

No. XVII.

An Act to consolidate and amend in certain respects the Criminal Law. [26th April, 1883.]

CRIMINAL LAW
AMENDMENT.
—

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. This Act (which may be cited as the “Criminal Law Amendment Act of 1883”) shall commence on the first day of July one thousand eight hundred and eighty-three on which day the Acts and portions of Acts mentioned in the First Schedule hereto shall to the extent of the repeal thereby indicated be repealed except as to offences committed and things done or commenced before that day which shall be dealt with and continued and every right and liability in respect thereof shall remain as if this Act had not been passed.

Commencement
of Act and repeal of
sundry Acts.

2. The Eighth and following Parts of this Act so far as their provisions can be applied shall be in force with respect to all offences whether at common law or by statute whensoever committed and in whatsoever Court tried.

Application of certain
Parts of Act.

INTERPRETATION AND GENERAL CLAUSES.

3. For the purposes of this Act the words in this section printed in *italics* shall have the meanings or be taken to include the terms or things or persons hereinafter in that behalf mentioned—that is to say:—

Interpretation of
terms.

(a.) The words *Court* and *Judge* respectively shall be equally taken to mean the Court in which or the Judge before whom the trial or proceeding is had in respect of which either word is used. The term *Indictment* shall include any information presented or filed as now provided by law for the prosecution of offences. And the word *Justice* or *Justices* shall be construed to mean a Justice or Justices of the Peace.

Court Judge.

Indictment.

Justices.

(b.)

Criminal Law Amendment.

Money.

(b.) The word *money* shall include all coined money whether current within the Colony or not and all Bank notes or instruments ordinarily so called if current as such and payable to the bearer And the words *valuable security* shall include every order or other security whatsoever entitling or evidencing the title of any person to any share or interest in any public stock or fund whether of any part of the British Dominions or of any Foreign State or in any fund of any body corporate company or society whether within or without the British Dominions or to any deposit in any Bank and shall also include every debenture deed bond bill note cheque warrant order or security whatsoever for money or for payment of money whether current in any part of the British Dominions or in any Foreign State and every document of title to land or goods as hereinafter defined.

Valuable security.

Property.

(c.) The term *property* shall include every description of real and personal property and also money valuable securities debts and legacies and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and shall include not only property originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged and everything acquired by such conversion or exchange whether immediately or otherwise.

Document of title to goods.

(d.) The term *document of title to goods* shall include every bill of lading India warrant dock warrant warehousekeeper's certificate warrant or order for the delivery or transfer of any goods or valuable thing and every bought and sold note or document used in the ordinary course of business as proof of the possession or control of goods or purporting to authorize by indorsement or delivery the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

Document of title to land.

(e.) The term *document of title to land* shall include every deed certificate of title map paper or parchment written or printed or partly written and partly printed being or containing evidence of the title or part of the title to any real estate or to any interest in or out of real estate.

Banker.

(f.) The term *Banker* shall include every director or manager of any Banking company whether incorporated or not or of any branch thereof and every person carrying on the business of a Banker.

Trustee.

(g.) The term *trustee* shall mean a trustee on some express trust howsoever created and shall include the heir or personal representative of such trustee and every other person upon whom the duty of such trust shall have devolved and also any official manager assignee liquidator or other like officer acting under any Act relating to joint stock companies or to bankruptcy or insolvency.

Governor.

(h.) The word *Governor* shall except in respect of the exercise of the pardoning power be taken to mean the Governor with the advice of the Executive Council.

Master or employer.

(i.) The words *person master* and *employer* shall severally be construed to include whenever applicable thereto any society company or corporation.

Cattle.

(j.) The term *cattle* shall include any horse mare gelding colt foal filly ass mule bull cow ox steer heifer calf ram ewe sheep lamb pig goat deer alpaca llama or vicuna and every hybrid or cross thereof.

(k.)

Interpretation and General Clauses.

- (k.) *Night* shall be deemed to commence at *nine* of the clock in the Night. evening of each day and to conclude at *six* of the clock in the morning of the next succeeding day.
- (l.) *Vessel* shall mean any ship or vessel used in or intended for Vessel &c. navigation not being an undecked boat and *property belonging to a vessel* shall include every portion of its cargo and property belonging to any of the officers crew or passengers thereof.
- (m.) The word *Oath* shall include affirmation promise and declaration in every case where by this or any other Act an affirmation promise or declaration is allowed instead of an oath. Oath.
- (n.) *Railway* shall include tramways and *telegraph* shall include Railway. Telegraph. equally telephones.
- (o.) The term *Counsel* shall include attorneys in all Courts where Counsel. attorneys now practise or shall hereafter practise as counsel.
4. Whenever by this Act a person is made liable to the punishment of death or of penal servitude the offence for which such punishment may be awarded is hereby declared to be and shall be dealt with as felony and wherever in this Act the term felony is used the same shall be taken to mean an offence punishable as aforesaid. What offences deemed felonies.
5. Whenever by this Act no greater punishment can be awarded than imprisonment with or without hard labour or whipping or the imposition of a fine in addition to or without imprisonment the offence shall be and be dealt with as a misdemeanour only. What offences misdemeanours.
6. In every section of this Act and in every sentence passed by any Court or Judge or Justices or Justice under this or any other Act or at Common Law the word month shall be taken to mean a calendar month unless the contrary be expressed. The word month.
7. Every act done of malice whether against an individual or any corporate body or number of individuals or done without malice but with indifference to human life or suffering or with intent to injure some person or persons or corporate body in property or otherwise and in any such case without lawful cause or excuse or done recklessly or wantonly shall be taken to have been done maliciously within the meaning of this Act and of every indictment and charge where malice is by law an ingredient in the crime. Malice and malicious.
8. Where by any section of this Act an offender is made liable to penal servitude for life or any other fixed term the Judge may nevertheless having regard to extenuating circumstances in the case if any pass a sentence to penal servitude of less duration as follows That is to say—instead of servitude for life a term of years not less than seven—instead of servitude for fourteen years a term of not less than five years—instead of servitude for ten years a term of not less than four years—and instead of servitude for seven years a term of not less than three years Provided that where the term of servitude is ten or seven or five years the Judge may instead of servitude pass a sentence of imprisonment with or without hard labour as follows That is to say—instead of servitude for ten years imprisonment for any less term not less than three years—instead of servitude for seven years imprisonment for any less term not less than two years—and instead of servitude for five years imprisonment for any less term not less than one year. Minimum terms of penal servitude. Alternative of imprisonment.

PART I.

OFFENCES AGAINST THE PERSON.

Homicide.

Murder—the crime defined.

9. Whosoever commits the crime of murder shall be liable to suffer death And murder shall be taken to be where the act of the accused or thing by him omitted to be done causing the death charged was done or omitted with reckless indifference to human life—or with intent to kill or inflict grievous bodily harm upon some person—or done in an attempt to commit or during or immediately after the commission by the accused or some accomplice with him of an act obviously dangerous to life or a crime punishable by death or penal servitude for life Every other punishable homicide shall be taken to be Manslaughter.

Trial where the death or cause of death occurs out of the Colony.

10. Where in any case of homicide the cause of death happened on the sea or elsewhere out of this Colony but the death was in this Colony or the cause of death happened in this Colony but the death was on the sea or elsewhere out of this Colony the offence may be dealt with in all respects as if the same had been wholly committed within this Colony.

Child murder.

11. On the trial of any person for the murder of a child such child shall be held to have been born alive if it shall have breathed and have been wholly born into the world whether it had an independent circulation or not.

Conspiring to commit murder.

12. Whosoever conspires and agrees to murder any person whether a subject of Her Majesty or not and whether within the Queen's dominions or not or solicits encourages persuades or endeavours to persuade or proposes to any person to commit any such murder shall be liable to penal servitude for life.

Manslaughter.

13. Whosoever commits the crime of manslaughter shall be liable to penal servitude for life or any term not less than three years or to imprisonment with or without hard labour for a term not exceeding three years Provided that in any case if the Judge is of opinion that having regard to all the circumstances it would properly be met by a nominal punishment it shall be lawful for him to discharge the jury from giving any verdict and such discharge shall operate as an acquittal.

Justifiable excusable homicide.

14. No act or omission which was not malicious or for which the accused had lawful cause or excuse shall be within the aforesaid ninth section And no punishment or forfeiture shall be incurred by any person who kills another by misfortune only or in his own defence.

Petit treason.

15. Every offence which before the twenty-seventh day of June one thousand eight hundred and twenty-eight would have amounted to petit treason shall be deemed to be murder only and all persons guilty in respect thereof whether as principals or as accessories shall be dealt with and punished as principals or accessories in murder.

Attempts to Murder.

Acts done to the person with intent to murder.

16. Whosoever administers to or causes to be taken by any person any poison or other destructive thing—or by any means wounds or causes grievous bodily harm to any person—with intent in any such case to commit murder shall be liable to suffer death.

Acts done to property with the like intent.

17. Whosoever sets fire to any vessel or any chattel therein or any part of her tackle apparel or furniture—or casts away or destroys any vessel—or by the explosion of gunpowder or other explosive substance destroys or damages any building—or places or throws any matter

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matter or thing upon or across a railway or removes or displaces any sleeper or other thing belonging to a railway—with intent in any of the cases aforesaid to commit murder shall be liable to suffer death.

18. Whosoever attempts to administer to or cause to be taken by any person any poison or other destructive thing or shoots at any person or in any manner attempts to discharge any kind of loaded arms at any person or attempts to drown suffocate or strangle any person with intent in any of the cases aforesaid to commit murder shall whether any bodily injury be effected or not be liable to penal servitude for life. Certain other attempts to murder.

19. Whosoever by any means other than those specified in the preceding sections attempts to commit murder shall be liable to penal servitude for life. Attempts by other means.

Letters threatening Murder.

20. Whosoever maliciously sends delivers or utters—or directly or indirectly causes to be received—knowing the contents thereof—any letter or writing threatening to kill any person shall be liable to penal servitude for ten years. Letters threatening murder.

Acts causing or intended to cause Bodily Harm.

21. Whosoever maliciously prevents or impedes any person on board of or having quitted any ship or vessel in distress or wrecked stranded or cast on shore in his endeavour to save his life—or maliciously prevents or impedes any person in his endeavour to save the life of such first-mentioned person—shall be liable to penal servitude for life. Impeding endeavours to escape shipwreck.

22. Whosoever maliciously by any means wounds or inflicts grievous bodily harm upon any person—or shoots at any person or in any manner attempts to discharge any kind of loaded arms at any person—with intent in any such case to do grievous bodily harm to any person or with intent to resist or prevent the lawful apprehension or detainer either of himself or any other person—shall be liable to penal servitude for life. Wounding &c. with intent to do bodily harm.

23. Any gun pistol or other arms loaded in the barrel or chamber with gunpowder or other explosive substance and with ball shot slug or other destructive material shall be deemed loaded arms within the meaning of this Act although the attempt to discharge the same may fail from want of proper priming or from any other cause and every gun pistol or other arms unlawfully presented at any person shall be deemed to be loaded unless the contrary be shown. What constitutes loaded arms.

24. Whosoever maliciously by any means wounds or inflicts grievous bodily harm upon any person shall be liable to penal servitude for five years. And any permanent or serious disfiguring of the person shall be included within the term grievous bodily harm for the purposes of this and the said twenty-second section. Inflicting bodily injury or disfiguring.

25. Whosoever by any means attempts to choke suffocate or strangle any person—or by any means calculated to choke suffocate or strangle attempts to render any person insensible unconscious or incapable of resistance—with intent in any such case to enable himself or another person to commit or with intent in any such case to assist any person in committing an indictable offence—shall be liable to penal servitude for life. Attempts to choke &c.

26. Whosoever unlawfully applies or administers to or causes to be taken by—or attempts to apply or administer to or cause to be taken by any person—any chloroform laudanum or other stupefying or overpowering drug or thing—with intent in any such case to enable himself or another person to commit or with intent to assist another person in committing an indictable offence—shall be liable to penal servitude for life. Using chloroform &c. to commit any offence.

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Using poison &c. so
as to endanger life.

27. Whosoever maliciously administers to or causes to be administered to or taken by any person any poison or other destructive or noxious thing so as to endanger the life of such person or so as to inflict upon such person grievous bodily harm shall be liable to penal servitude for ten years.

Administering poison
&c. with intent to
injure or annoy.

28. Whosoever maliciously administers to or causes to be administered to or taken by any person any poison or other destructive or noxious thing with intent to injure aggrieve or annoy such person shall be liable to penal servitude for five years.

Not providing wife
child or servant with
food &c.

29. Whosoever being legally liable to provide any wife child ward insane person apprentice or servant with necessary food clothing or lodging wilfully and without lawful excuse refuses or neglects to provide the same—or maliciously does or causes to be done any bodily harm to any wife child ward insane person apprentice or servant—so that in any such case his or her life is endangered or his or her health becomes or is or is likely to be seriously injured—shall be liable to penal servitude for five years. And whosoever being legally liable to maintain his wife and child or children wilfully and without lawful excuse deserts such wife or any such child and remains absent from his home for the space of thirty days leaving such wife or child without the means of support shall be guilty of a misdemeanour and be liable to imprisonment for a term not exceeding three years.

Wife or child
desertion.

Exposing or
abandoning children.

30. Whosoever unlawfully abandons or exposes any child under the age of two years whereby the life of such child was or is endangered or its health was or is likely to be seriously injured shall be liable to penal servitude for five years.

Causing bodily injury
by gunpowder &c.

31. Whosoever maliciously by the explosion of gunpowder or other substance or the use of any corrosive fluid or destructive matter burns maims disfigures disables or does grievous bodily harm to any person shall be liable to penal servitude for life.

Using or sending
explosive substance
or throwing corrosive
fluid.

32. Whosoever maliciously causes any gunpowder or other explosive substance to explode or sends or delivers to or causes to be taken or received by any person any explosive substance or other dangerous or noxious thing—or puts or lays at any place or casts or throws at or upon or otherwise applies to any person any corrosive fluid or any destructive or explosive substance—with intent in any such case to burn maim disfigure disable or do grievous bodily harm to any person—shall whether bodily injury be effected or not be liable to penal servitude for life.

Placing gunpowder
near a building &c.

33. Whosoever maliciously places or throws into upon against or near any building ship or vessel any gunpowder or other explosive substance with intent to do some bodily injury to any person shall whether or not an explosion takes place and whether or not bodily injury is effected be liable to penal servitude for fourteen years.

Setting spring-guns
&c.

34. Whosoever places or causes to be placed any spring-gun man-trap or other engine calculated to destroy human life or inflict grievous bodily harm on any person or continues any such engine so placed or knowingly permits the same to continue so placed—with intent in any such case to inflict grievous bodily harm—shall be liable to imprisonment for a term not exceeding four years. Provided that nothing in this section shall extend to any gin or trap placed with the intention of destroying vermin or to any spring-gun man-trap or other engine placed in a dwelling-house for the protection thereof.

Placing wood &c. on
a railway.

35. Whosoever maliciously puts or throws upon or across a railway any wood stone or other thing—or takes up removes or displaces any rail sleeper or other thing belonging to any railway—or turns moves or diverts or neglects to turn move or divert any point or other machinery belonging to any railway—or makes shows hides or removes any signal or light upon or near to any railway or does or causes

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causes to be done or neglects to do or cause to be done any other thing—with intent in any such case to injure or endanger the safety of any person travelling or being on such railway or in any railway carriage shall be liable to penal servitude for life.

36. Whosoever maliciously throws or causes to fall or strike at against into or upon any engine tender carriage or truck used upon a railway any wood stone or other thing with intent to injure or endanger the safety of any person in or upon such engine tender carriage or truck or in or upon any other engine tender carriage or truck of the same train shall be liable to penal servitude for life. Casting stone &c. on a railway carriage.

37. Whosoever by any unlawful or negligent act or omission causes grievous bodily injury to any person shall be liable to imprisonment for a term not exceeding two years—and whosoever by any such act or omission endangers or causes to be endangered the safety of any person conveyed or being in or upon a railway—shall be liable to imprisonment for a term not exceeding three years. Causing bodily injury or endangering passengers.

38. Whosoever by wanton or furious riding or driving or racing or other misconduct or by wilful neglect he being at the time on horseback or in charge of any carriage or other vehicle does or causes to be done to any person any bodily harm shall be liable to imprisonment for a term not exceeding two years. Injuries by furious driving &c.

