The Codification of the Criminal Law

The criminal law of Queensland with respect to indictable offences, and also to a certain extent with respect to offences punishable on summary conviction, is to be found in the Criminal Code Act, 1899, post, and the Criminal Code scheduled thereto. The Criminal Code Act, 1899, s. 2, declares that the provisions contained in the Code shall be the law "with respect to the several matters therein dealt with". Section 3 (1), (2) and the Second and Third Schedules of that Act repealed substantially the whole of the criminal statute law of Queensland (including English statutes in force by virtue of the Australian Courts Act, 1828, s. 24, title CONSTITUTION). Imperial statutes expressly applicable to the dominions of course remain in force. Those of major importance are printed under this title. Upon the Code coming into force persons ceased to be punishable for indictable offences under the common law. See the Criminal Code Act, 1899, s. 5, post. For the principles of construction applicable to codifying legislation, see the notes to s. 2 of the Criminal Code Act, 1899, post.

It is noteworthy that the enacting words of the Criminal Code Act, 1899, have been varied from the usual formula "be it enacted" to read "be it enacted and declared". The word "declared" does not, however, constitute a declaration that the Code is a mere restatement of the law as it existed at the time of its enactment. See Harding v. Commissioner of Stamps for Queensland, [1898] A.C. 769, at p. 775; 9 Q.L.J. 134, at p. 139; R. v. Martyr, [1962] Qd. R. 398, and the preamble to the Act which recites that it is desirable "to amend" the criminal law. The letter of Sir Samuel Griffith, dated October 29, 1897, transmitting the draft Criminal Code to the Attorney-General, points out that the draft in some cases departed from the rules then existing "for the purpose of avoiding admitted anomalies or of simplifying the law", and that it did not make provision for certain old criminal offences which were obsolete or inapplicable to Australia, such as the former crime of blasphemy. The contents of this letter are to be found in the edition of the Criminal Code by Wilson and Graham.

As Sir Samuel Griffith pointed out in the letter referred to, most civilised nations have reduced their criminal law to codified form, among the exceptions being the United Kingdom and some of the Australian States. A draft of a Criminal Code had been prepared in England about the year 1878 and a Commission appointed for that purpose presented a report concerning it. A Bill for its enactment was actually introduced in the House of Commons in 1880 but did not become law. The draft was, however, copied with adaptations by the New Zealand Criminal Code Act, 1893. The Criminal Code of Queensland does not follow this draft at all closely. It owes much to the penal codes of Italy and the State of New York. (See the letter of Sir Samuel Griffith referred to above.) In turn it has been closely followed by the Criminal Code of
Western Australia, first enacted in 1902, and re-enacted in 1913. The Criminal Code of Tasmania (1924) follows the Queensland Code much less closely than did that of Western Australia. The Queensland Code was adopted in the Territory of Papua by the Criminal Code Ordinance of 1902, No. 7, and in the Mandated Territory of New Guinea by the Laws Repeal and Adopting Ordinance, 1921, No. 1. Further afield still, numerous provisions similar to those of the Criminal Code of Queensland are to be found in the Criminal Code of Canada, enacted as Chapter 36 of the Revised Statutes of Canada, 1927.

Analysis of the Criminal Code

Detailed analysis of the Criminal Code is rendered unnecessary by the excellent precis of sections which prefaces it, but the following outstanding features may be mentioned in this place.

The Code defines an offence as an act or omission which renders the person doing the act or making the omission liable to punishment s. 2. Offences are divided into indictable offences, which are ordinarily punishable only after conviction on indictment, and simple offences, punishable upon conviction by justices or a magistrate in petty sessions s. 3; the Justices Acts, 1886 to 1963, ss. 4 (“simple offence”), 19, 30, title JUSTICES. An indictable offence may be a crime, which ordinarily imports that an offender may be arrested without warrant s. 5, or a misdemeanour s. 3. An offence not otherwise designated as a simple offence the Criminal Code, s. 3, post; see also the Justices Acts 1886 to 1963, s. 19, title JUSTICES.

Chapters II-V of the Code, dealing respectively with parties to offences, the general application of the Code, punishments, and the general principles of criminal responsibility, apply to both indictable and simple offences.

That portion of the Code which deals with specific offences, Parts II-VII, in general creates only indictable offences. In cases where it is usual for an act or omission of a particular nature to be dealt with both as an indictable offence and as a simple offence, the Code commonly constitutes a simple offence as well as an indictable offence, or provides for summary punishment of the indictable offence. The chief instances of such treatment will be found in ss. 341-346 (assaults), ss. 443-457 (stealing and similar offences), ss. 480-483 (injuries to property and animals), s. 534 (intimidation of workmen and employers) and s. 535 (attempts to commit indictable offences punishable summarily). Provisions creating indictable offences are rarely found in Queensland statutes other than the Criminal Code. Some such instances there are, however, e.g., The Companies Act of 1961, s. 379 (4), title COMPANIES. There are, of course, numerous Acts other than the Criminal Code which constitute acts or omissions as simple offences. The most important of such Acts will be found under the titles GAMING and VAGRANTS.

