LECTURE VII.

A GENERAL VIEW OF THE LAW OF CRIMES (WITH SPECIAL REFERENCE TO THE INDIAN PENAL CODE).

We have now to leave the subject of *Civil* law—the law of contracts, obligations, and of civil wrongs; the law of property and of easements—and approach a new subject which belongs to the domain (not of *private*, but) of *public* law.

Our attention has, during the last Lectures, been so directed to the question of rights of persons over things, that it may be necessary to recall to our memory, some of those considerations regarding rights and obligations in general, which were introduced in one of the first Lectures. I may, therefore, repeat that when the law desires to enforce any duty, *i.e.*, any obligation to act or to abstain from acting, it arms itself with a *sanction*, which term the lawyers use to indicate the penalty, or the unpleasant consequences, threatened by law against disobedience to its commands (p. 19). Hence, when any infringement of a legal right has occurred, the person affected can, by a proper action before the public Courts or judicial authorities, invoke the application of the legal remedy—set the sanction in operation. In the case of the Criminal law which we are now to consider, the "sanction" is always easy to perceive, as it consists in the penalty which is directly provided for every breach of the law.

Among the duties or obligations imposed by law, we noticed a class of cases which arose between person and person as the consequence of some *wrong* done by one against the other. But there are many wrongful acts which do not merely affect the individual injured; they threaten the peace and well-being of society at large; they spread alarm; and would, if allowed to go unnoticed, ultimately throw civil life into confusion and render mercantile business (not to say life and property in general) so insecure, that trade and industry would suffer. There are also wrongful acts, which must be repressed because they injure the public, or the public revenue or other property, though they

may not produce any tangible ill-effects to any particular individual. Such is the case where a man sets fire to a forest belonging to the State, or where he unlawfully distils spirits, or smuggles dutiable goods. When this public character or influence attaches to a wrongful act, it is no longer regarded as a matter of private law—as merely a case for damages (or other redress) to the individual; it is a matter of public law; the act is punished by the State, and it is called a "*crime*," an "*offence*," a "*felony*," a "*misdemeanour*," a "*delict*," or by some other name which indicates that it comes under the criminal law; the different names being adopted either to indicate some peculiarity in the nature of the act, or in general to distinguish the greater or less degree of gravity or criminality which the law attaches to it. We shall revert to this distinction hereafter; at present it is enough to notice it as a fact. It may be that *both* the Civil remedy and the Criminal are applicable. The person injured may have a civil action for the tort; but in many cases the law will insist on the wrongdoer being punished as well. And in grave cases, as we shall see, the law will not allow the injured person to come to any terms with the offender; if the offence, for example, is one of a class which the police can take direct cognizance of, and the case is brought to trial before the magistrate, the prosecution *must* go on, and "compounding" the offence is not, as a rule, allowed. This, however, is a matter of Criminal Procedure, and will come before us at a later stage.

Accordingly it becomes of great importance to know what *acts* or what *omissions* are regarded as having this public character, so that they are *punishable* as offences; it is the function of *Criminal Law* to define and regulate the whole subject. And if we reflect but for a moment, on the law regarding crimes or offences, it will be obvious there is a very considerable extent, as well as variety, of subject-matter to be dealt with. In the first place, there is the main subject of defining what acts or omissions constitute offences and what do not, (or, in other words, what acts will be repressed by public authority and what will be left to the Civil Courts to give satisfaction merely between man and man), and what amount, degree, and kind of punishment shall be threatened as legally imposable

in the event of a conviction. This is the *Substantive* Criminal Law, the law defining offences and imposing definite penalties. But there must obviously be Courts of law specially constituted and adapted for dealing with offences; and the powers of these Courts must be regulated, and their procedure provided. And there is even an earlier stage than that; before you can try the offender, he must be detected and arrested, or, at any rate, summoned before the magistrate: hence provision has to be made for authorizing and for regulating the action of the police in summoning or arresting offenders; and this too will involve the procedure regarding *search* when offenders are in hiding, or when property connected with theft and other crimes, is concealed and has to be discovered. Then again, it is more desirable to *prevent* offences, if possible, than to punish them; so the law may enact various rules which tend to prevent the occurrence of offences; such are legal provisions enabling the magistrate or the police to keep evil-doers and notorious criminals under supervision, to take security for keeping the peace, and the like. These matters (and there are many others also) form the subjects of the *Adjective* Criminal Law, the law of Criminal Procedure. Here, then, we have one main division for our lectures on Criminal Law; we will take the Substantive law first, and the Adjective or Procedure law afterwards.

