

LECTURE IX.

THE CLASSIFICATION AND DESCRIPTION OF OFFENCES (*continued*).

III. Offences against Property.

THE large class of offences against property, is dealt with in Chapter XVII. of the Code.

Theft, which is the first, is always of *moveable* property (p. 37); and as the thing must be moved in order to commit a theft, immovable property cannot be the subject of theft. But an immovable object may be severed from the ground with a view to taking it away; and it may be (Exp. 2 to sec. 378) that a moving which effects the severance, is also a moving which completes the theft.

“Theft” is only chargeable when the property is in the “possession” of the owner (p. 58). If not, the offence is “criminal misappropriation.” It seems a pity that the distinction is made, because of the difficulty connected with the legal idea of “possession.” The subject is however cleared up to some extent, by the numerous “illustrations” to sec. 378, which the student should read.

Theft need not cause wrongful gain to the thief, it is sufficient if it causes that or wrongful loss to the other party. This follows from the words: “A person intending to take *dishonestly* any moveable property out of the possession of any person, &c. ;” “dishonestly” implies causing “wrongful gain” or “wrongful loss” (see definition in Chapter II.).

An aggravated form of theft (sec. 380) is when it is from a building, tent, or vessel, used as a human dwelling or as a receptacle for property. Another is when the thief is a clerk or servant of the owner (sec. 381). Another is where the theft is committed, the thief having made preparation to cause death, hurt or restraint (sec. 382). ”

“Extortion” is distinguishable from theft, by the circumstance that the person *consents* to give up the property, only

that the consent is not voluntary, being enforced by fear of injury to himself or some other person. The offender thus dishonestly induces him to deliver property or a valuable security, &c. If the injury threatened in the act of extortion, is death or grievous hurt, the penalty is much heavier (sec. 386). So if the threat is to make an accusation against the person of a capital or other grievous offence.

Either theft or extortion, *when committed under certain circumstances*, becomes "robbery." Theft becomes robbery when, in committing the theft, or in carrying away the spoil, the thief causes or attempts to cause (for the purpose of theft or carrying away the spoil) death, hurt, or wrongful restraint, or fear of instant death, hurt, or wrongful restraint. Extortion also becomes "robbery," if the offender is in presence¹ of the person put in fear, and puts him in fear of instant death, instant hurt, or instant wrongful restraint to himself or some other person (*e.g.*, the sufferer's child), and by so putting him in fear, induces the sufferer to deliver up the thing extorted.

In practice it will be found that most robberies are partly theft and partly extortion. Robbers commonly both threaten and actually seize what they find.

If five or more persons conjointly commit or attempt to commit a robbery, every one of them concerned is said to commit "dacoity."

There are subsidiary provisions concerning this offence:—

- (1) Where the dacoity or robbery is accompanied by murder, *every one in the gang* is made liable to heavier punishment though not personally chargeable with the murder.
- (2) So if grievous hurt is caused, and the offender is armed with deadly weapons.
- (3) The fact that a person habitually belongs to a gang of dacoits, or of wandering thieves, &c., is made punishable as an offence of itself.

Criminal misappropriation (sec. 408) is dishonest conversion or misappropriation of any moveable property (not in possession of any one), and it may be for a time only. Dishonest intention is inferred from the circumstances of the case.²

¹ For in some cases, extortion is practised by threatening letter, message, &c.

² For example, A. takes a watch from B.'s table drawer, honestly believing

Explanation 2 to this section should be referred to as dealing with the case of a person who *finds* property and retains it, taking no steps to discover the owner. He will not commit an offence, where the property is such that it is impossible to find an owner (*e.g.*, where a person picks up a shilling lying on the roadside).

Criminal breach of trust (sec. 405) is something beyond theft, for here, though the property is not in immediate possession of the owner, it has been entrusted to the keeping of the person who misappropriated it. The offence is committed when the person entrusted—

- (1) dishonestly misappropriates or converts to his own use ;
 - (2) dishonestly uses or disposes of the property
 - (3) wilfully suffers any other person to do so.
- { in violation of a direction of law ; in violation of a legal contract (expressed or implied) as to how his trust is to be discharged ;

There are special sections for the graver offences of this class, where the trustee is a carrier, warehouse-keeper, or a clerk, or servant, or is a public servant, or a banker, broker, agent, or attorney.

