

DIGEST
OF
THE
CRIMINAL LAW
OF
CANADA

founded by permission on
Sir James Fitzjames Stephen's
Digest of the Criminal Law.

by
G.W. BURBIDGE
~~A.B., B.C.L.~~
JUDGE OF THE EXCHEQUER COURT OF CANADA

with a Foreword by
THE HONOURABLE
FRED KAUFMAN
ONE OF THE JUDGES OF
THE QUEBEC COURT OF APPEAL

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DIGEST OF THE CRIMINAL LAW OF CANADA



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FOREWORD

by

The Honourable Mr. Justice Fred Kaufman

In 1872, in the preface to his Treatise on Criminal Law, Samuel Robinson Clarke was moved to observe that it was a matter of surprise "that no Treatise on the subjects discussed in the following sheets has been written by any member of the profession of the law during our existence as a Colony". But now, with serious attempts at uniformity, a comprehensive work was needed, and Clarke laid the foundation. Two years later, Mr. Justice H.E. Taschereau published the first edition of his Criminal Law Consolidation and Amendment Acts, and in a second edition, published in 1888, the author was able to draw on the Revised Statutes of Canada of 1886, which contained a mini-code of criminal law, procedure and evidence. This was a major step forward, but codification (as we know it today) was still five years away, and two more texts were published in the meantime: Dandurand and Lanctôt's *Traité théorique et pratique de droit criminel*, which included not only Canadian and English case law, but also — advanced for its time — American decisions, and Burbidge's Digest of the Criminal Law of Canada, which has now been reprinted. This work, published in 1890, leaned heavily on Stephen's Digest of the Criminal Law of England, but in fact, as the preface proclaims, it was "a statement of that part of the Criminal Law of Canada which relates to the definition of crimes and of punishment prescribed therefor, as it stood on September 1st, 1889".

The law was varied indeed, and today — only three generations later — it is hard to imagine just how diverse the law was in the early years of union. There was, to begin with, the law of England, not as it stood at the time, but rather as it existed at a series of dates which differed from province to province: 1758 (probably) for the Maritimes, 1763 for Québec, 1792 for Ontario, 1858 for British Columbia and 1870 for the remaining provinces, the Yukon and the Northwest Territories. Then came the alterations brought about by the appropriate legislatures and, after 1867, the federal acts. It was, in many respects, a legal nightmare: offences against religion, for instance, occupied a whole chapter, and even though the author deemed some of these crimes and misdemeanors "practically obsolete", they were included because "they relate to acts which might still be done". But other sections still have a familiar ring — theft of oysters, for instance — and even a quick perusal of the 629 articles contained in the book provides a fascinating commentary on the morals and concerns of that age.

That is the value of the book today, but it achieved instant fame in 1892, when the Attorney General, in introducing the Bill for Canada's first comprehensive Code, referred to Burbidge as a major source for this new legislation, and so it was.

It is not surprising that this should have been so, for here, in clear and well-ordered fashion, we find a complete (and annotated) statement of the criminal law as it existed *in Canada*, and while the Digest arrived on the scene after the codifiers had commenced their task, it must have helped them enormously in the time which remained before the final version was published in 1892 and proclaimed a year later.

George Wheelock Burbidge was a Nova Scotian by birth. He graduated from Mount Allison and set up practice in Saint John, New Brunswick. In 1882 he became Deputy Minister of Justice for Canada, a post which he held until 1887, when he was appointed to the Bench of the Exchequer Court. His experience was wide, and it covered such diverse fields as the supervision (as Deputy Minister) of the Crown's case in the treason trials of 1885, to an inquiry into "certain matters" in connection with the Nakusp and Slocan Ry. Co. Clearly, the adage that busy persons get things done applied to the author, and Canadian legal literature has been greatly enriched by his efforts.

F.K.

Montréal,
November 23rd, 1979.

A DIGEST
OF THE
CRIMINAL LAW
OF CANADA

(CRIMES AND PUNISHMENTS)

FOUNDED BY PERMISSION ON

SIR JAMES FITZJAMES STEPHEN'S DIGEST OF THE
CRIMINAL LAW.