I expressly take the Indian Codes as the basis of our study, because in the third part of our course it will be Indian Forest law that we shall have chiefly to consider. But though it is there convenient to take the Indian Criminal Law as our standard, it will be found that a great deal of what is said is matter of general rule or principle, and will therefore satisfy the requirements of the general student.

The Criminal Law is either General, Special, or Local. In the "general" law (in India, in the Indian Penal Code), all acts and omissions which the law declares to be punishable offences are included, if they are of a general character; *e.g.*, offences against the State, against the life and person, against property, including mercantile frauds, offences against the currency, and other offences relating to general life in its usual course. It would be impossible to include in one Code all the infringements of special laws such as are made penal; for instance, the

laws relating to the Post Office, Telegraph, Railways, Military Cantonments, Excise, Gambling, Cattle-disease, Hackney-carriages, &c. Penalties are separately prescribed for offences against the provisions of the several Acts relating to these subjects; and such laws are called "Special" laws.[1] The Forest Acts, which also provide certain penalties peculiar to themselves, are "Special" laws. In some districts and provinces, the peculiar conditions of life require certain laws which are applicable only to those localities and not elsewhere. Such laws are "Local laws." It may be that a law is both special and local: for example, the Hazára Forest Regulation is both "Special" and Local, as it only applies to the district called Hazára in the Panjáb.[2]

But with reference to this separation of the provisions declaring and punishing offences, it is important to note that when the General law (Penal Code) makes provisions universally applicable, as *e.g.*, on the subject of *punishment*, then it contains an express definition of the term "offence." Under these clauses the term "offence," which in itself means *an act or an omission punishable by law*, is made (I. P. C., sec. 40) to include, in some cases, only offences against the Code, in others, *all* offences punishable by any law, and in other cases to include the latter only when they are of sufficient magnitude to be threatened with imprisonment for not less than *six months* (with or without fine).

Thus all the provisions of the *General law* relating to "imprisonment" (I. P. C., secs. 64—67), apply to *all* offences both in the Code and in Special and Local laws. Sec. 70, which allows the award of "solitary confinement" as part of the sentence of imprisonment, applies expressly *only* to offences under the Code.[3] Again, in sec. 109, "abetment" of offences is dealt with, and here, by effect of the definition, this means *any* offence. And so in sec. 214, when punishment is threatened against giving a gift to screen a person who has committed

[1] It is a matter of convenience, and of policy, what subjects are reserved to special Acts. For example, "Gambling" (*i.e.*, of a public character) *might* have been included in the General Code; but it was thought better to have the provisions relating to the subject collected in a separate Act.

[2] A very complete list of Indian Special and Local laws will be found in the *Anglo-Indian Codes*, Vol. I., p. 7 ff.

[3] That is, in effect, to say that no offences but those in the General Law, are of such gravity (or possess such other character) that *solitary confinement* (as a severe form of punishment) is considered necessary for them.

"an offence," it means *any* offence. On the other hand, in sec. 176, when the intentional omission to *give information* about "an offence" is made punishable, this applies only to offences under the Code, or to the more *serious* of the offences under Special and Local laws, *viz.*, those which carry a penalty of at least six months' imprisonment.

In practice no kind of difficulty occurs in dealing with the differences between offences under the Code and those under separate laws.

And it should be observed that when it happens that an offence is expressly declared under a Special or Local law, it will also be punishable under the Code, if the facts show that it also comes under the terms of the Code. But a person cannot be punished for the same offence twice, *i.e.*, first under one law and then under the other.[1]

Definition of Terms.

Such being the law under which certain acts or omissions are constituted offences, it is further obvious that in every case, it is needed to describe accurately what the offence is, and what precisely are the circumstances which make an act (or an omission) an offence. It would be very hard if persons were liable to punishment, perhaps involving a long term of confinement, a heavy fine, or even the deprivation of life, or liberty for the whole term of life, unless it were made perfectly clear under what precise circumstances the penalty became due. For this purpose it is necessary, not only to define what the different offences consist in,—what are their essential elements, but also to employ the words and terms used in defining crimes, in an uniform and exact manner. For this purpose a number of words and terms require to be defined. You will recollect to have found "definition clauses" in almost every Act and Regulation, whether Criminal or Civil; but in the penal law such definitions are exceptionally important. Let us then, before considering the kinds of acts which are "offences," first take note of the words and terms commonly made use of in Criminal Law, both General and Special.

