

大清律例卷二十五
刑律。賊盜下
發塚

CHAPTER XXV OF THE LAWS OF THE GREAT TS'ING DYNASTY.

CRIMINAL LAWS. — REBELLION, ROBBERY AND THEFT, III.

ON OPENING GRAVES

First Fundamental Article.

凡發掘他人墳塚見棺槨者杖一百流三千里。已開棺槨見屍者絞監候。發而未至棺槨者杖一百徒三年。招魂而葬亦是。爲從減一等。

若年遠塚先穿陷及未殯埋而盜屍柩者杖九十徒二年半。開棺槨見屍者亦絞。

其盜取器物磚石者計贓准凡盜論、免刺。

» Every person who opens a grave belonging to others and renders the coffin or the vault visible, shall receive one hundred blows with the long stick and be deported for life to a distance of 3000 miles. Should he have opened the coffin or the vault and rendered the corpse visible, he shall be strangled, after previously being kept in jail to await (the confirmation of his sentence by the higher authorities). And he who has opened a grave without reaching the coffin or the vault, shall be punished with one hundred blows with the long stick and three years' banishment. — The same punishments shall be inflicted if only an evoked soul were buried in the grave¹. — Accessories to the crime shall be liable to a punishment one degree less severe.

» If a coffin containing a corpse be stolen out of a grave of old date which has become open or has caved in, or if such a coffin be stolen before provisory burial or burial for good, the perpetrat-

¹ This clause is interesting, as it shows that the law for the protection of the dead is chiefly intended to protect the soul, which cannot subsist without the body. Compare pp. 847 sqq.

ors shall receive ninety blows with the long stick and be banished for two years and a half. Should they have opened the coffin and rendered the corpse visible, they shall also be strangled (Comp. page 881, the sixth supplementary article).

» In case of theft of implements and objects, bricks and stones (from a grave), the culprits must be punished as in ordinary cases of theft, according to the value of the things appropriated¹; but they need not be branded².

Second Fundamental Article.

若卑幼發五服以內尊長墳塚者同凡人論。開棺槨見屍者斬監候。若棄屍賣墳地者罪亦如之。買地人牙保知情者各杖八十、追價入官、地歸同宗親屬。不知者不坐。

若尊長發五服以內卑幼墳塚開棺槨見屍者總麻杖一百徒三年。小功以上各遞減一等。

祖父母父母發子孫墳塚開棺槨見屍者杖八十。

其有故而依禮遷葬者尊長卑幼俱不坐。

» Should an inferior or junior member of a family have opened the grave of a relation who held a higher rank in the family or was older than himself, and for whom he has, or had, to wear mourning in one of the five degrees, he shall be put on trial just as if he had opened the grave of a person to whom he was not related. If he has opened the coffin or the vault and rendered the corpse visible, he shall be beheaded, after having been kept in prison until his sentence has been confirmed by the higher authorities. This punishment shall be inflicted also in case he has thrown the corpse away and sold the burial ground; moreover, the buyer, and the broker or go-

1 A list of punishments to be inflicted upon thieves in proportion to the value of the stolen goods is given in chapter 24 of the Code, § 竊盜.

2 Ordinary thieves are branded on the upper part of the right arm with the characters 竊盜, "theft". A recidivist receives a second brand on the left arm, and if a man who has already been branded twice is convicted of theft a third time, he is to be condemned to strangulation. See chapter 24 of the Code, § 竊盜.

between who has effected the sale shall both be punished with eighty blows with the long stick if they were aware of the circumstances of the case; the purchase-money shall be sequestered and confiscated to the profit of the magistracy, and the ground be given back to the members of the clan to which the deceased belonged. But if either the buyer or broker has acted unwittingly, he shall not be punished.

» If a higher or senior member of a family has opened the grave of an inferior or junior relation, he shall, if he has opened the coffin or the vault and rendered the corpse visible, be punished with one hundred blows with the long stick and three years banishment if he had to mourn for the dead in the fifth degree. But should the dead person be such a relation of his in the fourth or a higher degree of mourning, the punishment is to be reduced one degree for each higher degree of mourning¹.

» Paternal grandparents or parents who open the grave of their grandchild or child and open the coffin, so that the corpse becomes visible, shall be punished with eighty blows with the long stick.

» (In all the cases provided for by this article) neither the superior and senior relations, nor the inferior and junior kinspeople commit any punishable crime when they transfer the dead into another grave for valid reasons, with observance of the established rites.

Third Fundamental Article.

若殘毀他人死屍及棄屍水中者各杖一百流三千里。若毀棄總麻以上尊長未葬死屍者斬監候。棄而不失其屍及毀而但髡髮若傷者各減一等。

毀棄總麻以上卑幼死屍、各依凡人毀棄依服制遞減一等。

毀棄子孫死屍者杖八十。其子孫毀棄祖父母

¹ That is to say, if the dead were to be mourned for by the perpetrator in the fourth degree, the punishment shall amount to 90 blows and 2½ years banishment; and if his mourning were in the third or the second degree, the punishment shall be 80 blows and 2 years, or 70 blows and 1½ years. Compare our remarks on page 567, and the list of punishments given at the foot of that page.

父母及奴婢雇工人毀棄家長死屍者不論殘失與否斬監候。

» Whoever mangles the corpse of a member of another family, or casts it into the water, shall be punished with one hundred blows with the long stick and be transported for life to a region three thousand miles distant. And he who mangles or casts away the still unburied corpse of a superior or senior member of his family for whom he must wear mourning in one of the five degrees, shall be decapitated, but previously be kept in jail until his sentence has been confirmed by the higher authorities. Each of these punishments is to be reduced one degree if the corpse thrown away were not lost in consequence of the crime, or when the mangling only caused injury to the hair.

» He who mangles or casts away the dead body of an inferior or junior relation of his for whom he must mourn in one of the five degrees, shall be punished as if he had committed the same crime against a person who is not a member of his family, but with a reduction of one degree for each higher degree of mourning.

» Mangling or throwing away the corpse of a son or grandson shall be punished with eighty blows with the long stick. But any child or grandchild who commits the same offence against his or her paternal grandparent or parent, and any male or female slave who mangles or throws away the dead body of his or her master, or any hired workman who commits such an offence against his employer, shall be beheaded, after previously being kept in jail until the sentence has been confirmed by the higher authorities, neither the nature of the mutilations, nor the loss of the corpse in consequence of the crime being taken into account in such an event.

Fourth Fundamental Article.

若穿地得無主死屍不卽掩埋者杖八十。

若於他人墳墓爲熏狐狸因而燒棺槨者杖八十徒二年。燒屍者杖一百徒三年。若緦麻以上尊長各遞加一等、卑幼各因其服依凡人遞減一等。

若子孫於祖父母父母及奴婢雇工人於家長墳墓熏狐狸者杖一百。燒棺槨者杖一百徒三年。燒屍者絞監候。

» He who, while digging in the earth, finds a corpse which has no owner, and does not forthwith cover it up with earth, shall receive eighty blows with the long stick.

» Should any person smoke foxes out of a grave which belongs to others, and thereby set fire to the coffin or the vault, he shall be punished with eighty blows with the long stick and be banished for two years. If the corpse is burnt, he shall receive a hundred blows and be banished for three years. If the corpse be that of a superior or senior member of his family for whom he must mourn in any of the five degrees, each of these punishments shall be increased one degree for each higher degree of mourning; but if an inferior or junior relation of his be buried in the grave, the punishment shall be in proportion to the mourning which the perpetrator must observe for him, that is to say, it will be the same as is inflicted in the case of a corpse belonging to another family, but with the reduction of one degree for each higher degree of mourning.

» If a son or grandson smokes a fox out of the grave of one of his parents or paternal grandparents, or if a slave or slave woman does such a thing in the grave of his or her master, or a hired workman in that of his employer, the culprit shall receive one hundred blows with the long stick. Should the coffin or the vault have suffered by the fire, the punishment shall be one hundred of such blows and three years banishment; and if the corpse be burnt, strangulation shall be inflicted, the culprit being previously kept in jail till the sentence has been confirmed by the higher authorities.

Fifth Fundamental Article.

平治他人墳墓爲田園者、雖未見棺槨、杖一百。仍令改正。

於有主墳地內盜葬者杖八十、勒限移葬。

» Whosoever levels another's grave even with the ground and converts it into a field or garden, shall receive one hundred blows with the long stick, though he may not have rendered the coffin or

the vault visible. Moreover he shall be ordered to put it into good condition again (Comp. p. 894, the seventeenth supplementary article).

» Any one who fraudulently inters a corpse in a grave-ground owned by another, shall be liable to a punishment of eighty blows with the long stick and be compelled to remove the body elsewhere within a fixed time.

Sixth Fundamental Article.

若地界內有死人、里長地鄰不申報官司檢驗而輒移他處及埋藏者杖八十。以致失屍者首杖一百、殘毀及棄屍水中者首杖六十徒一年。棄而不失及髡髮若傷者各減一等、杖一百。

因而盜取衣服者計贓准竊盜論、免刺。

» When a person is found dead within the precincts of a place, the headman of the village and the people living in the neighbourhood shall be punished with eighty blows with the long stick should they neglect to inform the magistrates of the fact, that these latter may hold an inquest, or if they arbitrarily transfer the corpse to another spot, or bury it. If the corpse is in consequence lost, the chief culprits among them shall receive one hundred blows, and should it be mutilated (by others) or cast into the water, they shall then receive sixty blows and be banished for one year. Should it be cast away, but not lost, or the hair only be injured, a punishment one degree less severe, that is to say, one hundred blows with the long stick, shall be inflicted upon them.

» If in such a case people have stolen the clothes from the corpse, they may be tried for ordinary theft and the punishment be fixed in accordance with the value of the things appropriated; but they need not be branded¹.

The above fundamental articles have been completed, partly modified and sharpened by sundry supplementary articles, enacted at different periods. Some earlier editions of the Code contain a few of such articles which are sought for in vain in later editions. We give them as found in an edition published in 1882, the latest reprint at our disposal.

¹ See notes 1 and 2 at the foot of page 869.

First Supplementary Article.

