CHAPTER X.

OFFENSES AGAINST PUBLIC PEACE.

§ 176. **General Statement.** Since the prime purpose of government is to maintain peace and tranquility to enable the people to live in comfort and security, any disturbance of sufficient magnitude for the law's notice is criminal. Chief among crimes of this class are: stirring up strife by common barratry, maintenance, and champerty (prosecutions for which are very rare and their criminality now doubtful); various simple breaches of the peace, as eavesdropping, common scolding, and making noises to the disturbance of the community; forcible entry and forcible detainer; affray; unlawful assembly, rout, and riot; and libel. Let us examine these separately.

COMMON BARRATRY, MAINTENANCE, AND CHAMPERTY.

§ 177. "Common Barratry is the offense of frequently exciting and stirring up suits and quarrels between his majesty's subjects, either at law or otherwise." 4 Bl. Com. 134.

§ 178. "Maintenance is an offense that bears a near relation to the former, being an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it. * * * A man may, however, maintain the suit of his near kinsman, servant, or poor neighbor, out of charity and compassion, with impunity." 4 Bl. Com. 134.

§ 179. "Champerty, campi-partitio, is a species of maintenance and punished in the same manner; being a bargain with a plaintiff or defendant campum partire, to divide the land or other matter sued for between them if they prevail at law; whereupon the champerter is to carry on the party's suit at his own expense."

Common law not adopted on this offense in Pennsylvania: James v. C., § 5.

SIMPLE BREACHES OF THE PEACE.

§ 180. Noises, Etc.

(Pa. Sup. Ct., 1812.) **Making Disturbance at Night.** Taylor was indicted and convicted of entering the house of J. Strain at 10 p. m., and making a great noise. The court arrested judgment on the ground that no crime was charged. The record comes here on writ of error. TILGHMAN, C. J. It is contended on the part of James Taylor, that the matter charged in the indictment is no more than a private trespass, and not an offense subject to a criminal prosecution. On the other hand it has been urged for the commonwealth that the offense is indictable; 1st, as a forcible entry; 2nd, as a malicious mischief. I incline to the opinion that the matter charged in the indictment does not constitute a forcible entry, although no doubt a forcible entry is indictable at common law. There must be actual force to make an indictable offense. The bare allegation of its being done with force and arms does not seem to be sufficient, for every trespass is said to be with force and arms. * * * There is another principle, however, upon which it appears to me that the indictment may be supported. It is not necessary that there should be actual force or violence to constitute an indictable offense. Acts injurious to private persons, which tend to excite violent resentment, and thus produce fighting and disturbance of the peace of society, are themselves indictable. To send a challenge to fight a duel is indictable, because it tends directly towards a breach of the peace. Libels fall within the same reason. A libel even of a deceased person, is an offense against the public, because it may stir up the passions of the living and produce acts of revenge. Now, what could be more likely to produce violent passion and a disturbance of the peace of society, than the conduct of the defendant? He enters secretly after night into a private dwelling-house with an intent to disturb the family, and after entering makes such a noise as to terrify the mistress of the house to such a degree as to cause a miscarriage. Was not this enough to produce some act of desperate violence on the part of the master or servants of the family? It is objected that the kind of noise is not described. No matter; it is said to have been made vehemently and turbulently, and its effects on the pregnant woman are described. In the case

of R. v. Hood, Sayer 161, the court refused to quash an indictment for disturbing a family by violently knocking at the front door of the house for the space of two hours. It is impossible to find precedents for all offenses. The malicious ingenuity of mankind is constantly producing new inventions in the art of disturbing their neighbors. To this invention must be opposed general principles calculated to meet and punish them. I am of opinion that the conduct of the defendant falls within the range of established principles, and that the judgment of the court below should be reversed. [Yeates, and Brackenridge, JJ., filed concurring opinions.] **C. v. Taylor,** 5 Binney 277, Mi. 44.