Rape and similar Crimes.

39. Whosoever commits the crime of rape shall be liable to suffer death And the consent of the woman if obtained by threats or terror shall be no defence to the charge And whosoever attempts to commit or assaults any female with intent to commit the crime of rape shall be liable to penal servitude for fourteen years. Rape and attempt to commit rape.

40. Whosoever by any false pretence false representation or other fraudulent means or by the use of any intoxicating drug induces or procures a woman to have illicit carnal connection with a man or by any such means has such connection with a woman and whosoever has carnal knowledge of a woman with her consent under the belief induced by the language or conduct of the accused that he was her husband shall be liable to penal servitude for fourteen years. Procuring or having carnal knowledge by fraud.

41. Whosoever carnally knows any girl under the age of ten years shall be liable to suffer death and whosoever assaults with intent carnally to know any such girl or attempts to have such knowledge shall be liable to penal servitude for fourteen years. Carnally knowing a girl under ten.

42. Whosoever unlawfully and carnally knows any girl of or above the age of ten years and under the age of fourteen years shall be liable to penal servitude for ten years and whosoever assaults with intent unlawfully and carnally to know any such girl or attempts to have such knowledge shall be liable to penal servitude for five years And the consent of the girl shall be no defence to any charge under this or the preceding section. Carnally knowing a girl between ten and fourteen.

Criminal Assaults by Teachers &c.

43. Whosoever being a schoolmaster or other teacher unlawfully and carnally knows any girl of or above the age of ten years and under the age of sixteen years being his pupil and whosoever being a father carnally knows any girl between such ages being his daughter shall be liable to penal servitude for fourteen years And whosoever being such schoolmaster or teacher or father assaults any such girl with intent to have such knowledge or by any means attempts to have such knowledge shall be liable to penal servitude for seven years And the Carnal knowledge of girl by teacher &c.

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the consent of the pupil or daughter shall be no defence to any charge under this section. Provided that nothing in this clause contained shall prevent such schoolmaster teacher or parent from being prosecuted under either section forty-one or forty-two of this Act.

Indecent assault
on females.

44. Whosoever indecently assaults any girl under the age of fourteen years whether with or without her consent shall be liable to penal servitude for five years. And whosoever indecently assaults any female of or above the age of fourteen years shall be liable to imprisonment for a term not exceeding three years.

Abduction.

Abduction of woman
against her will.

45. Where a woman of any age has an interest in property or is a presumptive heiress or next of kin to any one having such interest whosoever from motives of lucre takes away or detains such woman against her will with intent to marry or carnally know her or to cause her to be married or carnally known by any person shall be liable to penal servitude for fourteen years.

The like against the
will of parent &c.

46. Whosoever fraudulently allures takes away or detains any female under the age of twenty-one years out of the possession and against the will of any person having the lawful charge of her with intent to marry or carnally know her or to cause her to be married to or carnally known by any person shall be liable to penal servitude for seven years. And no offender under this or the last section shall be capable of taking any estate or interest in any property in her right and if any marriage has taken place the property of the wife shall be settled in such manner as the Supreme Court at the suit of the Attorney-General may appoint.

Forcible abduction of
a woman.

47. Whosoever by force takes away or detains against her will any female of any age with intent to marry or carnally know her or to cause her to be married to or carnally known by any person shall be liable to penal servitude for fourteen years.

Abduction of girl
under sixteen years.

48. Whosoever unlawfully takes or causes to be taken any unmarried girl under the age of sixteen years out of the possession and against the will of any person having the lawful charge of her shall be liable to imprisonment for a term not exceeding three years.

Taking child with
intent to steal &c.

49. Whosoever by force or fraud leads or takes away entices away or detains any child under the age of twelve years with intent to deprive any person having the lawful charge of such child of the possession of such child—or with intent to steal any article upon or about the person of such child to whomsoever such article may belong—and whosoever receives or harbours any such child knowing the same to have been so led taken enticed away or detained—shall be liable to penal servitude for ten years. Provided that this section shall not extend to any person who shall in good faith have claimed a right to the possession of such child.

Certain Assaults not indecent.

Obstructing minister
in discharge of his
duties.

50. Whosoever by threats or force prevents or endeavours to prevent any clergyman or other person duly authorized in that behalf from officiating in a place of divine worship or from the performance of his duty in the lawful burial of the dead in a burial-place or strikes or offers any violence to any clergyman or minister engaged in or to the knowledge of the offender about to engage in any of the duties aforesaid or going to perform the same shall be liable to imprisonment for a term not exceeding two years.

Assault on persons
preserving wreck.

51. Whosoever wounds strikes or assaults any person while in the execution of his duty concerning the preservation of a vessel in distress

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distress or any vessel or effects stranded or cast on shore or lying under water with intent to obstruct him or whereby he was obstructed in the execution of such duty shall be liable to penal servitude for seven years.

52. Whosoever assaults any person with intent to commit felony—or assaults resists or wilfully obstructs any officer while in the execution of his duty (such officer being a justice constable or other peace officer custom-house officer sheriff's officer or bailiff) or any person acting in aid of such officer—or assaults any person with intent to resist or prevent the lawful apprehension or detainer of any person for any offence—shall be liable to imprisonment for a term not exceeding two years. Assault with intent to commit felony or on certain officers.

53. Whosoever is convicted upon an indictment for an assault occasioning actual bodily harm shall be liable to penal servitude for five years—and whosoever is convicted upon an indictment for an assault although not occasioning actual bodily harm shall be liable to imprisonment for a term not exceeding two years and if committed upon a female shall in addition be liable to be once privately whipped. And where any such first-mentioned assault or any aggravated assault specially so found by the jury was by a husband upon his wife the Judge if satisfied that her future safety is in peril may add to the sentence a declaration that she shall no longer be bound to cohabit with her husband which declaration shall have the effect in all respects of a degree of judicial separation on the ground of cruelty. Certain assaults prosecuted by indictment. Assault by husband on wife.

Bigamy.

54. Whosoever being married marries another person during the life of the former husband or wife wheresoever such second marriage takes place shall be liable to penal servitude for seven years. Provided that no person shall be convicted under this section whose husband or wife has at the time of such second marriage been continually absent from such person for the space of seven years or if domiciled in this Colony at the time of the first marriage has been continually absent from the Colony for the space of five years then last past and was on reasonable grounds believed by the accused at the time of the second marriage not to be living—of which facts the proofs shall lie on the accused. And whosoever whether married or unmarried marries the husband or wife of a person not continually so absent knowing him or her to be married and the former wife or husband to be alive shall be liable to penal servitude for five years. Bigamy. Accessory to bigamy.

Attempts to procure Abortion.

55. Every woman being with child who unlawfully administers to herself any drug or noxious thing or unlawfully uses any instrument or other means with intent to procure her miscarriage—and whosoever with intent to procure the miscarriage of any woman whether with child or not unlawfully administers to or causes to be taken by her any drug or noxious thing—or unlawfully uses any instrument or other means with the like intent—shall be liable to penal servitude for ten years. Administering drugs &c.

56. Whosoever unlawfully supplies or procures any drug or noxious thing or any instrument or thing whatsoever knowing that the same is intended to be unlawfully used with intent to procure the miscarriage of any woman whether with child or not shall be liable to penal servitude for five years. Procuring drugs &c.

Concealing

*Criminal Law Amendment.**Concealing Birth or contributing to Death of a Child.*

Concealing the birth
of a child.

57. Where any woman has been delivered of a child every person who by any act after its death wilfully conceals or endeavours to conceal the birth of such child whether it died before or at or after its birth shall be liable to imprisonment for a term not exceeding four years. And any person tried for the murder of a child may if acquitted of such murder be convicted under this section in case the evidence warrants such conviction.

Injuries to or mark
of violence on child.

58. Whosoever during or after the delivery of a child maliciously inflicts on such child whether then wholly born or not any grievous bodily harm shall be liable to penal servitude for fourteen years—and where any woman delivered of a child and indicted for its murder has in any manner wilfully contributed to the death of such child whether during delivery or at or after its birth or there was on the body of such child any mark of violence wilfully caused by her and the jury (if they acquit her of the murder) so find she shall be liable to penal servitude for ten years.

Unnatural Offences.

Sodomy and bestiality.

59. Whosoever commits the abominable crime of buggery either with mankind or with any animal shall be liable to penal servitude for life or any term not less than five years.

Indecent attempt or
assault on a male
person.

60. Whosoever attempts to commit the said abominable crime or assaults any person with intent to commit the same shall be liable to penal servitude for five years. And whosoever commits an indecent assault upon a male person of whatever age with or without the consent of such person shall be liable to penal servitude for the like term.

Carnal knowledge
defined.

61. Carnal knowledge shall in every case under this Act be deemed complete upon proof of penetration only.

Explosive substances for injuring the Person.

Gunpowder &c. with
intent to injure the
person.

62. Whosoever knowingly has in his possession or makes or manufactures any gunpowder explosive substance or dangerous or noxious thing or any machine engine instrument or thing with intent by means thereof to injure or otherwise commit or for the purpose of enabling another person to injure or otherwise commit an offence being felony against the person of any one shall be liable to penal servitude for five years.

OFFENCES UNDER PART I. PUNISHABLE BY JUSTICES.

Assaults respecting
the sale of grain.

63. Whosoever beats or uses any violence or threat of violence to any person with intent to deter or hinder him from buying or disposing of or to compel him to buy or dispose of any grain flour meal malt or vegetable produce in any market or other place—or beats or uses any such violence or threat to any person having the charge of any such commodity whilst on the way to or from any place with intent to stop the conveyance of the same—shall on conviction before two Justices be liable to imprisonment for a term not exceeding six months or to a fine not exceeding twenty pounds. Provided that no person punished under this section shall be punished for the same offence under any other law.

Assaults obstructing
workmen.

64. Whosoever unlawfully and with violence or by any threat of violence prevents any person from or obstructs him in working at or exercising his lawful trade or occupation—or beats or uses any violence or threat of violence to any such person with intent so to prevent or obstruct him—shall on conviction before two Justices be liable

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liable to imprisonment for a term not exceeding six months or to a fine not exceeding twenty pounds. Provided that no person punished under this section shall be punished for the same offence under any other law.

65. Whosoever unlawfully assaults any person shall on conviction before two Justices be liable to imprisonment for a term not exceeding three months or to pay a fine not exceeding exclusive of costs if ordered the sum of ten pounds. And where such assault was upon an officer as defined in the fifty-second section in the execution of his duty or by the accused and another person in company with him or upon a child under twelve years or upon any female the offender shall be liable to imprisonment for a term not exceeding six months or to pay a fine not exceeding exclusive of costs if ordered the sum of twenty pounds.

Common assaults.

Aggravated assaults.

66. In case the Justices find the assault complained of to have been accompanied by an attempt to commit felony or are of opinion that the same is from any other circumstance a fit subject for prosecution by indictment they shall abstain from any adjudication thereupon and shall deal with the case by committal or holding to bail as in an ordinary case of prosecution by indictment.

Where jurisdiction not to be exercised.

67. If on the hearing of any such case of assault upon the merits the Justices deem the offence not to be proved or find the assault to have been justified or so trifling as not to call for punishment and accordingly dismiss the complaint they shall forthwith make out a certificate of such dismissal and deliver the same to the defendant.

Certificate of dismissal.

68. Any person who obtains such certificate or who having been convicted pays the amount adjudged to be paid or suffers the imprisonment awarded shall be released from all proceedings civil or criminal for the same cause.

Certificate or conviction a bar to other proceedings.

69. Nothing in the preceding sections shall authorize Justices to hear any case of assault in which any question affecting the same arises as to the title to land or any interest therein or accruing therefrom.

Exception from jurisdiction.

PART II.

LARCENY AND SIMILAR OFFENCES.

Larceny in General or by Bailees.

70. Every larceny whatever the value of the property stolen shall be deemed to be of the same nature and shall be subject to the same incidents in all respects as grand larceny was before the twenty-first day of June one thousand eight hundred and twenty-seven.

All larcenies to be of the same nature.

71. Whosoever being a bailee of any property fraudulently takes or converts the same or any part thereof—or any property into or for which it has been converted or exchanged—to his own use or the use of any person other than the owner thereof—although he shall not break bulk or otherwise determine the bailment—shall be guilty of larceny and may be convicted thereof upon an indictment for larceny. And the accused shall be taken to be a bailee within this section although he may not have contracted to restore or deliver the specific property received by him or may only have contracted to restore or deliver the property specifically.

Bailees fraudulently converting property.

72. Whosoever is convicted of simple larceny or of any felony by this Act made punishable like simple larceny shall (except in the cases hereinafter otherwise provided for) be liable to penal servitude for five years.

Punishment for simple larceny.

*Criminal Law Amendment.**Larceny of Animals.*

Stealing cattle or
killing same with
intent to steal.

73. Whosoever steals any cattle shall be liable to penal servitude for ten years And whosoever wilfully kills any cattle with intent to steal the carcass or skin or other part of the cattle so killed shall be liable to the same punishment as if he had been convicted of stealing the animal.

Stealing or killing
cattle.

74. If on the trial of any person under the preceding section it be proved that he stole or killed an animal of the species described in the indictment but it is uncertain on the evidence what was its sex or age the accused shall not be entitled to an acquittal by reason of such uncertainty.

Stealing dogs.

75. Whosoever steals any dog or has unlawfully in his possession or on his premises any stolen dog or the skin of any stolen dog knowing such dog to have been stolen the accused having been once or oftener summarily convicted of any such offence shall be liable to imprisonment for a term not exceeding one year.

Taking money to
restore dogs.

76. Whosoever corruptly takes any money or reward directly or indirectly under pretence or upon account of aiding any person to recover any dog which has been stolen or which is in the possession of any person not being its owner shall be liable to imprisonment for a term not exceeding one year.

Larceny of Written Instruments.

Bonds bills &c.
relating to real
property.

77. Whosoever steals or for any fraudulent purpose destroys cancels obliterates or conceals the whole or any part of any valuable security or of any document of title to land shall be liable to the same punishment as if he had stolen a chattel and been convicted of simple larceny in respect thereof.

Wills or codicils.

78. Whosoever steals or for any fraudulent purpose destroys cancels obliterates or conceals the whole or any part of any will codicil or other testamentary instrument either during the life of the testator or after his death or whether the same relates to real or personal estate or to both shall be liable to penal servitude for seven years.

Other remedies not
affected.

79. Neither of the two last preceding sections nor any proceeding conviction or judgment thereupon shall affect any remedy at law or in equity which any party aggrieved would have had if this Act had not been passed Provided that no conviction of an offender under either section shall be received in evidence in any action or suit against him and that no person shall be convicted under either of the said sections in respect of any act done by him if before being charged with the offence he first disclosed such act on oath under compulsory process in a proceeding instituted in good faith by a party aggrieved or under compulsory examination in some matter in bankruptcy or insolvency.

Stealing records or
other documents.

80. Whosoever steals or for any fraudulent purpose takes from its place of deposit for the time-being or from any person having the lawful custody thereof—or unlawfully and maliciously cancels obliterates injures or destroys the whole or any part of any record document or writing of or belonging to any Court—or relating to any matter or cause civil or criminal pending or terminated in any Court or relating to the business of any office or employment under Her Majesty and being in any public office—shall be liable to penal servitude for seven years.

Things attached to or growing on Land.

Metal glass wood &c.
fixed to house or
land.

81. Whosoever steals or rips cuts severs or breaks with intent to steal any glass or woodwork belonging to any building or any metal or any utensil or fixture whether made of metal or other material or of both

Part II.—Larceny and Similar Offences.

both respectively fixed in or to any building—or anything made of metal fixed in any land being private property or used as a fence to any dwelling-house garden or area or being in any square or street or in or on any place dedicated to public use or ornament—or in any burial-ground—shall be punished as in the case of simple larceny.

82. Whosoever steals or destroys or damages with intent to steal the whole or any part of any tree sapling shrub or plant or any under-wood respectively growing in any park pleasure-ground garden orchard or avenue or in any ground belonging to any dwelling-house—where the value of the article stolen or the amount of injury done exceeds twenty shillings—or steals or destroys or damages with intent to steal the whole or any part of any tree sapling shrub or plant or any under-wood respectively growing elsewhere than in any situation before mentioned where the value of the article stolen or the amount of injury done exceeds five pounds—shall be punished as in the case of simple larceny.