(Dating from 1870)

發掘常人墳塚開棺見屍爲首者擬斬立決。爲從、無論次數、俱擬絞監候。

其發塚見棺鋸縫鑿孔抽取衣飾、尙未顯露屍身、爲首者擬絞立決。爲從俱擬絞監候。

發塚開棺見屍爲從幫同下手開棺者、不論次數、秋審俱入情寔。在外瞭望一二次者入於緩決、三次及三次以上者入於情實。

其發塚見棺鋸縫鑿孔爲從幫同鑿棺鋸棺三次及三次以上者入於情實、一二次者入於緩決。在外瞭望六次者入於情實、一次至五次者入於緩決。

至發掘常人墳塚見棺槨爲首者改發近邊充軍、年在五十以上發附近充軍。爲從者杖一百徒三年。

» If the grave of an ordinary person has been dug up, the coffin opened and the corpse rendered visible, the chief culprits shall be condemned to decapitation with the sword, and their execution not be postponed (for confirmation of the sentence by the higher authorities). As for the accomplices: without taking into consideration how many times they have joined in such a crime, they shall be condemned to strangulation and be kept in jail till their sentence has been confirmed by the higher authorities (Comp. the first fundamental article).

» He who has opened a grave and rendered the coffin visible, then sawn a seam or made a hole in it and extracted clothes and ornaments from it even without laying bare the corpse, shall, if he has acted as chief culprit, be condemned to strangulation and be executed without awaiting confirmation of his sentence by the higher authorities. All his accomplices shall likewise be sentenced to strangulation, and be confined in jail until their sentence has been confirmed by the higher authorities.

» When graves have been dug up, the coffins opened and the

corpses rendered visible, all the accomplices who have assisted the chief culprits by laying hands on the graves and opening the coffins shall, without the number of times they have committed such an act being taken into consideration, at the autumnal revision of their sentence (by the high provincial authorities) be ranked among the criminals whose cases are properly verified (and whose sentence consequently need not be sent up to the Metropolis for Imperial confirmation). And those who, without having been actively engaged in the crime, have been present as spectators, shall, if they have been present on one or two such occasions, be ranked (at the said revision) among the criminals whose execution must be delayed, (their sentence having to be sent up to Peking for confirmation); but if they have been present on three or more occasions, they shall be ranked among those whose cases are properly verified.

» And in case graves have been opened, the coffins rendered visible and seams have been sawn or holes made therein, then the accomplices who have assisted in cutting and sawing shall, if they have committed the crime on three or more occasions, be ranked at the provincial revision among the criminals whose cases are properly verified; but if they have rendered themselves guilty thereof only once or twice, they shall be ranked among those whose execution must be delayed. And those who, without having been actively engaged in the crime, have been present as spectators, shall, if they have been present on six occasions, be ranked among the criminals whose cases are properly verified; and if they have been present on from one to five occasions, they shall be classed amongst those whose execution is to be delayed until the Imperial confirmation of their sentence has been given.

» If the grave of an ordinary person has been dug up, so that the coffin or vault has become visible, the chief culprits shall be transported for life to a province not far distant¹, but if they are fifty or over fifty years old, they shall be transported for life to an adjacent province. The accomplices shall receive one hundred blows with the long stick and be banished for three years (Comp. the first fundamental article).

¹ The provinces or departments, near or far-off, where convicts condemned to lifelong banishment are to be sent, are enumerated for each province separately in chapter 5 of the Code, §§ 充軍地方 and 徒流遷徙地方. Convicts condemned to temporary banishment are not sent out of their province.

Second Supplementary Article.

(Dating from 1821)

盜未殞未埋屍柩鋸縫鑿孔爲首一二次者杖一百徒三年。三次者總徒四年、四次五次者發邊遠充軍、六次及六次以上者發極邊烟瘴充軍。

爲從一二次者杖九十徒二年半。三次者杖一百徒三年。四次五次者總徒四年。六次七次者發邊遠充軍。八次及八次以上者發極邊烟瘴充軍。

» If a person has once or twice stolen a coffin containing a corpse, which was not yet temporarily buried or buried for good, and has then sawn a seam or made a hole in it, he shall, if he has acted as chief culprit, be punished with one hundred blows with the long stick and three years banishment. Should he have committed such a crime three times, he shall be banished for four years; if four or five times, he shall be banished for life to a distant province; and if he has committed the offence six or more times, he shall be banished for ever to the remotest province where a malarious climate reigns (Kwangtung).

» As for the accomplices: — if they have joined in the crime once or twice, they shall be liable to ninety blows with the long stick and banishment for two years and a half. If they have done so three times, they shall receive one hundred blows and be banished for three years, and if four or five times, the banishment shall last for four years. Should they have joined in such a crime six or seven times, they shall be sent into lifelong banishment to a distant province, and if they have done so eight or more times, they shall be sent into lifelong banishment in the remotest province where a malarious climate reigns.

Third Supplementary Article.

(Dating from 1806)

凡奴婢雇工人發掘家長墳塚、已行未見棺者爲首擬絞監候。爲從發近邊充軍。

見棺槨者爲首絞立決。爲從絞監候。

開棺槨見屍者爲首斬立決梟示。爲從斬監候。

毀棄撤撒死屍者不分首從皆斬、立決梟示。

如有家長尊卑親屬或外人爲首爲從、分別服制凡人各以首從論。

» Any slave, either male or female, who has opened the grave of his or her master, or any hired workman who has opened that of his employer, the work being commenced, but the coffin not yet being rendered visible, shall, if he (or she) has acted as chief culprit, be strangled, being previously kept in prison for the confirmation of the sentence by the higher authorities. The accomplices shall be sent into lifelong banishment in a province not far distant.

» Should the coffin or vault have become visible in such a case, the chief culprits shall be strangled and their execution not be postponed till the sentence has been confirmed. And their accomplices too shall be executed in the same way, being previously detained in prison for confirmation of their sentence by the higher authorities.

» And if the coffin or vault has been opened and the corpse has become visible, the chief culprits shall be decapitated without awaiting revision of their sentence, and their heads be exposed on stakes as a warning to the public. The accomplices too shall be liable to decapitation, but shall be kept in prison to await confirmation of their sentence by the higher authorities.

» Finally, if the corpse has been mutilated, thrown away, beaten, or tossed about, both the chief culprits and the accomplices shall be beheaded; their execution shall not be postponed for confirmation of their sentence, and their heads shall be exposed as a warning to the public.

» If, in the above cases, there be among the chief culprits and the accomplices elders of the family of the dead person, or superior and inferior relations of his, or members of other families, each one must be severally sentenced, in his capacity of chief culprit or accomplice, in accordance with the mourning which he must observe for the dead person, or in accordance with the circumstance of his being no relation to the same.

Fourth Supplementary Article.

貪人吉壤將遠年之墳盜發者、子孫告發、審有確據、將盜發之人以開棺見尸律擬絞監候。

如非其子孫、又非實有確據之前人古塚、但因有土墩見人埋葬輒稱伊遠祖墳墓、勾引匪類夥告夥証、陷害無辜、審明、將爲首者照誣告人死罪未決律杖一百流三千里。爲從各照誣告爲從律科斷。

若實係本人遠祖之墳被人發掘盜葬、因將所盜葬之棺發掘拋棄者、照祖父母父母被殺子孫不告官司而擅殺行兇人律杖六十。

若盜葬者並無發掘等情、止在切近墳旁盜葬、而本家輒行發掘者、應照地界內有死人不報官司而輒移他處律科斷。如有毀棄屍骸、照地界內有死人而移尸毀棄律科斷。

若非係墳地、止在田地場園內盜葬、而地主發掘開棺見屍、仍照律擬絞。其不開棺見尸者各照本律減一等治罪。

如兩造本係親屬、其所侵損之墳塚棺槨屍骸與本身皆有服制者各照律內服制科斷。

» If some one, coveting another's burial ground which brings good luck (to the offspring), has fraudulently dug up a grave of ancient date, and the descendants of that dead person lodge a complaint against him with the magistrates, who, on investigating the case, find incontestable proofs of the crime, the perpetrator thereof shall be condemned to strangulation in accordance with the fundamental law against opening coffins and rendering visible the corpses therein contained, and be imprisoned until his sentence has been confirmed by the higher authorities (See the first fundamental article).

» Should there, however, be no offspring of that dead person, or no incontestable proofs exist that the old grave is really that of some person of former times, and it should appear that people, on seeing a burial performed in a place where there was a heap of earth, have pretended without good reasons that it was a grave of

a remote ancestor of theirs, bringing with them bad folks of the same sort as themselves to lodge a complaint in concert with them and to bear witness with them, for the purpose of plunging innocent folks into grief and trouble — in such a case, after the truth has been properly ascertained, the chief culprits shall be sentenced according to the law which provides for cases of false accusation against others when the sentence of death has not yet been executed, that is to say, they shall be punished with one hundred blows with the long stick and transportation for life to a distance of 3000 miles¹. And their accomplices shall each be sentenced in accordance with the law which contains provisos against accomplices in false complaints.

»But, if the grave be really that of a remote ancestor of the party concerned, and this ancestor has been dug up by others and another corpse fraudulently buried in his place, — it then this second coffin be dug up (by the original owners of the grave) and cast away, they shall be punished with sixty blows with the long stick, in accordance with the law against sons or grandsons who, should their grandparents or parents be killed, do not enter a complaint with the authorities, but, taking the law into their own hands, slay the murderer.

»Should the parties who have buried the corpse in a fraudulent manner not have unearthed the old corpse or done any damage to the same, but simply performed the burial in the immediate proximity of the tumulus, then the original owners shall, if they have dug out the second corpse without authorisation, be sentenced according to the fundamental law which provides against those who, when a person is found dead within the precincts of a place, do not inform the magistrates thereof, but arbitrarily transfer the corpse to another spot (sixth fundamental art.). And if thereafter the corpse or the skeleton be mutilated (by others), or cast away, they shall be sentenced according to the fundamental law which provides against those who, when a person is found dead within the precincts of a place, transfer the corpse to another spot, in consequence of which it is mutilated or cast away (see the sixth fundamental art.).

»If the fraudulent burial has not been performed in a burial ground, but simply in a field, meadow or garden, and the owner of this ground has dug up the grave, opened the coffin, and rendered the corpse visible, he shall be condemned to strangulation, in accord-

¹ Comp. Chapter 30 of the Code, § 誣告

ance with the fundamental law (art. I). But if he has not opened the coffin or rendered the corpse visible, his sentence shall be reduced by one degree of punishment, likewise in accordance with the fundamental law (art. I).

» If both parties are relations by consanguinity or affinity, so that there exist mourning ties between the corpse in the damaged grave or coffin and the perpetrators, each one of the latter shall be sentenced in accordance with the gradations of mourning as fixed by law.