BY

GEORGE WHEELOCK BURBIDGE, A.B., D.C.L.
JUDGE OF THE EXCHEQUER COURT OF CANADA.

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PREFACE.

THIS Digest is intended to be a statement of that part of the Criminal Law of Canada which relates to the definition of crimes and of the punishments prescribed therefor, as it stood on September 1st, 1889.

The work is, by the kind permission of the author, founded on Sir James Fitzjames Stephen's Digest of the Criminal Law of England. The portions hereof that are taken from the latter work are enclosed in brackets [], and to enable the reader to distinguish such portions the more readily, and without turning backwards the leaf to which his attention is directed, the continuation of an extract beyond a page is indicated by the insertion of a bracket at the beginning of the page following.

The index and the tables of cases and of the statutes have been prepared by Charles H. Masters, Esquire, Barrister-at-Law, assistant reporter of the Supreme Court of Canada, to whom I am also greatly indebted for assistance in the preparation of the Digest, and for reading the proofs and verifying the references to cases and authorities.

Ottawa, January 2nd, 1890.

LIST OF ABBREVIATIONS.

The expression "Draft Code" means the Draft Code appended to the Report of the Criminal Code Commission published in 1879, and marked C. 2345.

The Canadian Statutes cited are designated by the letters D., P.C., etc., which are explained in the following list, placed after the Sovereign's name. The Statutes not so distinguished are those of the realm or the United Kingdom. In the table of Canadian Statutes, those not containing distinguishing letters are Dominion Statutes.

A. & E. . . .	Adolphus & Ellis.
All. . . .	Allen's New Brunswick Reports.
App. Cas. . .	Appeal Cases.
Arch. . . .	Archibald's Pleading and Evidence, 20th ed.
B. & Ald. . .	Barnewall & Alderson.
B. & Ad. . .	Barnewall & Adolphus.
B. & B. . . .	Broderip & Bingham.
B. & C. . . .	Barnewell & Cresswell.
B. & S. . . .	Best & Smith.
Bell, C. C. . .	Bell's Crown Cases.
Bing. . . .	Bingham's Reports.
Bish. Cr. Law.	Bishop's Criminal Law.
Brooke's Abt.	Brooke's Abridgment.
Burr. . . .	Burrow's Reports.
C. B. . . .	Common Bench Reports.
C. B. N. S. . .	Common Bench Reports, New Series.
C. P. . . .	Common Pleas (Law Reports).
C. P. D. . . .	Common Pleas Division.
C. & F. . . .	Clark and Finelly.
C. & K. . . .	Carrington and Kirwan.
C. & M. . . .	Carrington and Marsham.
C. & P. . . .	Carrington and Payne.
C. L. J. . . .	Canadian Law Journal.
C. L. T. . . .	Canadian Law Times.
C. S. C. . . .	Consolidated Statutes of Canada.
C. S. L. C. . .	Consolidated Statutes of Lower Canada.

TABLE OF CASES CITED.

A.	PAGE.
Abbott, R. v.	348
Abraham's Case	311
Abrahams, R. v.	343
Adams, R. v.	265
Addis, R. v.	303
Adey, R. v.	526, 527
Aickles' Case	389
Akey's Case.	220
Allen, R. v.	204, 248, 255
Allen and Others, R. v.	218, 223, 513, 522, 523
Almon, R. v.	265, 266
Anderson, <i>in re</i>	220
———, R. v.	222
Andrews v. Wilson	264
Antrobus, R. v.	112
Appleby, R. v.	10
——— v. Franklin	149
Archer, R. v.	35
Ardley, R. v.	346
Armory v. Dalamirie	281
Armstrong, R. v.	372
Arscott, R. v.	188
——— v. Lilley	188
Asher v. Calcraft	160
Ashwell, R. v.	296, 297
Aspinall, R. v.	370
Atalaya, The	95
Atkinson, R. v.	35
Att.-Gen. of Hongkong v. Kwok- a-sing	101
——— v. Baillie	12
——— v. Ranee Surnomoye Dossee	11
——— v. Stewart	10
——— v. Terry	173

	PAGE.
Att.-Gen. v. Windsor	296
Avery, R. v.	298
Austin, R. v.	472

B.

