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SOUTH



AUSTRALIA

FIFTY-NINTH REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

IN RESPECT OF IMPERIAL
LAWS APPLICATION WITHIN
THIS STATE IN RELATION TO
THE CRIMINAL LAW

1980

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The present members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., Chairman.

THE HONOURABLE MR. JUSTICE WHITE, Deputy Chairman.

THE HONOURABLE MR. JUSTICE LEGOE, Deputy Chairman.

D. W. BOLLEN, Q.C.

M. R. GRAY, S.-G.

J. F. KEELER.

D. F. WICKS.

The secretary of the Committee is Miss J. L. Hill, C/- Supreme Court, Victoria Square, Adelaide 5000

The Honourable Mr. Justice White was on long service leave when this matter was considered and accordingly he did not sign this report.

**FIFTY-NINTH REPORT OF THE LAW REFORM COMMITTEE OF
SOUTH AUSTRALIA IN RESPECT OF IMPERIAL LAWS
APPLICATION WITHIN THIS STATE IN RELATION TO THE
CRIMINAL LAW**

To:

The Honourable K. T. Griffin, M.L.C.,
Attorney-General for South Australia.

Sir,

We have already in the Fifty-Fourth Report of this Committee dealt with the general criteria for ascertaining whether a given statute of the Imperial Parliament which was a public general Act in force in England on the 28th day of December, 1836 was received as part of the law of South Australia on that date.

The reception of imperial statutes relative to the criminal law is in many ways easier than in the case of other branches of the law in that it must be assumed that for the peace, order and good government of South Australia the whole of the criminal law, both common law and statutory, immediately became applicable so far as it could be applied in South Australia.

The real difficulty with regard to the application of imperial law in this State stems from the provisions of Section 4 of the Criminal Law Consolidation Act 38 of 1876, part of which reads as follows:—

‘Nothing herein contained shall be deemed to repeal any Act or law not hereby expressly repealed, and the provisions herein contained shall be deemed to be cumulative to any such act or law, except so far as inconsistent (sic.) therewith, in which case the provisions of this Act shall be substituted for such act or law inconsistent (sic.) with this Act.’

In fact the State Act 38 of 1876 does not directly or indirectly repeal any imperial statute relating to the criminal law although it does repeal certain ordinances of the Parliament of South Australia which either recognised or adopted Acts of the Imperial Parliament, which had been passed just before or just after the founding of the colony, as law in South Australia. The result is that with one or two exceptions which are referred to in this report, the whole of the statutory criminal law of England must be taken to have formed part of the inherited law of the colony at its foundation. When the first general consolidation Act was assented to in 1876, no attempt was made to remove those statutes from the law. The difficulties with regard to the tests for inconsistency have been dealt with in our Fifty-Fourth Report and we need not repeat them here. Needless to say there is quite often only a small difference between the wording of one of the inherited imperial statutes and the section as it appeared in the Act 38 of 1876 or as it now appears in the present Criminal Law Consolidation Act, 1935. Having regard to the tests on inconsistency, it is probable that in most cases both the old inherited Imperial law and the present statute are in force in South Australia. The Crown has in fact argued that to be the position on a number of occasions to the knowledge of members of this Committee and on each occasion that submission has been upheld. The problem is not solved in the Criminal Law Consolidation Act, 1935 which by Section 4 simply repeals various Acts and Ordinances of the State of South Australia but says nothing about Imperial statutes except in specific provisions such as Section 6. In any event sections such as Section 6 of the 1935 Act assume the inheritance in this State of the Imperial statutes relating to the criminal law.

There is a further problem with which we have not dealt in this report, as we feel that it is a matter rather to be dealt with when the reports of the Mitchell Committee on the state of the criminal law are being translated into statute, and it is this:— In many cases the older Imperial statutes have been held to be declaratory of the common law. Accordingly in those cases merely repealing the Imperial statute, in the cases in which we recommend that that be done, will not completely solve the problem. It will mean that the statute has gone but the common law of which it is declaratory will remain. This we think can only be taken into account and borne in mind when the draftsman proceeds to deal generally with the criminal law and it is outside the terms of our remit.

Magna Carta Statute 9 Hen. III cc. 1–37 (1225) (Sometimes referred to as 25 Edw. I cc. 1–37 (1297)).

Chapter 17: This provides that no sheriff, constable, foreigner or any bailiff shall hold pleas of the Crown. Coke says that the reason for this statute was that none of the royal officers above named could command the Bishop of the diocese to give a delinquent his clergy where he ought to have it and secondly, which was more important when the death penalty was frequent, that the life of man which is the most precious of all things in this world ought to be tried before judges of learning experienced in the laws of the realm. (2 Co. Inst. 30–31). The first of those reasons has no force today when clergy has been abolished and the second is provided for in that all indictable offences have to be tried either before a Judge of the Supreme Court or a Judge of the District Court, according to the nature of the offence. The statute was repealed in England by the Statute Law Revision Act 1892 and can be repealed here.

Chapter 22 provides that the lands of felons shall not go into the hand of the Crown beyond one year and one day and then be delivered to the mesne lord. There are no mesne lords in South Australia today because of the operation of the statute *Quia Emptores* and forfeiture for treason and felony was abolished in South Australia by the Act 25 of 1874 (see now section 295 of the Criminal Law Consolidation Act, 1935). According to Coke (2 Co. Inst. 36) this chapter of Magna Carta is merely declaratory of the King's ancient prerogative so that this will be one of a number of cases where the repeal of the statute will not repeal the underlying law. However we think that the Act of 1874 has already sufficiently done that for South Australia. The statute was repealed in England by the Statute Law Revision Act 1948 and can be repealed here.

Chapter 34 provides that a woman shall not have an appeal of death except in respect of her husband. Appeals, as we have said in previous reports, have been obsolete for many years and were probably obsolete by 1836. However it was still thought necessary to repeal this statute by the Statute Law Revision Act 1863 in England and it should be repealed here.

Charta Forestae; 9 Hen. III (1225) (Sometimes referred to as 25 Edw. I (1297)).

Part of this, which was the general law of the forest, had already been repealed before 1836 by 7 & 8 Geo. IV c. 27 and 9 Geo. IV c. 53. We do not think that the remainder ever became part of the law of South Australia but as it has a number of

criminal offences in it it would be wise to repeal it here. The residue was repealed in England by the Statute 1971 Chapter 47. It should be repealed here.

Statute of Merton 20 Hen. III (1235) (Otherwise 40 Hen. III (1255)).

Chapter 6 deals with the ravishment of a ward. This was basically enacted to prevent the lord losing the value that he could obtain from the marriage of the ward, and so imprisonment was awarded until satisfaction was made both to the lord who lost his wardship and to the King. The Statute is not referred to in the textbooks on the subject because different provision was made for the same thing by the Statute of Westminster; 13 Edw. I c. 35: see for example *East's Pleas of the Crown (1803)* Volume 1 page 459. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

The Statute of Marlborough 52 Hen. III cc. 1-29 (1267).

Chapter 8 deals with imprisonment for redisseisin. As we have pointed out in previous reports, the real actions have long since become obsolete in South Australia if we ever inherited them. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

The Statute of Westminster I; Statute 3 Edw. I cc. 1-51 (1275).

Chapter 9: This provides that all men shall be ready to pursue felons. It is the original statute of hue and cry. It was probably in force in South Australia in 1836 until we got a police force together. It is obsolete now. It was repealed in England in 1887 and can be repealed here.

Chapter 12: This deals with the punishment of felons who refuse lawful trial. There are provisions now in the Criminal Law Consolidation Act dealing with this matter, e.g. Section 284. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Chapter 14: This deals with the question of whether an accessory can be appealed before his principal. Appeals of murder are long since obsolete in South Australia, if indeed we ever inherited them. The statute was repealed by the Statute Law Revision Act 1863 and can be repealed here.

Chapter 15: This is an early statute with regard to bail. It was partly repealed in England by the Criminal Law Act 1826 (7 Geo. IV c. 64), partly by 9 Geo. IV c. 53 and the remainder by the Sheriffs Act 1887. The small amount of it which remained as possible law in this State in 1836 should be repealed here.

Chapter 25: This is the original statute on champerty, and provides that those who commit it shall be punished at the King's pleasure. It was not repealed in England until the Criminal Law Act 1967 (1967 Chapter 58). The question of champerty is still of importance in the law today. It should really be dealt with however, not in its mediaeval context, but in the context of abuse of the processes of the Court in general. We suggest that you refer this general topic to us and that meanwhile the statute remain in force.

Chapters 26, 27 and 30: These deal with extortion by officers of the Crown and their servants. Extortion in a public office is not covered in this respect in the Criminal Law Consolidation Act 1935. Chapter 26 at least of these statutes was not repealed in England until the Theft Act 1968 (1968 Chapter 60). We

recommend that these three Chapters remain in force until the reports of the Mitchell Committee on the criminal law are given statutory force. Chapters 27 and 30 were repealed by the Statute Law Revision Act 1863.

Chapter 28: This deals with the King's clerks committing maintenance, and is an extension of Chapter 25. It was not repealed in England until 1967. As in the case of Chapter 25 we think that this should be subsumed under the general rubric of abuse of the processes of the Court and referred to us and that meanwhile the statute remain in force.

Chapter 33: This is a further statute with regard to maintenance. As Coke points out (2 Co. Inst. 225) the statute of Merton gave power to a person to appear by attorney, a matter with which we have already dealt in the previous reports, but as a result barrators and maintainers of quarrels were countenanced by sheriffs to be attorneys to make suit and even amongst those to give judgment, and that stewards of great lords and of others who had no letters of attorney according to the statute of Merton, would do the like and this statute was to remedy those mischiefs. The statute was repealed in England by the Statute Law Revision Act, 1863. We doubt whether this particular offence, although it does come in a sense within abuse of the processes of the Court, need wait for any further report by this Committee and the statute can be repealed.

Chapter 34: This provides that no one shall report slanderous news whereby discord may arise, upon pain of imprisonment. Reading some of the news media would make us think that this was a very useful statute, but it does not seem to have been put into force for many years. It was repealed in England by the Statute Law Revision Act, 1887 and it can be repealed here.

Statutum da Bigamis 4 Edw. I st. 3 (1276).

We have dealt with the whole of this statute except for Chapter 5 which deals with bigamy itself and clergy. It was repealed in 1863 in England and clergy possibly never came to South Australia. It should be repealed here.

Statute of Gloucester 6 Edw. I cc. 1-15.

We have already dealt with the whole of this statute in the Fifty-Fifth Report except for Chapter 9 which deals with the distinction between murder and manslaughter where the killing was by misfortune or in self-defence and this statute is also the source of the rule which is still part of the law of murder and manslaughter at the present day that the death must occur within a year and a day after the act causing death. The statute was repealed in England in 1863. It can be repealed here but with a saving of the amendments to the law made by the statute, which as we have said, are still part of the law in South Australia.

The Statute of Westminster II 13 Edw. I st. 1 cc. 1-50 (1285).

Chapter 38: This deals with the composition of juries and petty assizes. It was repealed in England in 1863. The matter is sufficiently dealt with today by the Juries Act, 1927 and it can be repealed in South Australia.

Chapter 49: This deals with further difficulties in the law of champerty in relation to buying the title of land depending in suit. This we think again should be reviewed by us under the

general rubric of abuse of process and we recommend that this statute remain in force until we report to you on the general topic.

The Statute of Wynton 13 Edw. I st. 2.

Most of this statute was repealed by 7 & 8 Geo. IV c. 27 s. 1 and so never became law in South Australia, but Chapter 6 relating to hue and cry remained. This formed part of the law in 1836 until we got a police force together. Chapter 6 was repealed in England by the Statute Law Repeals Act, 1969 and it can be repealed here.

Statute 23 Edw. I c.1—Statutum de Frangentibus Prisonam 23 Edw. I c. 1 (1295) (in Ruffhead 1 Edw. II st. 2 (1307)).

The offence of prison breaking and escapes from prison generally is now dealt with in the Prisons Act 1936 Section 29 and this statute can be repealed. It was repealed in England by the Statute Law Revision Act 1948.