Fifth Supplementary Article.

民人、除無故挖焚已葬屍棺者仍照例治罪外、其因爭墳阻葬開棺易罐埋藏占葬者亦照開棺見屍殘毀死屍各本律治罪。

若以他骨暗埋豫立封堆、偽說蔭基、審係恃強占葬者照強占官民山場律治罪。

審係私自偷埋者照於有主墳地內偷葬律治罪。其侵犯他人墳塚者照發掘他人墳塚律治罪。

如果審係地師教誘、將教誘之地師均照詐教誘人犯法律分別治罪。若地方官隱諱寬縱、不實力查究、照例參處。

» If — apart from the case when people, without valid reasons, take a buried coffin out of a grave and burn it, which is a crime that must be punished in accordance with the supplementary articles — it should occur that obstacles are laid in the way of a burial because the ground is in dispute, and yet such burial be arrogantly performed in those grounds after the parties have opened a coffin therein buried, placed the remains in an urn and interred them, they shall also be punished according to the (first and second) fundamental articles which contain provisos against opening coffins, rendering corpses visible and mutilating them.

» Should any person secretly bury other bones under a tumulus which he has thrown up for that purpose, and then falsely pretend that the spot is a patrimonial possession of his, it shall be inquired into whether this burial has taken place by an abuse of authority, and the culprit in this case shall be punished according to the fundamental law which provides against forcible

appropriation of grounds reserved by the Government or belonging to the people¹.

»If, however, the enquiry brings to light that the deed was done in an underhand, clandestine manner, the culprit shall be punished according to the (fifth) fundamental article which provides against burying corpses stealthily in the burial grounds of others. And if he has thus encroached upon a grave of the other party, he shall be punished according to the (first) fundamental article which provides against digging up other people's graves.

»In case it is discovered that the culprit has been seduced by geomancers to commit the act, they shall be punished according to the fundamental law which provides against inducing people by bad suggestions to transgress the laws². The local authorities also shall, according to the supplementary articles, be included in the case and punished, should they have hushed up, evaded or connived at such a crime, or neglected to investigate it with promptitude.

Sixth Supplementary Article.

(Passed in 1821)

盜未殯未埋屍柩及發年久穿陷之塚、未開棺槨者杖一百徒三年。爲從杖九十徒二年半。

開棺見屍爲首一次者發邊遠充軍、二次者發極邊烟瘴充軍、三次者絞。爲從一次者徒四年、二次者發邊遠充軍、三次者發極邊烟瘴充軍、三次以上者亦絞。

»They who have stolen a coffin containing a corpse not yet buried temporarily or for good, and also they who have dug up a grave that had become open or had caved in with age, shall, if they have not opened the coffin or the vault, be sentenced to one hundred blows with the long stick and three years banishment (Comp. the first fundamental art. and the second supplementary art.). Their accomplices shall receive ninety blows and be banished for two years and a half.

»Should they have opened the coffin and rendered the corpse

¹ To be found in chapter 9 of the Code, § 盜賣田宅. It stipulates one hundred blows with the long stick, followed by lifelong banishment in a country three thousand miles away.

² This law, contained in chapter 32 of the Code, stipulates the same punishment for the man who has induced another to a crime, as for the perpetrator himself.

visible, the chief culprits shall, if they have committed this offence only once, be sent to a distant province into lifelong banishment. Should they have committed it twice, they shall be sent into such banishment to the remotest province where a malarious climate reigns (Kwangtung); but should they have perpetrated the crime three times, they shall be strangled (Comp. the first fundamental art.). As for the accomplices: — if guilty of the offence for the first time, they shall be banished for four years; if they have committed it twice, they shall be sent into lifelong banishment to a distant province; having committed the offence three times, they shall be banished to the most distant province where malarious diseases reign; and having repeated it more than three times, they shall be strangled.

Seventh Supplementary Article.

凡愚民惑於風水擅稱洗筋檢筋名色、將已葬父母及五服以內尊長骸骨發掘檢視占驗吉凶者均照服制以毀棄坐罪。幫同洗檢之人俱以爲從論、地保扶同隱匿、照知人謀害他人不卽阻首律杖一百。

若有故而以禮遷葬仍照律勿論。

» If among the ignorant people which is led astray by the *fung shui* theories, anybody, pretending without valid reasons that he ought to wash the remains and examine them, should exhume the bones of his buried father or mother, or of a superior and senior member of his family for whom he must observe mourning in one of the five degrees, and examine the bones and augur good or evil therefrom, he shall be sentenced as if he had mangled the corpse or thrown it away, but in accordance with (the relationship existing between him and the dead man according to) the rescripts on mourning (See the third fundamental art.). Those who have assisted him in washing and examining the bones, shall all be dealt with as accomplices; and the headman of the ward and his assistants, if they have hushed up the matter, shall be punished with one hundred blows with the long stick, as required by the law against those who, knowing that any one intends to do harm to another, do not immediately take measures to prevent the conspirator.

» If the remains are transferred into another grave for valid reasons and with observance of the proper ceremonial, the case is, according to the (second) fundamental article, not actionable.

Eighth Supplementary Article.

(Enacted in this shape in 1810)

凡毆故殺人案內兇犯起意殘毀死屍及棄尸水中、其聽從擡棄之人、無論在場有無傷人、俱照棄屍爲從律杖一百徒三年。若埋屍滅跡、其聽從擡埋之人、審係在場幫毆有傷律應滿杖者、亦杖一百徒三年。其在場並未傷人、止于聽從擡埋者照里長地鄰棄尸律杖六十徒一年。

[如案內餘人起意毀棄及埋屍滅跡、仍照棄屍爲首律杖一百流三千里]。

不失屍者各減一等。若受雇擡埋並不知情者仍照地界內有死人不報官司而輒移藏律杖八十。

至竊刼之犯、如有在湖河舟次格鬪致斃、屍墮水中漂流不獲、及山谷險隘猝然遇暴、屍沉澗溪、本無毀棄之情、仍依格殺本律科斷、毋庸牽引棄屍之律。

若係在家夤夜格捕致屍姦盜之犯、或在曠野道途格殺拒捕盜賊罪、本不應擬、抵將屍毀棄掩埋移投坑井者照地界內有死人不報官司私自掩埋律杖八十。因而遺失者照地界內有死人移置他所以致失屍律杖一百。

如有格殺之後懷挾仇恨逞兇殘毀投棄水火割剝損傷者仍照毀棄死尸本律科罪。

其隨同協捕共毆之餘人有犯棄毀移埋等項、俱照此例分別辦理。

» If in a case of wilful murder committed in a riot the murderers suggest the mutilation or mangling of the corpse, or the casting of it into the water, those who suffer the corpse to be carried off and thrown away shall all be punished, as accomplices, under the (third) fundamental article which provides against the throwing away of corpses, and, without its being taken into consideration whether they have or have not received any wounds on the spot, they shall receive one hundred blows with the long stick and be banished

for three years ¹. Should the murderers have effaced vestiges of the riot by burying the corpse, the men who have tolerated their carrying away the same and burying it shall — if it be judicially proved that they were present on the spot and had a hand in the affray or were wounded, in which case the law requires the highest number of blows ever inflicted — also receive one hundred blows with the long stick and be banished for three years. But those who have merely been present on the spot without receiving wounds, being thus only guilty of having suffered the culprits to bear the corpse away and bury it, shall come under the (sixth) fundamental article which provides against village chiefs and neighbours suffering a corpse to be thrown away, and be sentenced to sixty blows with the long stick and banishment for one year.

»[Should in the above case other persons than the rioters have suggested a mangling of the corpse or the throwing of it away, or have effaced traces of the fact by burying it, they shall be adjudged in accordance with the (third) fundamental article which contains provisos against those acting as chief culprits in the crime of throwing away a corpse, and be punished with one hundred blows with the long stick and transportation for life to a distance of three thousand miles.]

»Should the corpse not be lost, each of the above punishments shall be abated one degree. And if the corpse has been conveyed away and buried by men who were paid for their work or were unacquainted with the circumstances of the case, they shall fall under the (sixth) fundamental article which contains provisos against those who, when a person is found dead within the precincts of a place, do not inform the magistrates or arbitrarily transfer the corpse to another spot and bury it, and, like such offenders, receive eighty blows with the long stick.

»Now passing on to cases of theft and robbery. If in a ship on a lake or river there occur a fight in which some one is killed, and his corpse falls into the water, floats away and is not rescued; or if somewhere in the mountains on a steep and dangerous path any one should meet with a cruel death by violence, which may occasion his corpse to be swallowed up by a brook — in both of these cases, if originally there existed no intention to mutilate the corpse or to cast it away, sentence shall be pronounced according

¹ That is to say, with one degree less punishment than the third fundamental article requires for the chief offenders. It is a general rule in China that accomplices are punished one degree less severely than the chief culprits.

to the fundamental laws against homicide, and the article concerning the throwing away of dead bodies is here not applicable.

»And if in a house, in the dark, an attack has been made, entailing manslaughter in consequence of fornication or robbery, or if thieves or robbers have murderously assailed any one in the open field or on the public highroad, then to those who cannot be brought up for trial for this crime, but who have tolerated the mutilation of the corpse, its being cast away, buried or taken to an abyss or well and thrown therein, the (sixth) fundamental article containing provisos against those who, when a person is found dead within the precincts of a place, do not inform the magistrates, but secretly transfer it elsewhere and hide it in the ground, shall be applicable, that is to say, eighty blows with the long stick shall be inflicted upon them. And if in consequence of their non-activity the corpse was lost, the (sixth) fundamental article against those who, when a dead body is found within the precincts of a place, transfer it to another spot, so that it is lost, shall be applicable to them, and a hundred blows with the long stick shall be inflicted.

»If, after such a murder, some one, harbouring feelings of hatred and revenge, in a fit of cruelty mutilates the corpse or throws it into the water or the fire, or cuts and hacks, injures and wounds it, he shall be sentenced according to the (third) fundamental article which contains provisos against mutilating or throwing away of dead bodies.

»All other persons who have accompanied the perpetrators of the crime, helped them in the attack or taken an active part in the fight, shall, if accused of the throwing away or the mangling of the corpse, or of its transportation to another spot, or of its burial etc., be specially tried under the application of the provisos contained in the present supplementary article.

Ninth Supplementary Article.