Badger, R. v.	111
Bail, R. v.	391
Balls, R. v.	298
Balme, R. v.	115
Barnard, R. v.	344
Barnes, R. v.	11, 180
——— v. Ward	186
Barnett, R. v.	241, 376
Barratt, R. v.	250
Barrett, R. v.	174
Barronet, <i>ex parte</i>	39
———, R. v.	200, 221
Barrow, R. v.	248, 249
Barthelemy, R. v.	221
Bassett, R. v.	187
Bateman, R. v.	388
Battersby v. Odell	11
Batty, R. v.	307
Bazeley's Case.	279, 311
Beatson v. Skene	269
Beaumont, R. v.	309
Belch v. Arnott	196
Bembridge, R. v.	110, 112, 152
Bennett, R. v.	115, 211
Bennett's Case	204
Bentinck v. Willink.	10
Berriman, R. v.	160, 228
Berthiaume, R. v.	297
Bertles, R. v.	343
Bertram v. Bonham	73
Best, R. v.	150

	PAGE.
Betts, R. v.	173
Billingham, R. v.	200
Bishop, R. v.	41
Biswell, R. v.	259
Blackstone, R. v.	392
Blades v. Higgs	287, 291
Blankard v. Galdy	9, 10
Blenkinsop, R. v.	388
Boardman, R. v.	385
Boden, R. v.	290
Borron, R. v.	110
Boult, R. v.	417
Boulton, R. v.	285
Bower, R. v.	114
Boyall, R. v.	115
Bradford, R. v.	464
Bradlaugh, R. v.	163, 165
Bradshaw, R. v.	449
Brady, R. v.	343
Brain, R. v.	209
Brawn and Webb, R. v.	255
Brice, R. v.	185
Bridges, R. v.	22
Bridgewater, The	196
Brien, R. v.	343
Brierley, R. v.	254
Brittain, R. v.	185
Brodribb, R. v.	69
Bromage v. Prosser	267
Brooks, R. v.	35
Brown, R. v.	226, 228, 230, 416
—— v. Harding	13
—— v. Mallett	186
Brownell, R. v.	464
Bryan, R. v.	346
Bryans, R. v.	449
Brydges, <i>ex parte</i>	203, 236
Bubb, R. v.	206
Buchanan, R. v.	115
Buck, R. v.	115
Buckmaster, R. v.	295
Buckner's Case	220
Bullock, R. v.	467
—— v. Dodds	22
Bunce, R. v.	295

	PAGE.
Buncombe, R. v.	35
Bunn, R. v.	51
Bunting, R. v.	51, 117
Burdell, R. v.	11
Burdett, R. v.	93, 265, 266
Burgess, R. v.	149, 224, 227, 299
Burgon, R. v.	348
Burns, R. v.	69, 92
—— v. Nowell	39
Burrell, R. v.	257
Burt v. Burt	253, 255
Burton, R. v.	304, 308
Butterworth, R. v.	298
Byrne v. Boadle	204
Byron's (Lord) Case	220, 221

C.

Cabbage, R. v.	289
Cadby, <i>ex parte</i>	388
Callahan, R. v.	307
Campbell, R. v.	343
—— v. Hall	10
Camplin, R. v.	250
Capital and Counties Bank v. Henty	263
Carlile, R. v.	274
Carlisle's Case	370
Carlisle, R. v.	115
Carr, R. v.	211, 263, 307
——, v. Fire Assur. Assoc.	10
——, v. Hood	270
Carvill v. McLeod	264
Cartwright v. Green	279, 292, 296, 297, 300, 532
Cary's Case	223
Case, R. v.	241
Castlehaven's (Lord) Case	249
Castro, R. v.	27
Caswell, R. v.	332
Chadwick, R. v.	255, 389
Chambers, R. v.	400
Chandler, R. v.	261
Chapman, R. v.	312
Chapman's Case	136

TABLE OF CASES CITED.