Statute Articuli Super Chartas 28 Edw. I st.1 (in Ruffhead 28 Edw. I st. 3) (1300).

Chapter 9: This deals with the composition of juries and is no longer of any importance since the Juries Act 1927. It was repealed in England in 1863 and can be repealed here.

Chapters 10 and 11: These deal with embracery and maintenance and are more legislation relating to abuse of the processes of the Court. Chapter 10 was not repealed in England until 1969 and Chapter 11 was not repealed until 1967. We think for the reasons we have advanced earlier that the two chapters should remain in force in South Australia until we have reported to you on the general topic of abuse of process of the Court.

Statutum de Appellatis 28 Edw. I st. 2 (1300).

This deals with those who falsely brought appeals in felony. Appeals, as we have said, were probably obsolete even in 1836 but the statute still remained on the books. It was repealed in England in 1863 and should be repealed here.

The Statute of Conspirators 33 Edw. I st. 2 (1304).

This deals with the general law of conspiracy and with the definition of champerty. Ruffhead notes that the part relating to champerty was not in the original statute. However it was treated as being part of the statute down to the Criminal Law Act 1967 in England (1967 Chapter 58) and we think we must do so here. As far as the Statute concerns conspiracy, that will no doubt be dealt with at the same time as the reports of the Mitchell Committee are dealt with, but the part relating to the definition of champerty is the same definition that is used today and again should be dealt with by us under the general rubric of the processes of the Court.

The Statute of Champerty 33 Edw. I st. 3.

This again deals with abuse of the processes of the Court and for the reasons we have already said should be left until we report to you on the general subject. It appears to have been repealed in England in 1967. The note in the chronological table of statutes is not clear on the point, but we think that this is the probable result of comparing the index in Ruffhead with the index in the Statutes at Large which treats the statute that we have just referred to as a Statute of uncertain date.

Statute 33 Edw. I st. 4—an Ordinance for Inquests—does not appear in the Statutes of the Realm edition.

It deals with challenges to jurors on behalf of the Crown. That matter is now dealt with by the Juries Act and this statute can be repealed.

Articuli Cleri 9 Edw. II st. 1 c. 1-16 (1315).

Chapters 10, 15 and 16 deal with sanctuary and with privilege of clergy. These things are all obsolete in South Australia. We doubt whether sanctuary was ever received here; privilege of clergy might have been. In any case they were all repealed by the Statute Law Revision Act 1863 and should be repealed here.

Statuta Incerti Temporis; Statutum de Magnis Assisis et Duellis.

This deals with battle and with the grand assize and was repealed in England by the Statute Law Revision Act 1863. It can be repealed here.

Statutum de Catallis Felonum.

This dealt with forfeiture of the chattels of those who have suffered corruption of blood by reason of convictions for felony. This as we have pointed out was abolished in South Australia in 1874. The statute was repealed in England by the Statute Law Revision Act 1948 and can be repealed here.

Abjuratio et Juramentum Latronum.

This dealt with abjuration from the Realm and with punishment of thieves. It was repealed in England in 1863 by the Statute Law Revision Act of that year and can be repealed here.

Statute 1 Edw. III st. 2 c. 14 (1327).

This is another in the series of statutes dealing with maintenance and champerty. It was not repealed in England until 1967. For the reasons we have set out before, we think that it should not be repealed here until we have reported to you fully on the general question of abuse of processes of the Court.

Statute 2 Edw. III c. 3 (1328).

This is the first of a long series of statutes dealing with those who go armed and in particular those who go abroad with arms by night. There was a difference of view between Hawkins and East on this point as to whether if persons so offending did not surrender they could forthwith lawfully be killed: see 2 *Hawkins: Pleas of the Crown* Chapter 13 and contrast *East: Pleas of the Crown* Volume 1 page 303. It almost certainly formed part of the law of South Australia in 1836. It was not repealed in England until 1967. We recommend that it be not repealed here until the reports of the Mitchell Committee have been given effect to.

Statute 14 Edw. III c. 15.

This provides that no pardon shall be granted for any felony but where the King may do it saving his oath. This is an extension of the Statute 2 Edw. III c. 2 to which we referred earlier. The statute is not referred to in any of the later textbooks but is treated as being a restriction on pardons by Coke (3 *Co. Inst.* 236). It does not seem to be of any value at the present day. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute 20 Edw. III c. 4 (1346).

This is another in the long series of statutes against maintenance and champerty and we recommend that it remain until we deal with the general subject of abuse of process of the Court.

Statute 25 Edw. III st. 5 c. 2.

This is the general statute with regard to treason. It is in force in South Australia today. It was amended before the Province of South Australia was proclaimed by the Statutes 9 Geo. IV c. 31 s. 1, relating to petty treason, 11 Geo. IV & 1 Will. IV c. 66 s. 31, relating to counterfeiting the great seal, and 2 & 3 Will. IV c. 34 s. 1 dealing with counterfeiting coin (adopted by 9 Vict. No. 1 in this State); otherwise the statute is still in force in South Australia. It is not certain that the Parliament of South Australia has any power to repeal this statute or indeed any of the other statutes dealing with treason in relation to the Queen personally. The question, which has been much discussed, is whether this Act by necessary implication extends throughout the Queen's Dominions. It would certainly seem a remarkable thing if the Queen lost the protection of the law relating to treason simply by stepping outside the confines of England. As to what the present law should be in relation to this offence, you will of course be guided by the recommendations of the Mitchell Committee, but we do draw your attention to the fact that it may not be possible to repeal this Statute in relation to South Australia because of the operation of the Colonial Laws Validity Act 1865 (28 & 29 Vict. c. 63). It should also be added that Coke (3 Co. Inst. 4) regards most of this Statute as being declaratory of the common law.

Statute 27 Edw. III st. 1 c. 2.

This provides that if a pardon is granted in felony because of false information, the pardon shall be void. This was held to be generally valid by Coke (3 Co. Inst. 236) and is probably still in force in South Australia today. It was not repealed in England until 1948 by the Statute Law Revision Act of that year. We think it can be repealed here but a provision in those terms ought to be placed in the Criminal Law Consolidation Act.

Statute 28 Edw. III c. 3.

This provides that no one shall be imprisoned or disinherited or put to death without being brought to answer by due process of law. This statute is referred to as of general application by Coke (4 Co. Inst. 38). The statute is still in force in England. It is of the utmost importance in the criminal law and it should not be repealed until a similar section is placed in the new Criminal Law Act or Acts to be passed following the consideration of the reports of the Mitchell Committee.

Statute 28 Edw. III c. 13 (1354).

This provides that, where the defendant is an alien, he is entitled to a jury de medietate linguae. Juries de medietate linguae were abolished by the Juries Act 1927 Section 85. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute 38 Edw. III st. 1 c. 12 (1364).

This deals with embracery and with jurors taking rewards to give a verdict. This does not appear to be dealt with either in the Criminal Law Consolidation Act or the Juries Act, no doubt

relying on the old law. The statute was repealed in England in 1863. We see no reason why it should not be repealed here but a section dealing with the problem, which is still with us today very occasionally, should be dealt with by a substantive section in the new Criminal Law Act.

Statute 42 Edw. III c. 11 (1368).

This is a statute relating to the returns of jurors' names and their availability to the parties. It was repealed in part by the Juries Act 1825 (5 Geo. IV c. 50 s. 62) and by the Statute 3 & 4 Will. IV c. 91 s. 50. The residue was repealed by the Statute Law Revision Act 1948. The topic is dealt with in Sections 39-41 of the Juries Act 1927 and the statute can be repealed here.

Statute 2 Ric. II c. 5 (1378).

This is the Statute of Scandalum Magnatum, the Statute penalising those who tell slanderous lies of the great men of the realm. We think that this matter can be dealt with sufficiently today by the ordinary law of libel and slander and we do not think that the additional sanction of the statute is required. It was repealed in England by the Statute Law Revision Act 1887 and it can be repealed here. We do however draw attention to 3 *Coke's Institutes* Chapter LXXVI page 174 from which it appears that there was such a jurisdiction at common law prior to the statutes of Scandalum Magnatum.

Statute 5 Ric. II st. 1 c. 8 (1381).

This is the first of the statutes of forcible entry. It was considered to be in force in Queensland by Sir Samuel Griffith when drawing his criminal code in 1899. It was repealed in 1977 in England. Part of the area is now covered by Section 243 of our Criminal Law Consolidation Act. However the whole statute should not be repealed until the new Criminal Law Act comes into force after consideration of the reports of the Mitchell Committee.

Statute 12 Ric. II c. 11 (1388).

This is the second of the statutes of Scandalum Magnatum. The same observations apply to it as to the previous one. It was likewise repealed in 1887 in England and can be repealed here.

Statute 13 Ric. II st. 2 c. 1 (1389).

This provides that in a pardon of murder, treason or rape the pardon is not valid unless the offence is specifically set forth. The statute was partly repealed by 16 Ric. II c. 6. However with regard to rape, it is held to be in force in *East: Pleas of the Crown* Volume 1 page 449. That part of the statute was repealed by the Statute Law Revision Act 1948. It should not be repealed here until the new Criminal Law Act comes into force and the question of pardon is dealt with comprehensively.

Statute 15 Ric. II c. 3 (1391).

This statute deals in general with the jurisdiction of the admiral and with his criminal jurisdiction. In so far as it deals with the criminal jurisdiction, it was repealed in England by the Criminal Law Act 1967 (1967 Chapter 58). Part of the area is covered by the Offences at Sea Act 1980 of this Parliament. It should however not be repealed until the whole of the Admiral's jurisdiction is integrated into the criminal law recension which has yet to take place after consideration of the reports of the Mitchell Committee.

Statute 15 Ric. II c. 2 (1392).

This is the second of the statutes of forcible entry. The same comments apply to it as to the previous one. It was repealed in 1977 in England. It should not be repealed here until the new general Criminal Law Act comes into force.

Statute 7 Hen. IV c. 4 (1405).

This deals with gaolers permitting prisoners to escape. This matter is now dealt with by the Prisons Act 1936. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute 7 Hen. IV c. 12 (1405).

This provides that where a person who commits treason holds lands to the use of others the lands shall not be forfeited. It is unlikely that that ancient device would be used now. The land would almost certainly be in trust under present day law. It was repealed in England by the Statute Law Revision Act 1948 and can be repealed here.

Statute 11 Hen. IV c. 9 (1409).

This deals with the return of jurors and indictments. The matter is now dealt with by the Juries Act 1927. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute 13 Hen. IV c. 7 (1411).

This gives power to two Justices of the Peace and the Sheriff to arrest rioters. The powers given by this statute are discussed in *Hawkins: Pleas of the Crown 8th edition (1824)* volume 1 pages 519-520. This statute would seem to be cumulative upon the power given by Section 244 of our Criminal Law Consolidation Act 1935. The statute was repealed in England partly by the Statute Law Revision Act 1948 and partly by the Criminal Law Act 1967. It can be repealed here once general provisions as to riot are enacted in a new Criminal Law Act, following the Mitchell Reports.

Statute 2 Hen. V st. 1 c. 6 (1414).

This enacts that breaking of truces or safe conducts is high treason. This is one of the many statutory extensions of treason which made the doctrine of constructive treason so dangerous. It was probably repealed by the Statute 1 Mary Sess. 1 c. 1 but was specifically repealed in England by the Statute Law Revision Act 1863. It can be repealed here.

Statute 2 Hen. V st. 1 c. 8 (1414).

This provides for commissions to be awarded to enquire of right and of any default of justices therein. It is an extension of the statute 13 Hen. IV c. 7 about which we have spoken above. It was repealed in England partly by the Statute Law Revision Act 1948 and partly by the Criminal Law Act 1967. It can be repealed here.

Statute 3 Hen. V c. 6 (1415).

This statute provides that it is treason to clip, wash or file money. Offences relating to money are now dealt with in Part IV of the Crimes Act of the Parliament of the Commonwealth and this statute can be repealed. It was repealed in England by the Statute Law Revision Act 1863.

Statute 2 Hen. VI c. 17 (1423).