凡盜葬之人、除侵犯他人墳塚發掘開棺見屍者仍各按照律例治罪外、如因盜葬後被地主發掘棄毀、無論所葬係尊長及卑幼屍柩、俱照強占官民山場律杖一百流三千里。

如於有主墳地及切近墳旁盜葬、尚無侵犯、致被地主發掘等情者照強占山場滿流律量減一等、杖一百徒三年。

若止於田園山場內盜葬者照強占山場滿流律量減二等、杖九十徒二年半。

仍勒限一個月押令犯屬遷移、逾限不遷即將犯屬枷示、候遷移日釋放。其唆令盜葬之地師訟師與本犯一體治罪。

» Whenever people have fraudulently buried a corpse — apart from the cases when they have encroached upon the grave of another, dug it up, opened the coffin, or rendered the corpse visible, for which crimes they are to be punished according to the fundamental and supplementary articles — if then, after that burial has been performed, the grave be dug up by the owner of the ground and the corpse thrown away or mutilated, it shall not be taken into consideration whether the buried corpse is that of a superior or senior family member (of the buriers) or an inferior or junior relation of theirs, but to all of them the fundamental law shall be applicable, which contains provisos against forcible appropriation of grounds which are reserved by the Government or belong to the people (Comp. the fifth supplementary article), viz. one hundred blows with the long stick shall be inflicted, followed by a lifelong banishment to a country three thousand miles away.

→ » Should such a fraudulent burial have been performed in burial ground which is owned by another, or in the close proximity of a tumulus without incroaching upon the grave itself, then, in case the owner of the ground has dug up the (new) grave and has acted as above, the same law which demands transportation for life for forcible appropriation of grounds shall be applicable (to the buriers), but with a reduction of one degree, so that the punishment shall amount to one hundred blows with the long stick and banishment for three years.

» And if they had only fraudulently buried the dead in a field or in an ordinary plot of ground, again the same law shall be applicable to them, but with a reduction of two degrees, so that they shall receive ninety blows with the long stick and be banished for two years and a half.

» Besides, (in each of these three cases) the family of the offenders shall be enjoined to remove the remains within one month, and if they do not do so, they shall be placed in the cangue, no more to be released from it until the day on which the order is executed. The geomancers and the advocates who have induced the

culprits to perform the fraudulent burial, shall be punished together with the chief offenders.

Tenth Supplementary Article.

(Enacted in this shape in 1845)

凡子孫發掘祖父母父母墳塚、均不分首從。已行未見棺槨者皆絞立決。見棺槨者皆斬立決、開棺見屍並毀棄尸骸者皆凌遲處死。

若開棺見屍至三塚者、除正犯凌遲處死外、其餘俱發往伊犁當差。如有尊長卑幼或外人爲首爲從、分別服制凡人各以首從論。

»Should children or grandchildren dig up the grave of their parent or grandparent, no distinction between chief culprits and accomplices shall be made. If they have begun the work, but not yet rendered the coffin or the vault visible, they shall be strangled, without postponement of execution till their sentence has been confirmed. Should the coffin or the vault have been rendered visible, they shall all be beheaded, likewise without such postponement; and if they have opened the coffin and rendered the corpse visible, or if they have mutilated the remains, or cast them away, they shall all undergo slow death by the knives¹ (Comp. fundamental art. II and III).

»If people have opened the coffins in three graves, rendering the corpses visible, they shall all, excepted the chief culprits, who shall suffer slow death by the knives, be transported to Ili and there be placed in government thralldom. If the chief culprits or

¹ The punishment also applied in cases of parricide, matricide and rebellion. It is called ling-ch'i, generally written 凌遲, though the correct form is 凌剝. The word means »ignominious slashing". »It is", says the commentary to the Code, »to be inflicted in the following manner: The criminal is sliced and slashed until »there remain no fleshy parts on his body. After this, the male organs are destroyed »with the knife, or, in the case of a woman, the female organ, and then the body »is vicerated, in order to extinguish life. Subsequently the limbs are severed from »the trunk and the bones destroyed, after which no more is done": 凌遲者

其法、乃刳而磔之、必至體無餘膚。然後爲之割其勢、女則幽其閉、出其臟腑以畢其命。仍爲支分節解、殲其骨而後已。 Chapter 4, l. 3. It seems, however, that practically the mutilation is confined to a few slashes quickly followed by decapitation.

accomplices are superior and senior relations of the buried persons, or inferior and junior relations, or people not belonging to their family, they must be severally sentenced, in their capacity of chief culprits or accomplices, in accordance with the mourning which they must observe (for the buried persons), or in accordance with the circumstance of their being no relations of the same.

Eleventh Supplementary Article.

(Dating from 1806)

凡指稱旱魃刨墳毀屍、爲首者照發塚開棺見屍律擬絞監候。如訊明實無嫌隙、秋審入於緩決、若審有挾仇洩忿情事、秋審入于情實。

爲從幫同刨毀者改發近邊充軍、年在五十以上仍發附近充軍、其僅止聽從同行並未動手者杖一百徒三年。

» If people declare a dead man to be a devil who causes drought, and dig up his grave and mangle the corpse, the chief offenders shall suffer under the (first) fundamental article which provides against the digging up of graves with the opening of the coffin and rendering visible of the corpse, and be sentenced to strangulation, but be kept in jail to await the confirmation of their sentence by the higher authorities. If it has been proved at the judicial investigation that the culprits cannot really be suspected of having used the accusation of the dead as a pretext, their sentence shall at the provincial autumn revision be ranked among those which are to be delayed (and sent to Peking for Imperial confirmation); but if it be proved that they have acted from a grudge, or in an outburst of hatred, the case shall at the autumnal revision be placed among the cases properly verified (and not be sent up to the Metropolis).

» As to the accomplices who have assisted in digging up the grave and mangling the corpse, they shall be sent into lifelong banishment in a province not far distant, or, if they are over fifty years of age, to an adjacent province; and those who have done nothing more than tolerate the crime or have accompanied the culprits, without moving their hands, shall receive one hundred blows with the long stick and be banished for three years.

Twelfth Supplementary Article.

(Enacted in this shape in 1814)

子孫盜祖父母父母未殯未埋屍柩、不分首從、開棺見尸者皆斬立決。如未開棺槨、事屬已行確有顯跡者皆絞立決。

如有尊長卑幼或外人爲首爲從、分別服制凡人各以首從論。

»Sons or grandsons who steal a coffin containing the corpse of their parent or grandparent not yet buried temporarily or for good, shall, whether they are chief culprits or accomplices, be beheaded without postponement of the execution till their sentence has been confirmed by the higher authorities, if they have opened the coffin and rendered the corpse visible. Should they not have opened the coffin or the vault, but unmistakable marks be found that a beginning of this crime had been made, they shall all be strangled, without postponement of their execution for confirmation of their sentence.

»If, in the above cases, there be among the chief culprits and accomplices superior and senior or inferior and junior relations of the dead person, or members of other families, each one must be severally sentenced, in his capacity of chief culprit or accomplice, in accordance with the mourning which he must observe (for the dead person), or in accordance with the circumstance of his being no relation of the same.

Thirteenth Supplementary Article.

(Enacted in this shape in 1814)

有服卑幼盜尊長未殯未埋屍柩、未開棺槨者爲首期親卑幼發極邊足四千里充軍、功總卑幼發邊遠充軍。爲從期親卑幼發邊遠充軍、功總卑幼發近邊充軍。

開棺見尸者爲首期親卑幼實發雲貴兩廣極邊烟瘴充軍、功總卑幼發極邊足四千里充軍。爲從期親卑幼發極邊足四千里充軍、功總卑幼發邊遠充軍。

如有尊長或外人爲首爲從、分別服制凡人各以首從論。

» Inferior or junior members of a family, who have stolen a coffin containing the corpse of a superior or senior relation not yet buried temporarily or for good, shall, if they must mourn for the defunct, be sentenced as follows, should they not have opened the coffin or the vault: — in case they acted as chief culprits, they shall be banished for life to a most distant province four thousand miles away if they are inferior or junior relations who must mourn in the second degree; and to lifelong transportation to a distant province if they are such relations in the three lower degrees of mourning. In case they have acted the part of accomplices, they shall be sent into lifelong banishment to a distant province if they belong to the mourners of the second degree; and if they are mourners of the three lower degrees, to a province not far away.

» But, if they have opened the coffin and rendered the corpse visible, chief culprits who are inferior or junior relatives of the dead person and must mourn for him in the second degree, shall be decidedly banished for life to a most distant province where the climate is malarious, such as Yunnan, Kweichow, Kwangsi, or Kwangtung; or if they are such relations in the three lower degrees of mourning, they shall be sent into lifelong banishment to a most distant province four thousand miles away. And of the accomplices, those who rank among the inferior and junior mourners in the second degree shall be banished for life to a most distant province four thousand miles away, and such as rank among those in the third, fourth or fifth degree, to a distant province.

» Should, in the above cases, there be among the chief culprits and accomplices superior and senior relations of the dead person, or members of other families, each one must be severally sentenced, in his capacity of chief culprit or accomplice, in accordance with the mourning he must observe (for the dead person), or in accordance with the circumstance of his being no relation of the same.

Fourteenth Supplementary Article.

(Dating from 1870)

有服卑幼發掘尊長墳塚、未見棺槨者爲首期親卑幼發極邊足四千里充軍、功總卑幼發邊遠充軍。爲從期親卑幼發邊遠充軍、功總卑幼發近邊充軍。

見棺槨者爲首期親卑幼實發雲貴兩廣極邊

烟瘴充軍、功總卑幼發極邊足四千里充軍。爲從期親卑幼發極邊足四千里充軍、功總卑幼發邊遠充軍。

如有尊長或外人爲首爲從、分別服制凡人各以首從論。

開棺見屍並鋸縫鑿孔首從之卑幼、無論期親功總、均照常人一例問擬。

» Inferior or junior members of a family, who have dug up the grave of a superior or senior relation without rendering the coffin or vault visible, shall, if they must mourn for the defunct, be sentenced as follows: — in case they have acted as chief culprits, they shall be banished for life to a most distant province four thousand miles away if they are inferior or junior relations who must mourn in the second degree, and subjected to lifelong banishment in a distant province if they are such relations in the three lower degrees of mourning. If they have been engaged in the crime as accomplices, they shall be banished for life to a distant province should they be relations in the second degree; but if they are relations in the three lower degrees, to a province not far away.