Observe here the general distinction. In *theft*, the owner is in "possession:" in *criminal misappropriation* he is not: in *breach of trust* the owner is not in possession because he has actually left the thief in trust with the property.

And to complete the subject, add: if theft is accompanied by violence, it is "robbery." If the offender does not himself take the property (perhaps does not know where to find it), but induces the owner to deliver it, under fear, &c., he commits extortion; and extortion may become "robbery," if the extorter is present and threatens death, &c. "Robbery" by a gang of five or more, is "dacoity."

The next offence to be noticed—that of "receiving stolen property," is an offence naturally connected with the foregoing series. If there were no "receivers," doubtless the number of thefts and robberies would be much reduced.

that it is his own watch. This is not theft; but if A., on discovering his mistake, dishonestly keeps the watch, he will be guilty under sect. 403.

I will only notice that very often a person is found in recent¹ possession of property which is shown to have been stolen from another; he cannot explain how he got it, or gives a false account; when such possession (under the circumstances) gives rise to a presumption of guilt against the person in unexplained possession, the presumption is that he is the thief or the misappropriator, and not (as is commonly charged) that he is a "receiver." The exact inference to be drawn must, however, depend on the circumstances and natural probabilities of the case.

"Cheating" (sec. 145) is a fraud which has many forms; it causes the loss of property by consent, but in a different way from extortion, because the owner here gives up the property, not by reason of *fear* (as in extortion), but by reason of *deception*. His consent is one which he could not have given if he were not misled. Cheating is sometimes carried out by the offender "personating" some one, and thus deceiving (sec. 419).

From "cheating," the Code passes to fraudulent deeds and disposition of property, about which I need say nothing; after which it deals with a considerable series of offences, all coming under the head of *Mischief* (see p. 117).

In all *mischief*, there must be an intent (or a knowledge of likelihood) to cause wrongful loss or some damage to the public or to any person, or some change in property which affects it injuriously. The *illustrations* to sec. 425 will make the matter clear.

The Code distinguishes:—

- (1) Simple mischief (sec. 426).
- (2) Mischief more serious, as causing loss, &c., to 50 Rs. value and over (sec. 427).
- (3) {
 - Mischief by killing, poisoning, or maiming valuable animals, &c. (sec. 428).
 - Ditto of special value (sec. 429).
- (4) {
 - Affecting public water supply.
 - Affecting any bridge or Public work.
 - Affecting public drainage, or causing inundation.
 } secs. 430—432.
- (5) Affecting lights and land marks (secs. 433—434).

¹ If the possession is of some duration, the inference might not arise; in the nature of things it might be more probable that the goods had passed through several hands.

- (6) { By fire or explosive (sec. 435).
Ditto in aggravated forms (sec. 436-438) (*i.e.*, to house
or place of worship, or a ship).
- (7) Special forms of mischief, as running a vessel aground,
&c. (sec. 439).
- (8) Mischief aggravated by being committed after prepara-
tion to cause death, or hurt, &c. (sec. 440).

“*Criminal Trespass*,” as I shall elsewhere have to notice, does not include any mere infringement of right like civil trespass, nor even such a trespass as would be punishable with fine under Forest law if committed in a forest or plantation. There must be—

- (a) an entry on property in the possession of another ;
- (b) An intent { to commit an *offence* (*i.e.*, by definition), one
under the I. P. Code or a more serious one
under a special or local law, *i.e.*, punishable
with six months' imprisonment.
- { to intimidate
to insult
to annoy } any person in possession.
- (c) if the original entry was innocent, the offence may be committed by *unlawfully remaining* with the above intent.

Should the Criminal Trespass be in a building, tent, or vessel, used as a human dwelling, or place for keeping property, or as a place of worship, it becomes “house trespass.”

House trespass again may be committed in forms of increasing criminality :—

(a) It is “lurking house trespass” (sec. 443) when the offender has taken precautions to conceal his entry from a person who has the right to exclude or to eject him. And lurking house trespass may be aggravated by being committed “at night,” *i.e.*, after sunset and before sunrise.