This provides that persons indicted of high treason, escaping out of prison, shall be adjudged traitors. This was impliedly repealed by the Statute of 1 Mary Sess. 1 c. 1 to which we referred earlier. It was expressly repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute 8 Hen. VI c. 9 (1429).

This is one of the statutes of forcible entry and is consequent upon the two Statutes of Richard II to which we referred earlier. It is in force in South Australia. It was repealed in 1977 in England. As with the two Statutes of Richard II this statute should not be repealed here until the new general Criminal Law Act comes into force.

Statute 8 Hen. VI c. 29 (1429).

This is one of the statutes which provides that an inquest shall be de medietate lingue where an alien is a party. It was repealed in South Australia impliedly by the Juries Act 1927 Section 85. It was repealed in England by the Statute Law Revision Act 1863 and can be expressly repealed here.

Statute 14 Hen. VI c. 1 (1435).

This provides that justices at nisi prius may give judgment of a man attainted or acquitted of felony. Circuit procedure in South Australia is governed by the Supreme Court Act and by proclamations made from time to time by His Excellency the Governor. The statute is not required here and can be repealed. It was repealed in England partly by the Supreme Court of Judicature (Consolidation) Act 1925 and partly by the Statute Law Revision Act 1950.

Statute 18 Hen. VI c. 14 (1439).

This provides penalties for taking bribes in the arraying of a jury. Ruffhead treats the statute as expired but this would seem to be wrong on the wording of the statute 'Adonqes icell ordenaunce endurera perpetuelment'. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute 20 Hen. VI c. 9 (1441).

This provided that peeresses indicted of treason or felony should be tried in the same way as peers of the realm are tried. It is doubtful whether this Statute ever extended to South Australia. It was repealed in England by the Criminal Justice Act 1948 and can be repealed here.

Statute 11 Hen. VII c. 1 (1494).

This statute provides that service to a King de facto is not high treason if the King de jure regains the throne. It is in force in South Australia today. It is still in force in England. It should remain in force until the general law of treason is dealt with following the reports of the Mitchell Committee.

Statute 22 Hen. VIII c. 14 (1530).

This deals with trials of murders and felonies committed out of the country and with peremptory challenges to a jury. The second of these is regulated by the Juries Act 1927. The statute was repealed in England in 1863 and can be repealed here.

Statute 26 Hen. VIII c. 13 (1534).

This deals with compassing the death of or bodily harm to the King, Queen or heir apparent. The statute was probably repealed by 1 Mary Sess. 1 c. 1 and possibly also by 1 & 2 Phil. & Mary c. 10. It was expressly repealed in England in 1863, no doubt from an abundance of caution, and can be repealed here.

Statute 27 Hen. VIII c. 4 (1535).

This statute relates to piracy and provides that all piracy within the jurisdiction of the Lord Admiral shall be tried according to the course of the common law. It is no doubt the source of the jurisdiction to try piracy in our Supreme Court today. The defect in the law which it was meant to supply is well set out in 3 *Co. Inst.* 111-114. The history of the jurisdiction and of the later statutes on the same point are set out in *East's Pleas of the Crown* Volume 2 pages 794-796. The statute was repealed in England in 1863. It should remain in force in South Australia until the general Criminal Law Act consequent on the reports of the Mitchell Committee comes into force.

Statute 28 Hen. VIII c. 1 (1536).

This provides that offenders in the case of petty treason are not to have their clergy and also deals with persons standing mute when charged with larceny and with other purposes of the criminal law. Benefit of clergy was taken away before South Australia became a Province and the Act can safely be repealed. It was repealed in England in 1863.

Statute 28 Hen. VIII c. 15 (1536).

This is the second of the statutes relating to the jurisdiction in piracy and the punishment of offenders. It is, as we said with the previous statute, one of the foundations of the jurisdiction of the Supreme Court in relation to this matter. It was not repealed in England until the Criminal Law Act 1967. Like its predecessor it should remain in force in South Australia until the general Criminal Law Act is passed.

Statute 33 Hen. VIII c. 20 (1541).

This relates to treason committed by a lunatic. This differs from all the modern conceptions as to criminal liability of persons of unsound mind. It was repealed in part by the Statute Law Revision Act 1863 and the remainder by the Statute Law Revision Act 1948. It can be repealed here.

Statute 35 Hen. VIII c. 2 (1543).

This Act deals with the trial of treasons committed out of the King's dominions. It would appear from *East: Pleas of the Crown* Volume 1 page 103 that this is the source of the jurisdiction relating to the trial of treasons out of the realm. East says expressly that the statute was not repealed by the Statute 1 & 2 Phil. & Mary c. 10. The statute no doubt provides the jurisdiction, if it were ever required, for our Supreme Court to try such treasons today. The statute should not be repealed until the general Criminal Law statute has been put on the statute book in this State.

Statute 37 Hen. VIII c. 22 (1545).

This is the source of the jurisdiction to pray a *tales de circumstantibus*. The matter is now regulated by Section 69 of the

Juries Act 1927. Accordingly the statute can be repealed in its application to South Australia. It was repealed in England in 1863.

Statute 1 Edw. VI c. 12 (1547).

This deals with various forms of treason and felony and says that wilful killing by poisoning shall be adjudged murder. It was repealed in part by 9 Geo. IV c. 31 s. 1 and the balance was repealed by statutes of 1863, 1887, 1925 and 1948. It can be repealed here so far as it was not repealed by the statute of 9 Geo. IV.

Statute 5 & 6 Edw. VI c.11 (1552).

This is an Act for the punishment of various kinds of treasons. In so far as it creates new treasons itself the statute was repealed by the Statute 1 Mary Sess. 1 c. 1. The statute has been repealed by a series of Acts in England of 1863, 1925, 1938, 1945 and 1948. Some parts of the statute, namely dealing with misprision of treason and that no one is to be convicted of treason except on the testimony of two lawful accusers, are no doubt still part of the law in this State. On the whole it may be wiser to leave the statute until the general statute on the criminal law is passed.

Statute 1 Mary Sess. 1 c. 1 (1553).

This is the statute which provided that nothing was to be treason except what had originally been laid down to be so in the Statute of 25 Edw. III. The statute is no doubt in force in South Australia. It was not repealed in England until the Criminal Law Act 1967. We think that it should remain in force until the general statute on the criminal law comes into force in South Australia.

Statute 2 & 3 Phil. & Mary c. 10 (1554).

This is a statute making various offences treason against the King and Queen and their issue. In so far as it does that the statute has of course expired. It has also provided for counsellors, procurers, comforters and abettors to be punished in the same way as principal offenders. The general parts of this statute are treated as still being in force by *East: Pleas of the Crown* Volume 1 pages 102 and 217 and accordingly it is necessary to repeal the statute in South Australia. It was repealed in England by the Criminal Law Act 1967. Because of its general provisions it may be wise not to repeal the statute here until the general Act on the Criminal Law reaches the statute book in this State.

Statute 5 Eliz. c. 9 (1562).

This is the first of the statutes that have endured to modern times on perjury. The reason for it is pointed out by Coke (3 Co. Inst. 163-164): that the punishment of perjury was so severe at the common law that very few people were convicted and so the lesser penalties of 5 Eliz. c. 9 were brought into force. In addition the scope of the documents as to which perjury could be committed was widened by the statute. The scope of perjury at the common law is set out in *Hawkins' Pleas of the Crown 8th Edition (1824)* Volume 1 pages 429-435. The statute was repealed in England by the Perjury Act 1911 (1 & 2 Geo. V c. 6). Section 239 of the Criminal Law Consolidation Act does not define 'perjury' but merely regulates the existing law, including therein of course this statute of Elizabeth. For this reason the

statute should not be repealed in South Australia until the general statute on the criminal law finds its way onto the statute books.

Statute 18 Eliz. c. 5 (1576).

This is a statute to regulate proceedings by common informers. Actions by common informers or as they are sometimes called qui tam actions are still possible in South Australia. An instance is to be found in Section 46 of the State Constitution Act. Other instances can be found in the Lord's Day Acts which are still in force in South Australia. Accordingly this statute which regulates proceedings by common informers still has value in South Australia today. It was repealed in England by the Statute Law Revision Act 1959. The whole idea of common informers has suffered an eclipse in recent years and it might be thought worthy of question whether this method of bringing the law into force should have any part in the law of South Australia today. We suggest that the topic be referred to the Law Reform Committee for investigation and report and that meanwhile the statute remain on the statute book.

Statute 31 Eliz. I c. 5 (1588).

This is a further Act regulating common informers. It is in force in South Australia today. For the reasons which we gave regarding the previous statute, we think that this statute should also remain upon the statute book until we report to you on the general topic.

Statute 31 Eliz. I c. 11 (1588).

This is the third of the statutes of forcible entry. The statute was repealed in 1977 in England. For the reasons which we gave in relation to the statutes of Richard II and Henry VI, we think that this statute should remain upon the books until the new Criminal Law Act, following the reports of the Mitchell Committee, goes onto the statute book.

Statute 31 Eliz. I c. 12 (1588).

This statute provides punishment for horse stealing. It was repealed in England by the Criminal Law Act 1967. This topic is covered in South Australia by Section 136 of the Criminal Law Consolidation Act 1935 and the definition of 'cattle', which includes a horse, in Section 5 of the Act. Accordingly we do not think that it is necessary for this statute to remain on the statute book and it can be repealed in South Australia.

Statute 21 Jac. I c. 6 (1623).

This statute was to remedy one of the difficulties arising out of benefit of clergy. For a large number of felonies a man could escape hanging by pleading his clergy, that is to say in practice by reading in Latin the first verse of Psalm 51. However a woman could not and cannot be a priest and therefore could not claim clergy and accordingly she was in danger of hanging where the man was not. This statute provided that she should be burned in the hand in such cases as clergy would have been allowed to a man. The administration of the death penalty has been abolished in South Australia, and benefit of clergy was itself abolished in the time of George IV. Accordingly there is no longer any need for this statute. It was repealed in England in 1863 and can be repealed here.

Statute 21 Jac. I c. 15 (1623).

This is another of the statutes of forcible entry. It was repealed in England in 1977. It would seem to be in force here and should remain so until the general criminal law Act is passed following the reports of the Mitchell Committee.

Statute 22 & 23 Car. II c. 11 (1670).

This is another of the statutes relating to piracy. A small part of what is therein contained is now in Section 209 of the Criminal Law Consolidation Act 1935 but most of the statute is not and was no doubt assumed as being already the law by the then Mr. Chamberlain when drawing the 1935 Act. It is without doubt part of the jurisdictional substratum of the Supreme Court on this subject. It was repealed in England by the Statute Law Revision Act 1966. It should not be repealed here until the new general statute on the criminal law reaches the statute book.

Statute 5 & 6 Will. & Mary c. 13 (1694).

This statute provided that if any person received a pardon for a felony the Judge before whom any such person came could require him to enter into recognizance with two sureties to be of good behaviour for a period not exceeding seven years. Such a method of proceeding would be contrary to modern ideas on punishment because it could operate as a term of imprisonment in default of finding sufficient sureties, for a person who had actually been pardoned by the Governor in Council. It was repealed in England by the Statute 19 & 20 Vict. c. 64 and can be repealed here.

Statute 6 & 7 Will. III c. 17 (1694).

This statute was aimed at preventing counterfeiting and clipping the coin of the realm. It was repealed in England by the Statute Law Revision Act 1867. As we have said with regard to a previous coinage Act these matters are now regulated by Part IV of the Crimes Act of the Commonwealth Parliament. Accordingly there is no reason why this statute should remain on the statute book in South Australia and it may be repealed.

Statute 7 & 8 Will. III c. 3 (1695).

This statute regulates trials in cases of treason and misprision of treason. It is still the statute regulating trials for treason in England although it has been amended by the Treason Act 1945 and in parts by the Statute Law Revisions Act 1888 and 1948. It is without doubt in force in South Australia and would apply to any trial for treason in this State. We think that the statute should remain in force until the general Criminal Law Act passed following the reports of the Mitchell Committee becomes law.

Statute 9 Will. III c. 41 (1697).

This was principally to prevent the embezzlement of army and naval stores. Such matters are dealt with by Commonwealth law in Australia. The Act was repealed by Acts of 1865, 1867 and 1875 in England and can be repealed here.