[1] To prevent mistakes, this principle is expressly declared in the Forest Act.

Chapter II. (sec. 7, etc.) of the I. Penal Code contains these explanations of terms, and should be read. Some of the definitions seem obvious enough; but then prisoners are cunning, and advocates, not to speak of magistrates, are sometimes captious; and loopholes must not be left. For this reason, it is explained that when the pronoun "he" is used, it is intended to include "she" where the agent is a woman (unless the context requires otherwise), and so the "man," "woman," includes a male or female human being of *any* age.

Other terms really require explanation: such, for example, as "Judge," "Court of Justice," and "Public servant." It is equally important also to attach definite meanings to terms which necessarily occur in describing offences connected with property, valuable securities and merchandise:—such as causing "wrongful loss," or "wrongful gain," acting "dishonestly" or "fraudulently." The terms "counterfeit," "document," "valuable security" are also explained. In some cases the definition is only given in the section which directly declares the offence, *e.g.* "cheating" (sec. 415) and "criminal force" (sec. 350)—a definition which more properly would be in the General Chapter.

It is perhaps an omission that no definition is given of the terms "corruptly," "malicious," "immoral," "negligent," "rash," etc. I will not attempt to define these terms, but remark that "corrupt" is applied to all acts which are with intent to gain some advantage inconsistent with official duty or the rights of others. "Malice" has been used to include cases where the motive is not only to do harm but to do harm for its own sake. In the Bombay High Court it has been defined as "conscious violation of the law, to the prejudice of a person." "Malignant" implies the extremity of malice. "Negligence," says Dr. Whitley Stokes, "imports an acting without consciousness that an illegal or mischievous effect will follow, and without such attention to the nature or probable consequences of the act, as a prudent man ordinarily bestows in acting in his own concerns."[1]

Only one other definition I will mention specifically, because the Code continually speaks of a person being "legally bound"

[1] Ang.-Ind. Codes, pp. 11, 12.

to do a thing—or a thing being "illegal;" this is defined (sec. 43) to mean that everything is "illegal" which is—

(1) an offence under the Code;

(2) prohibited by law;

(3) or furnishes ground for a civil action.

And a person is "legally bound to do" what it would be illega in him to omit.

Acts and Omissions.

But besides these various definitions, there are some matters of direct importance concerning *acts*, which require notice: I have already pointed out that an offence may be either an *act* prohibited or an *omission* to do something that is commanded. And it may be that both act and omission occur. Sec. 36 accordingly states that where the causing of a certain effect (or the attempt to cause it) by an act or omission is an offence, it is to be understood that causing it partly by an act, partly by an omission, is also the same offence.

The illustration given, is of murder by a jailor who has a prisoner lawfully in his keeping and is bound by law to feed him; here if death were caused partly by a wound (act) and partly by withholding food (omission), the jailor would be equally guilty of murder.

Again, it may be that an offence (being under the Code, or under any special or local law) is made up of parts, *i.e.* of several acts combined, and any one of the parts by itself is an offence; the offender may be guilty of all, but (unless expressly provided) is not liable to punishment for more than one. I mention this because it is often practically important: the case referred to is where *the several acts are mixed up together*, or "graduate towards, are essential to, and culminate in, a single distinct offence;" the offender is to be punished for one offence only. A person is often *charged* with several offences,—or parts of his course of conduct, so as not to let him escape unfairly,[1] but he may be only punished for one offence. The illustration in the Code is the case of A. giving B. a beating with fifty blows

[1] This is directly provided in sec. 235 of the Criminal Procedure Code, but the section saves sec. 71 of the I. P. C. It is obviously one thing to *charge* a man with all that he has done so as to prevent an unjust escape (owing to some defect of proof as regards any part of the charge), and another thing to punish separately every act charged.

of a stick; each blow is a "voluntary causing of hurt" as well as an assault or use of criminal force; but A. would be punished not for fifty separate offences, but for the combined one.[1] And so a number of lies in one deposition of a witness, would form one offence of "giving false evidence;" but the same lie repeated in different depositions would be separately punishable. So a person charged with rioting in an unlawful assembly, and causing (or being responsible for) hurt in the course of it, might be convicted of both offences, but would be only given one punishment. And so when a person is convicted of housebreaking and also of theft in a house (in the same transaction), he would only get one punishment.