» If the coffin or vault has been rendered visible, the chief culprits, if they are inferior or junior relations of the dead who must mourn for him in the second degree, shall be sent decidedly into lifelong banishment to a most distant province where a malarious climate reigns, such as Yunnan, Kweichow, Kwangsi or Kwangtung; but if they are such relations in the three lower degrees of mourning, they shall be sent into lifelong banishment to a most distant province, four thousand miles away. And of the accomplices, those inferior and junior relations who rank in the second degree of mourning shall be sent into lifelong banishment to a most distant province, four thousand miles away, and such as rank in the three lowest degrees, to a distant province.

» Should the chief offenders or accomplices be superior and senior relations of the dead person, or people not belonging to his family, then they must be severally sentenced, in their capacity of chief offenders or accomplices, in accordance with the mourning which they must observe (for the occupant of the desecrated grave), or in accordance with the circumstance of their being no relations of the same.

»Persons who have opened the coffin of a dead person of whom they are inferior or junior relations and rendered the corpse visible, or have sawn a seam in the coffin or cut a hole in it, shall, whether they are chief culprits or accomplices, all be brought up for trial and sentenced according to the (first) supplementary article which contains provisos against such crimes when perpetrated against an ordinary person, without its being taken into consideration whether they are relatives in the second, third, fourth or fifth degree of mourning.

Fifteenth Supplementary Article.

(Dating from 1810)

有服尊長盜卑幼未殯未埋屍柩、開棺見屍者總麻尊長爲首依發卑幼墳塚開棺見屍杖一百徒三年律減一等。未開棺槨者再減一等。如係小功以上尊長爲首、各依律以次遞減。爲從之尊長亦各按服制減爲首之罪一等。

如有卑幼或外人爲首爲從、分別服制凡人各以首從論。

»Superior or senior members of a family, who have stolen away a coffin which contains the corpse of an inferior or junior relation not yet buried temporarily or for good, shall, if they must mourn for the defunct, be sentenced as follows, should they have opened the coffin and rendered the corpse visible: — if they are superior or senior relations who must mourn in the fifth degree, they shall, if they have acted as chief offenders, come under the (second) fundamental article which stipulates one hundred blows with the long stick and three years banishment for those who dig up the grave of an inferior or junior relation, open the coffin and render the corpse visible, but they shall be punished one degree less severely. Should they not have opened the coffin or the vault, their punishment shall be abated one degree more. And if they are superior or senior relations in the fourth degree of mourning or in a higher degree, their punishment shall, if they have acted as chief offenders, be reduced in proportion, in accordance with the same fundamental article. Should they have acted as accomplices, each of them shall be punished one degree less severely

than the chief offenders, in accordance with their relationship as established by the degrees of mourning.

» If among the chief culprits or accomplices in the crime there are inferior or junior relations of the dead person, or people who are no relations of his, then they must be severally sentenced, in their capacity of chief culprits or accomplices, in accordance with the mourning they must observe (for the deceased), or in accordance with the circumstance of their being no relations of the same.

Sixteenth Supplementary Article.

(Dating in this revised shape from 1870)

糾衆發塚起棺索財取贖、已得財者將起意及爲從下手發掘扛擡棺木之犯比依強盜得財律、不分首從、皆斬立決。跟隨同行在場瞭望之犯發新疆給官兵爲奴。其未經得財者首犯仍比依強盜得財律斬立決、從犯俱發新疆給官兵爲奴。

如發塚後將屍骨拋棄道路並將控告人殺害者亦照強盜得財律、不分首從、皆斬立決。

» If any party have opened a grave, taken the coffin out of it and set a ransom upon it, then, if they have already received a ransom, those who have suggested the deed, their accomplices and those who have lent a helping hand in digging up the coffin and removing it, shall come under the fundamental law which provides against those who have appropriated wealth by robbery with main force¹, that is to say, both the chief offenders and their accomplices shall be condemned to be beheaded with the sword, and their execution shall not be postponed for confirmation of the sentence by the higher authorities. Those who have followed close at their heels, or have been present at the scene of the crime as spectators, shall be deported to Turkestan and there be given in slavery to the soldiery of the authorities. And if the offenders have not yet received a ransom, the fundamental law which provides against appropriating wealth by robbery with main force shall likewise be applied to the chief culprits and they shall be

1 See chapter 23 of the Code, § 強盜, the first fundamental article.

decapitated, without postponement of their execution till their sentence has been confirmed, and all the accomplices shall be sent to Turkestan and there be given into slavery to the soldiery of the authorities.

»Should the offenders, after opening the grave, have thrown away the remains on the road and then accused somebody else of a murder, the law which provides against appropriating goods by main force shall also in this case be applicable to them and decapitation without revision of the sentence be the punishment of them all, no distinction being made between chief culprits and accomplices.

Seventeenth Supplementary Article.

(Dating from 1821)

平治他人墳墓爲田園、未見棺槨、止一塚者仍照律杖一百。如平治多塚、每三塚加一等、罪止杖一百徒三年。

卑幼於尊長有犯、總麻功服各加凡人一等、期親又加一等。若子孫平治祖墳並奴僕雇工平治家長墳、一塚者杖一百徒三年。每一塚加一等、仍照加不至死之例、加至實發雲貴兩廣極邊烟瘴充軍爲止。

其因平治而盜賣墳地、得財者均按律計贓准竊盜論加一等。贓輕者各加平治罪一等。知情謀買者悉與犯人同罪、不知者不坐。

如因平治而強佔或盜賣、計畝數多按例應擬徒流充軍。

以至因平治而見棺見屍並棄毀屍骸、按例應擬軍遣斬絞凌遲者仍照各本例從其重者論。

其子孫因貧賣地、留墳祭掃並未平治又非盜賣者不在此例。

»He who has levelled a tumulus belonging to others and made a field or garden of it, shall, if he has not rendered the coffin or the vault visible and has levelled only one grave, be punished with one hundred blows with the long stick in accordance with the

(fifth) fundamental article. But if he has levelled several tumuli, his punishment shall be increased one degree for every three, up to one hundred blows and three years banishment as a maximum.

»Should inferior or junior members of a family violate the grave of a superior or senior relation in the above way, their punishment shall, in case the perpetrators are mourners in the three lowest degrees, be one degree more severe than if they had violated the grave of a person not belonging to their family, and it shall again be increased by one degree if they are mourners in the second degree. Should sons or grandsons level the grave of an ancestor, or slaves that of their master, or workmen that of their employer, they shall receive one hundred blows and be banished for three years. These punishments shall be increased one degree for each extra grave levelled by them; but such increase shall never entail the pain of death on the culprits, nor shall it ever exceed lifelong banishment to a most distant province with a malarious climate, such as Yunnan, Kwei-cheu, Kwangtung or Kwangsi.

»If people who have levelled another's grave fraudulently sell the ground, they shall, if they have received money, be sentenced as for ordinary theft according to the amount received, in accordance with the fundamental law concerning such offence¹, but with the addition of one degree of punishment. If but a small sum has been obtained by the sale, each culprit shall be punished one degree more severely than if he had merely levelled the grave. And if those who have bought the ground were aware of the circumstances of the case, they shall be punished in the same way as the offenders; but they shall not be punished if they have bought it unwittingly.

»And if people who have levelled another's grave appropriate the ground by abuse of power and then fraudulently sell it or keep possession of it, sentence of temporary or lifelong banishment shall be pronounced on them, in accordance with the supplementary articles, in proportion to the size of the ground in question.

»Should, in levelling the ground, the coffin or the corpse become visible or the remains be thrown away or mutilated, so that the supplementary articles requiring lifelong banishment, decapitation, strangling, or slow death by the knives, become applicable, then in each of these cases the severest punishment required by the supplementary article relevant hereto shall be applied.

¹ Comp. note 1 on page 869.

»Should sons or grandsons sell their family sepulchral grounds because of poverty, but leave the graves as they are, sacrificing upon them and sweeping them (on the established annual dates), without levelling them, there being, moreover, no question of fraudulent sale, then such case would not fall under this article.

Eighteenth Supplementary Article.

(Dating from 1831)

奴僕雇工人盜家長未殯未埋屍柩、未開棺槨、事屬已行確有顯跡者照發塚已行未見棺例爲首絞監候、爲從發近邊充軍。

開棺見屍者照發塚見棺槨例爲首絞立決、爲從絞監候。

其毀棄撤撒死屍者仍照舊例不分首從皆斬立決。

»If slaves or hired workmen steal the coffin which contains their master's or employer's corpse not yet buried temporarily or for good, they shall, if the coffin was not opened by them, but unmistakable signs are found that a beginning had been made for such purpose, fall under the (third) supplementary article which provides against the opening of (their master's or employer's) grave without the coffin being rendered visible, that is to say, the chief culprits shall be strangled, after having been detained in prison for confirmation of their sentence by the higher authorities, and the accomplices shall be sent into lifelong banishment to a province not far distant.

»Should they have opened the coffin and rendered the corpse visible, they shall come under the (third) supplementary article which provides against the digging up of (their master's or employer's) grave so that the coffin or vault is rendered visible, that is to say, the chief culprits shall be strangled and their execution not be postponed till the sentence has been confirmed, and the accomplices too shall be strangled, after having been kept in jail for confirmation of their sentence by the higher authorities.

»And if they have mutilated, thrown away or beaten the corpse, or tossed it about, they shall fall under the same supplementary article and both chief culprits and accomplices shall be beheaded, without their sentence being subjected to revision by the higher authorities.

Nineteenth Supplementary Article.

(Dating from 1821)

發掘墳塚並盜未殯未埋屍柩、無論已開棺未開棺及鋸縫鑿孔等項、人犯各按其所犯本條之罪、分別首從、併計科斷。

如一人疊竊有首有從、則視其爲首次數與爲從次數罪名相比、從其重者論。若爲首各次併計罪輕、准其將爲首次數歸入爲從次數內併計科罪、不得以爲從次數作爲爲首次數併計。亦不得以盜未殯未埋屍柩及鋸縫鑿孔之案歸入發塚見棺及開棺見屍案內併計次數治罪。

» When graves have been dug up, or coffins containing corpses not yet buried temporarily or for good have been stolen, whether the coffins in those graves have been opened or not, or whether seams have been sawn or holes made in those stolen coffins, or other matters of the kind have occurred, then for every offender the punishment shall be fixed after comparing together the sundry punishments he is liable to for each of those crimes, either in the capacity of chief culprit or accomplice.