Statute 11 Will. III c. 7 (1699).

This is another in the series of statutes relating to piracy. According to *East: Pleas of the Crown* Volume 2 page 797, the reason for the statute was to counter commissions granted by James II after his abdication. Section 9 of the statute, as East notes at page 800, follows verbatim the section 22 & 23 Car. II c.

11 s. 9 about which we have spoken above. East also considers that this statute of William III is a legislative interpretation of the statute 28 Hen. VIII c. 15 (East page 803).

Section 18 of the statute was repealed before South Australia became a province by 9 Geo. IV c. 31 s. 1. The balance of the statute is without doubt still in force in South Australia. We do not think that the South Australian Parliament, at least so far as its powers extend at present, can repeal this statute in its application to South Australia as on the face of it it applies to 'His Majesty's islands, plantations, colonies, dominions . . .'.

Until the Colonial Laws Validity Act 28 & 29 Vict. c. 63 ceases to apply to South Australia, it would seem that this statute will have to continue in force.

Statute 11 Will. III c. 12 (1700).

This statute provides that governors of colonies are punishable in England for any crime committed by them in the colony. The statute was extended by the Criminal Jurisdiction Act 1802 (42 Geo. III c. 85). The statute is without doubt in force in South Australia. As the statute expressly applies within Her Majesty's colonies, like the last preceding Act it cannot be amended or repealed in South Australia as long as the Colonial Laws Validity Act continues to apply to this State.

Statute 1 Anne st. 2 c. 9 (1702).

This statute provides for punishing accessories to felonies and receivers of stolen goods. It deals with the allowance of witnesses on behalf of the prisoner in treason and felony trials, penalties for perjury, and casting away of ships by sea captains. The statute was repealed in part by 7 & 8 Geo. IV c. 27 s. 1 and the remainder by the Perjury Act 1911 and the Statute Law Revision Act 1948. With the exception of the right for a prisoner to call witnesses in a charge of treason and felony, the rest is obsolete in South Australia. This is covered by Section 288 of the Criminal Law Consolidation Act 1935. We think that the statute can be repealed here.

Statute 1 Anne st. 2 c. 17 (1702).

This statute declares it to be treason to interfere with the succession to the throne as it is now established and by virtue of which our present Queen is Queen of England. Accordingly this statute is still in force in South Australia and it is partly in force still in England. We think that with the exception of Section 3 which protects the present succession to the throne, the rest of the statute could properly be repealed and that Section 3 should not be repealed until the general Criminal Law Act comes into force following the report of the Mitchell Committee.

Statute 6 Anne c. 31 (1706).

This deals with arrest of housebreakers and burglars. It was repealed in part by the Disorderly Houses Act 1818 (58 Geo. III c. 70 s. 1) and by the Criminal Law Act 1826 (6 Geo. IV c. 64 s. 32). The residue was repealed by the Sheriffs Act 1887. There is nothing in this statute that is not already covered by the Criminal Law Consolidation Act 1935 and we recommend that the residue of this statute be repealed in this State.

Statute 13 Anne c. 21 (1713).

This statute dealt with the long held view of those who lived along rocky sea coasts that the wrecking of a ship was in a sense

an act of God and one which was laudable to be assisted by the acts of men, such as boring holes in the ship to make sure it sank. The statute was repealed in England by the Merchant Shipping Repeal Act 1854 (17 & 18 Vict. c. 120 s. 4). It can be repealed here.

Statute 1 Geo. I st. 2 c. 5 (1714).

This is a consolidating Act on the subject of riot and was the main statute on the subject for centuries. According to *East: Pleas of the Crown* Volume 1 page 76 its main purpose was to distinguish between those riots which might amount to a general levying of war and therefore be high treason and those which were merely disturbances which ought to be punished in a lesser fashion. It is wider in its scope than the sections on riot in the Criminal Law Consolidation Act. It was not repealed in England until 1973 by the Statute Law (Repeals) Act of that year (1973 Chapter 39). We think that the statute should remain in force in South Australia until the general Criminal Law Act is passed following the consideration of the reports of the Mitchell Committee.

Statute 1 Geo. I st. 2 c. 25 (1714).

This statute deals with embezzlement of stores of war preventing cheats and abuses in paying seamen's wages and for continuing previous acts with relation to piracy. None of this needs to be continued in force in South Australia today. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 4 Geo. I c. 11 (1717).

This statute is for the further prevention of robbery, burglary and other felonies and for declaring the law in relation to piracy. As far as the area relating to robbery and burglary is concerned, this was repealed by 7 & 8 Geo. IV c. 27 s. 1. A further amendment as to piracy was made by the Piracy Act 1837 (7 Geo. IV & 1 Will. IV c. 88 s. 1) but this was just too late to affect the reception of law into South Australia. The remainder of the Act has been repealed by the Statute Law Revision Acts 1887 and 1948 and the Criminal Law Act 1967. We do not think that any part of the Act goes beyond the law as we at present have it and the statute can be repealed if we have the power to do so which is doubtful as the statute adopts 11 & 12 Will. III c. 7 which by its terms applies throughout the Queen's Dominions.

Statute 4 Geo. I c. 12 (1717).

This statute extends and makes perpetual the Statute 12 Anne st. 2 c. 18 relating to wrecks about which we have already reported earlier in this report. This statute like the previous one was repealed by the Merchant Shipping Repeal Act 1854 and can be repealed here.

Statute 8 Geo. IV c. 24 (1721).

This is the next in the series of piracy Acts. Section 5 was repealed by 4 & 5 Will. IV c. 34 s. 1 and Sections 8 and 9 were repealed by 22 Geo. II c. 33 s. 1. The principal amendment made by this law is that accessories may be tried as principals. In so far as the statute is not repealed by the Statutes of 4 & 5 Will. IV and 22 Geo. II we think it should remain in force in South Australia until the general Criminal Law Act has been passed.

Statute 12 Geo. I c. 30 (1725).

This is a continuation of the Waltham Black legislation which is already covered by Section 172 (c) of the Criminal Law Consolidation Act. The statute was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 2 Geo. II c. 25 (1728).

This provides for further punishment for forgery, perjury and subornation of perjury, and deals with the stealing of bonds, notes or other securities for the payment of money. The statute was repealed by the Perjury Act 1911. As we have said in relation to previous statutes of the same kind, the draftsmanship of our Act in relation to perjury is partly dependent upon these older Acts being in force. Accordingly we think that this statute should remain in force until the new statute for the general regulation of the Criminal Law is passed.

Statute 16 Geo II c. 31 (1743).

This deals with the punishment of persons assisting prisoners to escape out of lawful custody. The matter is sufficiently dealt with in Section 60 of the Prisons Act 1936 and this statute can be repealed. It was repealed in England by the Statute Law (Repeals) Act 1971.

Statute 18 Geo. II c. 30 (1745).

This deals with piracy and with the question of those acting under a commission from a foreign power. *East: Pleas of the Crown* Volume 2 page 799 says that the reason for the statute was to distinguish between such activities and high treason. The statute is without doubt in force in South Australia. Some of it is still in force in England and some of it has been repealed by statutes of recent years from 1948 to 1967. As this statute like the statute of 11 Will. III c. 7 extends to 'His Majesty's islands, plantations, colonies, dominions . . .' it is probable that the statute is not capable of being repealed in South Australia until the Colonial Laws Validity Act shall cease to apply to this State.

Statute 19 Geo. II c. 21 (1745).

This is a consolidation Act dealing with profane cursing and swearing. The matter is now dealt with by the Police Offences Act in South Australia and it is not necessary for this statute to continue in force here. It was repealed in England by the Criminal Law Act 1967 (1967 Chapter 58).

Statute 19 Geo. II c. 34 (1745).

This extends the Waltham Black Acts and provides for offences against customs or excise. As we have already said, the Waltham Black Acts have found their way into the Criminal Law Consolidation Act and matters of customs and excise are within the powers of the Commonwealth Parliament and not those of the States. Accordingly this statute can be repealed. It was repealed in England by the Statute Law Revision Act 1867.

Statute 20 Geo. II c. 30 (1746).

This permitted persons accused of treason to make their defence by counsel. It is without doubt in force in South Australia. It was not repealed in England until the Statute Law (Repeals) Act 1973 (1973 Chapter 39). The statute should remain in force here until the new general statute on the Criminal Law is passed.

Statute 23 Geo. II c. 11 (1749).

This deals with informations for subornation of perjury. The subject matter of indictments is already dealt with in the criminal rules of the Supreme Court and it is not necessary for this statute to be continued and it can be repealed. It was repealed in England by the Statute Law Revision Act 1867.

Statute 24 Geo. II c. 45 (1750).

This deals with robberies and thefts on rivers ports and wharves. This matter is now dealt with by Section 175 of the Criminal Law Consolidation Act 1935 and it is not necessary for this statute to remain in force in South Australia and it can be repealed. It was repealed in England by the Statute Law Revision Act 1867.

Statute 25 Geo. II c. 36 (1751).

This is the statute which penalised advertisements offering a reward for return of stolen property with no questions asked. This is now sufficiently governed in South Australia by the Police Offences Act and the statute can be repealed. It was partly repealed in England by a series of statutes from 1867 to 1977 but some small part of it appears to be still in force there.

Statute 25 Geo. II c. 37 (1752).

This statute provided for murderers' bodies to be delivered to Surgeons Hall for the purposes of dissection. It is doubtful whether the Statute ever extended to South Australia. It was repealed in England by the Statute Law (Repeals) Act 1973 and for the purposes of certainty it should be repealed here.

Statute 26 Geo. II c. 19 (1753).

This is another in the series of statutes penalising the stealing of shipwrecked goods. It was repealed in England by the Merchant Shipping Repeal Act 1854 and can be repealed here.

Statute 28 Geo. II c. 19 (1755).

This deals with amongst other things the burning off of forests and the better prevention of thefts and robberies. Mainly it deals with the regulation of disorderly houses. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 30 Geo. II c. 24 (1757).

This is the original consolidating statute on false pretences. It would certainly have been in force in South Australia in 1836. The subject of false pretences is now dealt with by the Criminal Law Consolidation Act 1935: Section 195 and it is not necessary for this statute to remain in force in South Australia. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 32 Geo. II c. 22 (1757).

This mainly deals with pension duties, but it also deals with the extension of the crime of forgery to forgery in relation to a document with intent to defraud a corporation. This is sufficiently dealt with today by Part VI of the Criminal Law Consolidation Act 1935. The statute was partly repealed in England by the Statute 48 Geo. III c. 2 s. 17 and the residue by statutes of 1870, 1887 and 1948. It may be repealed here.

Statute 6 Geo. III c. 36 (1766).

This statute made the stealing of trees, roots, plants and shrubs growing in the soil larceny, which was not the case at common law, but which was dealt with to a certain extent in the Waltham Black Act 1722. The interaction between these two statutes is well set out in *Radzinowicz: A History of the Criminal Law* Volume I pages 61-66. This is now covered by Sections 147-151 of the Criminal Law Consolidation Act 1965 and so this Statute of Geo. III no longer serves any useful purpose in South Australia. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 6 Geo. III c. 48 (1766).

Parliament returned to the same subject of larceny of timber and plants in the same Session and passed a further Act dealing with the matter. For the reasons referred to in the discussion of the last preceding Act it is not necessary for this Statute to continue to be in force in South Australia. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 6 Geo. III c. 53.

This amongst other things changed the law with regard to treason, counterfeiting coin or the great or privy seal or sign manual or privy signet. It was repealed in England by the Treason Act 1945. It should remain in force in this State until the general statute on the Criminal Law is passed.

Statute 7 Geo. III c. 50 (1767).

This deals with larceny of goods sent by post. The topic is dealt with in Australia by the Post and Telegraph Act 1901 of the Parliament of the Commonwealth. It is not necessary for the statute to remain in force in South Australia. It was repealed in England by the Statute Law Revision Act 1888 and can be repealed here.

Statute 9 Geo. III c. 29 (1769).

This is the first of the statutes to restrain the activities of the Luddites. It deals with the destruction of machinery which put people out of work as a result of the inventions. The matter is now dealt with by Sections 97-99 of the Criminal Law Consolidation Act and it is not necessary for the statute to remain in force. It was repealed in England by the Statute Law Revision Act 1887 and can be repealed here.