vii

	PAGE.
Charest, R. v.	305
Charlotte Smith, R. v. . . .	206
Cheafor, R. v.	287
Cheeseman's Case	52
Child, R. v.	71, 451
Chipchase's Case	310
Chouinard, R. v.	374
Christian, R. v.	372
Clark v. Molyneux	268
Clarke's Case	288
Clarke, R. v.	188, 248, 249
— v. Donnelly	182
Clarence, R. v.	231, 243
Clement, R. v.	51
Closs, R. v.	371, 392
Coggs v. Bernard	283
Cokely, R. v.	73
Coley, R. v.	305
Collin's Case	53
Collins, R. v.	92, 389
Colonial Bank v. Warden . .	10
Coney and Others, R. v. . .	43, 200
Connick v. Wilson	264
Connolly, R. v.	250
Cooke, R. v.	280, 385
Cooper, R. v.	45, 265, 374
Corby v. MacDaniel	11, 182
Corcoran, R. v.	70
Corey, R. v.	343
Cornellier, R. v.	124
Cornwall v. R.	246
Cory, R. v.	287
Coslet's Case	282
Costin v. Chappell	12
Cottè, R. v.	420
Cox, R. v.	248
— v. Lee	265
Coxhead v. Richards	269
Craig, R. v.	390
Cramp, R. v.	252
Crawley, R. v.	184
Crawshaw, R. v.	181
Cronan, R. v.	241
Cronin, R. v.	449
Cronmire, R. v.	372

	PAGE.
Cronyn v. Griffith	11
Cronyn v. Widder	11, 182
Cruse, R. v.	35, 44
Crutchley, R. v.	36
Cuddy, R. v.	221
Cullum, R. v.	307, 309
Cummings, R. v.	311, 339
Cunningham, R. v.	401
Curgerwen, R. v.	254
Curry v. Walter	273
Curtley, R. v.	43
Cutler v. Dixon	272

D.

Daggett, R. v.	160
Dale, R. v.	116
Daly, R. v.	188
Danger, R. v.	341
Dant, R. v.	207
Davenport, R. v.	294
Davie's Case	292
Davies, R. v.	296, 297
D'Avigdor, R. v.	149
Davis, R. v.	115, 343, 527
Davison v. Duncan	272
Dawes v. Painter	10
Dawkins v. Lord Paulet . .	273
— v. Lord Rokeby	272, 273
Dawson, R. v.	101
Day, R. v.	241
Deasy, R. v.	55
De Banks, R. v.	297
Debaun, <i>ex parte</i>	392, 401
Debay, R. v.	254
De Berenger R. v.	369
Dee, R. v.	249
D'Eon, R. v.	95
Delaval, R. v.	162, 167
Delegal v. Highley	274
Desmond and Others, R. v. .	218, 513
Despatie, <i>ex parte</i>	188
Dessauer, R. v.	343
Dewitt, R. v.	7
Dibdin v. Bostock	270

	PAGE.
Foster, R. v.	346
— v. Fowler	12
Foulkes, R. v.	306
Fournier, R. v.	381
Fox, R. v.	129, 171
Francis, R. v.	249
Fray's Case	521
Freeman v. Fairlie	10
French, R. v.	400
Fretwell, R. v.	45, 224
Friend's Case	261
Fulton v. James	180

G.

Gagnon, R. v.	133
Gale, R. v.	309
Gallagher, R. v.	55
Gardner, R. v.	302, 348
— v. Mansbridge	476
Garrett, R. v.	302, 347
— v. Roberts	11, 150
Gathercole, R. v.	264, 265
Gaylor, R. v.	225
Geach, R. v.	385
Gemmell, R. v.	343
George, R. v.	241
Gibbon, R. v.	135
Gibbons, R. v.	40
Gibson, R. v.	133, 481
Gilbert v. Sayre	13
Giles, R. v.	345
Glass, R. v.	312, 339
Glover, R. v.	309
Glyde, R. v.	300
Goodbody, R. v.	307
Goodman, R. v.	53, 452
Gordon, R. v.	346
— (Lord G.). R. v.	95
Gotley, R. v.	150
Gould, <i>in re</i>	391
— v. Cowan	297
Graham, R. v.	69
Gray, R. v.	226
Green, R. v.	204

	PAGE.
Greenacre, R. v.	225
Greenwood, R. v.	214, 449
Gregory, R. v.	48, 51
Grey (Lord), R. v.	167
Griffiths, R. v.	388
Groombridge, R. v.	249
Grove, R. v.	312
Guelder, R. v.	312
Gumbes's Case	12
Gurneis' Case	135

H.