Shooting dog on porch of owner to terror of members of family is: Henderson v. C., § 18. Shooting a wild goose near a house, so that a woman had a fit: C. v. Wing, § 18. Mere trespass: R. v. Bake, § 18; R. v. Turner, § 61.

FORCIBLE ENTRY AND FORCIBLE DETAINER.

§ 181. Defined. "Forcible entry or detainer, which is committed by violently taking or keeping possession of lands and tenements with menaces, force, and arms, and without the authority of law." 4 Bl. Com. 148.

(Mass. Sup. Judicial Ct., 1849.) **What Constitutes at Common Law.** Indictment for forcible entry and detainer. Defendant demurred. Demurrer overruled. Verdict, guilty. He excepts, among other things, to the sufficiency of the indictment. DEWEY, J. * * * We apprehend that both before and since the enacting of the various statute provisions in England, the remedies for a forcible entry unlawfully made have been twofold, one by indictment at common law, and the other by proceedings under the statutes. In R. v. Bathurst, Sayer 225, it was held, that an indictment lies at common law for a forcible entry into a dwelling-house and expelling the occupants. In R. v. Bake, 3 Burr. 1731 [§ 18], Justice Wilmot says, "Undoubtedly an indictment will lie at common law, for a forcible entry, though the proceedings are generally under the acts of parliament." In R. v. Wilson, 8 T. R. 357, 362, Lord Kenyon says, "There is no doubt that the offense of forcible entry is indictable at the common law, though the statute gives other remedies to the parties aggrieved." 3 Chit. Crim. Law 1131; Rosc. Cr. Ev. 374, are also authorities to the same effect. * * * This must be so upon sound principles, as the preservation of the public peace requires that the offense should be punished criminally. Individuals are not to assert their claims to real estate, and especially to a dwelling-house, in the actual possession of another, by force and violence, and with a strong hand. The peace of the commonwealth forbids it. This principle does not in any degree interfere with

the making of a formal entry upon land, preparatory to the bringing of an action at law, and which may be necessary to give a legal seizin to the party, but which leaves those in possession undisturbed as to the actual occupation. Nor does it embrace the case of a mere trespass upon land, as to which the civil remedy is alone to be resorted to. To sustain an indictment for a forcible entry, the entry must be accompanied with circumstances tending to excite terror in the owner, and to prevent him from maintaining his right. There must at least be some apparent violence; or some unusual weapons; or the parties attended with an unusual number of people; some menaces, or other acts giving reasonable cause to fear, that the party making the forcible entry will do some bodily hurt to those in possession, if they do not give up the same. It is the existence of such facts and circumstances, connected with the entry, that removes it from the class of cases of civil injury, to be redressed in actions of trespass or other civil proceedings, and holds the party thus making an unlawful entry amenable to the public as for a public wrong. Does the present indictment charge such an offense, as we have above described as that of a forcible entry? Charging the entry to have been unlawfully made with force and arms, and with a strong hand, is a sufficient allegation to constitute the offense a forcible entry. The words "with a strong hand" mean something more than a common trespass. By Lawrence, J., in R. v. Wilson, 8 T. R. 362, these words are said to imply that the entry was accompanied with that terror and violence which constitute the offense. See Rastall's Entries, 354; Baude's Case, Cro. Jac. 41. It seems to us, therefore, that this indictment does well charge the offense of a forcible entry, and that such forcible entry is an offense at common law. * * * Exceptions overruled. **C. v. Shattuck,** 4 Cush. 141, Kn. 324.

"Force and arms" does not imply breach of peace sufficient to sustain indictment: R. v. Bake, § 18; Kilpatrick v. P., § 16; C. v. Taylor, § 180. A common law offense: R. v. Bake, § 18.

AFFRAY.

§ 182. **Defined, Etc.** "Affrays (from affraier, to terrify) are the fighting of two or more persons in some public place, to the terror of his majesty's subjects: for, if the fighting be in private, it is no affray but an assault." 4 Bl. Com. 145.