Statute 9 Geo. III c. 30.

This deals with the embezzlement of naval stores, a matter which is dealt with by Commonwealth legislation in this country. It was repealed in England in 1865 and can be repealed here.

Statute 12 Geo. III c. 20 (1772).

This provides that persons standing mute on arraignment for felony or piracy should be treated as guilty. The object of it was of course to abolish the old punishment known as *peine forte et dure* under which a man was pressed to death if he did not put himself upon his country. Under Section 284 of the Criminal Law Consolidation Act 1935 it is now lawful for the Court to enter a plea of not guilty to be entered which has the same force as though the accused had actually pleaded not guilty. Accordingly

there is no need for the continuance of this statute in South Australia. It was repealed by the Statute Law Revision Act 1948 and can be repealed here.

Statute 12 Geo. III c. 24 (1772).

This is the statute which makes arson of the Queen's dock-yards a capital offence. It is beyond the power of the Parliament of South Australia to repeal this statute as the statute expressly refers to acts done within this realm (i.e. Great Britain) or 'in any of the islands, countries, forts or places thereunto belonging'. That being so, this statute cannot be repealed until the Colonial Laws Validity Act ceases to apply to South Australia.

Statute 17 Geo. III c. 56 (1777).

This deals with frauds by workmen in stealing or embezzling materials. It was repealed in England by the Theft Act 1968 (1968 Chapter 60). The matter is covered in South Australia by Section 176 of the Criminal Law Consolidation Act 1935 and the statute may be repealed in its application to South Australia.

Statute 18 Geo. III c. 18 (1778).

This deals with the forging of acceptances of bills of exchange. The subject is now dealt with in Section 214 (a) (iv) of the Criminal Law Consolidation Act 1935 and it is not necessary to retain this statute in South Australia. It was repealed in England by the Statute Law Revision Act 1861.

Statute 19 Geo. III c. 74 (1779).

This is the general statute on transportation of offenders which has long ceased to apply. It was repealed in England by the Statute Law Revision Act 1871 and can be repealed here.

Statute 21 Geo. III c. 68 (1781).

This made the dishonest detaching of fixtures from houses larceny. This matter is now covered by Section 147 of the Criminal Law Consolidation Act 1935. The Act can be repealed here. It was repealed in England by the Statute Law Revision Act 1861.

Statute 21 Geo. III c. 69 (1781).

This is a statute for punishing the receiving of goods referred to in the previous statute and amends the Statute 29 Geo. II c. 30. It is covered by Section 196 of the Criminal Law Consolidation Act 1935 and this also can be repealed here. It was repealed in England by the same statute, the Statute Law Revision Act 1861.

Statute 22 Geo. III c. 58 (1782).

This deals further with the problem of receiving. It does not need to be continued in South Australia for the reasons set out with regard to the last statute. It also was repealed in England by the Statute Law Revision Act 1861, no doubt following the comprehensive Larceny Act of that year.

Act 23 Geo. III c. 88 (1783).

This is the statute which made it an offence to be found by night with implements of house breaking. The matter is now dealt with by Section 172 of the Criminal Law Consolidation Act and this statute can be repealed. It was likewise repealed in England by the Statute Law Revision Act 1861.

Statute 28 Geo. III c. 55 (1788).

This is the second of the statutes dealing with the Luddite riots and indeed the most important of the group. Its history is dealt with in detail in *Radzinowicz op. cit.* Vol. I pages 479-483. As with the previous statute relating to the Luddites and their attempts to save themselves from inventions which put them out of work, the statute is sufficiently covered by the Criminal Law Consolidation Act today. It was repealed in England by the Master and Servant Act 1889 and can be repealed here.

Statute 30 Geo. III c. 47 (1790).

This is the second of the statutes on transportation. It was repealed in England by the Statute Law Revision Act 1871 and can be repealed here.

Statute 30 Geo. III c. 48 (1790).

This statute altered the common law which required a woman found guilty of high treason or petty treason to be burnt and substituted therefor the penalty of hanging: see *Radzinowicz op. cit.* Vol. I page 213. Part of the statute is still in force in England, although parts were repealed by the Statute 9 Geo. IV c. 31 s. 1 before 1836. As far as the reception of the law in South Australia is concerned, the balance may be repealed in South Australia.

Statute 31 Geo. III c. 46 (1791).

This was the general statute for many years on gaols and escapes and was no doubt in force in South Australia in 1836. The matter is now comprehensively covered by the Prisons Act 1936. The statute was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statute 33 Geo. III c. 67 (1793).

This deals with obstructing, destroying and damaging ships and other vessels. Sections 5 and 6 were repealed by 7 and 8 Geo. IV c. 27 s. 1 and Section 2 was repealed by 9 Geo. IV c. 31 s. 1. Part of the statute is still in force in England and that is partly dealt with in Sections 118-121 of the Criminal Law Consolidation Act. But as this statute seems to be wider in some ways than those sections of the Criminal Law Consolidation Act, we think that the statute, or so much of it as still remains, should remain in force until the new Criminal Law Act is passed following the reports of the Mitchell Committee.

Statute 34 Geo. III c. 60 (1794).

This permits temporary removal of offenders to gaols prior to transportation. It is obsolete in South Australia. It was repealed in England by the Statute Law Revision Act 1871 and can be repealed here.

Statute 36 Geo. III c. 7 (1796).

This is the statute which made seditious words treason. That part of the statute has been repealed by the Criminal Law Consolidation Act 1935, Section 6. Section 1 however is a section dealing with days compassing or imagining or devising death or destruction of bodily harm to Her Majesty. For the reasons we gave in relation to prior treason Acts, we think that the protection from treason goes with Her Majesty wherever she is, and accordingly the statute is by necessary implication in force in South Australia. We therefore think that until the Colonial Laws Validity Act ceases to apply to South Australia, Section 1 of this

Statute cannot be repealed. This was obviously the opinion of the then Mr. Chamberlain when drawing the Criminal Law Consolidation Act as he expressly excepts this part of the Statute from the operation of Section 6 of the Criminal Law Consolidation Act. Section 7 is still partly in force in England.

Statute 36 Geo. III c. 8 (1796).

This is a statute for preventing seditious meetings in assemblies. It was certainly in force in South Australia in 1836. It was repealed in England by 32 & 33 Vict. c. 24 s. 1.

Statute 37 Geo. III c. 46 (1797).

This statute deals with forgery of banknotes. That subject is dealt with in this country by Parts IV and V of the Commonwealth Crimes Act so that State legislation on the matter is not necessary. The statute was repealed in England by the Statute Law Revision Act 1870 and can be repealed here.

Statute 37 Geo. III c. 70 (1797).

This is the Incitement to Mutiny Act which followed the major naval mutiny at the Nore. The history of the Statute is set out in *Radzinowicz op. cit.* Vol. I pages 487–490. It would have been in force in South Australia in 1836. Parts of it are still in force in England today. Those matters are covered in Australia by Commonwealth Defence legislation. It is not necessary for this Act to remain in force in South Australia and it may be repealed.

Statute 37 Geo. III c. 122 (1797).

This deals with forgery of bank stock. Again this is dealt with by Commonwealth legislation in Australia. The statute was repealed in England in 1870 and it can be repealed here.

Statute 37 Geo. III c. 123 (1797)—The Unlawful Oaths Act.

It was partly directed at trade union activities and partly at treasonable activities. In so far as it was directed at trade union activities it is contrary to all modern legislation on the subject and in so far as it deals with treasonable activities, taking an unlawful oath would seem to be an overt act for the purposes of treason anyway. The Act is still partly in force in England. In our view it should be repealed here.

Statute 37 Geo. III c. 126 (1797).

This statute deals with the counterfeiting of coins. Part of it was repealed prior to the foundation of the colony by the Statute 2 & 3 Will. IV c. 34 s. 1. As we have said in relation to other statutes of the same kind, the matter is now dealt with in Part IV of the Commonwealth Crimes Act. The balance of the statute was repealed in England by the Statute 24 & 25 Vict. c. 95 and can be repealed here.

Statute 37 Geo. III c. 143 (1797).

This is a statute penalising the use of defective weights and unequal balances. Such matters are now dealt with in the Trade Measurements Act 1971–1976. The statute was repealed in England by the Weights and Measures Act 1878 and can be repealed here.

Statute 39 Geo. III c. 37 (1799).

This is the Offences at Sea Act 1799 and provides that offences committed on the high seas out of the body of a country are to be tried in the same way as those committed on shore. It is still in

force, at least in part, in England. Some authorities think the statute by necessary implication extended to the colonies. We think however that if that were correct there would have been no need for the passing of the Statutes 46 Geo. III c. 54 and 12 & 13 Vict. c. 96 which on their face expressly extended to the colonies. Accordingly we think that this statute can be repealed, if it ever applied to South Australia.

Statute 39 Geo. III c. 79 (1799).

This is the second of the statutes for the suppression of societies established for seditious and treasonable purposes and for preventing treasonable and seditious practices. Unfortunately in practice this was used on the nascent trade unions rather than on the enemies of King George III. It has been repealed in England by a series of statutes from 1869 to 1967. It should be repealed here.

Statute 39 Geo. III c. 85 (1799).

This was the general statute against embezzlement. This subject is dealt with in Sections 132-137, 177, 179, 180, 182 and 185-187 of the Criminal Law Consolidation Act. It is not necessary at this stage that this statute should remain in force. It was repealed in England by the Statute Law Revision Act 1861 consequent on the Larceny Act of that year and can be repealed here.

Statute 39 & 40 Geo. III c. 77 (1800).

This is a statute to prevent deliberate injury to mines. This subject is covered in the Criminal Law Consolidation Act. It has been repealed in England by a series of statutes from 1871 to 1948 and it can be repealed here.

Statute 39 & 40 Geo. III c. 89 (1800).

This is a statute against embezzlement of naval stores. It is dealt with in Australia by Commonwealth legislation and no State legislation on the subject is now necessary. The statute was repealed in England by the Public Stores Act 1875 and can be repealed here.

Statute 39 & 40 Geo. III c. 93 (1800).

This provides that trials for high treason shall be conducted in the same way as a trial for felony, where the overt act is any direct attack upon the Monarch. It is still partly in force in England. For reasons we have given with regard to previous treason statutes, that they protect the Queen wherever she is, it is probable that the Statute cannot be repealed because of the application of the Colonial Laws Validity Act in South Australia.

Statute 39 & 40 Geo. III c. 94 (1800).

This is the Criminal Lunatics Act 1800 and provides, as is done today, that where a person is found not guilty on the ground of insanity that he shall be detained and kept to strict custody until the pleasure of His Majesty be known. The statute was in force in South Australia in 1836 and orders were made under it. However the matter is now completely covered by Section 292 of the Criminal Law Consolidation Act and although the statute is still partly in force in England it can be repealed here.

Statute 41 Geo. III c. 24 (1801).

This is another of the statutes dealing with the Luddite riots. It can be repealed here for the same reason as we have already said

with regard to the two previous statutes on the same topic. It was repealed in England by the Statute Law Revision Act 1887.

Statute 41 Geo. III c. 30 (1801).

This is a further seditious meetings prevention Act. For the reasons we have given in relation to previous ones, it does not need to be kept in force in South Australia, even if it did not expire by its own wording, which is quite arguable. It was repealed in England by the Statute Law Revision Act 1872 and can be repealed here.

Statute 41 Geo. III c. 39 (1801).

This deals with forgery of bank notes. As we have already said, these matters are dealt with under the Crimes Act of the Commonwealth Parliament and it is not necessary to provide for them under State legislation. The statute was repealed by the Statute Law Revision Act 1872 and can be repealed here.

Statute 41 Geo. III c. 57 (1801).

Parliament returned to the subject of forgery of bank notes later in the same session with this statute. Again for the reasons given in respect of the last one it does not need to be kept in force here. Some of it is still in force in England but the whole statute can be repealed in relation to South Australia.

Statute 42 Geo. III c. 67 (1802).