» Should a man have many times stolen a corpse in the capacity of either chief culprit or accomplice, then the punishments he is liable to for all the cases in which he has acted in either of these capacities must be compared, and the severest punishment be inflicted upon him. Should the punishment for the cases in which he has acted as chief culprit, calculated by comparison, turn out not to be heavy, it is allowed to place such cases among those in which he has acted as accomplice, and to fix his punishment by the same comparative method; but never shall the cases in which he has acted as accomplice be so compared with those in which he has acted as chief culprit. Neither is it allowed to place the cases in which he has stolen a coffin containing a corpse not yet buried temporarily or for good, or in which he has sawn a seam in such a coffin, or chiseled a hole in it, among the cases in which he has opened a grave and rendered the coffin visible, or has opened such a coffin and rendered the corpse visible, and to inflict the punishment resulting from such comparison.

Twentieth Supplementary Article.

(Dating from 1821)

受雇看守墳墓並無主僕名分之人、如有發塚及盜未殯未埋屍柩并鋸縫鑿孔與未開棺槨者、或自行盜發、或聽從外人盜發、除死罪無可復加外、犯該軍流以下等罪悉照凡人首從各本律例上加一等問擬。

» If a salaried keeper or custodian of a grave digs up the same, whether he opens the coffin or the vault, or not; or if a free person who is a slave in name and has to perform duties as such, steals the coffin containing his master's corpse not yet buried temporarily or for good, and saws a seam in it or makes a hole in it, the culprit shall, whether he has opened the grave or committed the theft himself, or has permitted others to do so, be sentenced according to the present laws just as any ordinary person who has committed the same crime in the capacity of chief culprit or accomplice, with an addition of one degree of punishment if he should incur lifelong banishment or a lighter punishment; for if he incurs the penalty of death, this may not be increased.

Twenty-first Supplementary Article.

(Enacted in this shape in 1870)

凡發掘貝勒貝子公夫人等墳塚、開棺槨見屍者爲首斬立決、梟示、爲從皆絞立決。見棺者爲首絞立決。爲從皆絞監候。未至棺者爲首絞監候、爲從發邊遠充軍。

如有發掘歷代帝王陵寢及會典內有從祀名位之先賢名臣、並前代分藩親王或遞相承襲分藩親王墳墓者俱照此例治罪。

若發掘前代分封郡王及追封藩王墳墓者、除犯至死罪仍照發掘常人墳塚定擬外、餘各於發掘常人墳塚本罪上加一等治罪。

以上所掘金銀交與該督撫、飭令地方官修葺墳塚。其王帶珠寶等物仍置塚內。

» Whosoever digs up the grave of an Imperial prince of the third or fourth order (Bei-lêh or Bei-tszë) or of one of a lower degree, or the grave of the consort of a prince, or of any one of similar rank, having opened the coffin or vault and rendered the corpse visible, shall, if he has acted in the capacity of chief culprit, be decapitated with the sword and the execution not be postponed till the sentence has been confirmed; his head shall be exposed in public as a warning to the people, and the accomplices shall all be strangled, without postponement for the confirmation of the sentence. Should the coffin have been rendered merely visible, the chief culprits shall be strangled without postponement of the execution till their sentence is confirmed, and the accomplices be strangled after having been kept in custody till such a confirmation arrives. And if they have not dug so far as to reach the coffin, the chief culprits shall be strangled after having been kept in jail till their sentence has been confirmed by the higher authorities, and the accomplices be sent into lifelong banishment in a distant province.

» This article shall also apply to those who have dug up the mausoleum of an emperor or ruler of a former dynasty, or the grave of an ancient sage or renowned statesman of whom a tablet inscribed with the name is worshipped at the official sacrifices of the State in obedience to the Collective Statutes, or the grave of a feudatory Imperial prince or any other prince of the nearest Imperial kin of the past dynasty, or of any one who has then inherited such a rank by birth.

» Those who have dug up the grave of an Imperial prince of the second generation of the past dynasty invested with a fief, or of any one who then was, after his death, invested with the dignity of feudatory Imperial prince, shall be punished one degree more severely than those who have dug up the grave of an ordinary individual, except when they incur the pain of death, in which case they shall be sentenced as if they had dug up the grave of an ordinary person.

» The gold and silver which in any of the above cases might have been exhumed, shall be delivered to the Provincial Governor-General or Governor, who shall order the local magistrates to repair the violated grave. The pearls, precious articles and other things which the royal inmate of the grave wore on his body, shall again be placed in the tomb.

Twenty-second Supplementary Article.

(Dating from 1825)

夫毀棄妻屍者比依尊長毀棄期親卑幼死屍律於凡人杖流上遞減四等、杖七十徒一年半。不失屍及毀而但髡髮若傷者再減一等、杖六十徒一年。

» If a husband mangles or casts away the corpse of his wife, the (third) fundamental article which contains provisos against superior and senior relations who mangle or cast away the corpse of an inferior or junior member of their family for whom they must mourn in the second degree, shall be applicable to him and he accordingly be condemned to a punishment which stands four degrees higher than the bastinado and transportation which would have to be inflicted on him had he committed the same crime against a person not related to him, viz. to seventy blows with the long stick and banishment for one year and a half. Should the corpse not be lost or the mangling only affect the hair, his punishment shall be diminished one degree and thus amount to sixty blows with the long stick and banishment for one year.

Twenty-third Supplementary Article.

(Dating from 1852)

凡發掘墳塚及鋸縫鑿孔偷竊之案、但經得財俱核計所得之贓、照竊盜賊科斷。如計贓輕於本罪者仍依本例定擬、若計贓重於本罪者即從重治罪。

» Whenever theft has taken place in connection with digging up a grave, sawing a seam in a coffin or making a hole in it, then only in case some spoil has been appropriated shall the quantity thereof be minutely calculated, in order to sentence the culprit in proportion to its value¹. Should the punishment required for such an amount of spoil be lighter than that which the culprit would have to suffer for the crime proper (the violation of the grave or the coffin), the articles relevant hereto shall be applied; but should the contrary be the case, the heavier punishment shall be inflicted.

¹ Comp. note 1 on page 869.

Certainly it would hardly be possible to find more palpable evidence of the great stress which the rulers of the Chinese nation lay upon the inviolability of the dead and their graves, than the above collection of laws, providing so minutely against their desecration in every imaginable form. Probably we do not go beyond the truth when we say that no people on the face of the earth possesses a Codex on this head of like extent and severity, and this again suggests that the Religion of the Human Corpse is nowhere so highly developed as in China. And still our readers must not suppose that these laws include everything which the present dynasty has enacted on the subject. An article, the text of which has been given on page 133, forbids the people to leave the dead unburied for over a year; others, which will be reproduced in the last chapter of this Volume, forbid their being thrown into the water, or their being burnt¹. Even to corpses of executed criminals the Code gives its protection, prescribing that »he who after an » execution mutilates the corpse shall be punished with fifty blows » with the short bamboo stick”². Elsewhere we read: »He who »mutilates or spoils in another’s sepulchral ground inscribed stone » tablets or stone animals, shall be punished with eighty blows » with the long stick”³. » And any person who, within the precincts » of an imperial mausoleum, has caused a fire by accident, shall, » if the fire did not spread, receive eighty blows with the long stick » and be banished for two years; but if it spreads over the forest » which covers the mountains, or attacks the trees growing in the » burial ground, he shall be punished with one hundred of such blows » and lifelong banishment to a country two thousand miles distant”⁴.

But this article is by no means the only one by which the Government protects the trees which, since very ancient times, filial descendants have deemed it a holy duty to plant upon the graves of

1 See chapter 17 of the Code, § 喪葬.

2 其已處決訖別加殘毀死屍者笞五十. Chapter 37, § 斷罪不當.

3 若毀人墳塋內碑碣石獸者杖八十. Chapter 9, § 棄毀器物稼穡等.

4 若於山陵兆域內失火者、雖不延燒、杖八十徒二年、仍延燒山林兆域內林木者杖一百流二千里. Chapter 34, § 失火.

their ancestors. A whole series of laws have been enacted for the purpose. This will appear natural rather than surprising to such of our readers as remember from our dissertation on sepulchral trees (pp. 460 *sqq.*) the important place they have ever held in the Religion of the Dead since times immemorial. We place these articles before our readers as found in an edition of the Code published in 1882.

大清律例卷二十三

刑律。賊盜上

盜園陵樹木

CHAPTER XXIII OF THE LAWS OF THE GREAT TS'ING DYNASTY.

CRIMINAL LAWS. — REBELLION, ROBBERY AND THEFT, I.

STEALING TREES FROM MAUSOLEA.

Fundamental Article.

凡盜園陵內樹木者皆、不分首從、杖一百徒三年。若盜他人墳塋內樹木者首杖八十、從減一等。

若計賊重於徒杖本罪者各加盜罪一等。

» Those who steal trees which grow in a mausoleum, shall all be punished with one hundred blows with the long stick and banishment for three years, whether they have acted as chief culprits or as accomplices. And if trees which grow within another's sepulchral ground are stolen, the chief culprits shall receive eighty blows with the long stick and the accomplices be chastised one degree less severely.

» Should the punishment inflicted for the theft of things of the same value as the stolen trees be heavier than the banishment or the blows inflicted by this article, the punishment for the theft of such an amount of spoil shall be inflicted¹, with an increase of one degree.

¹ Comp. note 1 at the foot of page 869.

First Supplementary Article.

(Enacted in this shape in 1825)

凡山前山後各有禁限。如紅椿以內盜砍樹株、取土取石、開窯燒造、放火燒山者比照盜大祀神御物律斬、奏請定奪。爲從者發近邊充軍。

若紅椿以外官山界限以內、除採樵枝葉、仍照舊例毋庸禁止、並民間修理房塋取土刨坑不及丈餘、取用山上浮石長不及丈、及砍取自種私樹者一概不禁外、其有盜砍官樹、開山採石、掘地成濠、開窯燒造、放火燒山在紅椿以外白椿以內者卽照紅椿以內減一等、爲首間發近邊充軍、從犯杖一百徒三年。

如在白椿以外、青椿以內者爲首杖一百徒三年、從犯減一等、杖九十徒二年半。如在青椿以外、官山以內者爲首杖九十徒二年半、從犯減一等、杖八十徒二年。

計賊重於徒罪者各加一等。

官山界址在二十里以外、卽以二十里爲限、若在二十里以內、卽以官山所止之處爲限。

弁兵受賄故縱、如本犯罪應軍徒者與囚同罪。賊重者計賊以枉法從重論。本犯罪應斬決者將該弁兵等擬以絞決。

其未經得賄、潛通信息、致犯逃避、本犯罪應軍徒者亦與囚同罪。本犯罪應斬決者將該弁兵等減發極邊烟瘴充軍。

僅止疎於防範者兵丁杖一百、官弁交部議處。

» In general there exist, both in front of the high grounds (in which the Imperial mausolea are situated) and at the back thereof, limits upon which it is not allowed to trespass. Should any one inside the red posts fell trees with a thievish intent, take away earth or stones, erect a kiln and burn pottery or bricks, or set the hills on fire, he shall be punished as if he had violated the fundamental article

against stealing Imperial implements assigned for the Great Imperial Sacrifice to the Deity (Heaven)¹, that is to say, he shall be beheaded, after the Imperial confirmation of his sentence has been asked for and obtained. And his accomplices shall be banished for life to a province not far distant.