It is necessary to observe that this applies only when, as a matter of fact, we are dealing with what is *essentially one* transaction, like a whole beating made up of separate blows. It would not apply, *e.g.* to a robber out on a raid, who in one night should enter and rob several different houses. A practical instance is when a timber thief enters a defined State forest, and cuts down fifty trees: here it could not, under all circumstances, be said that the whole cutting was *in its nature one* transaction: probably owing to inconvenience, the prosecution would be content to make a single charge and merely appeal to the large amount of mischief done, as a reason for a heavier punishment, compensation, &c.; but theoretically (unless there were some special considerations in the case) the acts of mischief, theft, &c., would be as separate as the entering and robbing six houses in succession.

An analogous case (also in sec. 71) is the case where the same act has different aspects, according to each of which it might fall within different definitions of legal offence in the Code, or in different Acts of the Legislature;[2] also where several acts, each of which separately is an offence, are combined, and *so combined* constitute a new or different offence. Here also only one offence is punishable.

[1] But if while beating B., A. also attacked and beat X. who came to B.'s protection, here the beating of X. would be no part of the transaction with B.; and A. would be liable to separate punishment for the offence against X.

[2] For example, where tampering with a valuable legal document might conceivably fall under the definition of "mischief," and also of "forgery" or "fabricating evidence." Again, an act might be defined as an offence both under the Code and also under the Forest Act.

Lastly, under this head, sec. 72 contains the useful provision that where a person has committed an act which is one or other of several offences, but it is doubtful which; he is to be punished for the act which has the lowest punishment provided. We shall find in the Procedure law also, provisions which prevent the escape of prisoners who have been convicted of an offence, and on revision or appeal, it appears that technically, the act comes under a different heading: the finding will be corrected, and the sentence, if need be, will be adjusted accordingly; but the guilty person will not escape on the mere technicality. An example of this case of doubt may be taken from Dr. Whitley Stokes. A. is charged with—

(1) assaulting Z (a woman);
(2) with assaulting her, intending to wound;
(3) with assault, intending to rape her.

It is clear that he committed the assault, but not clear whether he intended to wound or to rape; he is still liable, but only for simple assault. So in a case of "false evidence." A. makes two statements, which being directly contradictory, one of them *must* be false, but it is not known which; he can be convicted. Once more; it is clear that either A. or B. murdered Z., and that one committed the act and the other aided and abetted, but it is not certain which person did which act: here, as the abettor of a murder is liable to the same punishment as a murderer, both A. and B. are liable to the same.

It may sometimes happen that a person intending to do one thing, actually does another which he did not intend. Such cases are met by sec. 39. It is provided that a person must be held to have caused an actual effect "voluntarily," when he *either* causes it by the means whereby he intended to cause it, or by means which, at the time of employing them, he knew, or had reason to believe, were likely to cause it. Thus A., intending only to facilitate a robbery, deliberately sets fire to an inhabited house in the midst of a city. The result is that an inhabitant is burnt to death. A. is liable for the death, even though he did not intend it, and is perhaps sorry for it: for he must have known that it was likely to result from the means he employed to carry out his actual intention.[1] [After disposing

[1] Dr. W. Stokes remarks that the incendiary would be guilty of culpable homicide, but not actual "murder," unless he knew death to be the most probable result of his act.

of these general definitions and explanations, the Code at once inserts Chapter III. on Punishments, but this I propose to leave for the present.]

General Exceptions (excusing acts which might otherwise be offences).

We have next to discuss a very important subject which the Code deals with in Chapter IV., namely, the cases when acts which might in themselves be offences, are not so dealt with in law, by reason of the existence of certain circumstances which alter their legal character. It is to be understood (see sec. 6 of the Code[1]) that every definition of an offence and every penal provision in the Code is to be taken subject to the "General Exceptions" in Chapter IV.

No act is an offence when a person is bound in law to do it. A police officer seizing and confining A., who is guilty of murder, is under no liability for an offence of assault or wrongful confinement: and the same immunity extends to persons acting in good faith, but under a mistake of fact (not of law); as where a person bound to apprehend A., and, in good faith—with due care and caution—believing Z. to be A., apprehends Z.[2] No forest officer doing an act which the Forest law requires him to do, would be liable to prosecution for doing it, providing he acted in good faith.