This adds to the statutes relating to growing crops, in relation to the theft of turnips and other field crops. The matter is dealt with by Section 151 of the Criminal Law Consolidation Act. It was repealed in England by the Statute Law Revision Act 1887 and can be repealed here.

Statute 42 Geo. III c. 85 (1802).

This is a further statute for the punishment not only of Governors but of all persons holding office in the colonies. This followed the case of Governor Wall (1802 28 St. Tr. 51). The statute is in force in South Australia. It is still partly in force in England. It applies by its own wording to 'places out of Great Britain and to authorities in any plantation, island, colony or foreign possession of His Majesty'. That being so, the statute is within the Colonial Laws Validity Act and cannot be repealed here as long as the Colonial Laws Validity Act remains applicable to South Australia.

Statute 43 Geo. III c. 113 (1803).

This deals with persons wilfully casting away and destroying vessels. It was probably in force in South Australia. Chief Justice Sir Samuel Griffith treated it as being in force in Queensland. It is dealt with in South Australia by the Criminal Law Consolidation Act 1935: Sections 116 and 119. The statute was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statute 43 Geo. III c. 139 (1803).

This deals with the forging and counterfeiting of foreign bills of exchange. On the face of it, it appears to be an English statute but it was treated by Sir Samuel Griffith as being in force in Queensland. The subject matter is covered by Commonwealth legislation in this country, and although the statute is still partly in force in England it can be repealed in South Australia.

Statute 44 Geo. III c. 71 (1804).

With the exception of three minor issues of shillings and in one case of sixpences, no silver coin was minted in England from the end of the reign of George II until 1817 except for Maundy money. To make up for this problem and in particular with regard to trade with the East where trade has habitually been conducted in specie, the Bank of England minted silver dollars. This statute was enacted to prevent the counterfeiting of such coins. Until recent years such trade dollars have been in existence, and have been used in certain parts of the East. We doubt whether the coinage provisions of the Crimes Act deal with this problem. However we feel that it is not a problem which can be solved in Australia. These are not our coins and accordingly we think the statute should be repealed here. It was repealed in England by the Statute Law Revision Act 1861, following the Larceny Act of that year.

Statute 45 Geo. III c. 89 (1805).

This is a further statute with regard to forgery of banknotes, bills of exchange, and other securities. It was partly repealed by the Forgery Act 1830 (11 Geo. IV and 1 Will. IV c. 66) but part of the remainder is still in force in England. The matter is covered by Commonwealth legislation in Australia. It is not necessary that the statute should remain on the statute books in South Australia, and it can be repealed.

Statute 46 Geo. III c. 52 (1806).

This is the first of the major statutes against the Slave Trade. This Act applies on the face of it to 'any of His Majesty's subjects . . . resident within . . . any of the islands, colonies, dominions or territories belonging to or in the possession of His Majesty's heirs or successors'.

Accordingly the statute applies in South Australia and as the Colonial Laws Validity Act applies to it, it cannot be repealed by any Act of Parliament of South Australia so long as the Colonial Laws Validity Act continues to remain in force in this State.

Statute 46 Geo. III c. 54 (1806).

This is the Offences at Sea Act 1806. This is a statute referring to any of 'His Majesty's islands, plantations, colonies, dominions, forts or factories'. It is accordingly a statute to which the Colonial Laws Validity Act applies and cannot be repealed in South Australia as long as that statute continues to apply in this State.

Statute 47 Geo. III Sess. 1 c. 36 (1807).

This is the general Act for the abolition of the Slave Trade. Like the 1806 statute, it is expressed to apply throughout His Majesty's dominions. Accordingly for the same reasons as the previous statute, as long as the Colonial Laws Validity Act continues to bind South Australia, the statute cannot be repealed in this State.

Statute 48 Geo. III c. 31 (1808).

This is a further statute with regard to the counterfeiting of tokens. For the reasons given as to the previous statutes, as well as the fact that this was to apply principally though not wholly in Ireland, the statute can be repealed in its application to South Australia. It was repealed in England by the Statute Law Revision Act 1861.

Statute 48 Geo. III c. 59 (1808).

This is a general statute with regard to bail in the course of proceedings on indictments and informations. Unfortunately there is no general statute in South Australia regulating bail and this statute would still be in force in this State. It was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act 1938 but it should not be repealed here until there is a general statute dealing specifically with the question of bail.

Statute 48 Geo. III c. 129 (1808).

This was a statute for more effectually preventing larceny from the person. Its topic is dealt with in detail in the Criminal Law Consolidation Act 1935. The statute was repealed in England in 1861 following the passing of the Larceny Act of that year and can be repealed here.

Statute 49 Geo. III c. 126 (1809).

This is a statute that public offices shall not be sold. Until that date many public offices could be sold, could be devised for fees simple or fees tail, or life interests could be created out of them. They were simply a species of property and this statute was enacted to take this away. It applied also to 'offices held in the dominions, colonies or plantations'. It may be therefore that the statute cannot be repealed in South Australia. Sir Samuel Griffith however thought that it could be repealed in Queensland and so recommended in the Second Schedule to his Criminal Code. He apparently took the view that although the office might be in the Dominions, the statute only applied to what happened in England in regard to them and that is certainly a tenable view. On the whole we think probably Sir Samuel Griffith is right although the matter is not free from doubt and therefore the statute can be repealed here. It is still in force in part in England. It involves the law of contract and the law of public appointments as well as the criminal law. If it is repealed however there should be some statute in South Australia dealing with the problem. There are other statutes besides this one involved and if the matter is not subsumed under the general rubric of the criminal law, and usually it is not, then the matter should be referred to the Committee for a report on the subject in general.

Statute 50 Geo. III c. 59 (1810).

This statute deals with embezzlement of monies by persons in the public service. That subject is covered by Section 177 of the Criminal Law Consolidation Act and it is not necessary that the statute should remain in force in South Australia. It was repealed in England partly before the coming into being of the province by the Statute 2 & 3 Will. IV c. 4, partly by the Statute Law Revision Act 1888, and the residue by the Theft Act 1968.

Statute 51 Geo. III c. 23 (1811).

This is an Act amending the Act of 1807 in relation to the Slave Trade. Again by its wording it applies to any of the 'islands, colonies, dominions, forts, settlements, factories or territories in His Majesty's occupation or possession', so that although the statute was repealed in England by the Statute Law Revision Act 1861 it is beyond the power of the Parliament of this State to repeal it until the Colonial Laws Validity Act no longer applies to South Australia.

Statute 51 Geo. III c. 41 (1811).

This deals with stealing of linen. This is part of the general larceny section of the Criminal Law Consolidation Act and is a form of embezzlement when done by a servant. It was repealed in England by the Master and Servant Act 1889 and can be repealed here.

Statute 51 Geo. III c. 65 (1811).

This is an Act relating to seditious books. It was a statute very much abused in practice. Governments thought that the mildest criticism of themselves in print was a seditious book. The statute was repealed in England in 1869 and should be repealed here.

Statute 51 Geo. III c. 110 (1811).

This is another one in the series of statutes relating to the counterfeiting of Bank of England dollars and tokens. For the reason given in respect to the previous statute, this statute does not need to remain in force in South Australia. It was repealed in England by the Statute Law Revision Act 1861 and may be repealed here.

Statute 52 Geo. III c. 63 (1812).

This statute deals with embezzlement of securities for money and other effects left or deposited for safe custody or any other special purpose in the hands of bankers, merchants, brokers, attorneys, or other agents. This matter is dealt with by Section 184 of the Criminal Law Consolidation Act and the statute can be repealed here. It was repealed in England by the Statute Law Revision Act 1887.

Statute 52 Geo. III c. 64 (1812).

This extends the law of false pretences in relation to obtaining bonds and other securities. That is covered by Section 195 of the Criminal Law Consolidation Act. The statute does not need to remain in force in South Australia and can be repealed. It was repealed in England by the Statute Law Revision Act 1861.

Statute 52 Geo. III c. 104 (1812).

This is a statute amending the Statute 37 Geo. III c. 123 relating to unlawful oaths. Again although the statute was originally alleged to be passed for the purpose of keeping down sedition and treason, it was also used for dealing with trade combinations and trade unions. A very small part of the statute is still in force in England, but most of it was repealed in 1888 and in 1967. The statute should be repealed here.

Statute 52 Geo. III c. 138 (1812).

This is a further statute against counterfeiting Bank of England dollars and tokens. Despite dealing with what is in some ways a local problem, Sir Samuel Griffith considered that it was in force in Queensland and we think it is arguably in force here. For the reasons given in relation to the previous statutes, we do not think it is required here. It was repealed in England by the Coinage Act 1870 and can be repealed here.

Statute 52 Geo. III c. 143 (1812).

This provided the death penalty for acts done in breach of or in resistance to revenue laws. On the face of it, it would appear that it probably did not extend to South Australia. However Sir

Samuel Griffith thought that it did extend to Queensland. It was not repealed in England until 1966. We think however for certainty it should be repealed here.

Statute 52 Geo. III c. 156 (1812).

This statute provides for punishment for persons aiding prisoners of war to escape from His Majesty's dominions. This statute on the face of it deals with any part of His Majesty's dominions. Accordingly although the statute was repealed in England by the Statute Law (Repeals) Act 1973 (1973 Chapter 39) it appears to us that it cannot be repealed here as long as the Colonial Laws Validity Act remains in force in South Australia.

Statute 52 Geo. III c. 157 (1812).

The legislature returned to this problem of counterfeiting Bank of England tokens amongst other things in this statute. Like the previous one, it was repealed by the Coinage Act 1870 and can be repealed here.

Statute 53 Geo. III c. 87 (1813).

This amends the previous Acts passed earlier in the same reign preventing frauds by boatmen dealing with the laws relating to wreck and salvage. It was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statute 53 Geo. III c. 112 (1813).

This amends the Slave Trade Act of 1807 (47 Geo. III Sess. 1 C. 36). As that statute as we pointed out is in force throughout His Majesty's dominions, this statute which amends it must similarly remain until the Colonial Laws Validity Act ceases to apply to South Australia.

Statutes 53 Geo. III cc. 114 and 139 (1813).

These are two more Acts in the long struggle to prevent forged tokens. They were repealed in England by the Statute Law Revision Acts 1861 and 1873 and can be repealed here.

Statute 53 Geo. III c. 160 (1813).

This deals with blasphemy and in particular with the denial of the doctrine of the Holy Trinity. It was repealed in England in 1873 and can be repealed here.

Statute 53 Geo. III c. 162 (1813).

This provides that where persons are convicted of felony they may be sentenced to hard labour. This statute was no doubt in force in South Australia, but the position is now covered by Section 311 of the Criminal Law Consolidation Act and this statute may be repealed in its application to South Australia. It was repealed in England by the Statute Law Revision Act 1873.

Statute 54 Geo. III c. 4 (1813).

This is a further statute in the line of statutes dealing with the forgery of Bank of England tokens. It was repealed in England by the Coinage Act 1870 and can be repealed here.

Statute 54 Geo. III c. 42 (1813).

This is a statute dealing with the destruction of stocking or lace frames or articles in such frames and is a further example of Luddite legislation. It was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statute 54 Geo. III c. 59 (1814).

This is a further amending Slave Trade Act and like the others refers to 'any part of His Majesty's dominions' and the statute cannot be repealed here so long as the Colonial Laws Validity Act continues to apply to South Australia.

Statute 54 Geo. III c. 60 (1814).

This is another Act with regard to the embezzlement of naval stores. These matters are dealt with by Commonwealth legislation in South Australia and this statute does not need to remain on the statute book. It was repealed in England by the Public Stores Act 1875.

Statute 54 Geo. III c. 145 (1814).

This is an Act to take away corruption of blood in certain cases. The whole doctrine was swept away by our Act 25 of 1874 and this Act can be repealed. It was repealed in England by the Statute Law Revision Act 1960.

Statute 54 Geo. III c. 146 (1814).

This is a statute altering the mode of punishment in cases of high treason. It is in force in South Australia. As the death penalty is no longer carried out in this State, the statute does not matter. It is still largely in force in England, but it may be repealed here.

Statute 55 Geo. III c. 127 (1815).

