

**CRIMINAL PROCESS, OR, A VIEW OF THE  
WHOLE PROCEEDINGS TAKEN IN  
CRIMINAL PROSECUTIONS, FROM  
ARREST TO JUDGEMENT AND EXECUTION:  
INTENDED AS AN INTRODUCTION TO THE  
STUDY AND PRACTICE OF CROWN LAW**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649437320

Criminal Process, or, a View of the Whole Proceedings Taken in Criminal Prosecutions, from Arrest to Judgement and Execution: Intended as an Introduction to the Study and Practice of Crown Law by Henry R. Dearsly

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**HENRY R. DEARSLY**

**CRIMINAL PROCESS, OR, A VIEW OF THE  
WHOLE PROCEEDINGS TAKEN IN  
CRIMINAL PROSECUTIONS, FROM  
ARREST TO JUDGEMENT AND EXECUTION:  
INTENDED AS AN INTRODUCTION TO THE  
STUDY AND PRACTICE OF CROWN LAW**



CRIMINAL PROCESS:

OR,

A VIEW OF THE WHOLE PROCEEDINGS TAKEN

IN

CRIMINAL PROSECUTIONS,

FROM

ARREST TO JUDGMENT AND EXECUTION:

INTENDED AS AN INTRODUCTION TO

THE STUDY AND PRACTICE OF CROWN LAW.

---

BY HENRY R. DEARSLY, ESQ.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

PHILADELPHIA:

T. & J. W. JOHNSON, LAW BOOKSELLERS,

NO. 197 CHESTNUT STREET.

1854.

TO RICHARD BETHELL, ESQ.,

FOR MANY YEARS MEMBER OF PARLIAMENT FOR THE EASTERN DIVISION OF YORKSHIRE,  
AND UPWARDS OF FORTY YEARS CHAIRMAN OF THE EAST RIDING QUARTER  
SESSIONS, THIS LITTLE BOOK ON CRIMINAL LAW IS  
RESPECTFULLY DEDICATED BY

THE AUTHOR.

# CRIMINAL LAW.

## CHAPTER I.

### OF CRIMES AND THEIR DIVISION.

THE design of the present work is to present the reader with the various steps which are taken in a criminal prosecution. And it may be as well, at the outset, to say something of crimes in general. All crimes, according to the law of England, are divided into *treasons*, *felonies*, and *misdemeanors*. The offence of treason, at common law, was somewhat indeterminate. The statute 25 Edw. III., c. 2, confirmed by subsequent statutes, determined what offences only for the future should be considered treason. Under this statute, the offence consists of six branches:—

1. When a man doth compass or imagine the death of our lord the king, of our lady his queen, or of their eldest son and heir.

2. If a man do violate the king's companion, or the king's eldest daughter unmarried.

3. If a man do levy war against our lord the king in his realm.

4. If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere.

\*5. If a man counterfeit the king's great or privy seal.

6. If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. [ \*2 ]

FELONY, in the general acceptation of our English law, comprises every species of crime which occasioned at common law, the forfeiture of lands and goods. Sir Edward Coke says, that treason was anciently comprised under the name of *felony*: and in the statute 25 Edw. III., c. 2, speaking of some crimes, we find the following words:—"Whether they be treason or other felony." All treasons are therefore felonies though all felonies are not treasons. Learned but fanciful writers have given many derivations of the word felony. I think Sir Henry Spelman's is the most probable one. Felon, according to him, is derived from two northern words, namely, *fee*, which signifies fief; and *lon*,

which signifies price or value. Felony is, therefore, the same as "*pretium feudæ*"—the consideration for which a man gives up his fief. These derivations are more amusing than instructive.

MISDEMEANOR is a term generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, &c.

[\*3]

## \*CHAPTER II.

## THE PROSECUTOR.

THE first question to be considered upon the commission of an offense is, by whom is the offender to be brought to justice. Though every man is entitled to prefer an accusation against any one suspected of crime, criminal prosecutions for the most part are instituted in the name of the crown; and persons entitled to prefer accusations are bound by the strongest obligations both of law and reason, to do so; and those obligations are, in many cases, enforced by the law itself. Thus, in cases of treason and felony, a person knowingly concealing the crime is guilty of what is called a misprision of the crime. In the case of treason, he may be punished by the forfeiture of his goods, the loss of all profits of his lands during life, and imprisonment of his person for life. If a public officer conceal a felony, he is punishable by fine and imprisonment for a year and a day; and any person other than an officer, for the same offence, is punishable by fine and imprisonment in the discretion of the judges. Even in cases of misdemeanor, if the crime be of a public character, it is illegal to receive a consideration for suppressing a prosecution; and in a recent case in the Queen's Bench, it is questionable whether an arrangement for a compromise can be made even with the consent [ \*4 ] of the court. Magistrates have power, in order to compel persons to perform the duty imposed on them by law to prosecute, to bind them over to prosecute and give evidence, and, upon refusal, to commit them to prison. The law also holds out many inducements to persons to prosecute, and throws around a prosecutor every fair and reasonable protection, insomuch that he cannot even be sued for wrongly indicting a person, unless he has been actuated by malice, and the proceedings were destitute of any reasonable foundation.