Trees in pleasure-grounds of the value of £1 or elsewhere of the value of £5.

83. Whosoever steals or destroys or damages with intent to steal the whole or any part of any tree sapling shrub or plant or any under-wood if the value thereof or the amount of injury done exceeds five shillings shall if twice previously summarily convicted of any such offence be punished as in the case of simple larceny.

Trees &c. of the value of 5s.
Third offence.

84. Whosoever steals or destroys or damages with intent to steal any dead wood lying on land in the occupation of another person if such wood exceeds in value five shillings shall if twice previously summarily convicted of any such offence be punished as in the case of simple larceny.

Dead wood.
Third offence.

85. Whosoever steals or destroys or damages with intent to steal any plant root fruit or vegetable production growing in any garden orchard pleasure-ground nursery-ground hot-house green-house or conservatory if twice previously convicted of any such offence shall be punished as in the case of simple larceny.

Fruit or vegetables in a garden &c.
Third offence.

Larceny from Mines.

86. Whosoever steals or severs with intent to steal any gold or the ore of any metal or any metal or mineral of commercial value or any coal or cannel coal from any mine bed or vein thereof respectively or from any claim or land comprised in any lease or promise of lease for mining purposes by or on behalf of the Crown shall be punished as in the case of simple larceny.

Ore of metal coal &c.

87. Whosoever being employed in or about any mine or claim or any land comprised in any such lease or promise of lease as aforesaid takes removes or conceals any gold or the ore of any metal or any metal or mineral of commercial value found or being in such mine claim or land—with intent to defraud any mining company or partnership or any proprietor of or adventurer in such mine claim or land or any workman or miner employed therein—shall be liable to imprisonment for a term not exceeding three years.

Miners removing ore with intent to defraud.

88. Whosoever being the holder of any lease issued under any Act relating to the gold-fields shall by any device or contrivance defraud or attempt to defraud Her Majesty of any gold or money payable by such lease or shall conceal or make a false statement as to the amount of any gold procured by him or shall falsify any account with in any such case a fraudulent intent shall be guilty of a misdemeanour.

Penalty for concealing royalty.

89. Whosoever with intent to defraud his co-partner or co-adventurer in any such claim or land or in any share or interest therein secretly keeps back or conceals any gold or any other metal or mineral of commercial value found in or upon or taken from such claim or land shall be punished as in the case of simple larceny.

Punishment of fraud on partners.

*Criminal Law Amendment.**Robbery and similar Offences.*

Robbery or stealing
from the person.

90. Whosoever robs or assaults with intent to rob any person or steals any chattel money or valuable security from the person of another shall unless where a greater punishment is provided by this Act be liable to penal servitude for ten years.

Same with striking
or wounding.

91. Whosoever commits any such felony as is mentioned in the last preceding section and immediately before or at the time of or immediately after the commission thereof strikes or uses any other corporal violence to any person shall be liable to penal servitude for fourteen years And if the person so offending thereby wounds any person he shall be liable to penal servitude for life.

Robbery or stopping
a mail being armed
or in company.

92. Whosoever being armed with an offensive weapon or instrument or being in company with another person robs or assaults with intent to rob any person—or stops any mail or vehicle railway train or person conveying a mail with intent to rob or search the same—shall be liable to penal servitude for fourteen years.

Robbery with arms
and wounding.

93. Whosoever being armed with an offensive weapon or instrument or being in company with another person so armed robs or assaults with intent to rob any person—and immediately before or at the time of or immediately after such robbery or assault wounds or inflicts grievous bodily harm upon such person—shall be liable to penal servitude for life.

Demanding money
&c.

94. Whosoever with menaces or by force demands any property from any person with intent to steal the same shall be liable to penal servitude for seven years.

Letter demanding
money &c. with
menaces.

95. Whosoever sends delivers or utters or directly or indirectly causes to be received knowing the contents thereof any letter or writing demanding any property of any person with menaces or any threat and without reasonable cause shall be liable to penal servitude for ten years.

Threatening letters.

96. Whosoever sends delivers or utters or directly or indirectly causes to be received knowing the contents thereof any letter or writing accusing or threatening to accuse a person of felony or of having committed or attempted to commit an infamous crime as hereinafter defined or of having committed an offence against decency in a public place with intent in any such case to extort or gain property from any person shall be liable to penal servitude for fourteen years.

Accusing or
threatening to
accuse.

97. Whosoever in any manner by words or otherwise accuses or threatens to accuse either the person to whom such accusation or threat is made or some other person of any such crime or offence with intent to extort or gain property from any person shall be liable to penal servitude for ten years.

Causing a person by
violence or threats
to execute deeds &c.

98. Whosoever by unlawful violence to or restraint of the body of any person or by any threat of such violence or restraint or by accusing or threatening to accuse a person of any such infamous crime compels or induces any person to execute make accept indorse alter or destroy the whole or any part of any valuable security or to write impress or affix any name or seal upon or to any paper or parchment—with intent in any such case to defraud—shall be liable to penal servitude for fourteen years.

Infamous crime
defined.

99. The crime of rape or of buggery or bestiality with mankind or an animal and every assault with intent to commit or attempt to commit any such crime and every solicitation promise or threat offered or made to any person whereby to induce him to commit or permit any such crime shall be deemed an infamous crime within the meaning of the three last preceding sections.

Evidence of menace.

100. It shall be immaterial whether any such menace or threat as aforesaid is of violence or injury or of an accusation to be caused or made by the offender or by any other person or whether the accusation if made shall purport to be that of the offender or some other person.

Sacrilege

*Part II.—Larceny and Similar Offences.**Sacrilege Burglary and Housebreaking.*

101. Whosoever breaks and enters any place of Divine worship and commits any felony therein or being in any place of Divine worship commits any felony therein and breaks out of the same shall be liable to penal servitude for fourteen years And every building or structure ordinarily used for Divine worship shall be deemed a place of Divine worship within this section.

Breaking and entering a church or chapel.

102. Whosoever commits the crime of burglary shall be liable to penal servitude for fourteen years And whosoever enters the dwelling-house of another with intent to commit felony therein or being in such dwelling-house commits any felony therein and in either case breaks out of the said dwelling-house in the night shall be deemed guilty of burglary.

Burglary.

103. Whosoever breaks and enters any dwelling-house or any building appurtenant thereto and while therein or on premises occupied therewith assaults with intent to murder any person or inflicts grievous bodily harm upon any person shall be liable to suffer death.

Burglary with intent to murder &c.

104. Whosoever enters any dwelling-house in the night with intent to commit felony therein shall be liable to penal servitude for seven years.

Entering dwelling-house in the night.

105. No building although within the same curtilage with any dwelling-house and occupied therewith shall be deemed part of such dwelling-house unless there is a communication between such building and dwelling-house either immediate or by means of a covered passage leading from the one to the other.

What building deemed part of dwelling-house.

106. Whosoever breaks and enters any building within the curtilage of a dwelling-house and occupied therewith but not being part thereof and commits any felony therein or being in any such building commits any felony therein and breaks out of the same shall be liable to penal servitude for ten years.

Breaking into building within the curtilage.

107. Whosoever breaks and enters any dwelling-house school-house shop warehouse or counting-house and commits any felony therein or being in any dwelling-house school-house shop warehouse or counting-house commits any felony therein and breaks out of the same shall be liable to penal servitude for ten years.

Breaking into any house &c. and committing felony.

108. Whosoever breaks and enters any place of Divine worship or any dwelling-house or any building within the curtilage school-house shop warehouse or counting-house with intent to commit felony therein shall be liable to penal servitude for seven years.

Housebreaking &c. with intent to commit felony.

109. Whosoever is found at night under any of the circumstances in this section mentioned that is to say—being armed with any weapon or instrument with intent to enter a building and to commit felony therein—or having in his possession without lawful excuse any implement of housebreaking—or having his face blackened or otherwise disguised with intent to commit felony—or who enters or is in any building with intent to commit felony therein—shall be liable to penal servitude for five years.

Being found at night with intent to commit felony.

110. Whosoever is convicted under the last preceding section after a previous conviction for felony or misdemeanour of whatever kind shall on such subsequent conviction be liable to penal servitude for seven years.

The like after a previous conviction.

Larceny in Dwelling-house.

111. Whosoever steals in a dwelling-house any property to the value in the whole of five pounds or more shall be liable to penal servitude for seven years And whosoever steals any property in a dwelling-house and uses thereafter any menace or threat to any person therein shall be liable to penal servitude for fourteen years.

Stealing to value of £5 or with menaces.

Larceny

*Criminal Law Amendment.**Larceny in Manufactories.*

Stealing goods in process of manufacture.

112. Whosoever steals to the value ten shillings any goods article or material while anywhere placed or exposed during the process or progress of manufacture shall be liable to penal servitude for a period not exceeding three years.

Pawning or embezzling materials to be manufactured.

113. Whosoever for the purpose of manufacture or any special purpose connected with manufacture is employed to make prepare or work up or is intrusted with any goods article or material or with any tools or apparatus for the purpose of manufacture and sells pawns purloins secretes embezzles exchanges or otherwise fraudulently disposes of the same or any part thereof shall be liable to imprisonment for a term not exceeding four years.

Receiving purloined materials or tools.

114. Whosoever receives any such goods article or material or any tools or apparatus for manufacturing or working up the same knowing the same to have been purloined embezzled or secreted as aforesaid or that the person offering the same is fraudulently disposing thereof shall be liable to imprisonment for a term not exceeding four years.

Larceny from Ships or Wharfs.

Stealing from ships or wharfs &c.

115. Whosoever steals any property in any vessel barge or boat while in any haven or port or upon any navigable river or canal or in any creek or basin belonging to or communicating with any such haven port river or canal or steals any property from any dock wharf or quay shall be liable to penal servitude for seven years.

Stealing from ship in distress or wrecked.

116. Whosoever steals or plunders any part of any vessel in distress or wrecked stranded or cast on shore or any property of any kind to the value of twenty shillings belonging to such vessel shall be liable to penal servitude for fourteen years.

Embezzlement or Larceny by Clerks and Servants.

Larceny by clerks or servants.

117. Whosoever being a clerk or servant steals any property belonging to or in the possession or power of his master or employer or any property into or for which it may have been converted or exchanged shall be liable to penal servitude for ten years.

Embezzlement by clerks or servants.

118. Whosoever being a clerk or servant fraudulently embezzles either the whole or any part of any property delivered to or received or taken into possession by him for or in the name or on the account of his master or employer shall be deemed to have stolen the same—although such property was not received into the possession of such master or employer otherwise than by the actual possession of such clerk or servant—and shall be liable to penal servitude for ten years.

Definition of clerk or servant.

119. Every person employed for any purpose as or in the capacity of a clerk or servant or as a collector of moneys—although temporarily only or employed also by other persons or employed to pay as well as receive moneys or although the accused had no authority from his employer to receive money or other property on his account—shall be deemed a clerk or servant within the meaning of the two last preceding sections.

Embezzlement. General deficiency in accounts.

120. On the prosecution of any person for the larceny or embezzlement by him as a clerk or servant of money the property of his master or employer it shall not be necessary to prove the larceny or embezzlement by him of any specific sum of money if there is proof of a general deficiency on the examination of the books of account or entries kept or made by him or otherwise and the jury are satisfied that the accused stole or fraudulently embezzled the deficient money or any part thereof.

Part II.—Larceny and Similar Offences.

121. Whosoever being employed in the Public Service steals any property or any part thereof intrusted to him or taken into his possession or being in his custody or under his control by virtue or colour of such employment shall be liable to penal servitude for ten years.

Persons in the Public Service.

122. Whosoever being employed as last aforesaid fraudulently embezzles any property or any part thereof so intrusted to him or taken into his possession or being in his custody or under his control or fraudulently secretes removes or in any manner fraudulently appropriates or disposes of the same or any part thereof shall be deemed to have stolen the same.

What acts within preceding section.

123. Any property stolen within the meaning of the last two sections or either of them by any person employed as aforesaid shall be deemed to have been stolen from Her Majesty and may be described as the property of Her Majesty accordingly.

Property may be laid in the Queen.

Larceny or Embezzlement by Joint Owners.

124. Whosoever being a member of any co-partnership or being one of two or more joint owners steals or embezzles any property of or belonging to such co-partnership or joint owners may be convicted of and punished for the offence as if he was not a member of the co-partnership or one of such joint owners. And the word co-partnership shall for the purposes of this section include all corporations and societies whatsoever.

Larceny &c. by joint owners.

Larceny by Tenants or Lodgers.

125. Whosoever being the tenant or occupier of any house building or lodging steals any chattel or fixture let to be used there-with whether the contract was entered into by the accused or by any person on his behalf shall be punished as in the case of simple larceny.

Tenants &c. stealing articles let to hire.

Frauds by Factors and other Agents.

126. Whosoever having been intrusted as an agent with any money or security for the payment of money with a direction in writing to apply pay or deliver such money or security or any part thereof respectively or the proceeds or any part of the proceeds of such security for any purpose or to any person specified in such direction misappropriates in any manner such money security or proceeds or any part thereof respectively in violation of good faith and contrary to the terms of such direction shall be guilty of felony.

Banker &c. embezzling money &c. intrusted to him.

127. Whosoever having been intrusted as an agent with any chattel or valuable security for safe custody or for any special purpose without authority to sell negotiate transfer or pledge the same—or with any power of attorney for the sale or transfer of any share or interest in any public stock or fund or in any stock or fund of any body corporate or company—misappropriates in any manner such chattel or security or the proceeds of the same or any part thereof or the share or interest in the stock or fund to which such power of attorney relates or any part thereof in violation of good faith and contrary to the purpose for which such chattel security or power of attorney was intrusted to him shall be guilty of felony.

The like as to goods &c. intrusted to him.

128. Nothing in the last two sections shall affect any trustee under any instrument or any mortgagee of property in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by the trust or mortgage or shall restrain an agent from receiving money payable upon any valuable security according to the tenor and effect thereof or from disposing of property on which he has any claim entitling him by law so to do unless such disposal extends to more than is requisite for satisfying such claim.

Not to affect trustees or mortgagees nor receiver of money on securities &c.

Criminal Law Amendment.

Meaning of agent intrusted and misappropriate.

129. For the purposes of the said two sections and the two now next following the word "intrusted" shall mean intrusted either solely or jointly with any other person—the word "agent" shall include bankers merchants attorneys factors brokers and every other person acting in the capacity of an agent so intrusted—and the word "misappropriate" shall mean appropriate in any manner (whether by sale pledge or otherwise) to the agent's own use or benefit or the use or benefit of some one other than the person by or for whom he was so intrusted.

Persons under powers of attorney fraudulently selling property.

130. Whosoever being an agent intrusted with property for safe custody fraudulently sells negotiates transfers pledges or in any manner misappropriates the same or any part thereof shall be guilty of a misdemeanour—and whosoever being intrusted with any power of attorney for the sale or transfer of property fraudulently sells transfers or otherwise misappropriates the same or any part thereof shall be guilty of felony.

Factors &c. obtaining advances on property of their principals.

131. Any person being an agent intrusted with property for the purpose of sale or otherwise disposing of the same who otherwise than for the use of his principal and in violation of good faith transfers consigns pledges or delivers the same or any part thereof as security for money or other valuable thing borrowed or received or to be borrowed or received by such agent—or who obtains any advance of money or other valuable thing upon any undertaking by him to transfer consign pledge or deliver such property or any part thereof—shall be guilty of felony And every person assisting in the making of any such transfer consignment pledge or delivery knowing the same to be in violation of good faith shall be guilty of felony Provided that nothing in this section shall extend to any transfer consignment pledge or delivery made or agreed to be made as security for no greater sum than the amount if any then due to such agent and of any current bill or bills drawn by or on account of his principal and accepted by such agent.

Proviso.

What to be deemed an intrusting with goods or a pledge thereof &c.

