfully and wilfully throws down, levels, or otherwise destroys, in whole or in part, any toll-gate, or any toll-bar or chain, or fence belonging thereto, set up to prevent passengers from passing by without paying toll, directed by law, shall be punished with fine, and in default of payment with imprisonment, with or without hard labour, for a term which may extend to six months.

Other Damage.

Other damage.

243. Whoever wilfully commits upon any property whatever, any wilful damage, or injury, not otherwise provided for, shall be punished with fine, and in default of payment with imprisonment with or without hard labour, for a term which may extend to three months.

TITLE VI.

CHAPTER XIX.

THREATS, CONSPIRACY, ATTEMPTS, ACCESSORIES, &c.

Threats, Conspiracy, Attempts, Accessories, &c.

244. Whoever with intent to intimidate or annoy any person, breaks or injures any building or portion thereof, or by the discharge of firearms or otherwise alarms or attempts to alarm any person in any dwelling, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or with fine or both.

Conspiring to prevent levying of or collection of taxes.

245. Whoever conspires with any other person by force or intimidation to prevent the levying or collection of any taxes, authorized by law, shall be liable to imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Inciting or attempting to commit offences.

246. Whoever attempts in any case, not hereinbefore by this Code provided, to commit any offence, or who incites or attempts to incite any one to commit an offence punishable by this Code, shall be liable to imprisonment for a term not exceeding one-half of the longest term, to which a person committing the offence attempted to be committed, or incited to, may be sentenced under this Code: Provided that the power to fine or in default of payment to imprison, shall exist in all such cases.

Punishment accessories.

247. Whoever, in any case where no express provision is made for the punishment of an accessory, is an accessory after the fact, to any offence punishable under this Code, he shall be liable to imprisonment for a term not exceeding half of the longest term for which the offence to which he is accessory is punishable under this Code: Provided that the power to fine, or in default of payment to imprisonment, shall exist in all such cases.

TITLE VII.

CHAPTER XX.

JURISDICTION AND PROCEDURE.

Courts of Resident Magistrates.

248. The Courts of Resident Magistrates already established in the Transkeian Territories shall be until otherwise provided Courts of Resident Magistrates, and it shall be lawful for the Governor, by any proclamation to be by him from time to time issued for that purpose, to erect, constitute, and establish Courts of Resident Magistrates within the Transkeian Territories, to be held for and within such districts respectively as the said Governor shall think fit to create, which Courts shall be holden before such persons as shall respectively be appointed to be Resident Magistrates of such districts.

Courts of Resident Magistrates.

Trial by Resident Magistrates.

249. Whenever in any of the cases in which jurisdiction is hereby given to any Court of Resident Magistrate, the Magistrate shall consider that any person charged with any crime or offence, whether he has pleaded guilty to the same or not, ought to receive a more serious punishment than such Magistrate is competent to adjudge, he may, at his discretion, commit the accused person for trial before any Court having jurisdiction to impose such greater punishment, or the Special Court hereafter provided for and established.

Resident Magistrate may commit accused person for trial.

Jurisdiction and Special Court.

250. The Courts of Resident Magistrate shall have jurisdiction in all cases wherein a person may be accused of any crime or offence, except crimes or offences punishable under the following chapters and sections of this Code, viz.:

Jurisdiction.

- (a) Title II, Chap. V, Offences against the Public Order, sections eighty-five to ninety inclusive.
- (b) Title III, Chap. VII, Offences against the Administration of Justice, sections one hundred and three and one hundred and four.
- (c) Title V, Chap. X, Murder :
Provided, however, that no Resident Magistrate shall, in any case, have jurisdiction or authority to pass and pronounce upon any offender under this Code, any sentence greater or heavier than imprisonment, with or without hard labour, for any period not exceeding one year, or imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or corporal punishment in any number of lashes not exceeding twenty-five : Provided, also, that no offender