Hadfield, R. v.	389, 464
Haines, R. v.	213
Hale, R. v.	254
Hall, <i>in re</i>	391
—, R. v.	39, 290, 305
— v. Carty	264, 391
Hamilton v. Bone.	476
Hands, R. v.	293
Hardy, R. v.	464
Harmer, R. v.	240
Harper, R. v.	400
Harring v. Walrond	164
Harris, R. v.	115, 163, 417
Harrison v. Bush	268
— v. Spencer	10
Harrison's Case	298
Hart, R. v.	388
Harvey v. Farnie.	254
—, R. v.	93, 294, 440
Hassall, R. v.	283, 302
Hastings, R. v.	104
Haswell, R. v.	143
Hatton's Case	1
Hawkeswood's Case	390
Hawkins, R. v.	310
Haynes, R. v.	371
Hayward, R. v.	223
Hazelton, R. v.	345
Henderson v. Broomhead.	272
Henkers, R. v.	258
Hennah, R. v.	252
Hennessey, R. v.	310, 340

	PAGE.
Henson, R. v.	184
Henwood v. Harrison . . .	270
Hermann, R. v.	437
Hesketh v. Ward.	10
Hespeler v. Shaw.	160
Heven, R. v.	369
Hibbert, R. v.	259
Hicklin, R. v.	164
Hickson, R. v.	267
Higgins, R. v.	51
Hill, R. v.	340, 380
Hillman, R. v.	252
Hincks, R. v.	420
Hoare v. Silverlock	273
Hoatson, R. v.	385
Hodgkiss, R. v.	136
Hodgson, R. v.	45, 312, 386
Hogan, R. v.	261
Hogg, R. v.	125, 129
Hoke, <i>in re</i>	392
Holbrook, R. v.	266
Holland, R. v.	213
Hollis, R. v.	294
Holloway, R. v.	289, 290
Holmes, R. v.	163, 184
Hook, R. v.	206
Hopkins, R. v.	259
Hopley, R. v.	196, 520
Horseman, R. v.	290, 321
Horton, R. v.	40
Howarth, R. v.	160
Hudson, R. v.	349
Huggett's Case	220, 525, 526, 527
Huggins, R. v.	196
Hughes, R. v.	35, 48, 134, 204, 218, 307, 467
Hughes's Case.	292
Hunt, R. v.	231, 308
Hunter v. Sharpe.	269
Huppel, R. v.	342
Hynes, R. v.	372

I.

Ingram's Case.	131
------------------------	-----

	PAGE.
Isaacs, R. v.	252

J.

Jackson, R. v.	111, 248, 249, 345
James, R. v.	71, 113, 385
—— v. McLean.	13
Jamieson, R. v.	182
Jarrard, <i>in re</i>	391
Jarvis, R. v.	184
Jefferys v. Boosey	152
Jenkins v. Cook	113
—— v. Jones	138
Jenks v. Turpin	174
Jenner v. A'Becket	270
Jennison, R. v.	346
Jenson, R. v.	307
Jessop, R. v.	224, 345
John v. R.	51, 242
Johnson, R. v.	315
Jones, R. v.	104, 112, 115, 185, 254, 289, 329
Jones' Case	116, 390
Jones (Lloyd), R. v.	312
—— (Valentine), R. v. . . .	112
Joyce, R. v.	401
Judd, R. v.	265

K.

Kavanagh v. Phelan	10
Kay, R. v.	280
Kaylor, R. v.	257
Kelly, R. v.	42, 43, 70
—— v. Jones	12
Kennedy v. Lyell.	138
Kennett, R. v.	112
Kenrick R. v.	370
Keyn, R. v.	94
Kielley v. Carson.	10
Kilham, R. v.	285, 347
King, R. v.	312
Kinsman, R. v.	9
Kipps, R. v.	259
Kirkham, R. v.	223