132. For the purposes of the last section every agent intrusted with the possession of a document of title to property—whether derived immediately from the owner of the property or obtained by such agent by reason of his having possession of such property or of some other document of title thereto—shall be deemed to have been intrusted with the property indicated by such document and every transfer pledge or delivery of any such document shall be deemed a transfer pledge or delivery of the property indicated by the same and where any such document or the property thereby indicated is held by any person on the behalf or subject to the control of any such agent the same shall be taken to be in the possession of such agent—And where any money or valuable security or other thing is lent advanced or delivered to an agent intrusted as aforesaid on the faith of a contract or undertaking by him to transfer consign pledge or deliver any such property or document such money or valuable security or thing shall be deemed a loan or advance on the security of such property or document although the property or document may not be actually received by the person making such loan or advance until a period subsequent thereto—And every agent in possession of property or of any such document of title shall be taken to have been intrusted therewith by the owner unless the contrary be shown.

Trustees fraudulently disposing of property.

133. Whosoever being a trustee of property for the use or benefit wholly or partially of some other person or for any public or charitable purpose converts or appropriates the same or any part thereof for the use or benefit of himself or some other person or for any other than such public or charitable purpose—or otherwise disposes of or destroys such property or any part thereof—in violation in any such case of good faith and with intent to defraud shall be guilty of felony Provided

Part II.—Larceny and Similar Offences.

Provided that no prosecution shall be instituted under this section without the leave of the Supreme Court or a Judge thereof or of Her Majesty's Attorney-General.

No prosecution without leave of a Judge &c.

134. Whosoever being a director officer or member of any body corporate or public company fraudulently takes or applies for his own use or benefit or any use or purpose other than the use or purposes of such body corporate or company or fraudulently destroys any of the property of such body corporate or company shall be guilty of felony.

Directors &c. fraudulently appropriating property.

135. Whosoever being a director or officer of any body corporate or public company receives or possesses himself of any of the property of such body corporate or company otherwise than in payment of a just debt and with intent to defraud omits to make or direct to be made a true and sufficient entry thereof in the books or accounts of such body corporate or company shall be guilty of felony.

Or keeping fraudulent accounts.

136. Any person being a director officer or member of any body corporate or public company who with intent to defraud destroys alters mutilates or falsifies any book entry paper writing or valuable security belonging to such body corporate or company or makes or concurs in making any false entry or omits or concurs in omitting any material particular in any book of account or other document shall be guilty of felony.

Wilfully destroying books &c.

137. Whosoever being a director or officer of any body corporate or public company makes circulates or publishes or concurs in making circulating or publishing any written statement or account which he knows to be false in any material particular with intent to deceive or defraud any member shareholder or creditor of such body corporate or company or with intent to induce any person to become a shareholder or partner therein or to intrust or advance any property to such body corporate or company or to enter into any security for the benefit thereof shall be guilty of felony.

Publishing fraudulent statements.

138. Every person convicted of any of the felonies mentioned in any of the twelve last preceding sections shall be liable to penal servitude for ten years.

Punishment under preceding sections.

139. Nothing in the said sections shall relieve any person from making a full discovery by answer to a bill in equity or from answering any question in a civil proceeding—Provided that no person shall be convicted of an offence under any of the said sections in respect of any act or omission by him if before being charged with the offence he first disclosed such act or omission on oath under compulsory process in a proceeding instituted by a party aggrieved or under compulsory examination in some matter in bankruptcy or insolvency—and no conviction under any of the said sections shall be received in evidence in any suit against the convicted person—Provided also that nothing in the said sections and no proceeding or conviction under them shall affect any remedy which any party might have had if this Act had not been passed nor shall affect any agreement entered into or security given by a trustee having for its object the restoration or repayment of any trust property misappropriated.

As to compulsory disclosures.

Civil remedies not affected.

Obtaining Money &c. by False Pretences.

140. Any clerk or servant or person acting in the capacity of a clerk or servant who with intent to defraud destroys alters mutilates or falsifies any book paper writing valuable security or account belonging to or in the possession of or received for his employer—or with intent to defraud makes or concurs in making any false entry in or omits or alters or concurs in omitting or altering any material particular from or in any such book or writing or account—shall be liable to penal servitude for five years.

Falsification of accounts &c.

Criminal Law Amendment.

False pretences.

141. Whosoever by any false pretence or partly by a false pretence and partly by a wilfully false promise obtains from any person any property with intent to defraud shall be liable to penal servitude for five years.

Causing payment or delivery to any other person.

142. Whosoever by any false pretence or partly by a false pretence and partly by a wilfully false promise causes or procures any money to be paid or any property to be delivered to himself or any other person for the use or benefit or on account of himself or any other person with intent to defraud shall be deemed to have obtained such money or property within the meaning of the last section.

False pretence of title.

143. Whosoever falsely and with intent to defraud represents that he has a title or right to certain property or to convey or dispose of certain property knowing such representation to be false and thereby obtains any chattel money or valuable security or other property shall be deemed to have obtained the same within the meaning of the same section.

Fraudulent personation.

144. Whosoever falsely personates or pretends to be some other person with intent fraudulently to obtain any valuable security or property shall be liable to penal servitude for life or any term not less than five years. But nothing in this section shall prevent any person so personating or pretending from being proceeded against in respect of such act or pretence under any other enactment or at common law.

Inducing persons by fraud to execute instruments.

145. Whosoever with intent to defraud or injure any person causes or induces any person by any false pretence to execute make accept indorse or destroy the whole or any part of any valuable security or to write impress or affix any name or seal upon any paper or parchment shall be liable to penal servitude for seven years.

Taking reward for helping to recover stolen property.

146. Whosoever corruptly takes or offers or agrees to take any money or reward directly or indirectly under pretence or upon account of helping any person to any property taken or obtained or converted or disposed of in such manner as to be punishable by this Act shall (unless he has used all due diligence to cause the offender to be brought to trial for the same) be liable to penal servitude for five years.

Receivers.

Receiving where principal guilty of felony.

147. Whosoever receives any property the stealing whereof amounts to felony knowing the same to have been stolen shall be guilty of felony and may be indicted either as an accessory after the fact or for a substantive felony and in the latter case whether the principal felon has or not been previously tried or shall not be amenable to justice and every such receiver shall be liable to penal servitude for the term of ten years—And the word stealing in this and the next section shall include equally the taking extorting obtaining embezzling or otherwise disposing of the property in question.

Receiving where principal guilty of misdemeanour.

148. Whosoever receives any property the stealing whereof is a misdemeanour knowing the same to have been unlawfully stolen shall be guilty of a misdemeanour and may be convicted thereof whether the person guilty of the principal offence has or not been previously tried or shall not be amenable to justice and every such receiver shall be liable to imprisonment for a term not exceeding three years.

Receiving cattle feloniously killed or the carcass &c.

149. Whosoever receives any animal feloniously killed with intent to steal the carcass or skin or other part thereof knowing the same to have been so killed—or receives any part of an animal so killed or of an animal feloniously stolen—knowing it to have been so killed or so stolen—shall be guilty of felony and may be indicted and punished as if the animal had been stolen and the accused had feloniously received the same. And such person shall not be entitled to acquittal by reason only of uncertainty in the evidence as to the sex or age of such animal if it be of the species of animal described in the indictment.

OFFENCES

Part II.—Larceny and Similar Offences.

OFFENCES UNDER PART II. PUNISHABLE BY JUSTICES.

Larceny &c. triable by Consent.

150. Where a person is charged before two Justices with simple larceny or an offence punishable as simple larceny or with larceny or embezzlement as a clerk or servant or larceny from the person or an offence within the one hundred and forty-first section and the evidence for the prosecution is in their opinion sufficient to put the accused on his trial but it appears to them that the case may properly be disposed of summarily the Justices shall reduce the charge into writing and read it to him and shall ask the accused whether he consents to its being disposed of summarily and if he consents they shall ask him whether he is guilty or not and if the accused pleads guilty the Justices shall pass sentence upon him but if he says that he is not guilty and has a defence they shall proceed to hear the same But where the accused has not consented as aforesaid or the Justices are of opinion that the charge ought to be prosecuted by indictment or they are equally divided in opinion on that point they shall deal with the case as if this section had not been passed.

Petty cases tried by consent.

151. Provided always that upon the close of the case for the prosecution and before asking the accused whether he is guilty the Justices shall explain to him that he is not obliged to plead before them but is entitled to have the case disposed of in the ordinary course of law.

Accused to be warned.

152. If the accused pleads guilty or the Justices after hearing the whole case find the charge to be proved they shall convict him thereof and shall thereupon commit him to some common gaol there to be imprisoned for a term not exceeding six months or where the offender's age is in their opinion under sixteen years then for a term not exceeding three months but if the Justices find the accused not guilty they shall dismiss the case and shall if requested make out and deliver to him a certificate under their hands stating the fact of such dismissal.

Punishment or dismissal in such cases.

153. Every such conviction shall have the same effect as a conviction upon an indictment for the offence would have had and no person convicted as aforesaid or who obtains a certificate of dismissal under the last section shall be afterwards liable to prosecution for the same cause.

Summary conviction or indictment.

Fraudulently appropriating or retaining Property.

154. Whosoever fraudulently appropriates to his own use or that of another any property belonging to another person although not originally taken with any fraudulent intent—or who in order to procure a reward for its restoration fraudulently retains any such property—shall on conviction before two Justices be liable to imprisonment for a term not exceeding three months or to pay a fine not exceeding twenty pounds.

Appropriating or fraudulently retaining property.

Unlawfully taking or Branding Animals.

155. Whosoever takes and works or otherwise uses or takes for the purpose of working or using any cattle the property of another person without the consent of the owner or person in lawful possession thereof—or who takes any such cattle for the purpose of secreting the same or obtaining a reward for the restoration or pretended finding thereof or for any other fraudulent purpose—and whosoever fraudulently brands or ear-marks or defaces or alters the brands or ear-marks of any cattle the property of another person—shall be guilty of a misdemeanour and on conviction before two Justices shall be liable to imprisonment for a term not exceeding six months or to pay a fine not exceeding fifty pounds.

Unlawfully using &c. another person's cattle.

Criminal Law Amendment.

Cases of indictable offence.

156. If the Justices before whom a person is charged with any such misdemeanour are of opinion that the case is a fit subject for prosecution by indictment they shall commit the accused for trial accordingly and if convicted of the offence he shall be liable to imprisonment for a term not exceeding three years. Provided that where the Justices are of opinion that on the evidence before them the accused ought to be prosecuted for felony in respect of any such taking they shall commit him for trial for such felony.

Possession of skin &c. of stolen cattle.

157. Whenever the skin or carcass of any stolen cattle or cattle reasonably suspected to have been stolen or any part of any such skin or carcass is found in the possession of any person or on his premises—and there is reasonable cause to believe that the same has been dishonestly come by—then if such person fails to satisfy the Justices before whom the case is heard as hereinafter provided that he obtained the same without any knowledge or reasonable ground to suspect that the same was the skin or carcass or part of the skin or carcass of any stolen cattle he shall be liable to imprisonment for a term not exceeding six months or to pay a fine not exceeding fifty pounds.

Proceedings in respect thereof.

Search warrant.

158. Every person in whose possession or on whose premises any such skin or carcass or part thereof has been found may be summoned to appear before any two Justices to show in what manner he became possessed of the same. And upon the oath of any credible person before any Justice that he believes (and if such Justice sees cause to believe) that any such skin or carcass or part of any such skin or carcass is on the premises of any person such Justice may grant a warrant authorizing any constable to search such premises in the day-time and to take into his custody any skin or carcass or any part of any skin or carcass there found and retain the same until the disposal of the case under this and the last section. Provided that nothing herein shall prevent any constable who finds any such skin or carcass or part of any such skin or carcass reasonably suspected to have been part of any stolen cattle from seizing and retaining the same without a warrant.

Stealing or possessing stolen dog.

159. Whosoever steals any dog shall on conviction before two Justices be liable to imprisonment for a term not exceeding six months or to pay above the value of the dog a sum not exceeding twenty pounds. And whosoever has unlawfully in his possession or on his premises any stolen dog or the skin of any such dog knowing the dog to have been stolen shall on conviction before two Justices be liable to pay a sum not exceeding twenty pounds.

Stealing animals &c. ordinarily kept in confinement.

160. Whosoever steals any animal ordinarily kept in a state of confinement or for any domestic purpose but not being the subject of larceny at common law or kills any such animal with intent to steal the same or any part thereof shall on conviction before two Justices be liable to imprisonment for a term not exceeding six months or to pay above the value of the animal a sum not exceeding twenty pounds. And whosoever having been so convicted afterwards commits any offence in this section mentioned and is convicted in like manner shall be imprisoned for a term not exceeding twelve months.

Second offence.

Persons found in possession of stolen animals &c.

161. If any such animal or the skin thereof respectively is found in the possession or on the premises of any person any Justice may restore the same to the owner thereof and the person in whose possession such animal or skin is so found (such person knowing that the bird or animal has been stolen or that the skin is the skin of a stolen animal) shall on conviction before two Justices be liable for the first offence to the same penalty and for every subsequent offence to the same punishment as a person convicted under the last section is liable to.

Part II.—Larceny and Similar Offences.

162. Whosoever unlawfully and wilfully sets or uses any snare or engine for the purpose of taking or killing deer upon any inclosed land in the occupation of the owner of such deer or unlawfully and wilfully destroys any part of the fence of any land where deer are then kept shall on conviction before two Justices pay a sum not exceeding twenty pounds. Setting engines for deer &c.

163. Whosoever unlawfully and wilfully kills wounds or takes any house-dove or pigeon under circumstances not amounting to larceny at common law shall on conviction before two Justices pay above the value of the bird a sum not exceeding two pounds. Killing pigeons.

164. Whosoever unlawfully and wilfully takes or destroys any fish in any water being private property shall on conviction before two Justices pay above the value of the fish taken or destroyed a sum not exceeding five pounds. Taking fish in certain waters.

Larceny of things attached to Land.

165. Whosoever steals or destroys or damages with intent to steal the whole or any part of any tree sapling shrub or plant or any underwood the value of or the injury done to which exceeds a shilling shall on conviction before two Justices pay above the value of the property stolen or intended to be stolen or the amount of injury done a sum not exceeding five pounds. And whosoever having been convicted of any such offence afterwards commits any such offence and is convicted in like manner shall be liable to pay the value of the property stolen or intended to be stolen or the amount of the injury done in addition to a penalty not exceeding twenty pounds. Stealing shrubs &c. of the value of 1s.

166. Whosoever steals or cuts breaks or throws down with intent to steal any part of any live or dead fence or any material set up or used as a fence or any stile or gate or any part thereof respectively shall on conviction before two Justices pay above the value of the property stolen or the amount of injury done a sum not exceeding ten pounds and whosoever having been convicted of any such offence afterwards commits any such offence and is convicted in like manner shall be liable to pay the value of the property stolen or intended to be stolen or the amount of the injury done in addition to a penalty not exceeding twenty pounds. Stealing &c. live or dead fence &c.

167. If the whole or any part of any tree sapling or shrub or any underwood or any part of any live or dead fence or any post pale wire rail stile or gate or any part thereof being of or above the value of one shilling is found in the possession of any person or on his premises with his knowledge and such person being taken or summoned before two Justices shall not satisfy them that he came lawfully by the same he shall on conviction by such Justices pay above the value of the property found a sum not exceeding five pounds. Suspected persons in possession of wood &c.

168. Whosoever steals or destroys or damages with intent to steal any dead wood lying on land in the occupation of another person such wood being of the value of or above one shilling shall on conviction before two Justices pay above the value of the wood a sum not exceeding five pounds and whosoever having been convicted of any such offence afterwards commits any such offence and is convicted in like manner shall pay above the value of the wood a sum not exceeding ten pounds. Stealing dead wood.

169. Whosoever steals or destroys or damages with intent to steal any plant root fruit or vegetable production growing in any garden orchard pleasure-ground nursery-ground hothouse greenhouse or conservatory shall on conviction before two Justices be liable to imprisonment for a term not exceeding six months or to pay above the value of the article stolen or the amount of injury done a sum not exceeding twenty pounds. Stealing fruit &c. in gardens.

Criminal Law Amendment.

The like not growing
in gardens.

170. Whosoever steals or destroys or damages with intent to steal any cultivated root or plant used for the food of man or beast or for medicine or for distilling or dyeing or for any manufacture and growing in any enclosed land not being a garden orchard pleasure-ground or nursery-ground shall on conviction before two Justices be liable to pay above the value of the article stolen or the amount of injury done a sum not exceeding twenty shillings.

Larceny of Shipwrecked Goods.

Persons in possession
of shipwrecked
goods.