Every judge and magistrate is protected in all acts of a *judicial nature*, if acting in exercise of a power, which he (in good faith) believes himself to possess. Similarly, acts done in pursuance of warrants or orders of a court of justice, so long as the order, &c., is in force, are protected, notwithstanding that the Court had not authority to issue such judgment, order, or warrant. Similarly, nothing is an offence which a person does when he is justified by law in doing it, or which he in good faith, but under a mistake of fact, believes himself justified in doing (*e.g.* arresting a person who appears to have committed

[1] And the section ought to have been placed at the beginning of Chapter IV.

[2] Observe the rule that mistake of fact excuses, and mistake of law does not. It sometimes happens that very hard cases arise under a mistaken belief as to legal duty, *e.g.*, see the case of the sentinel firing on a man in the belief that he was authorized and bound to do so—given in Markby (p. 136). The conviction would follow; but in such cases the prerogative of mercy would probably be exercised.

a murder—an act which in itself *any* person is legally justified in doing: but it might turn out that the person arrested had committed no murder, but had acted rightly in self-defence).

An act done by accident or misfortune, is never an offence,—

(a) in the absence of all criminal intention or knowledge;

(b) if done in course of doing a lawful act—

(c) in a lawful manner, by lawful means, and with proper care and caution (sec. 80).

In our earlier analysis of an "act" (p. 23) we made mention of some principles which we now find enacted in the Penal Code (secs. 82—86). Young children (as explained at pp. 24, 32), idiots, lunatics, imbeciles, monomaniacs, and intoxicated persons (when the intoxication is produced without their knowledge and against their will) are not responsible. This rests on the theory that the subject of a criminal action must not only be capable of willing, but must know what he is doing and be capable of judging of the natural or probable consequences of his act. With regard to sec. 86, which deals with the case where the intoxication is voluntary, Dr. Whitley Stokes observes that this section is properly a matter of evidence; and is a 'rider' to sec. 85. The *voluntarily* intoxicated person is held responsible for his act; and if the act is one that requires a particular intent or knowledge, he is held, in law, to have had the same intention as he would have had if not (voluntarily) intoxicated.[1] The Code does not mention an exception for deaf-mutes.

There is also a series of cases which are naturally connected together, and so I place them. I refer to acts (*a*) which, though harmful, are done to *prevent* other *greater harm* to person or property; (*b*) acts done by *consent;* and (*c*) acts done for *benefit* of a person, with, (and in emergencies even without) his consent.

Acts done to prevent other harm (*a*), must be done without any criminal intention, and in good faith *for the purpose* of preventing other harm to person or property: and it is a question of fact whether the harm to be prevented or avoided was of such

[1] There are certain limitations to this rule; and some difficulties may arise which I do not go into, but merely refer to Anglo-Ind. Codes, Vol. I., p. 13. If a drunken man attempted to pass a false coin, being too drunk to examine or see that it was false, I have no doubt that he would be allowed to plead it.

a nature, and the danger so imminent, as to justify the act (sec. 81). The illustration in the Code is clear; and under this head comes also the justification for blowing up certain premises to stop a conflagration.

As to acts done with *consent* (*b*), I will only indicate, with reference to secs. 87–92, the general idea of these provisions; it is, that no act that is not intended to cause death or grievous hurt, "ought to be an offence by reason of any harm it may cause to a person of ripe age, who, undeceived, has given a free intelligent consent to suffer the harm or to take the risk of the harm." Thus in a fencing-match, where due precautions are taken, and there is no foul play, no offence is committed if harm is done, as each party has expressly or impliedly consented to take the risk. Observe that here an age of over eighteen years (whatever the actual general law on the subject of minority) is deemed sufficient to ensure capacity to consent. Observe also that consent in these cases will not excuse acts intended, or known to be likely, to cause death or serious hurt; and we shall presently note that it will not excuse an act which is declared to be an offence *of itself*. Hence the expressed or implied consent of the parties to a *duel*, would not excuse either of them if he caused death, or wounds which amounted to grievous hurt.[1] *This* head, it will also be observed, relates to acts done with consent, without respect to any intent to *benefit* the consenting party (*e.g.* to save his life in danger).