(b) Lurking house trespass becomes “housebreaking” if the concealed entry is effected in one of the ways described in sec. 445 ; all of these imply wrong doing or evil intent ; such as breaking a lock, making a hole, entering by a passage not intended for human ingress, or by scaling, climbing, &c., entering forcibly, &c.

Housebreaking may be aggravated by being committed “at night.”

A whole series of sections then separately declare the punishment for the different offences, fixing the punishment higher according to the increasing degree of heinousness, *e.g.*, house trespass (sec. 448-453), lurking house trespass or house-breaking (sec. 453-459).

Either of these forms of trespass may be not only of a higher or lower degree of criminality in itself, but may further differ according to the purpose of the trespass or its attendant circumstances; such as, intent to commit certain classes of offence; with preparation for causing^d death or hurt, &c. If grievous hurt is caused, or the attempt to cause death or grievous hurt is made, during a lurking house trespass, or housebreaking, the offender is liable to transportation for life. And (by sec. 460) when the offences are committed by night and any one person concerned in them, causes or attempts to cause death or hurt, the whole of the persons concerned in the house trespass, are liable to transportation for life.

IV. Offences relating to Documents, &c.

Passing from direct attacks on property, the Code (Chap. XVIII.) proceeds to the wide series of offences which affect property, not by directly depriving an owner of it (theft, &c.), nor directly destroying or reducing its value (mischief), but by tampering with and forging *documents* which are securities by which property is held or which are necessary for trade and commerce. Offences regarding trade and property marks are also included in this category, as tending to injure trade and to defraud purchasers. The main groups of sections refer:—

- (1) to making false documents and forgery; enumerating various degrees of offence, the punishment of which is made greater according to the nature of the intent with which the forgery is committed, and the character of the document forged or falsified.
- (2) Offences relating to Trade and Property marks.

I do not think it necessary to offer any remarks on the subject of false documents and forgery.

I will only notice that the secs. 478-489 regarding Trade and Property marks, now stand as amended and redrafted by the Indian Merchandise Marks Act IV. of 1889.

And I will add that some of the sections afford us a good illustration of how a *general* criminal law deals with matters, and in so doing

omits some special forms of offence, or some special circumstances, which arise only in the course of a particular business. We shall afterwards see how the Forest Act has found it advisable to make some special provisions about *timber* marks fraudulently used or altered, which the General Law has not contemplated.

V. Criminal Breach of Contract.

Of the remaining chapters of the Code, I have still less to say. Chapter XIX. includes those occasional cases where a breach of contract may be of such a character that the remedy of damages, &c., from the Civil Court, does not suffice; and the law regards the breach as criminal—as tending to produce an evil effect which extends beyond the mere injury to the individual. For instance, there may be a criminal breach of a contract to carry a person from one place to another (*e.g.*, the case of *pālki* bearers setting down a traveller, perhaps on a malarious forest road, and running away).¹

VI. Offences relating to Marriage.

Chapter XX. refers to offences against marriage; such as bigamy and adultery (the latter offence in India is a criminal one, which it is not by the English law): the woman cannot however be charged as an abettor except under a certain local regulation for the Punjab Frontier Districts.

VII. Defamation.

Chapter XXI. contains the Criminal law of defamation as distinct from the Civil law of libel.

VIII. Insult and Intimidation.

Chapter XXII. deals with offences of intimidation and insult, which are not included as offences against the person or property, because they usually do, or may, include threats against character and reputation, or cause alarm. Under this head come the curious forms of duress known in India, whereby a person sits himself down at the door of another, the latter being supposed to become an object of divine displeasure; this is a form of intimidation or putting

¹ Certain special cases of breach of contract by labourers or artisans may be punishable, but for a different reason; such offences are dealt with by a Special Act (XIII. of 1859).

pressure on people, which cannot be tolerated : it is quite immaterial that the evil consequences are imaginary ; the act of the coercing party is equally painful to the other, and equally successful in intimidating him into compliance.

The last Chapter contains a single general provision on the subject of *attempts* ; which I have reserved for a special notice further on.