This is a further statute relating to embezzlement of naval stores. That subject is dealt with by Commonwealth legislation in this country. The statute was repealed in England by the Public Stores Act 1875 and can be repealed here.

Statute 55 Geo. III c. 172 (1815).

This is a statute relating to captured slaves and is an amendment to the Slave Trade Acts. Like the other Acts, it expressly refers to 'His Majesty's colonies or plantations' and it cannot be repealed here as long as the Colonial Laws Validity Act remains in force in this State. It was repealed in England by the Statute Law Revision Act 1861.

Statute 56 Geo. III c. 5 (1816).

This is a statute to enable conditional pardons to be given for court martial offences. These offences are dealt with in Australia partly by Imperial legislation and partly by the Defence Act of the Commonwealth and it is not necessary that the Act remain in force in this State. It was repealed in England by the Act 23 & 24 Vict. c. 123 s. 86.

Statute 56 Geo. III c. 27 (1816).

This is one of the Acts amending the transportation of offenders legislation. Transportation became obsolete over a century ago in this country, and the Act can be repealed here. It was repealed in England by the Statute Law Revision Act 1873.

Statute 56 Geo. III c. 68 (1816).

This was the statute which, after nearly sixty years of neglect, provided for a new silver coinage for England which has since continued year by year from that day to this although not now in silver. It has the usual offences connected with it relating to the coinage and it is also the statute which provided that silver coin was legal tender only up to forty shillings. All of these matters

are covered by Commonwealth legislation today. The statute was repealed by the Coinage Act 1870 and can be repealed here.

Statute 56 Geo. III c. 73 (1816).

This statute deals with the conviction of offenders stealing a property from mines. It would appear to us on the face of it to be probably referable only to England and English mines, but it was treated as being in force in Queensland by Sir Samuel Griffith in his Criminal Code, so that from an abundance of caution it should be dealt with here. The subject matter is dealt with by our criminal Law Consolidation Act and the statute can be repealed here. It was repealed in England by the Statute Law Revision Act 1861.

Statute 56 Geo. III c. 138 (1816).

This abolished the pillory except in cases of perjury. If we ever inherited the pillory in South Australia, which is doubtful, the use of it is long since obsolete. It was repealed in England partly by the Statute Law Revision Act 1888, partly by the Criminal Law Act 1967 and partly by the Statute Law (Repeals) Act 1973. It can be repealed here.

Statute 57 Geo. III c. 6 (1817).

This amends the statute 36 Geo. III c. 7 relating to the law of treason with which we have already dealt. Portion of it is repealed in South Australia by the Criminal Law Consolidation Act 1935 Section 6. For the reasons explained in the previous statute relating to the compassing of the death of or bodily harm to the Queen, which accompany the Queen wherever she goes, this statute cannot be repealed in South Australia as long as the Colonial Laws Validity Act remains in force here. Accordingly the then Mr. Chamberlain's distinction is correct in drawing Section 6 of our 1935 Act. The part of the statute which has already been repealed is all that is within the power of the Parliament of South Australia to repeal at present. Parts of it are still in force in England and parts have been repealed by Statutes from 1848 to 1890.

Statute 57 Geo. III c. 7 (1817).

This is a further incitement to mutiny Act. This is dealt with in Australia by Commonwealth legislation so that this statute does not need to remain in force here. It was repealed in England by the Statute Law Revision Act 1873 and can be repealed here.

Statute 57 Geo. III c. 19 (1817).

This is the seditious meetings Act which regrettably was used not so much for seditious meetings as for the incipient trade unions. Part of the statute was repealed by 7 & 8 Geo. IV c. 27 s. 1. Parts of it are still in force in England. The topic of sedition as such is dealt with in the Crimes Act of the Commonwealth Parliament. It does not seem to us necessary to keep this statute in force in South Australia and it can be repealed here.

Statute 57 Geo. III c. 53 (1817).

This deals with murders and manslaughters committed in places not within Her Majesty's jurisdiction and one of the examples given in the statute is New Zealand. This provides that any murder or manslaughter committed out of Her Majesty's dominions can be tried in any of 'His Majesty's islands, plantations, colonies, dominions, forts or factories'. Accordingly the statute is in force in South Australia and by reason of the

Colonial Laws Validity Act cannot be repealed until the latter statute ceases to have effect in South Australia. It was repealed in England in 1967.

Statute 57 Geo. III c. 126 (1817).

This is another in the series of statutes against the Luddite riots. It was repealed in England by the Statute Law Revision Act 1873 and can be repealed here.

Statute 58 Geo. III c. 14 (1818).

This is another of the statutes in relation to tokens. It was repealed in England in 1873 and can be repealed here.

Statute 58 Geo. III c. 49 (1818).

This is another in the line of amending Slave Trade statutes. Like the others it refers to 'any other country island territory or place whatever whether under the dominion of His Majesty or of any foreign sovereign state or power'. Accordingly the statute cannot be repealed in South Australia as long as the Colonial Laws Validity Act stays in force here. It was repealed in England by the Statute Law Revision Act 1861.

Statute 58 Geo. III c. 70 (1818).

This is a statute dealing with disorderly houses as places where thieves, burglars, receivers and robbers ply their trade or dispose of their goods. It was repealed in England by the Administration of Justice Act 1965. If it ever was in force in South Australia, which is doubtful because some of it at least appears to be local in nature, then it no longer needs to be kept in force here and can be repealed.

Statute 58 Geo. III c. 98 (1818).

This is another in the abolition of the Slave Trade statutes. For the reasons given in relation to previous statutes of the same kind, it cannot be repealed in South Australia until the Colonial Laws Validity Act ceases to have effect in this State.

Statute 59 Geo. III c. 27 (1819).

This is an Act to facilitate the trial of felonies committed on board vessels employed on canals navigable rivers and inland navigation. The residue of the statute was repealed in 1975 in England although part of it was repealed before South Australia came into being by the Statute 6 Geo. IV c. 64. So much of it as is still in force in South Australia does not so far as we can see appear to be dealt with in any other statute. Certain specific examples of such offences are dealt with in the Criminal Law Consolidation Act but not the whole gamut of offences to which this statute applies. Accordingly we think the statute can be repealed in its application to South Australia but a similar jurisdictional section should be placed in the Criminal Law Consolidation Act giving the same jurisdictional powers to the Supreme Court as are given by this statute.

Statute 59 Geo. III c. 69 (1819).

This deals with the question of forbidding the Queen's subjects to enlist in foreign armies or navies. The statute was repealed in England by the Foreign Enlistment Act 1870 (33 and 34 Vict. c. 90 s. 31). This statute is by its words in force in Her Majesty's dominions. It will be an interesting question with which we shall deal in a later report as to whether when the repealing statute is itself one so expressed and the statute is assented to before the

application of the Statute of Westminster in Australia in 1942, whether that did not operate as a repeal for Australia. We rather think it did, but we shall report to you in detail on this in a report which deals only with the statutes which are or may be continued in force under the provisions of the Colonial Laws Validity Act.

Statute 59 Geo. III c. 96 (1819).

This is an Act to facilitate the trial of felonies committed on stage coaches and stage waggons where the stage coach or stage waggon passed from one jurisdiction to another in the course of its journey. It was presumably in force in South Australia and dealt with the operations of such people as Cobb and Co. but it is of course obsolete now. It was repealed in England by the Statute Law Revision Act 1887 and can be repealed here.

Statute 59 Geo. III c. 97 (1819).

This is another of the Acts extending the offences against the slave trade. Again it is in force in 'His Majesty's islands, plantations, colonies, dominions, forts or factories'. It was repealed by the Statute Law Revision Act 1861. The latter statute does not purport on the face of it to be a statute extending throughout Her Majesty's dominions. Accordingly this raises a further point in relation to the application of the Colonial Laws Validity Act to Australia with which we shall deal in a subsequent report.

Statute 60 Geo. III & 1 Geo. IV c. 1 (1819).

This is the Unlawful Drilling Act and deals with unlawful military exercises. It arose out of the Peterloo Riots. Such matters are dealt with the Commonwealth legislation in Australia. It is still partly in force in England. It can be repealed here.

Statute 60 Geo. III & 1 Geo. IV c. 4 (1819).

This is a statute regulating the form of pleading in cases of misdemeanour. It is still in force in South Australia. It was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act 1938. It can be repealed in South Australia, but with a saving of the law enacted in this statute.

Statute 60 Geo. III & 1 Geo. IV c. 6 (1819).

This is an Act relating to seditious meetings in assemblies. Sedition is governed in Australia today by the Crimes Act of the Commonwealth Parliament. The statute was repealed in England by the Statute Law Revision Act 1873 and can be repealed here.

Statute 60 Geo. III & 1 Geo. IV c. 8 (1819).

This is the statute punishing blasphemous and seditious libels. Section 4 was partly repealed by 11 Geo. IV & 1 Will. IV c. 73 s. 1. Otherwise it is still in force in South Australia and parts of it are still in force in England, as witness one recent prosecution. The statute should remain in force in South Australia until the general Criminal Law Act is passed following the recommendations of the Mitchell Committee.

Statute 1 Geo. IV c. 57 (1820).

This is a statute which abolishes whipping for female convicts. The whole of the concept has been repealed in South Australia. The statute was repealed in England in 1948 and can be repealed here.

Statute 1 Geo. IV c. 102 (1820).

This extends the Statute of 56 Geo. III c. 73 in relation to stealing from mines. As we have said this subject is covered by the Criminal Law Consolidation Act in South Australia. It was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statutes 1 Geo. IV c. 115 and 116 (1820).

These statutes are the first fruits of the long campaign by Romilly, Bentham, Fowell Buxton and others to take away capital punishment for all sorts of minor offences. The statutes were repealed in England, Chapter 115 by the Statute Law Revision Act 1861 and Chapter 116 by the Statute Law Revision Act 1873. They can both be repealed here but with the saving of the reforms in the law made by the two statutes.

Statute 1 & 2 Geo. IV c. 88 (1821).

This is a general statute dealing with rescuing persons charged with felony. It was partly repealed by 9 Geo. IV c. 31 s. 1. It is dealt with in South Australia in part by Section 270 of the Criminal Law Consolidation Act. However the statute is wider than Section 270 in that it deals with the case where persons are not already in custody but the officers of the law are attempting to get them into custody. The remainder of the statute was repealed in England by a series of statutes from 1887 to 1967. We think it can be repealed here but with a saving of the reform in the law which is effected by the statute.

Statute 3 Geo. IV c. 38 (1822).

This deals with the punishment of persons convicted of manslaughter, of servants robbing their masters and accessory before the fact to grand larceny, and certain other felonies. All of this is dealt with in the Criminal Law Consolidation Act in general terms in South Australia. It was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statute 3 Geo. IV c. 114 (1822).

This provided that on conviction from certain offences prisoners were to be sentenced to hard labour. The statute was partly repealed by 7 & 8 Geo. IV c. 27 s. 1 and the remainder by the Criminal Justice Act 1848 but the topic is sufficiently dealt with by the Criminal Law Consolidation Act in South Australia and the residue of the statute can be repealed here.

Statute 4 Geo. IV c. 31 (1823).

This is a statute amending the statute 19 Geo. II c. 21 against profane cursing and swearing. The subject matter is dealt with in South Australia under the Police Offences act. The statute was repealed in England by the Statute Law Revision Act 1873 and can be repealed here.

Statute 4 Geo. IV c. 37 (1823).

This is a statute for the more speedy return and levying of fines, penalties, forfeitures and recognizances. It was repealed in England by the Criminal Justice Act 1967. If it was ever in force in South Australia the matter is sufficiently dealt with in the Justices Act and the statute can be repealed here.

Statute 4 Geo. IV c. 48 (1823).

This provides that a Judge may abstain from pronouncing the formula for the death penalty in a proper case and may simply

order sentence of death to be recorded. As sentences of death have now been abolished in South Australia this statute can be repealed. It was repealed in England by statutes of 1971 and 1973.

Statute 4 Geo. IV c. 52 (1823).

This dealt with the burial of suicides. It was repealed in England by the Interments Act 1882 and can be repealed here.

Statute 4 Geo. IV c. 52 (1823).