(*c*) There are many cases, chiefly connected with surgical operations, in which a person is likely to die, or to suffer seriously, unless some operation or other "harm" is done him, and yet there may be risk in doing the necessary act. Here of course, if possible, *consent* is a condition. It would be a case of "grievous hurt" to draw out a man's tooth against his will; but it is none for a dentist to do it with consent. An act not *intended* to cause death,—even though there is risk of causing death,—may be justified when undertaken *for the benefit* of a person who consents. If however the person is incapable of consent (by reason of infancy,[2] lunacy, &c.) the guardians' consent is

[1] A duel involves the intention to cause death. An express provision in a later section, would allow the consent not to excuse, but so far to mitigate, the offence, that the crime of killing would not be *murder*, but only *culpable homicide*.

[2] Here infancy (sec. 89) only extends to 12 years of age.

sufficient: but the grounds of such consent are prudently restricted. The consent cannot be given to intentionally causing (or attempting to cause) death; nor can it be given to an act (*e.g.* an operation) likely to cause death or grievous hurt, unless it is for the express purpose of preventing death or grievous hurt, or curing a grievous disease or infirmity.

A common instance is where a person is in imminent danger, and the death or great injury to the person can only be prevented by undertaking a risky operation. The person *may* die under it, but still it is the only chance of saving him.

But none of these rules depending *on consent* (secs. 87, 88, 89) apply when the harmful act done is an offence *independently* of the harm caused or likely to be caused. The case of a duel has already been instanced; and under the latter section may be instanced the causing of miscarriage, which (except only for the purpose of saving the life of the woman) is an offence in itself—independently of any harm it may cause; here consent of the woman or a guardian will not justify it (sec. 91) in any other case but that of necessity for saving the life of the woman.

A still further case arises where *consent* cannot, under the circumstances, be signified; or no guardian exists who can give consent in time: here the excusable act (as before) must not amount to intentional causing or attempting to cause, death, or even causing hurt of any kind, except in order *to prevent death or grievous hurt* or *grievous disease*. An instance is the case of a man thrown from a horse and becoming insensible: a surgeon near, sees that trepanning will be the only chance: consent is impossible: the surgeon acts in good faith, not intending to cause death, or even hurt, except such as is necessary to save the patient's life: he accordingly trepans the man, who dies under the operation: the surgeon has committed no offence. So in the case of firing at a tiger which has seized a man. It is the only chance, though there is a great risk of the ball hitting the man. If it does so, the person firing the gun (acting of course in good faith for the sufferer's benefit) is not guilty of an offence.

An act under "duress" (as it is called) is excused, if it is compelled by threats which *reasonably* cause apprehension of instant death: provided that the person did not voluntarily put

himself into the situation in which he became subject to the duress (sec. 94). There are some further explanations as to this on which I do not enter. But observe that "duress" which might affect acts in civil law, is not sufficient; nothing short of the fear of instant death will excuse a criminal act.

In connection with this exception, must be noticed the case of a man doing some harm to others, to prevent injury to himself. May a man, for example, steal food to prevent himself from dying of hunger? It is held in such a case that a legal offence is committed, though a magistrate might mitigate his sentence according to the circumstances.

Under this head also would come cases where acts are committed of necessity; as where cattle are driven into a forest (where it would be trespass to go), in order to seek shelter from a sudden storm, or where persons overtaken at night in a forest, cut wood and make a fire to save themselves from suffering by cold or to scare away wild beasts. A technical offence is committed; but in such a case, a prosecution would not be instituted; if it were, and this defence appeared true, a merely nominal sentence would be awarded.

Section 95 should be noted.[1] The object is to take out of the category of criminal offences, those petty and trifling acts which, though strictly within a definition of crime or offence, are only productive of "harm so slight that no person of ordinary sense and temper would complain of such harm."

In a case reported in Ind. Law Rep. V. Bombay (Criminal Cases), p. 35, a person had been convicted of stealing from a bit of forest land (it happened to be a private forest, but that does not affect the point) a few pods of some tree, worth 3 *pie*: the conviction was quashed under this section. It would be otherwise, if the act was really a part of an act of graver character, *e.g.*, a thief may have got access to a lot of property and yet had time only to appropriate a very small quantity. I recollect a case, where a notorious burglar had broken into premises hoping to find a rich booty, but only succeeded in carrying off a bit of old iron almost worthless; he was rightly given

[1] I have occasionally heard of forest cases which should, in view of this section, have never been prosecuted. It is very desirable to avoid making forest conservancy more obnoxious to the ignorant peasantry than in the nature of things it must be; and a wise discretion should be exercised in filing a criminal complaint of a forest offence if it is really insignificant, or a warning would suffice. Stripping off leaves from a tree is a forest offence, because such an act may cause the death of, or serious injury to, the tree; but obviously it would be unreasonable to punish a man for picking off a single leaf; yet as the plural includes the singular, such a prosecution would be possible except for this section 95.

a heavy sentence; but then the entry or housebreaking was an offence independently of the value of property taken.