## CHAPTER III.

## THE ARREST OF CRIMINALS.

WE shall now shortly consider the law relative to arrest on a criminal charge before indictment. In every case of treason, felony, or



actual breach of the peace, a person may be arrested on suspicion before any indictment is preferred against him. Formerly, grave doubts existed as to whether a person could be arrested before a bill was found. The difficulty seems to have arisen from the wording of Magna Charta, which enacts that, "No one shall be taken or imprisoned but by the lawful judgment of his peers, or by the law of the land." An early exception was taken to the case of where a thief was taken in the *manour*—that is, with the stolen goods actually in his possession. Even \*in [ \*5 ] the case of misdemeanors, there are certain acts of parliament which authorise a justice to issue his warrant, as in the case of keeping a disorderly house. In every case of treason and felony, and actual breach of the peace, the offender may be apprehended without warrant, if such a crime has actually been committed by some one. The arrest may take place in the night as well as day, and on Sundays, as on other days,—the statute of 29 Charles II., s. 6, making an exception in treasons, felonies, and breaches of the peace. It may also be made in any place, so that even a clergyman, upon a criminal charge, whilst in the performance of divine service, may be arrested. Any private person present when a felony is committed, is enjoined by law to arrest the offender. He is also bound to assist an officer requiring his aid in the apprehension of a felon. If a felony has been actually committed, a private person may direct an officer to arrest the person he supposes to be guilty. If the offence be committed in the presence of another, he may justify breaking open doors in pursuit of the felon; but no private person can justify breaking open doors in apprehending another upon the mere suspicion of the commission of a felony. Constables, *virtute officii*, without warrant, for treason, felony, breach of the peace, and certain misdemeanors less than felony, may arrest another. A constable may also arrest one upon the bare information of others, without any positive knowledge of the circumstances upon which the suspicion is grounded. A \*constable may also break open doors to take a felon who may [ \*6 ] be in his own house, provided that he has given notice that he is a constable, and has been refused admission. Justices of the peace may arrest on the commission of a felony, or a breach of the peace in their presence, or by issuing a warrant on the evidence and complaint of another. Sheriffs are enjoined to arrest felons, and all persons are required to assist them. A coroner, as a conservator of the peace, in relation to all felonies, may arrest, or cause another to arrest, a felon. The secretary of state may also issue his warrant to apprehend persons suspected of state offences. He may also commit without oath. A warrant may be granted, in extraordinary cases, by the privy council, or secretaries of state, by the speaker of the House of Commons or Lords, by justices of gaol delivery, oyer and terminer, justices at sessions, or by a judge of the Court of Queen's Bench. By 11 & 12 Vict. c. 42, commonly called Jervis' Acts, it is enacted, by s. 1, that in all cases where a charge or complaint shall be made before any one or more of her Majesty's justices of the peace, that any person has committed, or is suspected to have committed, any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever within the limits of the

jurisdiction of such justice or justices of the peace; or that any person guilty, or suspected to be guilty, of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices, is [ \*7 ] residing, or being, or is suspected \*to reside, or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant to apprehend such person. In some cases the party may be first summoned, and if the summons be not obeyed, a warrant may issue. The following are the forms, of such summons, &c. :—

*Information and Complaint for an indictable Offence.*

    } The information and complaint of C. D. of —, [yepman],  
to wit. } taken this — day of —, in the year of our Lord 185—,  
before the undersigned, [one] of her Majesty's justices of the peace in  
and for the said [county] of —, who saith that [ &c. stating the of-  
fence ].

Sworn before [me], the day and year first above-mentioned, at —.

*Warrant to apprehend a Person charged with an indictable Offence.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas A. B. of —, [labourer], hath this day been charged upon oath before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of —, for that he on — at —, did [ &c. stating shortly the offence ]: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before [me], or some other of her Majesty's justices of the peace in and for the said [county], to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid. J. S. (L. S.)

[ \*8 ] \*Summons to a Person charged with an indictable Offence.

To A. B. of —, [labourer].

Whereas you have this day been charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that you, on —, at —, [ &c. stating shortly the offence ]: These are therefore to command you, in her Majesty's name, to be and appear before me on — at — o'clock in the forenoon at —, or before such other justice or justices of the peace for the same [county] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the county aforesaid. J. S. (L. S.)

*Warrant where the Summons is disobeyed.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas on the — last past *A. B.* of —, [*labourer,*] was charged before the undersigned, [*one*] of her Majesty's justices of the peace in and for the said [county] of —, for that [*&c. as in the summons*]: And whereas [*I*] then issued [*my*] summons to the said *A. B.* commanding him, in her Majesty's name, to be and appear before [*me*] on — at — o'clock in the forenoon at —, or before such other justice or justices of the peace for the same [county] as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said *A. B.* hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons was duly served upon the said *A. B.*: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before me, or some other of her Majesty's justices of the peace in and for the said [county], to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid. *J. S.* (L. S.)

\*When the officer has made his arrest, according to the import of the warrant, he is, as soon as possible, to bring the offender to [<sup>\*9</sup>] the gaol, or before the justice. If a prisoner after arrest has escaped, the officer may follow him and retake him, wherever he find him, in the same or a different county. A rescue is a forcible setting at liberty against law of one arrested. The mere prevention of the arrest of one who has committed a felony is only a misdemeanor. But if an offender be taken and rescued, then, if the arrest were for felony, the rescuer is a felon; if for treason, a traitor.

By 22 Geo. III., c. 58, s. 2, it is made lawful for any one justice of the peace, upon complaint made before him upon oath that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house or other place, by warrant under his hand and seal, to cause every such place to be searched in the *day time*.

## CHAPTER IV.

## OF THE EXAMINATIONS.

WITHIN a reasonable time after the arrest of an offender, it is the duty of the officer to bring the accused before the magistrate to be examined; and after investigation, to be committed, bailed, or discharged, as the magistrate may think right. The examinations of the prisoner and the