(Ga. Sup. Ct., 1853.) **Proof of Joining in Affray—Mere Words.** WARNER, J. The defendants were indicted for an affray, which is defined by our code, to be "the fighting of two or more persons in some public place, to the terror of the citizens, and disturbance of the public tranquility." Prince, 643. * * * Where two are indicted for an affray, the successful defense of one will operate as an acquittal of both; as where the evidence shows that one of

the parties acted entirely in self-defense, while the other assaulted and beat him, the aggressor may be guilty of an assault and battery, but neither of them guilty of an affray; and neither can be convicted on an indictment therefor; so that on the trial of an indictment for an affray, the aggressor is as much interested to show that both parties did not fight, as the innocent party is to show that fact; the defense of one enures to the benefit of the other. But it is said, there is no evidence that Hawkins, one of the defendants, fought at all, and that an affray cannot be committed by words alone. The evidence is, that an altercation took place between the parties in a public street in Milledgeville, at the instance of Hawkins, who first accosted Bonner. Bonner then drew his knife, cut at Hawkins. Hawkins then drew his knife from his pocket, but did not use it, being prevented by the bystanders. The drawing his knife and attempting to use it on that occasion, was an act quite significant of his intention, had he not been prevented from using it. The words alone of the parties, independent of their acts, would not have constituted an affray; but their words, accompanied by their acts respectively, in drawing their knives and attempting to use them, was calculated to terrify the good citizens of Milledgeville, and disturb the public tranquility. 1 Russell on Crimes 271. * * * Affirmed. **Hawkins v. S.**, 13 Ga. 322, 58 Am. Dec. 517, Kn. 313.

Prize fight: C. v. Colberg, § 28; S. v. Burnham, § 28.

UNLAWFUL ASSEMBLY, ROUT, AND RIOT.

§ 183. Defined and Distinguished. **"Ricts, routs, and unlawful assemblies, must have three persons at least to constitute them. An unlawful assembly is when three or more do assemble themselves together to do an unlawful act, as to pull down inclosures, to destroy a warren or the game therein, and part without doing it, or making any motion towards it. A rout is where three or more meet to do an unlawful act upon a common quarrel, as forcibly breaking down fences upon a right claimed of common or of way, and make some advances towards it. A riot is where three or more actually do an unlawful act of violence, either with or without a common cause or quarrel: as if they beat a man; or hunt and kill game in another's park, chase, warren, or liberty; or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuisance, in a violent and tumultuous manner."** **4 Bl. Com. 146.**

(Ind. Sup. Ct., 1853.) **Charivari.** Indictment for riot under 2 R. S. (1852), p. 425, providing: "If three or more persons shall do an act in a violent and tumultuous manner, they shall be deemed guilty of a riot." Verdict, guilty; motion for new trial overruled; and on

exceptions the question was whether there was evidence to sustain the verdict. It was shown that defendants marched back and forth in the highway before the public house of J. Wise blowing horns, singing songs, and shouting, at night till two o'clock in the morning; but that they carried no weapons, and offered no violence. PERKINS, J. * * * A great noise in the night-time, made by the human voice or by blowing a trumpet, is a nuisance to those near whom it is made. The making of such a noise, therefore, in the vicinity of inhabitants, is an unlawful act; and, if made by three or more persons in concert, is, by the statute of 1843, a riot. All these facts exist in the present case. Here was a great noise, heard a mile, in the night-time, made with human voices and a trumpet, in the vicinity of inhabitants. The requirements of the statute for the making out of the offense are filled. The noise was also made tumultuously. The act itself involves tumultuousness of manner in its performance. But it is said, here was no alarm or fear. The statute defining the offense says nothing about alarm or fear. In this case, however, it was only the witnesses who were not alarmed. Others within the distance of the mile in which the noise was heard, and who were not present to observe the actual condition of things, may have been, and doubtless were, alarmed; and the pedler was afraid his horses would be stolen. It is said the rioters were in good humor. Very likely, as they were permitted to carry on their operations without interruption. But with what motive were they performing these good-humored acts? Not, certainly, for the gratification of Wise and his family. They were giving them what is called a charivari, which Webster defines and explains as follows: "A mock serenade of discordant music, kettles, tin-pans, etc., designed to annoy and insult. It was at first directed against widows who married a second time, at an advanced age." * * * Judgment affirmed. **Bankus v. S.**, 4 Ind. 114, Kn. 315.