171. If any article of the value of five shillings belonging to a vessel in distress or wrecked stranded or cast on shore is found in the possession of any person or on his premises with his knowledge and such person being summoned before two Justices fails to satisfy them that he came lawfully by the same such article shall by their order be delivered to or for the use of the owner and the offender shall be liable to imprisonment for a term not exceeding six months or to pay above the value of the article a sum not exceeding twenty pounds.

Shipwrecked goods
for sale.

172. If any person offers for sale any article unlawfully taken or reasonably suspected to have been so taken from any such vessel any person to whom the article is offered or any officer of customs or police may seize the same and shall carry it or give notice of such seizure to some Justice—and if the person who offered the article for sale being duly summoned fails to satisfy two Justices that he came lawfully by such article or received the same without knowing or having cause to suspect that it had been so taken as aforesaid the same shall by order of the Justices be delivered to or for the use of the owner upon payment of a reasonable reward (to be ascertained by them) to the person who seized the same and the offender shall be liable to imprisonment for a term not exceeding six months or to pay above the value of the article a sum not exceeding twenty pounds.

Miscellaneous Provisions.

Misappropriation of
corn &c. by servants.

173. If any servant contrary to the orders of his master takes any food being his master's property for the purpose of its being given to any animal in the possession of his master such servant shall not by reason thereof be guilty of an indictable offence but shall be dealt with under any Act for the time being in force regulating the duties and liabilities of masters and servants.

Stealing or
damaging books &c.
in Public Library.

174. Whosoever steals or removes secretes or damages with intent to steal any book print manuscript or other article or any part thereof kept for the purposes of reference or exhibition or of art science or literature in any Public Library or any building belonging to the Queen or to any University or College or the Council of any Municipality shall on conviction before two Justices be liable to imprisonment for any term not exceeding twelve months and to pay a sum equal to four times the value of the article stolen or intended to have been stolen—Every collection of books prints manuscripts or similar articles kept in any School of Arts or Mechanics Institute or in any building or room occupied or habitually used by the members of any Association or Municipality as a Reading-room or Library shall be deemed a Public Library within the meaning of this section.

Term "Public
Library."

Advertising reward
for return of
stolen property.

175. Whosoever advertises a reward for the return of any property stolen or lost and uses words purporting that no questions will be asked or makes use of words in any advertisement purporting that a reward will without seizing or making any inquiry after the person producing the same be given for any such property—or promises or offers in any advertisement to return any money advanced upon or paid for any such property and whosoever publishes any such advertisements—

Part III.—Malicious Injuries to Property.

advertisements—shall on conviction before two Justices be liable to pay a penalty or sum of not exceeding fifty pounds.

176. Where the stealing or taking of any property is by this Act punishable on summary conviction whosoever receives such property knowing the same to have been stolen or unlawfully taken shall on conviction before two Justices be liable to the same penalty and punishment and to the same increased punishment for a subsequent offence to which a person stealing or taking such property is made liable. Receivers punishable summarily.

PART III.

MALICIOUS INJURIES TO PROPERTY.

Injuries by Fire to Buildings &c.

177. Whosoever maliciously sets fire to any place of Divine worship or to any dwelling-house any person being in such dwelling-house shall be liable to penal servitude for life and if the offender knows any person to be then in such dwelling-house he shall be liable to suffer death. Setting fire to church or dwelling.

178. Whosoever maliciously sets fire to any dwelling-house or warehouse office shop mill barn storehouse granary or wool-shed whether the same be then in the possession of the offender or of any other person with intent to injure or defraud any person shall be liable to penal servitude for fourteen years. Setting fire to certain other buildings.

179. Whosoever maliciously sets fire to any station engine-house warehouse or other building belonging to any railway port dock or harbour or to any canal or other navigation or to any building the property of the Queen or the council or body corporate of any municipal institution or belonging to any university or college or dedicated to public use or ornament or erected or maintained by public subscription shall be liable to penal servitude for fourteen years. Setting fire to railway station or public building.

180. Whosoever maliciously sets fire to any building other than those hereinbefore mentioned shall be liable to penal servitude for ten years. Setting fire to other buildings.

181. Whosoever maliciously sets fire to any matter or thing being in against or under any building under such circumstances that if the building were thereby set on fire the offence would amount to felony shall be liable to penal servitude for seven years. Setting fire to things adjacent to buildings.

182. Whosoever maliciously attempts to set fire to any such building or matter or thing as aforesaid shall be liable to penal servitude for five years. Attempting to set fire to buildings.

Injuries by Explosive Substances to Buildings.

183. Whosoever maliciously by the explosion of gunpowder or other explosive substance destroys throws down or damages the whole or any part of any dwelling-house any person being therein or the whole or any part of any building whatsoever whereby the life of any person is endangered shall be liable to penal servitude for life. Destroying or damaging a house with gunpowder.

184. Whosoever maliciously places or throws in or into or upon under against or near any building any gunpowder or other explosive substance with intent to destroy or damage any building engine machinery tools fixtures or other property whether or not any explosion takes place and whether or not any damage is caused shall be liable to penal servitude for fourteen years. Attempting to destroy building with gunpowder.

*Criminal Law Amendment.**Injuries to Buildings by Rioters.*

Rioters demolishing
buildings or
machinery.

185. If any persons riotously and tumultuously assembled together to the disturbance of the public peace unlawfully and with force demolish pull down or destroy or begin or attempt to demolish pull down or destroy any such place or building or erection as is mentioned in any of the first three sections of this Third Part—or any machinery whether fixed or movable prepared for employment or employed in any manufacture or any steam-engine or other engine for sinking working ventilating or draining any mine or any staith or erection used in conducting the business of any mine or any bridge waggonway tramway trunk or shoot for conveying minerals from any mine—every such offender shall be liable to penal servitude for ten years.

Rioters otherwise
injuring the like.

186. If any persons riotously and tumultuously assembled together to the disturbance of the public peace unlawfully and with force injure or damage any such place or building or erection as is mentioned in any of the said first three sections or in the last section every such offender shall be liable to penal servitude for seven years.

Injuries to Buildings by Tenants.

Tenants maliciously
injuring houses.

187. Whosoever being possessed of any building or part of any building held for any period or at will or held over after the termination of any tenancy maliciously pulls down or demolishes or begins or attempts to pull down or demolish the same or any part thereof or maliciously pulls down or severs from the freehold any fixture belonging to such building shall be liable to imprisonment for a term not exceeding three years.

Injuries to Manufactures Machinery &c.

Injuring machinery
or goods in process
of manufacture.

188. Whosoever maliciously cuts breaks or destroys or damages with intent to destroy or render useless any goods article or material in any stage process or progress of manufacture—or maliciously cuts breaks or destroys or damages with intent to destroy or render useless any loom frame machine engine rack tackle tool or implement whether fixed or movable prepared for or employed in manufacturing or preparing any such goods article or material—or by force enters into any building or place with intent to commit any such offence—shall be liable to penal servitude for seven years.

Injuring agricultural
and other machines.

189. Whosoever maliciously cuts breaks or destroys or damages with intent to destroy or render useless any machine or engine whether fixed or movable used or intended to be used for performing any agricultural operation or any machine or engine used or intended to be used for sheep-washing wool-pressing sugar-crushing cotton-ginning or for performing any process connected with the preparation of any agricultural or pastoral produce or with the preservation of meat or other animal substances or any appliance or apparatus in connection with any such machine or engine shall be liable to penal servitude for five years.

Injuries to Corn or Hay-stacks Trees &c.

Setting fire to crops.

190. Whosoever maliciously sets fire to any crop of hay grass sugar-cane corn grain pulse cotton or cultivated vegetable produce of any kind whether standing or cut down or to any wood coppice or plantation of trees or to any heath gorse furze or fern or to any natural grass wheresoever growing shall be liable to penal servitude for fourteen years.

Part III.—Malicious Injuries to Property.

191. Whosoever maliciously sets fire to any stack of corn grain pulse tares hay straw haulm stubble or cultivated vegetable produce or of furze gorse heath fern turf peat coals kerosene shale charcoal wood or bark or to any grain or hay housed in a barn or shed shall be liable to penal servitude for fourteen years. Setting fire to stacks.

192. Whosoever maliciously sets fire to any fence or to any timber cut laid down or prepared for the purpose of fencing shall be liable to penal servitude for ten years—and whosoever maliciously attempts to set fire to any matter article or thing in this or either of the last two preceding sections mentioned—shall be liable to penal servitude for seven years. Setting fire to fences and attempts to set fire.

193. Whosoever maliciously destroys or damages any hopbinds growing on poles in any plantation of hops or any vines growing in any vineyard or garden or any growing or planted cotton or sugar-canes shall be liable to penal servitude for ten years. Destroying hopbinds.

194. Whosoever maliciously destroys or damages any tree sapling shrub or plant or any underwood growing in any park pleasure-ground garden orchard or avenue or in any public place or enclosed ground or in any ground belonging to any dwelling-house if the amount of injury done exceeds twenty shillings shall be liable to penal servitude for five years. Injuring trees shrubs &c. in pleasure-ground &c.

195. Whosoever maliciously destroys or damages any tree sapling shrub or plant or any underwood growing elsewhere than in any place mentioned in the last section if the amount of injury done exceeds five pounds shall be liable to penal servitude for five years. The like to value of over £5 elsewhere.

196. Whosoever maliciously destroys or damages any tree sapling shrub or plant or any underwood if the injury done exceeds one shilling after having been twice summarily convicted of any such offence shall be liable to imprisonment for a term not exceeding two years. Injuring trees &c. after two summary convictions.

197. Whosoever maliciously destroys or damages any plant root fruit or vegetable produce growing in any garden orchard nursery ground hothouse greenhouse or conservatory after a previous summary conviction for any such offence shall be liable to penal servitude for five years. Destroying plant &c. in a garden after one summary conviction.

198. Whosoever maliciously drives any cattle into or upon any enclosed land then under cultivation—or maliciously pulls or breaks down or removes cuts or severs any fence wall dyke or palisade—or maliciously opens or leaves open any gate or slip-rail—with intent in any such case to allow cattle to stray in or upon such enclosed land—shall be liable to imprisonment for a term not exceeding four years. Driving cattle &c. on to cultivated land.

Injuries to Mines.

199. Whosoever maliciously sets fire to any mine of coal cannel coal anthracite kerosene shale or other mineral fuel or to any well of mineral oil shall be liable to penal servitude for life And whosoever maliciously attempts to set fire to any such mine or well shall be liable to penal servitude for fourteen years. Setting fire to coal mine or attempting that crime.

200. Whosoever maliciously causes any water to be conveyed or run into any mine or into any subterraneous passage communicating therewith with intent thereby to destroy or damage such mine or to hinder or delay the working thereof—or with the like intent maliciously pulls down fills up or obstructs or damages with intent to destroy obstruct or render useless any airway waterway drain pit level or shaft of or belonging to any mine shall be liable to penal servitude for seven years. Conveying water into a mine shaft &c.

201. Whosoever maliciously sets fire to or pulls down or destroys or damages with intent to destroy or render useless any engine employed or about to be employed in sinking draining ventilating

or

Criminal Law Amendment.

or working any mine or any appliance or apparatus in connection therewith—or any staith building or erection bridge waggon-way or trunk used or intended to be used in or about the business of any mine whether such engine staith building erection bridge waggon-way or trunk is completed or unfinished—or maliciously prevents or obstructs the working of any such engine appliance or apparatus or cuts breaks unfastens or damages with intent to destroy or render useless any rope chain or tackle used in any mine or in or upon any way or work employed in or connected with any mine or the business thereof—shall be liable to penal servitude for seven years.

Injuries to Sea or River Banks &c.

Destroying sea or river bank or wall.

202. Whosoever maliciously breaks down cuts down or otherwise destroys or damages any sea-bank or sea-wall or the bank dam or wall of or belonging to any river creek canal drain reservoir pool or marsh whereby any land or building is or probably may be overflowed or damaged—or maliciously throws breaks or cuts down levels undermines or otherwise destroys or damages any watercourse aqueduct pipe dam embankment cutting or reservoir connected with any work for the supply or conservation of water—or any quay wharf jetty lock sluice floodgate weir tunnel towingpath drain watercourse or other work belonging to any port harbour dock or reservoir or on or belonging to any navigable river creek or canal—shall be liable to penal servitude for life or not less than five years or to imprisonment for a term not exceeding four years.

Removing piles or obstructing navigation of river.

203. Whosoever maliciously cuts off draws up or removes any materials fixed in or placed on the ground and used for securing any sea-bank or sea-wall or the bank dam or wall of any river canal drain aqueduct marsh reservoir pool port harbour dock quay wharf jetty or lock or maliciously opens or draws up any floodgate or sluice or does any other injury to any navigable river or canal with intent to obstruct or prevent the carrying on completing or maintaining the navigation thereof shall be liable to penal servitude for seven years.

Injuries to Ponds Reservoirs &c.

Breaking down dams &c. poisoning fish.

204. Whosoever maliciously cuts through breaks down or destroys the dam floodgate or sluice of any fish-pond or of any water being private property with intent thereby to take or destroy any fish in such pond or water or so as to cause the loss or destruction of any such fish—or maliciously puts any lime or other noxious material in any such pond or water with intent thereby to destroy any fish then or that may thereafter be therein—or maliciously cuts through breaks down or destroys the dam or floodgate of any mill-pond reservoir or pool—shall be liable to imprisonment for a term not exceeding four years.

Injuries to Bridges Viaducts and Toll-bars.

Injury to a public bridge.

205. Whosoever maliciously pulls or throws down or in anywise destroys any bridge viaduct or aqueduct over or under which any highway railway road or canal passes or does any injury with intent thereby to render such bridge viaduct or aqueduct or the highway railway road or canal passing over or under the same or any part thereof dangerous or impassable shall be liable to penal servitude for life.

Destroying turnpike-gate &c.

206. Whosoever maliciously throws down levels or otherwise destroys in the whole or in part any turnpike-gate or toll-bar or any wall chain rail post bar or other fence belonging to any turnpike-gate or toll-bar erected to prevent passengers passing by without paying toll or any house building or weighing engine erected for the better collection ascertainment or security of any such toll shall be liable to imprisonment for a term not exceeding twelve months.

Injuries

*Part III.—Malicious Injuries to Property.**Injuries to Railway Carriages and Telegraphs.*

207. Whosoever maliciously places or throws any matter or thing upon or across any railway—or takes up removes or displaces any rail sleeper or other thing belonging to any railway—or maliciously turns moves or diverts or neglects to turn move or divert any point or other machinery belonging to any railway—or makes or shows hides or removes any signal or light upon or near to any railway—or does or causes to be done any other thing—with intent in any such case to obstruct overthrow destroy or injure any engine tender carriage or truck on such railway or to injure any person travelling or being therein or thereon—shall be liable to penal servitude for life.

Certain acts &c. on railway with intent to obstruct &c.

208. Whosoever maliciously destroys breaks removes or in any manner damages any telegraph post or wire or any part thereof or any insulator attached to any such post or by any unlawful act wilfully obstructs the passing of any message along any such wire shall be liable to imprisonment for a term not exceeding three years—And whosoever maliciously attempts to commit any such offence shall be liable to imprisonment for a term not exceeding twelve months.

Injuring telegraph posts &c.

209. Whosoever by any unlawful act or wilful omission or neglect obstructs or causes to be obstructed the passing or working of any engine or carriage on any railway or aids or assists in any such offence shall be liable to imprisonment for a term not exceeding three years.

Obstructing engines or carriages on railways.

Injuries to Works of Art.

210. Whosoever maliciously destroys or damages any book manuscript picture print statue bust or vase monument or other memorial painted glass ornament or ornamental work or other article or thing kept or deposited for the purposes of art science or literature or as an object of curiosity in any building belonging to the Queen—or in any museum gallery cabinet library school of arts or other repository habitually or from time to time open for the admission of the public whether gratuitously or by the payment of money—or in any place of Divine worship—or in any building belonging to the council or body corporate of any municipal institution or to any university or college or in any street burial-ground or public garden or ground—or any statue or monument exposed to public view or any ornament railing or fence belonging to or surrounding the same—or any post office receiving-box or pillar or any drinking-fountain—or any erection place or object of public or scientific interest—shall be liable to penal servitude for five years or to be imprisoned for a term not exceeding three years.

Injuring works of art in museums or other public places &c.

Injuries to Cattle.

