LORD CAMPBELL'S ACTS, FOR THE FURTHER IMPROVING THE ADMINISTRATION OF CRIMINAL JUSTICE, AND THE BETTER PREVENTION OF OFFENCES. TOGETHER WITH THE ACT FOR THE BETTER PROTECTION OF APPRENTICES AND SERVANTS

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CHARLES SPRENGEL GREAVES

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FOR

THE FURTHER IMPROVING THE ADMINISTRATION OF CRIMINAL JUSTICE,

AND

THE BETTER PREVENTION OF OFFENCES.

TOGETHER WITH

THE ACT FOR THE BETTER PROTECTION OF APPRENTICES AND SERVANTS;

AND

THE ACT FOR AMENDING THE LAW RELATING TO THE EXPENSES OF PROSECUTIONS,

WITH

Notes, Observations, and Indictments.

BY

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&c. &c. &c.

LONDON:

LATE W. BENNING AND CO., LAW BOOKSELLERS,

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1851.

PREFACE.

THIS little Book contains "The Act for the further Improving the Administration of Criminal Justice," 14 & 15 Vict. c. 100; "The Act for the better Prevention of Offences," 14 & 15 Vict. c. 19; "The Act for the better Protection of Persons under the Care and Control of others as Apprentices and Servants, and to enable the Guardians and Overseers of the Poor to institute and conduct Prosecutions in certain cases," 14 & 15 Vict. c. 11, and "The Act to amend the Law relating to the Expenses of Prosecutions, and to make further Provision for the Apprehension and Trial of Offenders in certain Cases," 14 & 15 Vict. c. 55.

To these Statutes are added explanatory Notes and Observations at the foot of such sections as seemed to require them.

A summary of the alterations in Indictments effected by "The Act for the further Improving the Administration of Criminal Justice" is given at the end of that Statute.

Precedents of Indictments for offences created by these Acts, and also some Precedents of Indictments framed according to the new enactments, have been added, with a view the better to illustrate the effect of such enactments. It is to be observed, that an alteration has been made in

the frame of these Indictments. Hitherto Indictments have followed the Latin form, which placed the party injured or murdered, the thing stolen, &c., before the verb. According to this course the present simple form of Indictment for murder would run "The jurors on their oath present that John Phelps Stephen Thomas feloniously, wilfully, and of his malice aforethought, did kill and murder"—which is hardly intelligible. I have ventured in every case to state the charge in the manner which I conceive to be the correct English manner. Thus the Indictment for murder runs, "The jurors on their oath present that John Phelps feloniously, wilfully, and of his malice aforethought, did kill and murder Stephen Thomas."

Some general observations are added, and I have there taken the opportunity of pointing out certain provisions, which appear to me extremely well calculated to improve the efficiency of the administration of criminal justice.

The clauses struck out of "The Act for the further improving the Administration of Criminal Justice," either in the House of Lords or House of Commons, are given, as they appear to me very important; and I trust may hereafter become the Law.

CHARLES S. GREAVES.

September 15, 1851.

GENERAL OBSERVATIONS.

HAVING had the honor to be entrusted with the preparation of "The Act for the further Improving the Administration of Criminal Justice," and "The Act for the Better Prevention of Offences," and having watched these bills step by step in their passage through Parliament, as well by attending the Committees upon them as otherwise, I need offer no apology for publishing this little Work, with the view of explaining the objects of these statutes and the provisions contained in them.

Both these bills underwent a most careful and anxious consideration in the House of Lords, not only by a Select Committee, but also by individual Peers. They were very attentively considered by the Lord CHANCELLOR, Lord LYNDHURST, Lord CAMPBELL, and Lord CRANWORTH, and many, if not, all of the Judges contributed their observations upon them, which were weighed with all the attention which they so well deserved. Nor ought it to be omitted that Lord DENMAN also afforded his important assistance. In the House of Commons "The Bill for Improving the Administration of Criminal Justice" was referred to a Select Committee, which comprised, amongst others, the ATTORNEY GENERALS for England and Ireland, Sir FREDERICK THESIGER, Mr. CROWDER, Mr. BAINES, Mr. EVANS, Mr. NAPIER, Mr. WORTLEY, Mr. HENLEY, and Mr. AGLIONBY, who devoted several days to a careful and attentive examination of every provision contained in it.

I make this statement for the purpose of shewing with how great deliberation these acts passed, and in the hope that whenever any question shall arise upon any clause in either of them, their provisions may meet with that attention, which statutes passed with so much circumspection so peculiarly deserve, and that such a construction may be put upon them in every case as may be best calculated to further the great objects for which they were passed.

Nor is this my only reason for mentioning the great care and attention that were bestowed upon these statutes. It is nothing but right that it should be known how deep and sincere an

interest has been taken, as well by the House of Lords and the House of Commons as by the Judges, in measures, which may affect the liberties or lives of those persons, who may unhappily become the objects of criminal proceedings. At first sight, peradventure, it might be supposed that the interests of such a portion of the community were little likely to meet with much consideration. Far otherwise, however, was the case in the present instance. Never shall I forget with how much anxiety all—Peers, Judges, Members of Parliament—laboured, perhaps I ought rather to say, vied with each other in their endeavours to accomplish one and the same object, so that whilst large improvements might be made in criminal proceedings, no provision should be adopted, which was calculated in any degree unfairly to prejudice any party charged with any offence. If any one knew after how much discussion and with how much difficulty the first clause of "The Act for the Amendment of the Administration of Criminal Justice," which confers a limited power of amendment, passed, I am convinced that, however clear his opinion might be that such a clause was imperatively required, he could not for a moment doubt that the interests of those, who might become the subjects of criminal proceedings, had never been watched over with greater care than on the present occasion.