Liability of rioters for acts of opponents: C. v. Campbell, § 14. Number necessary to create: Respublica v. Teischer, § 15.

LIBEL.

§ 184. Defined, Etc.

(Conn. Sup. Ct. of Errors, 1828.) **Letter Addressed to Person Libeled.** Information for writing and sending a letter to a married woman insinuating libidinous conduct and soliciting adultery. Defendant moved in arrest of judgment after conviction, and asks the opinion of this court. PETERS, J. * * * **A libel is a malicious defamation of any person, made public by printing, writing, signs, or pictures, tending to blacken the memory of the dead, with intent to provoke the living, or injure the reputation of the living, provoke him to wrath, and expose him to hatred, contempt or ridicule.** 1 Hawk. P. C. c. 73, § 1; 4 Bl. Com. 150; Holt, Libel, 73; Hillhouse v.

Dunning, 6 Conn. 391. Is the writing in question a libel? It is a letter, addressed, by the defendant, to the wife of another man, stating she had "played peep-abo" with him long enough; by which the jury have found, that he meant, that she had acted libidinously towards him, and invited him to an adulterous intercourse and connection with her, and sought opportunities to effect it. It appears by the information, which the jury have found to be true, that the defendant composed and wrote the letter, and sent it to her, with intent to insult and abuse her, and to seduce and debauch her affections from her husband, entice her to commit adultery, and bring her into hatred and contempt. Adultery is a detestable crime, especially in a female; the most disgraceful a woman can commit; and is punished with great severity, by our law. St. 1821, tit. 22, § 62. To say of a woman, falsely and maliciously, that she has committed this crime, is a gross slander. To say that she is running about the country seeking opportunities to commit adultery, renders her more contemptible and ridiculous than the crime itself; and to publish such a story, by printing or writing, is a libel. But a libel is a high misdemeanor; and it may be laid down as law, in all cases, that the allegation of an act, which the law recognizes and punishes as a crime, is libelous. Holt, Libel, 188, 189; R. v. Wilkes, 2 Wils. 151. It is said, that the letter in question is not a libel, because it was not published, by the defendant. But it is well settled, that the sending of a letter to the party, filled with abusive language, is an indictable offense, because it tends to a breach of the peace. It has, indeed, been a matter of doubt whether the sending of such a letter to another would support an action for a libel, because there was no publication. But the sending of such a letter, without other publication, is clearly an offense of a public nature, and punishable as such, as it tends to create ill-blood, and cause a disturbance of the public peace. Holt, Libel, 239; 2 Swift, Dig. 341; 1 Hawk. P. C. lib. 1, c. 73, § 11; Bac. Abr. tit. "Libel," B; Wooton v. Edwards, Poph. 140; Hicks's Case, Hob. 215. * * * Motion in arrest overruled. **S. v. Avery,** 7 Conn. 266, 18 Am. Dec. 105. F. 149.

A common law crime in America: C. v. Chapman, § 5; S. v. Pulle, § 7. Not an offense punishable in U. S. courts: U. S. v. Hudson, § 2. Liability of publishers of papers and magazines for matter not known by them to be in paper: R. v. Almon, § 81. Written out of jurisdiction punishable where published: R. v. Johnson, § 87; C. v. Blanding, § 87. Obscene publication as criminal libel: R. v. Curl, § 19.