211. Whosoever maliciously kills maims or wounds any cattle shall be liable to penal servitude for ten years Provided that where such cattle are at the time unlawfully trespassing on enclosed land under cultivation such killing maiming or wounding by the occupier of such land or any person by his order shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding twenty pounds And provided also that the word cattle in this section shall not include any pig or goat.

Killing or maiming cattle.

Injuries to Ships.

212. Whosoever maliciously sets fire to or casts away or by any means destroys any vessel the same being afloat and any person being at the time therein shall be liable to suffer death And whosoever maliciously sets fire to or casts away or in anywise destroys any vessel whether complete or unfinished or maliciously and with intent to destroy such vessel sets fire to the tackle apparel or furniture of such vessel

Setting fire to ship or attempting that crime.

Criminal Law Amendment.

vessel or any goods therein shall be liable to penal servitude for life And whosoever maliciously attempts to set fire to or cast away or destroy any such vessel shall be liable to penal servitude for fourteen years.

Placing gunpowder near a ship with intent to damage it.

213. Whosoever maliciously places or throws in or into or upon against or near any vessel any gunpowder or other explosive substance with intent to destroy or damage such vessel or any machinery working tools or chattel in or near the same whether or not an explosion takes place or any damage is caused shall be liable to penal servitude for fourteen years.

Damaging ship otherwise than by fire.

214. Whosoever maliciously damages otherwise than by fire gunpowder or other explosive substance any vessel whether complete or unfinished with intent to destroy the same or render the same useless shall be liable to penal servitude for seven years.

Exhibiting false signals &c.

215. Whosoever maliciously masks alters or removes any light or signal or exhibits a false light or signal with intent to bring any vessel or boat into danger shall be liable to suffer death And whosoever maliciously does anything with intent to cause the loss or destruction of or serious injury to any vessel or boat for which offence no punishment is hereinbefore provided shall be liable to penal servitude for life.

Removing or concealing buoys and other sea marks.

216. Whosoever maliciously cuts away casts adrift removes alters defaces sinks or destroys or does any act with intent to cut away cast adrift remove alter deface sink or destroy or injure or conceal any boat buoy buoy-rope perch or mark used or intended for the guidance of seamen or the purposes of navigation shall be liable to penal servitude for seven years.

Destroying wrecks &c.

217. Whosoever maliciously destroys any part of any vessel in distress or wrecked stranded or cast on shore or any goods or article of any kind belonging to such ship or vessel shall be liable to penal servitude for fourteen years.

Letters threatening to Burn or Destroy Property.

Sending letters threatening to destroy property.

218. Whosoever sends delivers or utters or directly or indirectly causes to be received knowing the contents thereof any letter or writing threatening to burn or destroy any ship or vessel or any building or any rick or stack of grain hay or straw or other agricultural produce or any grain hay straw or other agricultural produce in or under any building shall be liable to penal servitude for seven years.

Indictable Injuries not otherwise provided for.

Persons committing other malicious injuries over £5.

219. Whosoever maliciously injures any real or personal property whatsoever (either of a public or private nature) for which act no punishment is hereinbefore provided such injury being to an amount exceeding five pounds shall be liable to imprisonment for a term not exceeding two years and where such offence is committed in the night shall be liable to penal servitude for five years.

Making Gunpowder to commit offences against Property.

Making or having gunpowder to commit malicious injuries.

220. Whosoever makes or knowingly has in his possession any gunpowder or other explosive substance or any dangerous or noxious thing or any machine engine instrument or thing with intent thereby or by means thereof to commit or for the purpose of enabling some other person to commit any malicious injury within the meaning of this Act shall be liable to imprisonment for a term not exceeding three years.

Cruelly



Part III.—Malicious Injuries to Property.

Cruelly wounding Cattle.

221. Whosoever maliciously and cruelly wounds or tortures any cattle whether his own property or that of another shall be guilty of a misdemeanour and be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred pounds Provided that nothing in this section shall prevent the summary conviction of the offender under any Act passed to prevent cruelty to animals and that after any such conviction or after acquittal on the merits he shall not be liable to prosecution under this Act for the same cause.

Cruelly wounding
or torturing cattle.

OFFENCES UNDER PART III. PUNISHABLE BY JUSTICES.

Injuries to Trees Shrubs Vegetable Produce &c.

222. Whosoever maliciously destroys or damages any tree sapling shrub vine or plant or any underwood wheresoever growing if the amount of injury done exceeds one shilling shall on conviction before two Justices pay above the value of the property destroyed or the damage done a sum not exceeding five pounds and for every subsequent offence a sum not exceeding twenty pounds above such value or amount of damage.

Damaging trees &c.
to the amount of one
shilling.

223. Whosoever maliciously destroys or damages any plant root fruit or vegetable produce growing in any garden orchard nursery ground hothouse greenhouse or conservatory or any ornamental tree or shrub growing in a Public Park shall on conviction before two Justices pay the value of the property destroyed or the amount of the damage done in addition to a penalty not exceeding twenty pounds.

Destroying fruit or
vegetable produce
in a garden.

224. Whosoever maliciously destroys or damages any cultivated root or plant used for the food of man or beast or for medicine or for distilling or dyeing or for any manufacture and growing in any enclosed land not being a garden orchard or nursery ground shall on conviction before two Justices pay above the value of the property destroyed or the damage done a sum not exceeding twenty shillings and for any subsequent offence a sum not exceeding ten pounds above such value or amount of damage.

Destroying culti-
vated roots &c. not
in a garden.

Injuries to Fences.

225. Whosoever maliciously cuts breaks throws down or in any-wise destroys any fence of any description or any wall stile or gate or any part thereof respectively shall on conviction before two Justices pay above the value of the property destroyed or the damage done a sum not exceeding five pounds and for any subsequent offence a sum not exceeding twenty pounds above such value or amount of damage.

Destroying any fence
wall stile or gate.

Injuries to certain Animals.

226. Whosoever maliciously kills maims or wounds any dog or other animal or beast not being cattle or any bird—being respectively the subject of larceny or ordinarily kept in a state of confinement or for any domestic purpose—shall on conviction before two Justices be liable to imprisonment for a term not exceeding four months or to pay above the amount of injury done a sum not exceeding twenty pounds and for every subsequent offence shall be liable to imprisonment for a term not exceeding six months.

Killing or maiming
animals not being
cattle.

*Criminal Law Amendment.**Injuries not otherwise provided for.*

Injuring property
not previously
provided for.

227. Whosoever maliciously injures any real or personal property whatsoever (including any tree sapling shrub plant or underwood) for which no punishment is hereinbefore provided shall on conviction before two Justices pay above the value of the property injured or damage done a sum not exceeding five pounds and for any subsequent offence a sum not exceeding twenty pounds above such value or amount of injury. In the case of private property the compensation for the injury done shall be paid to the party aggrieved and in the case of property of a public nature or wherein any public right is concerned shall be applied as the Justices think fit.

Declaratory Clauses.

Ownership and
possession of
property injured.

228. Every act of malicious injury to property the doing of which is punishable under this Act is hereby declared to be an offence so punishable whether the property belonged to a private person or to Her Majesty or was otherwise of a public nature. And every act of malicious injury done to property by any person with intent to injure or defraud another shall be an offence within this Act although the offender was at the time of its commission in lawful possession of such property.

Actual malice—
certain acts not
malicious.

229. It shall not be necessary in any prosecution for any such act whether by indictment or before Justices to prove the existence of malice either against the owner of the property or against any other person. Provided that no act shall be deemed malicious which was done by the accused under a reasonable supposition that he had a right to do such act.

PART IV.

FORGERY.

Declaratory and General Clauses.

Forgery defined.

230. Forgery shall for the purposes of this Act be taken to mean the counterfeiting of an instrument or document or of some signature or other matter or thing by whatsoever means effected with intent to defraud. And wherever by this Act the forging of any signature instrument or document or other matter or thing is expressed to be an offence or made punishable the altering of the same in any particular with intent to defraud shall equally be within the enactment.

Altering to be
deemed forgery.

Uttering offering &c.
defined.

231. Whosoever utters offers disposes of or puts off any such forged signature instrument document matter or thing shall be guilty in the same degree and be liable to the same punishment as if he had committed and been convicted of the forgery thereof. And for the purposes of this Act the term utter or uttering wherever used herein with respect to any such signature instrument document matter or thing shall be taken to mean that the person uttered offered disposed of or put off the same with intent to defraud knowing it to be counterfeited.

Forging or uttering
any attestation.

232. Wherever the forging of any instrument or document or matter is by this Act expressed to be an offence or made punishable the forging of any attestation or signature of a witness thereto (whether by law required or not) shall equally be within the enactment. And the uttering of such instrument document or matter shall be an offence in the same degree and liable to the same punishment as the forging of the instrument or document or matter.

Part IV.—Forgery.

233. Wherever the forging of any instrument or document or Instruments forged out of the Colony. matter if done in this Colony would be an offence punishable by this Act the uttering of the same in this Colony (wherever made or purporting to have been made) shall be an offence of the same degree and liable to the same punishment as if the forgery had been done in this Colony.

Public Seals or Official Signatures.

234. Whosoever forges any of Her Majesty's seals or the seal Royal or public seal. of New South Wales or of any British Colony or the impression of any such seal—or utters any instrument having thereon or affixed thereto the impression of any such forged seal or any forged impression made or apparently intended to resemble the impression of any such seal—or forges any instrument having any such impression thereon or affixed thereto—shall be liable to penal servitude for fourteen years.

235. Whosoever forges or utters the signature of the Governor Signature of Governor Minister of the Crown &c. or of any of Her Majesty's Principal or Under Secretaries of State or of any Minister of the Crown or Under Secretary in this Colony or of the Surveyor-General Deputy Surveyor-General Auditor-General Chief Commissioner of Crown Lands or Collector of Customs to any grant commission warrant order or other official instrument or document shall be liable to penal servitude for ten years.

Transfers of Stock &c.

236. Whosoever forges or utters any transfer of any share or Transfer of certain stock or power of attorney relating thereto. interest of or in any stock annuity or other public fund of or in any part of Her Majesty's dominions or of or in the capital stock of any body corporate company or society now or hereafter established by charter or any Imperial or Colonial Act—or forges or utters any power of attorney or other authority to transfer any such share or interest or to receive any dividend or money payable in respect of any such share or interest—or demands or endeavours to have any such share or interest transferred or to receive any dividend or money payable in respect thereof by virtue of any such forged power of attorney or authority knowing the same to be forged—with intent in any such case to defraud—shall be liable to penal servitude for fourteen years.

237. Whosoever falsely and deceitfully personates any owner of Personating owner of stock or property &c. any such share or interest or any owner of any dividend or money payable in respect of any such share or interest or any owner of any property whatever or any estate or interest therein or any charge or encumbrance thereon—and thereby transfers or endeavours to transfer any share estate or interest belonging to any such owner or thereby receives or endeavours to receive any money due to any such owner as if such offender were the true owner—shall be liable to penal servitude for fourteen years.

238. Whosoever wilfully makes any false entry in or alters any Falsifying books of public funds. word or figure in any book of account in which the accounts of the owners of any share or interest of or in any stock annuities or other public funds are entered or wilfully falsifies any of the accounts of any such owner in any such book with intent in any such case to defraud—or wilfully makes any transfer of any share or interest of or in any such stock annuity or public fund or any such capital stock as aforesaid or of or in the capital stock of any such body corporate company or society as aforesaid in the name of any person not being the true owner of such share or interest with intent to defraud—shall be liable to penal servitude for fourteen years.

239. Whosoever being employed in the Public Service knowingly Persons making false dividend warrants &c. and with intent to defraud makes out or delivers any divided warrant or warrant for the payment to any person of any annuity interest or salary payable by public authority for a greater or less amount than such person is entitled to shall be liable to penal servitude for seven years.

*Criminal Law Amendment.**India Bonds Exchequer Bills &c.*

East India bonds
Exchequer bills or
debentures &c.

240. Whosoever forges or utters any bond commonly called an East India bond or any bond debenture or security made under the authority of any Act relating to the East Indies or any indorsement on or assignment of any such bond debenture or security—or any Exchequer bill bond or debenture or any indorsement on or assignment of any such bill bond or debenture or any Treasury bill or debenture of the Government of this Colony or receipt or certificate for interest accruing thereon—shall be liable to penal servitude for fourteen years.

Making plates &c.
like those used for
Exchequer bills &c.

241. Whosoever without lawful authority makes or knowingly has in his possession any frame mould or instrument having therein or thereon any words letters figures marks lines or devices peculiar to and appearing in the substance of any paper provided or used for Exchequer bills bonds or debentures or Treasury bills or debentures of the Government of this Colony—or any machinery for working threads into the substance of any paper—and intended to imitate any such words letters figures marks lines threads or devices—or any plate peculiarly employed for printing such bills bonds or debentures or any die or seal peculiarly used for preparing any such plate or for sealing such bills bonds or debentures or any plate die or seal intended to imitate any such plate die or seal as aforesaid—shall be liable to penal servitude for seven years.

Making paper like
that used for
Exchequer bills &c.

242. Whosoever without lawful authority makes any paper in the substance of which appear any words letters figures marks lines threads or other devices peculiar to and appearing in the substance of any paper provided or used for any such bills bonds or debentures as in the last section mentioned or any part of such words letters or other matter and intended to imitate the same—or knowingly has in his possession any paper in the substance whereof appear any such words letters or other matter or any parts of such words letters or matter and intended to imitate the same—or causes any such words letters or other matter as aforesaid or any part thereof and intended to imitate the same to appear in the substance of any paper or without such authority takes any impression of any such plate die or seal as in the said section mentioned—shall be liable to penal servitude for seven years.

Or taking
impressions.

Abettor in such
offences.

243. Where the doing of any act is by either of the last two preceding sections made punishable whosoever causes such act to be done or assists in the doing thereof shall be guilty in the same degree and punishable in like manner.

Having paper &c. to
be used for
Exchequer bills &c.

244. Whosoever without lawful authority receives or knowingly has in his possession any such plate die or seal as in the said two sections mentioned or any paper manufactured under the direction of Her Majesty's Treasury or of the Government of this Colony for the purpose of being used as Exchequer bills bonds or debentures or Treasury bills or debentures of the Government of this Colony before such paper shall have been lawfully issued for public use shall be liable to imprisonment for a term not exceeding three years.

Stamps or having Forged Dies &c.

Forging stamps or
possessing false dies
&c.

245. Whosoever forges or utters with intent to defraud knowing the same to be forged any stamp authorized to be issued under the authority of any Act of this Colony now or hereafter passed—or without lawful authority or excuse makes uses or knowingly has in his possession the whole or any part of any forged die plate or instrument resembling or apparently intended to resemble wholly or in part any die plate or instrument provided or used under the direction of the Government of this or any other Colony for denoting stamp duty or any material having thereon wholly or in part the impression of any such forged

Part IV.—Forgery.

forged die plate or instrument or any impression resembling or apparently intended to resemble wholly or in part the impression of any such die plate or instrument—or fraudulently uses fixes or places with or upon any material any stamp removed from any other material or fraudulently cuts or gets from any material any word figure or other matter with intent to use any stamp then upon such material for any instrument or thing in respect whereof any stamp duty is payable—or knowingly uses utters sells or exposes to sale or without authority or excuse has in his possession any stamped material from which any such matter has been fraudulently cut or obtained—shall be liable to penal servitude for ten years.

Affixing stamps &c.

Erasing names &c.

Using or selling &c.

Bank Notes and Bank Bills.

246. Whosoever forges or utters any note or bill of exchange of any company or person carrying on the business of banking whether in this Colony or elsewhere commonly called a bank note bank bill of exchange or bank post bill or any indorsement on or assignment of any such note or bill shall be liable to penal servitude for fourteen years And whosoever for any unlawful purpose or without lawful authority or excuse purchases or receives from any person or has in his possession any such forged bank note bank bill of exchange or bank post bill knowing the same to be forged shall be liable to penal servitude for fourteen years.

Forging a bank note &c.

Purchasing or receiving same.

Engraving Plates &c. for Bank Notes &c.