However strong my own opinion may be that these statutes do not by any means go to the extent they ought—which opinion, I have the best reason to know, is entertained by many great and luminous minds,—yet, when I reflect that the only reason why the provisions of these acts were not extended further, was the apprehension felt by those, for whose opinions no one could fail to entertain extreme respect, that peradventure in some instances accused persons might be unfairly prejudiced, I am mightily consoled—and I do not doubt, that after these acts shall have been found to operate, as I have no doubt they will, without any unfair prejudice to any party accused, those who have watched them so narrowly, finding their apprehensions were unfounded, will be willing to lend their powerful assistance to the passing of larger and more comprehensive measures of a similar character.

The great object of "The Act for the better Administration of Criminal Justice" is, that *every criminal case should be tried on its real and intrinsic merits.*

It establishes two great principles.

First. That it is right that *wherever upon a trial a variance happens to occur in a matter of fact not evidenced by any writing,*

such variance ought to be amended. Such no doubt is the principle, upon which the first section proceeds. True it is that full scope to that principle is not given, as the power of amendment is confined to the particular cases designated, and moreover is only to be applied to those cases where the variance is not material to the merits, *and* the defendant cannot be prejudiced in his defence upon the merits by an amendment.

This principle being established, the only question for future consideration is, whether the power of amendment ought not to be extended to every variance not material to the merits, and by the amendment of which the prisoner cannot be prejudiced in his defence upon the merits. I entertain no doubt whatever that this is the only limitation that ought to be made; and, my own opinion further is that the only question as to any amendment ought to be, whether the prisoner will be prejudiced in his defence *on the merits* by the amendment or not. If the amendment will not prejudice the prisoner in his defence on the merits, I not only see no reason why it should not be made, but every reason why it should.

The other principle is, that *Indictments ought to be in the plainest and simplest form*. When an Indictment for murder has been made sufficient, which simply alleges that the prisoner feloniously, wilfully, and of his malice aforethought, killed and murdered the deceased, it will be very difficult to find any adequate reason why all other Indictments should not be reduced to an equally simple form so far as is practicable with reference to the particular offence.

This bill originally contained a clause making every Indictment good, which charged an offence in the words of the statute, which is the case now after verdict, &c., under the 7 Geo. 4, c. 64, s. 21; but this clause was struck out in the House of Lords, on the ground that it would make it unnecessary to set out any of the pretences in an Indictment for false pretences. It is by no means easy to see any good ground for holding an Indictment good after verdict, which was insufficient before verdict. The chief object of an Indictment is to specify the charge in such precise terms that the jury may know exactly the charge they have to try, and the Court may strictly confine the attention of the Jury to that charge. Now the 7 Geo. 4, c. 64, s. 21, plainly indicates that an Indictment, which follows the words of the statute, may be sufficient to enable the Jury to know the precise charge they have to try, and the Court to confine their attention to such charge. If that be so, it seems but reasonable that an Indictment, which

uses the terms of the statute creating the offence, should be sufficient for all purposes; and it must be confessed, that it is a strange anomaly that the same words, which are sufficient to create an offence, should not be sufficient to describe the same offence in an Indictment.

I cannot avoid offering a few remarks with reference to Indictments in this place. It has ever seemed to me that, upon principle, an Indictment ought merely to charge the crime in apt and plain language. To allege the means of death in murder, or the pretences in false pretences, or to set out the letter in an indictment for sending a threatening letter, seems to me against principle. The common law Indictments for burglary, robbery, larceny, &c. &c., all proceed on the right principle by merely charging the crime, not the mode, in which, or the means by which, it was effected. A reason can in some, if not in all, instances be assigned for the opposite course. Thus, the reason for stating the means of death and the wounds, &c. in murder, no doubt was, that the statute *De Coronatoribus* required coroners to inquire into these matters. So in false pretences the reason for requiring the pretences to be set out was, that the Court might judge whether the pretences were such as fell within the statute creating the offence: and the same reason prevailed in Indictments for sending threatening letters. This reason seems little satisfactory, as the Court, which tries the case, must always, whether the pretences or letter be set out or not, determine whether in point of law the false pretences or the letter fall within the meaning of the statute. And if it be said that the statement is required, in order that a Court of error may have an opportunity of determining the question, it will not be easy for those who rely upon this ground to account for the omission to state the means of committing the offence in the numerous instances where it is not now required; for if the statement of the means be necessary for the purpose of enabling a Court of error to determine whether an offence has been committed in one case, no possible reason can be assigned why it is not equally necessary in all.

Great opposition is ordinarily made to the simplification of Indictments upon the ground that it is by them that the prisoner is informed of the charge he is called upon to answer. Now any one really acquainted with criminal procedure must be well aware that to a very great extent indeed this is an entire fallacy. What takes place upon the arraignment of a prisoner, in immeasurably the greater number of instances, is this. The