Another important exception is when the act which would otherwise be an offence is done by a person in *defence* of:—

(*a*) His own *body*
(*b*) The body of another } Against any "offence" affecting the human body ("offence" under the I. P. Code—see sec. 40).

(*c*) His own
(*d*) Another person's } *property* (of any kind) } Against acts (or attempts) of:—
a. Theft.
b. Robbery.
c. Mischief.
d. Criminal trespass.[1]

It is immaterial (sec. 98) whether the act which gives rise to the right, is committed by a person who by reason of youth, or unsoundness of mind, or intoxication, would not be guilty of an offence.[2]

But the right of private- or self-defence only exists subject to the provisions of secs. 99—106, which should be read.

Briefly, the sections are concerned—

(A) With the circumstances under which the right arises or does not arise; and

(B) With the extent of harm which may be caused in defence; first, in the case of attacks on the body, and then in the case of those on property.

(*Ad* A) There is no defence against an act by a *public servant* done under colour of his office, or done under direction of a public servant (even though not strictly justified), unless the act reasonably causes apprehension of death or grievous hurt.[3]

[1] Observe it must be a *criminal* trespass under the I. P. C., *i.e.*, not an ordinary civil trespass or a trespass under the Forest law.

[2] This is obviously just; for though the person doing the act will be excused, the person defending himself could be just as much affected by the act whether legally an offence or not.

[3] A public servant, in doing an official act, making an arrest, &c., may never need use such violence as to give a reasonable fear of death or grievous hurt to the person: if he did, the latter would be justified in defending himself against the unjustifiable violence. A public servant making an arrest may use such force if he is resisted, but the force is only such as is justifiable under section 46 of the Criminal Procedure Code, and would only extend to causing death in a particular case.

The person defending himself is not deprived of his rights, unless he knows, or has reason to believe, that the person acting against him *is* a public servant, or that the person acting under directions, *is* so acting, or the person states that he is so acting, and shows his warrant, if he has one, on demand to see it.

The right *never* arises when there is time to have recourse to the protection of the public authorities.

(*Ad* B) It *never* extends to causing more harm than it is necessary to inflict for the purpose of defence. But it extends (*if necessary*) to causing death or any other harm, to the aggressor, if the act (against which the defence is made) consists of—

(1) Assault causing reasonable apprehension that death, or grievous hurt, will ensue.

(2) Assault with intention of rape, or gratifying unnatural lust.

(3) An assault with intention of kidnapping, or abducting, or wrongfully confining the person, under circumstances which reasonably cause apprehension that it will be impossible to have recourse to the public authorities for release.

If the offence be not of these kinds, then the defence must not extend to killing, but only to causing harm other than death: (subject to what has already been stated, that the harm is never to be greater than is necessary).

Sec. 102 tells us when the right of defence arises or begins, and how long it lasts.

The Code then goes on to similar conditions regulating the defence of *property*. Briefly put, the defence can only extend to causing death, when the attack on property is of a grave kind, *e.g.*, robbery, housebreaking by night, mischief by fire in a building, &c., and against theft, mischief and house-trespass, if these lesser forms of offence are committed under such circumstances as to give rise to the reasonable apprehension that death or grievous hurt will result if the right of defence is not exercised. Only harm short of death, may be caused in lesser cases (subject to the general provision already noted).

Sec. 105 is intended to tell us (in the case of defence of property) when the right of defence begins or arises, *i.e.*, with

the apprehension; and how long it lasts (as sec. 102 did in case of defence of the body).

This brings to a close the general or introductory portion of the law relating to offences. We have next to consider:—

(1) The classification and character of offences in the General law, *i.e.*, the Penal Code.

(2) The question of participation: *i.e.*, where more persons than one are concerned in some way—more or less—in the commission of an offence.

(3) With "attempt"—*i.e.*, where the offence is begun but not carried out.

(4) And lastly, the subject of "legal punishment" in general; and some supplementary incidental matters connected with prosecution and punishment.