This is another in the long series of Acts following the work of Romilly, Bentham and others, to take away the death penalty from less serious offences. It was repealed in England by the Statute Law Revision Act 1873 and can be repealed here.

Statute 4 Geo. IV c. 54 (1823).

This is a statute relating to benefit of clergy. Benefit of clergy is obsolete in South Australia. The statute was repealed in England by the Statute 24 and 25 Vict. c. 95 and can be repealed here.

Statute 5 Geo. IV c. 17 (1824).

This is a further amending Statute relating to the slave trade. It raises the same problems with regard to the Colonial Laws Validity Act as we have previously adverted to. It should remain in force for the time being, until we do a further report on this subject.

Statute 5 Geo. IV c. 84 (1824).

This was the general Act relating to the transportation of offenders under which most offenders were transported to Australia. It was repealed in England by the Criminal Justice Act 1948. It has been obsolete for over a century in South Australia and can be repealed here.

Statute 5 Geo. IV c. 113 (1824).

This is the general Act consolidating the slave trade laws. It is certainly in force in South Australia. It is still partly in force in England. It raises the same problems as we have already adverted to with regard to the application of the Colonial Laws Validity Act and must remain in force for the time being in South Australia.

Statute 6 Geo. IV c. 19 (1825).

This is an Act relating to the offence of sending threatening letters. These matters are dealt with by Sections 19, 125, 159 and 161 of the Criminal Law Consolidation Act. It was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statute 6 Geo. IV c. 25 (1825).

This is a statute relating to benefit of clergy which has long been obsolete in South Australia. It was repealed in England by the Statute Law Revision Act 1873 and can be repealed here.

Statute 6 Geo. IV c. 49 (1825).

This is a statute for encouraging the capture or destruction of piratical ships and vessels. The subject matter does not seem to be dealt with by our Criminal Law Consolidation Act. It was repealed in England by the Piracy Act 1850. We think that it should not be repealed here until the general statute has been passed in relation to the Criminal Law following the reports of the Mitchell Committee.

Statute 6 Geo. IV c. 56 (1825).

This deals with certain problems in the law of forgery. The points do not seem to be dealt with in the Criminal Law Consolidation Act as no doubt the draftsman considered the matter was already covered by statute. We think that the statute may be repealed here with a saving of the amendment to the law made by the statute. It was repealed in England by the Statute Law Revision Act 1861.

Statute 7 Geo. IV c. 38 (1826).

This is a statute dealing with piracy. It deals with offences 'upon the sea or in any haven, river, creek and place where the Admiral or Admirals have jurisdiction'. It is probably still in force in South Australia, and it is at least arguable that it cannot be repealed unless the Colonial Laws Validity Act ceases to have effect in South Australia. It was repealed in England by the Criminal Law Act 1967 and the Statute Law (Repeals) Act 1974.

Statute 7 Geo. IV c. 64 (1826).

This is an Act for improving the administration of criminal justice in England and deals generally with indictments, recognizances and defences in bail. It was repealed in 1976 in England. It was certainly received by us in South Australia. It is one at least of the statutes which give jurisdiction to the Supreme Court in bail. We think it should not be repealed in relation to South Australia until a general statute is passed following the consideration of the reports of the Mitchell Committee.

Statute 7 & 8 Geo. IV c. 27 (1827).

This is a comprehensive criminal Statutes Repeal Act to make way for the consolidating Acts which follow immediately after in the statute book. The statute was repealed in England by the Statute Law Revision Act and can be repealed here but with a saving of the amendments in the law made by the statute.

Statute 7 & 8 Geo. IV c. 28 (1827).

This is the first of the consolidating Acts relating to the procedure of the criminal courts. It deals with a number of matters which are still in force in South Australia, as for example consecutive sentences; the general rules for the interpretation of all criminal statutes; challenges, and the effect of a plea of not guilty. We think the statute should remain in force in South Australia until the general criminal law statute comes into force following the consideration of the reports of the Mitchell Committee. It was repealed in England by the Criminal Law Act 1967.

Statute 7 & 8 Geo. IV c. 29 (1827).

This was the first general consolidating statute on the subject of larceny. It is recognized by the Act 14 of 1850 that it was received in South Australia. It is true that the Act 38 of 1876 repeals the Act 14 of 1850 but as this part of the Act 14 of 1850 was merely declaratory it is probable that the repeal by the 1876 Act does not affect the Statute of 7 & 8 Geo. IV c. 29. It was repealed in England by the Larceny Act 1861 and it would be safer if it were repealed *eo nomine* in South Australia.

Statute 7 & 8 Geo. IV c. 30 (1827).

This is the second of the consolidating statutes and in this case dealing with malicious injuries to property. Again it was

recognized in South Australia by Act 14 of 1850 which as we have said was repealed by 38 of 1876 Section 3. The statute was repealed in England by the Statute 24 & 25 Vict. c. 95. We think that for safety it should be expressly repealed here.

Statute 7 & 8 Geo. IV c. 38 (1827).

This took duties away from constables in regard to making presentments for certain offences. The statute was repealed in England in 1873 and can be repealed here with a saving of the amendment made by the statute.

Statute 7 & 8 Geo. IV c. 63 (1827).

This is a further statute relating to mutiny in respect of transportation of offenders. Transportation as we have said has been obsolete in Australia for over a century. This statute can be repealed. It was repealed in England by the Statute Law Revision Act 1873.

Statute 9 Geo. IV c. 31 (1828).

This is the consolidating Offences against the Person Act. It was certainly in force in South Australia and is recognized by the Act No. 1 of 1845. Again one has the problem that this Act was repealed by 38 of 1876 Section 2 but that probably did not of its own force repeal in its application to South Australia the Statute 9 Geo. IV c. 31. The subject matter is now covered by the Criminal Law Consolidation Act. It was repealed in England by the Statute 24 & 25 Vict. c. 95 and can be repealed here.

Statute 9 Geo. IV c. 32 (1828).

This deals with competency as a witness, after conviction for forgery and perjury, and the effect of a pardon under the great seal. The question of evidence will be dealt with in a separate report to you. The question dealt with in Section 3 as to the effect of punishment does not seem to have been dealt with in the Criminal Law Consolidation Act. It may be wise to leave the statute as it is until the general statute is enacted following the consideration of the reports of the Mitchell Committee.

Statute 9 Geo. IV c. 69.

This deals with persons going armed by night for the destruction of game. Parts of it are still in force in England. We would have doubted whether it was in force in South Australia but Sir Samuel Griffith treated it as being in force in Queensland. It should be repealed in its possible application to South Australia.

Statute 9 Geo. IV c. 84 (1828).

This is another of the abolition of the Slave Trade Acts and raises the same considerations as the previous Acts. It should be left until we do a general report to you on the effect of the Colonial Laws Validity Act in relation to imperial statutes.

Statute 11 Geo. IV & 1 Will. IV c. 39 (1830).

This is another in the long series of transportation Acts. It no doubt applied in South Australia in 1836. It was repealed in England by the Criminal Justice Act 1948 and the Statute Law Revision Act 1963 and can be repealed here.

Statute 11 Geo. IV & 1 Will. IV c. 66 (1830).

This was a consolidating Act relating to forgery. The history of the Act is well set out in *Radzinowicz (op. cit.) page 590* and following. It removed the punishment of death from most types

of forgery. Sections 2 and 3 would appear not to have been impliedly repealed by the Criminal Law Consolidation Act 1935. The statute is still partly in force in England. It can be repealed in South Australia but with the saving of the alterations in the law made by those two sections.

Statute 11 Geo. IV & 1 Will. IV c. 73 (1830).

This is an amending Act to the Act 60 Geo. III & 1 Geo. IV c. 8 dealing with blasphemous and seditious libel. It was repealed in England in 1869. For the reasons given with regard to the previous statute we think it should remain in force here until the general Criminal Law Act has been passed following the consideration of the reports of the Mitchell Committee.

Statute 2 & 3 Will. IV c. 4 (1832).

This deals with embezzlements in the public service. It is sufficiently dealt with in the Criminal Law Consolidation Act. The statute was repealed by the Statute Law Revision Act 1891 and can be repealed here.

Statute 2 & 3 Will. IV c. 34 (1832).

This is a consolidating Act relating to coinage. Section 21 expressly refers to coinage in any part of Her Majesty's dominions. This statute abolished the death penalty for all coinage offences. The statute was repealed in England by 24 & 25 Vict. c. 95. As to the colonies it is a question whether the statute survived the Coinage (Colonial Offences) Act 1853 Chapter 48. As this raises one of the many problems relating to the application of the Colonial Laws Validity Act we suggest that the statute remain in force until we have dealt with this statute in the specific report dealing with the application of the Colonial Laws Validity Act of this State.

Statute 2 & 3 Will. IV c. 62 (1832).

This statute substituted transportation for the death penalty in the cases referred to in the statute. It was repealed in England by the Statute Law Revision Act 1874 and can be repealed here.

Statute 2 & 3 Will. IV c. 123 (1832).

This altered the punishment for certain forgeries from death to transportation. It was repealed in England by the Statute Law Revision Act 1891 and can be repealed here.

Statute 3 & 4 Will. IV c. 44 (1833).

This takes away the death penalty for breaking and entering and stealing in a dwelling-house and deals with the question of transportation for life for forgery. It was repealed in England by the Statute Law Revision Act 1874 and can be repealed here.

Statute 3 & 4 Will. IV c. 73 (1833).

This is one of the general consolidating statutes for the abolition of the slave trade. Part of it is still in force in England today and part has been repealed by the Statutes of 1888 and 1890. It applies on the face of it throughout the colonies and by reason of the Colonial Laws Validity Act it cannot be repealed in South Australia.

Statutes 3 & 4 Will. IV c. 97 (1833).

This deals with forgery of stamps. It is doubtful whether it was ever in force in South Australia. It was repealed in England by the Statute Law Revision Act 1874 and can be repealed here.

Statute 3 & 4 Will. IV c. 103 (1833).

This is one in the long series of child labour laws. It provides that children under eighteen are not to work in factories between 8.30 at night and 5 o'clock in the morning and they are not to work more than twelve hours in a day, and if they are under thirteen they shall not work more than ten hours in the day. The statute was repealed in England by the Factory and Workshop Act 1878 and can be repealed here.

Statute 4 & 5 Will. IV c. 13 (1834).

This is a general Act relating to smuggling. It was repealed in England by the Statute 8 & 9 Vict. c. 84 and can be repealed here.

Statute 4 & 5 Will. IV c. 26 (1834).

This is an Act to abolish the practice of hanging the bodies of criminals in chains. It was repealed in England by the Statute Law Revision Act 1874 and can be repealed here.

Statute 4 & 5 Will. IV c. 67 (1834).

This abolished capital punishment in case of offenders returning from transportation. It was repealed in England by the Criminal Justice Act 1948 and can be repealed here.

Statute 5 & 6 Will. IV c. 59 (1835).

This is the original Prevention of Cruelty to Animals Act. Some of it is covered by our own Acts on the same subject but some is not. It was repealed in England by the Cruelty to Animals Act 1849. There should be a repeal of the statute here but saving the amendments to the law made by the statute which are not covered by our own legislation.

Statute 5 & 6 Will. IV c. 81 (1835).

This is a statute to abolish capital punishment for letter stealing and for sacrilege. It was repealed in England by the Statute Law Revision Act 1874 and can be repealed here.

Statute 6 & 7 Will. IV c. 4 (1836).

This amends the statute of the previous session to abolish capital punishment for letter stealing and sacrilege. It was repealed in England by the Statute Law Revision Act 1874 and can be repealed here.

Statute 6 & 7 Will. IV c. 114 (1836).

This gave prisoners indicted of felony a right for the first time to be defended by counsel. It is still partly in force in England. The history of the procedure up to that date is well set out in *Radzinowicz (op. cit.)* Volume I page 98. The matter is now covered in South Australia by Section 288 of the Criminal Law Consolidation Act and the statute can be repealed here.

We have the honour to be

HOWARD ZELLING	M. F. GRAY
CHRISTOPHER J. LEGOE	JOHN KEELER
D. W. BOLLEN	D. F. WICKS

Law Reform Committee of South Australia.

1 July 1980.