» If people with a thievish intent fell trees belonging to Government outside the red posts, but still inside the limits of the grounds reserved to the Government, or if they open the mountains there to collect stones, or dig in the earth to make a canal, or erect a kiln for burning pottery or bricks, or set the hills on fire, they shall be punished one degree less severely than if they had done the same thing within the red posts, provided the crime be perpetrated outside the latter and within the white posts; that is to say, the chief culprits shall be condemned to lifelong banishment in a province not far distant, and the accomplices be beaten with one hundred blows of the long stick and be banished for three years. Gathering fuel, branches or leaves are acts which, according to former supplementary laws, need not be forbidden; further, taking away of earth and digging away of declivities for no more than one *chang*, for the purpose of repairing people's houses or graves, or fetching to this end loose stones from the mountains, which are not bigger than one *chang*, or felling and removing trees which are their private property, having been planted by themselves, — all such things, not being forbidden, do not fall under this law.

» Should an offence such as the above have taken place outside the white posts and within the blue posts, the chief culprits shall receive one hundred blows with the long stick and be banished for three years, and the accomplices shall undergo a punishment one degree less severe, namely, ninety blows with the long stick and banishment for two years and a half. And if it has been committed outside the blue posts, but still in the grounds reserved for Government use, the chief culprits shall receive the last mentioned punishment, and their accomplices one a degree less severe, viz., ninety blows and banishment for two years.

» If theft of articles of the same value as the appropriated (or damaged) things should require a punishment heavier than such banishment, then in each of the above cases the punishment required for the theft of such an amount of spoil shall be inflicted, increased by one degree

» Should the landmarks of the Government reservation grounds

¹ See chapter 23 of the Code.

be placed beyond twenty miles, the boundaries shall nevertheless be deemed to terminate at twenty; and if they are placed within twenty miles, the boundaries shall be considered to terminate at the points to which the Government grounds extend.

» If officials or soldiers (settled in the mausoleum-grounds as guardians) have wittingly tolerated an offence such as the above for a bribe, they shall, if the culprits proper have to be punished with lifelong or temporary banishment, be imprisoned together with them and receive the same punishment. And if the appropriated (or damaged) things represent a considerable value, their value shall be calculated, and the heavier of the two punishments required by the violated laws shall be inflicted upon them. Should the perpetrators, however, deserve decapitation, those officials and soldiers shall be sentenced to strangulation.

» And should they not have received any bribes, but secretly have informed the offenders, so that the latter could effect their escape, they shall, if the offenders are to be punished with lifelong or temporary banishment, be imprisoned with them and receive the same punishment. But if the offenders are sentenced to decapitation, such officials and soldiers shall be punished one degree less severely, and be banished for life to the most distant province with a malarious climate

» Those who have merely been negligent in maintaining the regulations regarding the guarding of the ground, shall, if they are soldiers, be chastised with one hundred blows with the long stick, and if they are officials, be delivered over to the Board to which they belong, and be brought up for trial by it.

Second Supplementary Article.

(Dating from 1801)

姦徒知情私買墳塋樹木者、係子孫盜賣、其私買者減子孫盜賣罪一等。

若係他人盜賣者、其私買人犯、無論株數已伐者、初犯杖一百枷號一個月。再犯杖一百枷號三個月、犯至三次者照竊盜三犯例杖一百流三千里。爲從者減一等、未伐者又各減一等、不知情者不坐。

其私買墳塋之房屋碑石磚瓦木植者均減盜賣罪一等。

樹木等物分別入官給主。

» If some wicked individual has wittingly bought trees growing in a sepulchral ground, he shall, if it be the sons or grandsons who have fraudulently sold them to him, receive a punishment one degree less severe than that imposed on the latter for such sale.

» Should other individuals have thus fraudulently sold the trees, no account shall be taken of the number of the latter, nor of the circumstance whether they have been already felled or not, but the buyer shall, if he has committed the act for the first time, be punished with one hundred blows with the long stick and exposure in the cangue for one month. Should he have committed the crime twice, he shall receive the same number of blows and be exposed in the cangue during three months; if three times, he shall come under the provisos of the supplementary article against those who commit a theft for the third time, and be subject to one hundred blows with the long stick, followed by lifelong transportation to a region three thousand miles distant. His accomplices shall be punished one degree less severely, and their punishment be commuted by one degree more if the trees have not yet been felled; and if they have acted unwittingly, they shall go unpunished.

» He who has bought buildings, stone tablets, stones, bricks, tiles or wooden structures belonging to a grave ground, shall be punished one degree less severely than the individual who has fraudulently sold those things to him.

» The trees and other articles shall, in the first case, be confiscated, and, in the second case, be given back to the legal owners.

Third Supplementary Article.

(Enacted in this shape in 1814)

盜砍他人墳樹、初犯杖一百枷號一個月、再犯杖一百枷號三個月。計賊重於滿杖者照本律加竊盜罪一等。犯案至三次者即照竊盜三犯本例計賊分別擬以軍流絞候。

其糾黨成羣、旬日之間疊次竊砍至六次以上、而統計樹數又在三十株以上、情同積匪者、無論從前曾否犯案、即照積匪猾賊例擬軍。如連日竊砍在六次以下三次以上、樹數在三十株以下十株以上者、照積匪例量減擬徒。仍各按竊盜本例刺字。

其竊砍止一二次者從一科斷、照前例問擬。

盜賣他人墳塋之房屋碑石磚瓦木植者計賊准竊盜論、免刺。

» He who fraudulently fells trees which grow on a grave belonging to others, shall, if for the first time, be punished with one hundred blows with the long stick and an exposure in the cangue for a month, and on the second offence, with the same number of blows and such an exposure during three months. Should the punishment required for theft of things of the same value as the felled trees be heavier than the said maximum of blows which is ever inflicted, the culprit shall, in accordance with the fundamental article, receive the punishment required for theft of that amount of spoil, with an increase of one degree. And should the culprit have committed the crime three times, he shall be tried under the law against theft committed three times and, in proportion to the value of the stolen goods, be sentenced either to transportation for life, or to strangulation with postponement of the execution till the sentence has been confirmed by the higher authorities.

» If some individuals have clubbed together and fraudulently felled grave trees several times within the lapse of ten days, then, if they have committed this crime six or more times and the number of trees felled exceeds thirty, so as to cause their work to resemble the enterprise of a band of thieves, it shall not be inquired into whether they have rendered themselves guilty of any crime at a former date, but they shall be sentenced to transportation for life, according to the supplementary article against the brigandage of banditti¹. And if they have felled grave trees during several days in succession, from three to six times, the number of trees ranging from ten to thirty, then the same supplementary article shall be applied with proportionate mitigations of punishment, and mere temporary banishment be pronounced. In each of the above cases every convict shall be branded, as required by the law of theft.

» If the fraudulent felling of trees have taken place but once or twice, then the case shall be treated as if it were a first offence, and sentence be pronounced in accordance with the first rescripts (contained in this article).

» Fraudulent sale of buildings, stone tablets, stones, bricks, tiles

¹ This article, inserted in chapter 24 of the Code, § 竊盜, prescribes that such convicts shall be sent into lifelong banishment to Yunnan, Kweichow, Kwangtung, or Kwangsi.

or wooden structures from a grave ground which belongs to others, must be punished as ordinary theft in proportion to the value of the things in question; but the perpetrators need not be branded.

Fourth Supplementary article.

(Dating in this shape from 1810)

凡子孫將祖父墳塋前列成行樹木及墳旁散樹高大株顚、私自砍賣者、一株至五株、杖一百枷號一個月。六株至十株、杖一百枷號兩個月、十一株至二十株、杖一百徒三年。係旗人徒罪、折枷共枷號三個月。

計賊重者准竊盜加一等從其重者論。

二十一株以上者旗人發吉林當差、民人發邊遠充軍。

如墳旁散樹並非高大株顚、止間不應重杖。

若係枯乾樹木、不行報官私自砍賣者照不應重律杖八十。

看墳人等及奴僕盜賣者罪同。

盜賣墳塋之房屋碑石磚瓦木植者子孫奴僕計賊並准竊盜罪加一等。

»Sons or grandsons who have felled and sold for private ends from one to five high and big trees standing arrayed in rows in front of their grandfather's or father's sepulchral grounds, or detached along the sides thereof, shall be castigated with one hundred blows with the long stick and be exposed in the cangue for one month. Should they have felled and sold from six to ten of such trees, they shall receive the same number of blows and be placed in the cangue for two months, and if they have cut down eleven or more trees, up to twenty, one hundred blows with the long stick shall be inflicted, together with banishment for three years. If Bannermen are sentenced to such banishment, a cangue penalty lasting three months in all, shall be inflicted upon them by instalments.

»Should the theft of things of the same value as the trees felled require a heavier punishment, then the above cases shall be punished as theft, with an increase of one degree, and the sons or grandsons accordingly undergo the heavier punishment.

»If twenty-one trees or more have been felled and sold, the

culprits shall, if they are Bannermen, be banished to Kirin and be placed there in Government thralldom; and if they are civil subjects, they shall be banished for life to a distant province.

»The bastinado must in the above cases not be inflicted severely if the trees were planted sparsely along the sides of the grave, or if they were not high and big.

»If the trees in question were rotten or withered and were felled and sold for private ends without the authorities having been apprised of the matter, eighty blows with the long stick shall be inflicted, as in this case the law is not to be applied in its full severity.

»Persons charged with guarding the grave, and such like persons, as also slaves, shall, if they have sold grave trees with thievish intent, receive the same punishments as are prescribed in this article.

»When buildings, stone tablets, stones, bricks, tiles or wooden structures of a burial ground have been sold with thievish intent, the sons, grandsons or slaves who have done this deed, shall be punished for theft in proportion to the value of the spoil, but with an increase of one degree of punishment.