247. Whosoever for any unlawful purpose or without lawful authority or excuse engraves or makes upon any material any words or writing purporting to be a bank note bank bill of exchange or bank post bill of any company or person carrying on the business of banking whether in this Colony or elsewhere or to be part of any such instrument or any name word or character resembling or apparently intended to resemble any subscription to any such instrument issued by any such company or person—or uses any material or implement or device for making or printing any such instrument or any part thereof or knowingly has in his possession any such material or any such implement or device—or knowingly offers utters disposes of or puts off or has in his possession any paper upon which any such instrument or any part thereof or any name word or character resembling or apparently intended to resemble any such subscription as aforesaid is made or printed—shall be liable to penal servitude for fourteen years.

Engraving or having any plate &c. for making bank notes or paper.

248. Whosoever for any unlawful purpose or without lawful authority or excuse engraves or makes upon any material any word number figure device character or ornament the impression taken from which resembles or apparently is intended to resemble any part of a bank note bank bill of exchange or bank post bill of any such company or person as aforesaid carrying on the business of banking—or uses or knowingly has in his possession any such material or instrument or device for impressing upon paper or other material any word number figure character or ornament which resembles or apparently is intended to resemble any part of any such note or bill—or knowingly offers utters disposes of or puts off or has in his possession any paper or other material upon which there is an impression of any such matter as aforesaid—shall be liable to penal servitude for fourteen years.

Engraving &c. any part of a bank note &c.

249. Every instrument in blank which in a complete state would be a bank note bank bill of exchange or bank post bill shall equally be within the two last preceding sections.

As to blank bank bills &c.

250. Whosoever for any unlawful purpose or without lawful authority or excuse makes or uses any frame mould or instrument for the manufacture of paper with the name or firm of any such company

Having moulds for paper with the name of any banker.

or

Criminal Law Amendment.

or person carrying on the business of banking appearing visible in the substance of the paper or knowingly has in his possession any such frame mould or instrument—or makes uses sells exposes to sale utters or disposes of or knowingly has in his possession any paper in the substance of which the name or firm of any such company or person appears visible or by any art or contrivance causes the name or firm of any such company or person to appear visible in the substance of the paper upon which the same is written or printed—shall be liable to penal servitude for fourteen years.

Engraving plates for foreign bills or notes.

251. Whosoever for any unlawful purpose or without lawful authority or excuse engraves or makes upon any material any bill of exchange promissory-note undertaking or order for payment of money or any part of any such instrument in whatsoever language the same is expressed and whether the same is or not under seal or intended to be under seal purporting to be the bill note undertaking or order or part of the bill note undertaking or order of a foreign prince or state or any body corporate or body of the like nature or person or company of persons in any country not under the dominion of Her Majesty—or uses or knowingly has in his possession any material upon which any such foreign bill note undertaking or order or any part thereof is engraved or made or knowingly offers utters disposes of or puts off or has in his possession any paper upon which any part of any such instrument is made or printed—shall be liable to penal servitude for fourteen years.

Deeds Wills Bills of Exchange &c.

Forging deeds or wills.

252. Whosoever forges or utters any will testament codicil or testamentary instrument shall be liable to penal servitude for life And whosoever forges any deed bond or writing obligatory or any assignment thereof shall be liable to penal servitude for fourteen years.

Forging bills notes or orders receipts for goods &c.

253. Whosoever forges or utters any bill of exchange or any acceptance indorsement or assignment thereof or any promissory-note for the payment of money or any indorsement or assignment thereof or any undertaking warrant order authority or request for the payment of money or the delivery or transfer of any chattel note bill or security or for procuring or giving credit—or forges or utters any acquittance or receipt for money or goods or for any note bill or other security or any indorsement on or assignment of any such undertaking warrant order authority request receipt or other instrument—shall be liable to penal servitude for ten years.

Signing bill note &c. by procuration without authority.

254. Whosoever with intent to defraud draws makes signs accepts or indorses any bill of exchange or promissory-note or any such undertaking warrant order authority or request as aforesaid by procuration or otherwise for or in the name or on the account of any other person without lawful authority or excuse—or offers utters disposes of or puts off any such instrument so drawn made signed accepted or indorsed knowing the same to have been so drawn made signed accepted or indorsed—shall be liable to penal servitude for ten years.

Obliterating crossings on cheques.

255. Whenever any cheque or draft on any banker is crossed with the name of a banker or with two transverse lines with the words “bank” or the words “and company” or any abbreviation thereof respectively or with the word “credit” followed by the name of any individual or firm whosoever with intent to defraud obliterates adds to or alters any such crossing or with the like intent utters any cheque or draft whereon any such obliteration addition or alteration has been made knowing the same to have been made shall be liable to penal servitude for ten years.

Part IV.—Forgery.

256. Whosoever forges or utters any debenture or other security or instrument not otherwise hereinbefore provided for issued or purporting to be issued under any lawful authority whatsoever either within Her Majesty's dominions or elsewhere shall be liable to penal servitude for ten years. Forging debentures.

Records Process Instruments of Evidence &c.

257. Whosoever forges or fraudulently alters any record entry minute or process or instrument or document of or belonging to or issued by or filed in any Court in this Colony (including herein the Court of Vice-Admiralty and every Court of Sessions of the Peace District Court and Court of Petty Sessions) or any document or writing or copy of any document or writing used or intended to be used as evidence in any such Court shall be liable to penal servitude for ten years. Forging proceedings of Courts.

258. Whosoever utters any false copy or certificate of any such record entry minute process instrument or document and whosoever not being an officer or clerk of or in the Court signs or certifies any such copy or certificate as such officer or clerk—and whosoever forges or utters any copy or certificate of any such record or other matter having thereon any forged signature—and whosoever forges the seal of any such Court or any stamp or seal used for stamping or sealing any such matters or the impression thereof on any such matter or serves or enforces any forged process of any such Court knowing the same to be forged—or delivers or causes to be delivered to any person any parchment or paper falsely purporting to be any such process or a copy thereof or to be a decree or order of any such Court or a copy thereof knowing the same to be false—or acts or professes to act under any such false process knowing the same to be false—shall be liable to penal servitude for seven years. Uttering false certificates and using forged process.

259. Whosoever forges or utters any instrument whether written or printed or partly written and partly printed which is made evidence by any Act passed or to be passed in this Colony or by the Imperial Legislature and for which offence no punishment is herein provided shall be liable to penal servitude for seven years. Forging instruments made evidence by Statute.

Matters respecting Registration of Deeds.

260. Whosoever forges or utters any instrument document or writing made or issued or purporting so to be under the provisions of any Act passed or to be passed for or relating to the registry of deeds or other instruments or forges the seal of or belonging to any office for the registry of deeds or other instruments or any stamp or impression of any such seal or forges or utters any signature purporting to be the signature of any person to any such instrument document or writing shall be liable to penal servitude for ten years. Forgery as to the registry of deeds.

Signature of Justices or Officers of Courts &c.

261. Whosoever forges or utters any instrument document writing or signature made or purporting or appearing to be made by a Judge or by the Master in Equity Chief Commissioner of Insolvent Estates or any Officer of any Court or by any Justice of the Peace or any Officer authorized to take affidavits or solemn declarations shall be liable to penal servitude for ten years. Forging name of any Justice Master in Equity &c.

Falsely acknowledging Recognizances &c.

262. Whosoever without lawful authority or excuse confesses a judgment in any Court or signs any cognovit or acknowledges any recognizance deed or instrument in the name of another person before any Court or person lawfully authorized in that behalf shall be liable to penal servitude for seven years. Acknowledging recognizances &c. in the name of another.

*Criminal Law Amendment.**Matters relating to Marriage.*

Forging marriage
certificates &c.

263. Whosoever forges or utters any consent or writing purporting to be a consent to the marriage of a person under the age of twenty-one years—or any certificate of marriage or writing purporting to be a certificate of marriage or any copy of any registry of marriage or writing purporting to be a copy of any such registry—or signs or transmits to any Registrar District Registrar or other officer appointed under any Act passed or to be passed relating to marriage or the registration thereof any certificate or writing being or purporting to be a certificate containing any false statement—knowing the same in any such case to be false—shall be liable to penal servitude for ten years.

Falsifying Entries of Births Deaths &c.

Falsifying entries of
births &c. or giving
false certificates.

264. Whosoever unlawfully destroys defaces or injures any register of births marriages deaths or burials now or hereafter by law required to be kept or any certified copy of any such register—or forges or fraudulently obliterates or alters in any such register or copy any entry relating to any birth marriage death or burial or fraudulently inserts in any such register or copy any false entry or matter relating to any such matter—or fraudulently gives any false certificate relating to any birth marriage death or burial or certifies any writing to be a copy or extract from any such register knowing such writing or the entry to which it relates to be false—or forges or utters the signature or any seal or stamp of or belonging to or used by the Registrar-General or any District or other Registrar—shall be liable to penal servitude for fourteen years.

Making false entries
in copies sent to
Registrar.

265. Whosoever wilfully inserts in any copy of any register required by law to be transmitted to a Registrar any false entry or matter relating to any baptism marriage or burial or forges or utters any copy of any such register or wilfully signs or verifies any copy of any such register which copy is false in any part knowing the same to be false—or forges or unlawfully destroys defaces or injures or for any fraudulent purpose takes from its place of deposit or conceals any such register or copy—shall be liable to penal servitude for fourteen years And whosoever causes or knowingly permits the doing of any act made punishable by this or the last section shall be equally punishable as if he had himself committed such act.

Causing or per-
mitting any such act.

Obtaining or demanding Property on Forged Instruments.

Demanding property
on forged instru-
ments.

266. Whosoever with intent to defraud obtains or demands or causes to be delivered or paid to any person or endeavours to obtain or cause to be delivered or paid to any person any property upon or by virtue of any forged instrument knowing the same to be forged—or upon or by virtue of any probate or letters of administration knowing the will codicil or testamentary writing on which the same was or were obtained to have been forged or such probate or letters to have been obtained by any false oath or affirmation—shall be liable to penal servitude for fourteen years.

Fraudulently using Trade-Marks.

Forging or fraudu-
lently using trade-
marks &c.

267. Whosoever forges any trade-mark or label ordinarily and lawfully used by the maker or vendor of any article or merchandize or with intent to defraud or to enable any other person to defraud affixes stamps or places to or upon any article or case vessel or cover containing the same any such forged trade-mark or label—or sells or disposes of or offers to sell or dispose of any article having thereon or affixed thereto

Part V.—Coinage.

thereto or to or upon such case vessel or cover any such forged trade-mark or label knowing the same to be forged—or with the like intent affixes stamps or places to or upon any article or any such case vessel or cover any trade-mark or label resembling or apparently intended to resemble and intended to be mistaken for any trade-mark or label ordinarily and lawfully used by any such maker or vendor as aforesaid—shall be liable to imprisonment for a term not exceeding three years and to pay a sum not exceeding one hundred pounds in addition to or without such imprisonment.

Matters not already specified.

268. Whosoever forges or utters any instrument or matter the forging or uttering of which is not punishable under any of the preceding sections shall be liable to imprisonment for a term not exceeding two years. Forgeries not already specified.

PART V.

COINAGE OFFENCES.

Interpretation and General Clauses.

269. For the purposes hereinafter contained the expression “the Queen’s gold or silver coin” shall include any gold or silver coin coined in any of Her Majesty’s Mints or lawfully current by virtue of any Act or proclamation or otherwise in any part of Her Majesty’s Dominions and the expression “the Queen’s copper coin” shall include any copper coin or coin of bronze or mixed metal so coined or lawfully current as aforesaid and the expression “the Queen’s current coin” shall include any coin so coined or lawfully current as aforesaid whether made of gold silver copper bronze or mixed metal and the expression “counterfeit coin resembling or apparently intended to resemble any of the Queen’s gold or silver coin” shall include any of the Queen’s current coin gilt silvered washed coloured or cased over or in any manner altered so as to resemble or be apparently intended to resemble or pass for any of the Queen’s current coin of a higher denomination. Interpretation of terms—current gold and silver coin copper coin &c.

270. Every offence of unlawfully making or counterfeiting any coin or buying selling receiving paying tendering uttering or putting off or offering to buy sell receive pay utter or put off any counterfeit coin against this Act shall be deemed complete although such coin may not be in a fit state to be uttered or the counterfeiting thereof is not finished or perfected. Where counterfeited coin is incomplete.

Uttering or impairing Gold or Silver Coin.

271. Whosoever unlawfully makes or counterfeits any coin resembling or apparently intended to resemble any of the Queen’s gold or silver coin shall be liable to penal servitude for fourteen years. Counterfeiting gold or silver coin.

272. Whosoever fraudulently gilds or silvers any coin resembling or apparently intended to resemble any of the Queen’s gold or silver coin—or gilds or silvers any piece of silver or copper or coarse gold or coarse silver or any metal or mixture of metals respectively being of a fit size and figure to be coined with intent that the same shall be coined into counterfeit coin resembling or apparently intended to resemble any of the Queen’s gold or silver coin—or gilds any of the Queen’s silver coin or files or in any manner alters such coin with intent to make the same pass for any of the Queen’s gold coin or gilds or silvers any of the Queen’s copper coin or files or in any manner alters such coin with intent to make the same resemble or pass for any of the Queen’s gold or silver coin—shall be liable to penal servitude for fourteen years. Colouring coin or metal. Fraudulently altering genuine coin.

Criminal Law Amendment.

What to be deemed
gilding or silvering.

273. Whosoever with any wash or material capable of producing the colour or appearance of gold or of silver or by any other means whatsoever washes cases over or colours any coin or any such piece of silver or copper or coarse gold or silver or metal or mixture of metals shall be deemed to have gilded or silvered the same within the meaning of the last section.

Impairing gold or
silver coin.

274. Whosoever impairs diminishes or lightens any of the Queen's gold or silver coin with intent that the coin so dealt with may nevertheless pass for the Queen's gold or silver coin shall be liable to penal servitude for seven years. And whosoever defaces any of the Queen's gold silver or copper coin by stamping thereon any name or word whether such coin is or not thereby diminished or lightened shall be liable to imprisonment for a term not exceeding two years.

Unlawful possession
of filings of gold or
silver coin.

275. Whosoever unlawfully has in his possession any filings or clippings or any gold or silver bullion or any gold or silver in dust solution or otherwise obtained by impairing diminishing or lightening any of the Queen's gold or silver coin knowing the same to have been so obtained shall be liable to penal servitude for five years.

Buying or selling
counterfeit gold or
silver coin.

276. Whosoever without lawful authority or excuse buys sells receives pays or puts off or offers to buy sell receive pay or put off any counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin at a lower rate or value than the same imports or is apparently intended to import or would pass for if genuine shall be liable to penal servitude for ten years.

Uttering counterfeit
gold or silver coin.

277. Whosoever offers or utters any counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin knowing the same to be counterfeit shall be liable to imprisonment for a term not exceeding three years—And if the offender at the time of such offering or uttering has in his possession besides the coin offered or uttered any other piece of counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin—or on the same day or within ten days next ensuing offers or utters any other counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin knowing the same to be counterfeit—he shall be liable to penal servitude for seven years.

Having three pieces
of counterfeit gold
or silver coin in
possession.

278. Whosoever has in his possession three or more pieces of counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin knowing the same to be counterfeit with intent to utter or put off the same or any of them shall be liable to penal servitude for five years. And whosoever having been convicted of any offence in this Act mentioned relating to the coin afterwards commits any such offence shall be liable to penal servitude for ten years.

Uttering medals &c.
as current coin.

279. Whosoever with intent to defraud offers utters or puts off as or for the Queen's gold or silver coin any coin or medal or piece of metal or mixed metals resembling or apparently intended to resemble the current coin for which the same is so offered uttered or put off but not being such current coin shall be liable to imprisonment for a term not exceeding three years.

Counterfeiting or uttering the Copper Coin.

Counterfeiting &c.
copper coin.

280. Whosoever unlawfully makes or counterfeits any coin resembling or apparently intended to resemble any of the Queen's copper coin—and whosoever without lawful authority or excuse knowingly makes or mends or begins or proceeds to make or mend or buys or sells or has in his possession any instrument tool or engine intended to be used in counterfeiting any of the Queen's copper coin—or buys sells receives pays or puts off or offers to buy sell receive pay or put off any counterfeit

Part V.—Coinage.

counterfeit coin resembling or apparently intended to resemble any of the Queen's copper coin at or for a lower rate or value than the same imports or is apparently intended to import or would pass for if genuine—shall be liable to penal servitude for five years.