Part VIII of the Criminal Code provides for procedure with respect to arrest, prosecution and punishment of offenders. Here again the provisions of the Code are in the main restricted to indictable offences, the procedure on prosecution for simple offences being dealt with in the laws relating to justices of the peace, their powers and authorities (s. 556), which are to be found in the Justices Acts, 1886
to 1963, title JUSTICES. The Justices Acts 1886 to 1963, Parts IV and V, provide the procedure governing preliminary proceedings on charges of indictable offences. See the Criminal Code, s. 554. The chief provisions of Part VIII of the Code which relate to prosecutions for simple offences are ss. 574, 656-659, 659A, 674, 678, 700, 707 (1).

The Criminal Code does not deal with the criminal jurisdiction of Courts. For the Acts relating to such jurisdiction, see the notes to s. 553 of the Code. The territorial limitation on the powers of the Parliament of Queensland to pass criminal legislation is dealt with in the notes to s. 12 of the Code, post, and in the Preliminary Note to the title CONSTITUTION.

The effect of s. 6 of the Criminal Code Act, 1899, post, on civil rights is to be noted. It is declared that when by the Code any act is declared to be lawful, no action can be brought in respect thereof; otherwise rights of action are not affected. Cases in which this provision has been applied will be found in the notes thereunder.

Important provisions with respect to evidence in criminal cases are contained in s. 618A of the Code, post, the Criminal Law Amendment Acts, 1892 (s. 4) and 1894 (s. 10), post. The law of evidence generally is dealt with by the Acts printed under the title EVIDENCE.

Queensland Criminal Statutes Other than the Criminal Code

Certain other Queensland Acts are printed under this title. Provision for aiding the defence of persons of little means charged with indictable offences is made by the Poor Prisoners' Defence Act of 1907, post. With respect to assistance of such persons on appeals, see the Criminal Code, s. 671c, post. The Cattle Stealing Prevention Act of 1853, post, relates to restitution to their owners of stolen animals and the adjustment of rights as between purchasers of animals after the stealing.

The Fugitive Offenders Act of 1850, post, has been superseded in practice by the Service and Execution of Process Act 1901-1958, Part III (Commonwealth) title PRACTICE.

Persons serving terms of imprisonment or convicted of the more serious offences are commonly disqualified by statute from holding positions of a public or official nature or from engaging in particular professions. For provisions of this nature, see related legislation, ante.

Commonwealth Criminal Legislation

The Commonwealth has passed the Crimes Act 1914-1960 dealing with a number of offences relating to Commonwealth law, property and administration. With regard to the power of the Commonwealth to enact criminal legislation, see R. v. Kidman (1915), 20 C.L.R. 425 See also notes to s. 5 of the Criminal Code Act, 1899, p. 197 post.

Imperial Statutes in Force in Queensland

The Admiralty Offences (Colonial) Act, 1849, Courts (Colonial) Jurisdiction Act, 1874, and the Territorial Waters Jurisdiction Act, 1878, post, relate to trial of offences committed on the sea or in certain inlets of the sea. In this connexion see also the Australian Courts Act, 1828, s. 4 (Imperial), title CONSTITUTION. The Admiralty Offences (Colonial) Act, 1860, post, confers power on the legislatures of British
possessions to punish as murder or manslaughter acts done within the possession where the resulting death occurs outside the possession. This power appears to have been exercised in s. 12 of the Criminal Code, _post_.

The law relating to extradition of persons accused or convicted of having committed specified crimes in foreign States with which treaties for surrender have been made is contained in the Extradition Act, 1870, _post_, which is made applicable to British possessions by s. 17 thereof. This Act is supplemented by the Extradition Acts, 1873, 1906, and 1932, _post_, the Counterfeit Currency (Convention) Act, 1935, _post_, and the Extradition Act, 1903-1950 (Commonwealth).

The rendition, as between different parts of British dominions, of fugitive criminals charged with commission of crimes punishable in the places where committed with imprisonment and hard labour for one year or any greater punishment, or convicted of offences, is provided for by the Fugitive Offenders Acts, 1881 and 1915, _post_. For the application of these Acts in respect of Queensland, see the note to ss. 12 and 39 of the Fugitive Offenders Act, 1881. The removal from one British possession to another of prisoners serving sentences is dealt with by the Colonial Prisoners Removal Acts, 1869 and 1884, _post_.