Fifth Supplementary Article.

(Enacted in this shape in 1845)

私入紅椿大道以內、偷打牲畜、爲首於附近犯事地方枷號兩個月、滿日改發極邊烟瘴充軍。爲從枷號一個月杖一百徒三年。

其因起意在內偷牲遺失火種、以致延燒草木者於附近犯事地方枷號兩個月、滿日發新疆、酌撥種地當差。爲從枷號一個月杖一百徒三年。如延燒殿宇牆垣、爲首擬絞監候、爲從杖一百流三千里。

»If people secretly slip into such parts of a mausoleum as lie inside the red posts or the great avenue, and steal or beat the sacrificial animals kept there, the chief offenders shall be exposed in the cangue for two months in proximity to the spot where the deed was committed, and thereafter be banished for life to the remotest province where malarious diseases prevail. Their accomplices shall be placed in the cangue for one month, receive one hundred blows with the long stick and be banished for three years.

»They who, harbouring the intention to steal sacrificial animals

in a mausoleum, drop fire, thus causing shrubs and trees to catch fire, shall be exposed in the cangue for two months in proximity to the place where the offence has been committed and, after the expiration of this time, be banished to Turkestan, where it shall be decided into which localities they are to be distributed to live in Government thralldom. Their accomplices shall be placed in the cangue for one month, receive one hundred blows with the long stick and be banished for three years. And if the fire has attacked halls or buildings, walls or inclosures, the chief offenders shall be condemned to strangulation, and be kept in jail to await confirmation of their sentence by the higher authorities; and their accomplices shall receive one hundred blows with the long stick and be banished to a region three thousand miles distant.

Sixth Supplementary Article.

(Enacted in 1830)

凡旗民人等在紅椿以內偷挖人參至五十兩以上、爲首比照盜大祀神御物律斬、奏請定奪。爲從發新疆、給兵丁爲奴。二十兩以上、爲首發新疆、給兵丁爲奴、爲從杖一百流三千里。十兩以上、爲首寔發雲貴兩廣烟瘴地方充軍、爲從杖一百流二千里。十兩以下、爲首發近邊充軍、爲從杖一百徒三年。

在紅椿以外白椿以內偷挖人參至五十兩以上者、爲首擬絞監候、爲從發近邊充軍。二十兩以上、爲首實發雲貴兩廣烟瘴充軍、爲從杖一百流三千里。十兩以上、爲首發近邊充軍、十兩以下、爲首杖一百流三千里、爲從俱杖一百徒三年。

在白椿以外青椿以內偷挖者、照偷刨山場人參例分別治罪。

未得參者各於已得例二減一等。

知情販賣者減私挖罪一等、不知者不坐。

得參人犯首從俱刺盜官參三字、未得參及販賣者俱免刺字。參物入官。旗人有犯、銷除旗檔、照民人一律辨理。

弁兵受賄故縱、本犯罪不應死者與犯人同罪。賊重者計賊以枉法從重論。本犯罪應斬決者爲首之弁兵擬絞立決、本犯罪應絞候者該弁兵發新疆、分別當差爲奴。其止疎於防範者兵丁杖一百、官弁交部議處。

» If Bannermen, civil subjects or any one whosoever dig ginseng¹ with thievish intent within the red posts of a mausoleum, to the weight of fifty taels or more, the chief offenders shall come under the fundamental law which provides against stealing Imperial implements assigned for the Great Imperial Sacrifices to Heaven², and be beheaded accordingly, but the Imperial confirmation of the sentence will first have to be obtained. Their accomplices shall be relegated to Turkestan, and there be given as slaves to the soldiery. The chief culprits shall be condemned to this latter punishment if the unearthed ginseng weighs twenty or more taels, and their accomplices in this case shall be castigated with one hundred blows with the long stick and be banished for life to a region three thousand miles distant. Should the weight be ten or more than ten taels, the punishment for the chief offenders shall be lifelong banishment in a malarious province, viz. Yunnan, Kweichou, Kwangtung or Kwangsi, and for the accomplices one hundred blows with transportation to a distance of two thousand miles; and should it be ten taels or less, the chief culprits shall be banished for life to a country not far distant, and the accomplices be beaten with one hundred blows and be banished for three years.

» If ginseng has been dug up without the red post, but within the white ones, the punishments shall be as follows: — for a weight of fifty taels or more, strangulation of the chief culprits, with imprisonment until their sentence has been confirmed by the higher authorities, and lifelong banishment of the accomplices to a province not far distant. For twenty taels or more, lifelong banishment of the chief offenders to a malarious region, viz. Yunnan, Kweichou, Kwangtung or Kwangsi, and flagellation of the accomplices with one hundred blows, together with lifelong banishment to a region three thousand miles distant. For ten taels or more, the chief culprits shall be deported for life to a province

1 The well known root of a plant (*Aralia quinquefolia*?), which is much valued as a medicine and commands very high prices in China.

2 Comp. the first supplementary article.

not far off, and for a weight of less than ten tael, they shall receive one hundred blows with the long stick and be transported for life to a country three thousand miles off; and for each of these quantities the accomplices shall receive one hundred blows and be banished for three years.

» And should the digging have taken place outside the white and inside the blue posts, both the chief culprits and the accomplices shall be differently punished in a way such as the supplementary law which provides for those digging in the soil for ginseng with a thievish intent demands.

» If no ginseng has been found by the offenders, the punishments above specified in this article for cases in which it has been obtained, shall be inflicted with a mitigation of one degree.

» Those who have wittingly sold such ginseng shall be punished one degree less severely than the persons who have secretly dug it up; but they shall not be liable to punishment if they have sold it without being aware of its origin.

» If in the above cases ginseng has been appropriated, the chief culprits and the accomplices shall all be branded with the characters: » Theft of ginseng belonging to the Government"; but no branding shall take place if no ginseng has been appropriated, nor shall the persons who have sold it be branded. The ginseng and things (that have served for the unearthing of it?) shall be confiscated by the Government. If Bannermen have committed the offence, they shall be deprived of their Bannermanship and be sentenced according to the laws in force for civil subjects.

» Should petty officials or soldiers (charged with the guarding of the mausoleum grounds) have wilfully connived at the offence for a bribe, they shall be punished in the same degree as the offenders proper, unless the penalty of death has to be inflicted upon these latter. And if the quantity of ginseng is considerable, the punishment required for theft of things of its value shall be calculated and, if it is heavier than the punishments mentioned in this article, be inflicted upon the culprits. Should the offenders proper incur decapitation, the chief culprits among the bribed officials or soldiers shall be condemned to strangulation, and be executed without confirmation of their sentence by the higher authorities; but if the offenders have incurred such strangulation, those officials and soldiers shall be sent to Turkestan, there to be placed in different localities in Government thralldom. Those who have merely been remiss in maintaining the regulations with respect to the guarding of the ground, shall, if they are

soldiers, receive one hundred blows with the long stick, and if they are officials, they shall be delivered over to the Board to which they belong, to be brought up for trial by it.

Seventh Supplementary Article.

(Dating from 1852)

凡在陵寢圍牆以內盜砍樹木枝杈、爲首者先於犯事地方枷號兩個月、發近邊充軍。其無圍牆之處、如在紅椿以內盜砍者卽照圍牆以內科罪。若在紅椿以外白椿以內盜砍者爲首杖一百徒三年、如在白椿以外青椿以內、爲首杖一百、均枷號一個月。如在青椿以外官山以內、爲首杖一百。

爲從各犯俱於首犯罪上各減一等問擬。

其圍牆以外並無白椿青椿者均照官山以內辦理、

弁兵受賄故縱、及潛通消息致犯逃避者各與囚同罪。

» Those who with a thievish intent have felled trees or hewn off branches thereof in an Imperial mausoleum, within the walled-in grounds, shall, if they have acted in the capacity of chief culprits, first be exposed for two months in the cangue in the locality where the crime has been committed, and then be sent into lifelong banishment in a near province. Should they have done so in the grounds not surrounded by walls, but within the red posts, they shall be punished as if they had done so within the immured parts. If the offence have been committed outside the red and within the white posts, the chief culprits shall receive one hundred blows with the long stick and be banished for three years, and if the crime has been perpetrated outside the white and within the blue posts, they shall merely receive the hundred blows; but in each of these two cases they shall be placed in the cangue for one month. Finally, if they have committed the deed beyond the blue posts, but in the grounds reserved to the Government, the chief offenders shall receive one hundred blows with the long stick.

» Accomplices in all the above cases shall be sentenced to one degree less punishment than that which is required for the chief culprits.

» If the offence have been committed outside the immured parts,

and no white or blue posts were standing there, the case shall be dealt with as if it had been committed in the grounds reserved to the Government.

»If petty officials or soldiers attached to the place have willingly connived at the deed for a bribe, or have secretly warned the perpetrators, so that they could escape, they shall receive the same punishment as the men arrested”.

Burial of uncared-for Human Remains by the Authorities. Official Assistance afforded to the Poor in burying their Dead.

If it be admitted that the *Cheu li* is a work actually dating from the Cheu dynasty, we may infer from it that already in pre-Christian times the Government of China was not indifferent about its subjects being properly buried, and even went so far as to charge itself with the duty of committing to the earth human remains neglected by others. Indeed, this book contains certain rescripts concerning the burial places of the people and the official control to be exercised over them, rescripts which have been reproduced by us on page 830. Moreover, we read therein:

»The Officer whose duty it is to provide against carrion-insects, »is charged with the removal of putrid human remains. Whenever »a Great Sacrifice takes place in (the suburbs of) the capital, he »shall ordain that unclean matter be cleared away in the villages »of the district, and that those who have been punished with »corporal mutilation, and people in penal servitude or wearing »mourning dress, are not to be admitted into the suburbs. He shall »act in the same way when there is a great concentration of troops »or a solemn reception of high visitors. When a corpse is found »on the road, he shall order it to be buried and boards to be »fixed up, inscribed with the date of the day and month; the »clothes and effects which were on the corpse he shall hang up »at the dwelling of the local officer, to be kept there for the »relations. He is also charged with the maintenance of the ordi- »nances which are in force in the capital for the treatment of »human remains in a state of decay”¹.

¹ 蜡氏掌除骴。凡國之大祭祀令州里除不蠲、禁刑者任人及凶服者以及郊野。大師大賓客亦如之。若有死於道路者則令埋而置楬焉、書其