281. Whosoever offers utters or puts off any counterfeit coin resembling or apparently intended to resemble any of the Queen's copper coin knowing the same to be counterfeit or has in his possession three or more pieces of counterfeit coin resembling or apparently intended to resemble any of the Queen's copper coin knowing the same to be counterfeit with intent to utter or put off the same or any of them shall be liable to imprisonment for a term not exceeding three years.

Uttering counterfeit copper coin.

Counterfeiting or uttering Foreign Coin.

282. Whosoever unlawfully makes or counterfeits any kind of coin not being the Queen's gold or silver coin but resembling or apparently intended to resemble the gold or silver coin of a foreign country shall be liable to penal servitude for seven years.

Counterfeiting foreign gold or silver coin.

283. Whosoever offers utters or puts off any such counterfeit coin as last aforesaid knowing the same to be counterfeit shall be liable to imprisonment for a term not exceeding twelve months And whosoever commits the like offence after two previous convictions for any such offence shall be liable to penal servitude for ten years or not less than five years.

Uttering such counterfeit coin.

284. Whosoever unlawfully makes or counterfeits any kind of coin not being the Queen's current coin but resembling or apparently intended to resemble coin of any foreign prince or country made of copper or any metal or mixed metals of less value than the silver coin of such foreign prince or country shall be liable for the first offence to imprisonment for a term not exceeding one year and for the second offence to penal servitude for five years.

Counterfeiting foreign coin other than gold or silver.

Importing or exporting Counterfeit Coin.

285. Whosoever with intent to defraud imports or brings into this Colony or receives into his possession or exports or puts on board any vessel for the purpose of exportation from this Colony any counterfeit coin resembling or apparently intended to resemble any of the Queen's current coin or any counterfeit coin resembling or apparently intended to resemble the gold or silver coin of any foreign country shall be liable to penal servitude for seven years.

Importing &c. counterfeit coin British or foreign.

Making or having &c. Coining Tools.

286. Whosoever without lawful authority or excuse knowingly makes or mends or begins to make or mend or buys or sells or has in his possession any such engine machine tool instrument or thing as is hereinafter mentioned—that is to say any puncheon counter-puncheon matrix stamp die pattern or mould in or upon which there is impressed or which will impress or shall be intended to impress either wholly or in part the figure stamp or apparent resemblance of both or either of the sides of any of the Queen's gold or silver coin or of any foreign coin or any part thereof respectively or any edger edging or other tool collar instrument machine or engine intended for marking coin round the edges with letters grainings or other marks or figures apparently resembling those on the edges of any such coin as aforesaid knowing the same to be so intended—or any press for coinage or engine for cutting by force of a screw or other contrivance round blanks out of gold silver or other metal or mixture of metals or any other machine of any kind knowing such press to be a press for coinage or such engine or machine to be used or intended for the counterfeiting of any such coin—shall be liable to penal servitude for fourteen years.

Making or having coining tools &c.

Criminal Law Amendment.

Conveying tools or moneys out of the Mint.

287. Whosoever without lawful authority or excuse knowingly conveys out of Her Majesty's Mint in Sydney any puncheon counter-puncheon matrix stamp die pattern mould edger edging or other tool collar instrument press machine or engine or any part thereof respectively there used or kept for use for coining purposes or any coin bullion metal or mixture of metals shall be liable to penal servitude for fourteen years.

Cutting suspected Coin.

Coin suspected to be counterfeit may be cut by any person.

288. Where any coin is offered as the Queen's gold or silver coin to any person who suspects the same to be diminished otherwise than by reasonable wear or to be counterfeit such person may cut break bend or deface such coin and if it has been diminished otherwise than by reasonable wear or is counterfeit the person who offered the same shall bear the loss thereof but if the same is of due weight and lawful coin the person cutting breaking bending or defacing the same shall receive the same at the rate it was coined for and if any dispute arises whether the coin is diminished in manner aforesaid or counterfeit the matter shall be determined in a summary manner by two Justices who may examine upon oath as well the parties as any other person in order to the decision of such dispute And all receivers duly appointed of every branch of Her Majesty's revenue are hereby required to cut break or deface every piece of counterfeit or unlawfully diminished gold or silver coin offered to them in payment of any part of such revenue.

OFFENCES UNDER PART V. PUNISHABLE BY JUSTICES.

Uttering defaced coin.

289. Whosoever offers utters or puts off any of the Queen's current coin defaced by stamping thereon any name or word whether such coin is or not thereby diminished or lightened shall on conviction before two Justices be liable to pay a sum not exceeding forty shillings Provided that it shall not be lawful to proceed for any such penalty without the consent of Her Majesty's Attorney-General.

Having above five pieces of counterfeit foreign coin.

290. Whosoever without lawful authority or excuse has in his possession more than five pieces of counterfeit coin resembling or apparently intended to resemble any foreign coin shall on conviction before two Justices forfeit all such coin which shall be destroyed by their order and shall pay a sum not exceeding forty shillings for every such piece of coin found in his possession.

PART VI.

PERJURY AND SUBORNATION OF PERJURY.

Punishment of perjury.

291. Whosoever commits the crime of perjury shall be liable to penal servitude for seven years And whosoever commits such perjury with intent to procure the conviction or acquittal of any person for or of any offence punishable with death or by penal servitude shall be liable to penal servitude for fourteen years.

False swearing not being perjury.

292. Whosoever before any person authorized to administer an oath wilfully makes on oath any false statement knowing the same to be false shall (where such offence does not in law amount to perjury) be liable to penal servitude for five years And the offender may be found guilty under this section on an indictment against him for perjury in respect of the same statement.

Part VI.—Perjury and Subornation of Perjury.

293. Where on the trial of a person for perjury or for making a wilfully false statement on oath not amounting to perjury it appears that the accused has made two statements on oath of which one is irreconcilably in conflict with the other and the jury are of opinion that one of such statements was wilfully false but they cannot say which of them was so they may specially so find and that the accused is guilty of perjury (or of wilful false swearing as the case may be) and he shall be liable to punishment accordingly.

Contradictory statements on oath.

294. Where on any such trial any affidavit deposition examination or solemn declaration offered in evidence is wrongly intituled or otherwise informal or defective or the jurat to any such instrument is informal or defective—or any such deposition where taken before a Justice or Coroner has no caption or no proper caption—the accused shall not be entitled to an acquittal by reason of such omission defect or informality but every such instrument if otherwise admissible may be given in evidence and used for all purposes of the trial notwithstanding.

Certain technical defects provided for.

295. The provisions of this Act in the present Sixth Part shall extend to every Declaration made or purporting or intended to have been made under any Act directing or authorizing the making of a Solemn Declaration before any public or other functionary in lieu of an oath or otherwise although such declaration may not be in the form prescribed by such Act. And every Solemn Declaration under the Act passed in the ninth year of Her Majesty's reign numbered nine respecting Extra-judicial Oaths may be in the form or to the effect of the form contained in the last Schedule to this Act.

The like as to certain statutory declarations.

296. Whosoever procures or causes any person to make any false statement on oath if the making of such statement amounts in law to perjury or is by any Act punishable as perjury shall be guilty of subornation of perjury and be liable to be punished as if the offender had himself been convicted of perjury. And whosoever persuades or induces or endeavours to persuade or induce any person to make a false statement on oath in a judicial proceeding before a Court or Justice or Coroner shall be liable to penal servitude for five years—and whosoever without lawful cause persuades or induces or endeavours to persuade or induce any person to abstain from giving evidence or attending as a witness in any such proceeding such person being bound by recognizance or subpœna so to attend—shall be liable to imprisonment for a term not exceeding three years.

Subornation of perjury &c.

Attempting to suborn &c.

297. Whosoever wilfully makes for the purpose of being inserted in any register of births marriages deaths or burials any false statement of or respecting any particular required to be registered by any Act now or hereafter passed in that behalf shall be liable to penal servitude for seven years.

False statements respecting births marriages &c.

298. Where any declaration or statement is or shall be by law required to be made in respect of the importation or exportation of certain goods as to the value thereof or the contents or value of any cask case or package containing such goods whosoever with intent to defraud the Queen or to diminish Her Majesty's Revenue knowingly makes or causes or permits to be made to any Collector or other Officer of Customs any such declaration or statement which is false in any material particular shall be liable to imprisonment for a term not exceeding three years and to pay a fine not exceeding one hundred pounds in addition if the Court thinks fit.

False declarations in fraud of the Revenue.

299. Nothing in the present Sixth Part shall prevent or affect any other punishment or any forfeiture provided under any Act now or hereafter passed and the provisions of this Act shall apply to every false oath declaration or affirmation declared by any Act to be perjury or thereby made punishable as perjury.

Saving of other specific punishments.

Criminal Law Amendment.

For restraining
vexatious prosecu-
tions.

300. Where any oath has been taken in any suit proceeding or matter pending in the Supreme Court or any Circuit or District Court or before any Judge of any such Court or any Chairman of General Sessions or the Chief Commissioner of Insolvent Estates no prosecution in respect thereof shall be instituted without the leave of such Court or Judge or Chairman or Commissioner and where any oath has been taken before any District Commissioner for Insolvent Estates or Justices or Justice no prosecution in respect thereof shall be instituted without the leave of a Judge.

Directing prosecu-
tion for perjury.

301. In respect of any oath taken by any person as in the last section mentioned the Judge or Chairman or Chief Commissioner before whom the same was so taken may if reasonable cause appears for so doing direct such person to be prosecuted for perjury and may thereupon require him forthwith to enter into a recognizance with one or more surety or sureties to take his trial for that offence at the next or nearest practicable sitting of the Supreme or Circuit Court or Court of General Sessions And such Judge or Chairman or Commissioner may also require any persons then present to enter into recognizances to prosecute and give evidence respectively against the accused and commit any person in default of his entering into any such recognizance.

PART VII.

ABETTORS AND ACCESSORIES.

Principals in the
second degree.

302. Every principal in the second degree in any felony whether the same is a felony at common law or by this or any other statute (now existing or hereafter to be passed) and whether a capital felony or not shall be liable to the same punishment as the principal in the first degree is subject to.

Accessories before
the fact.

303. Every accessory before the fact to any such felony may be indicted convicted and sentenced either before or after the trial of the principal felon or together with such felon or be indicted convicted and sentenced as a principal in the felony and shall be liable in either case to the same punishment as the principal felon is subject to whether the principal felon has been tried or not or is or not amenable to justice.

Accessories after the
fact.

304. Every accessory after the fact to any such felony may be indicted convicted and sentenced as such accessory either before or together with or after the trial of the principal felon whether such felon has been previously tried or not or is or not amenable to justice.

Punishment of
accessories after the
fact.

305. Every accessory after the fact to murder or the crime of robbery with arms or in company with one or more other person or persons shall be liable to penal servitude for life And every accessory after the fact to any other felony (except where otherwise specifically enacted) whether a felony at common law or by statute shall be liable to penal servitude for five years.

Abettors in misde-
meanours.

306. Whosoever abets counsels or procures the commission of any misdemeanour whether the same be a misdemeanour at common law or by any statute may be indicted convicted and punished as a principal offender And where any offence is by this Act punishable on summary conviction whosoever abets counsels or procures the commission of such offence shall on conviction before two Justices be guilty in the same degree and liable to the same forfeiture and punishment as the principal offender.

PART VIII.

PART VIII.

PROCEDURE EVIDENCE AND VERDICT.

307. It shall be lawful for the Attorney-General in respect of any person under committal for trial to transmit at any time a certificate in the form contained in the Second Schedule to this Act to the Judges of the Supreme Court any one of whom may thereupon by warrant in the form contained in the said Schedule direct the gaoler in whose custody the prisoner is to discharge him from imprisonment in respect of the offence mentioned in such warrant and if such gaoler neglects so to do he shall be liable to a fine of fifty pounds to be recovered by action of debt in the name of the Attorney-General.

Discharge of person without prosecution.

(a.) As to Indictment—Form Venue Amendments &c.

308. No indictment shall be held bad or insufficient for want of an averment of any matter unnecessary to be proved or necessarily implied nor for the omission of the words “as appears by the record” or “with force and arms” or “against the peace” nor for the insertion or omission of the words “against the form of the statute” nor for designating any person by a name of office or other descriptive appellation instead of his proper name nor for omitting to state the time at which the offence was committed nor for stating the time wrongly in any case where time is not of the essence of the offence nor for stating the time imperfectly nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or on an impossible day or a day that never happened nor for want of a proper or perfect venue or a proper or formal conclusion nor for the omission or improper insertion of the word “feloniously” nor for want of or imperfection in any addition of the accused nor for want of any statement of the value or price of any matter or thing or the amount of damage or injury in any case where such value or price or amount is not of the essence of the offence.

What defects shall not vitiate an indictment.

309. New South Wales shall be a sufficient venue for all places whether the indictment is in the Supreme Court or any other Court having criminal jurisdiction. Provided that some district or place within or at or near which the offence is charged to have been committed shall be mentioned in the body of the indictment. And every such district or place shall be deemed to be in New South Wales and within the jurisdiction of the Court unless the contrary be shown.

Venue in indictment.

310. Every objection to an indictment for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the jury are sworn and every Court before which any such objection is taken may thereupon cause the indictment to be forthwith amended and afterwards the trial shall proceed as if no such defect had appeared.

Formal objections to be taken before jury are sworn.

311. In all cases of felony and misdemeanour alike the judgment against the accused on demurrer shall be that he answer over to the charge.

Judgment on demurrer.

312. No traverse shall in any case be allowed or trial postponed or time to plead to the indictment be given unless the Court shall so order. Provided that where the Judge is of opinion that the accused ought to be allowed time either to prepare for his defence or otherwise such Judge shall postpone the trial upon such terms as to him seems meet and may respite the recognizances of the prosecutor and witnesses accordingly.

As to traversing indictment.

313. Whenever on the trial of an indictment any variance appears between any statement name or description therein and the evidence offered in proof thereof or some words required by law to be inserted

Court may amend variances and either proceed with or postpone the trial.

Criminal Law Amendment.

inserted in such indictment have been omitted therefrom or words which ought to have been omitted have been inserted it shall be lawful for the Court—if it considers such variance omission or insertion not to be material and that the accused will not be prejudiced in his defence on the merits by the proposed amendment—to order such indictment to be amended according to the proof not only in the part where such variance omission or insertion occurs but in every other part which it may become necessary to amend on such terms as to postponing the trial to be had before the same or another jury or otherwise as the Court thinks reasonable.

Proceedings in either case.

314. After any such amendment the trial shall proceed whenever proceeded with in the same manner in all respects and with the same consequences as if no such variance omission or insertion had occurred and the order for the amendment shall be endorsed on or noted in the margin of the indictment And in all cases where the trial is postponed it shall be lawful for the Court to respite the recognizances of the prosecutor and witnesses and of the accused and his sureties if any requiring them severally to appear and prosecute or be tried or give evidence at the time and place to which the trial is so postponed.

Verdict and judgment valid after amendment.

315. Every verdict and judgment given after the making of any amendment under this Act shall be of the same force and effect as if the indictment had originally been in the words and form in which it is after such amendment And if it is necessary at any time to draw up a formal record in any case where an amendment has been made such record may be drawn up in the words and form of the amended indictment without noticing the fact of amendment.

Separate offences in one indictment.

316. In every case not capital counts may be inserted in the same indictment against the same person for any number of distinct offences of the same kind not exceeding three committed against the same party Provided that no more than six months have elapsed between the first and the last of such offences And in every indictment for an offence against the person not being capital where such offence includes an assault a count may be added for such assault.

Property of partner or joint owners.

317. In any indictment wherein it is necessary to state the ownership of property belonging to more than one person whether as partners in trade joint tenants parceners or tenants in common it shall be sufficient to name one of such persons and to allege such property to belong to the person so named and another or others as the case may be—and whenever in any indictment it is necessary to mention for any purpose any partners joint tenants parceners or tenants in common it shall be sufficient to describe them in the manner aforesaid and this provision shall extend to all joint stock companies executors administrators and trustees.

Indictment for murder or manslaughter.

318. In an indictment for murder or manslaughter it shall not be necessary to set forth the manner in which or the means by which the death alleged was caused but it shall be sufficient in an indictment for murder to charge that the accused did feloniously and maliciously murder the deceased and in an indictment for manslaughter to charge that the accused did feloniously slay the deceased—and it shall be sufficient in any indictment against an accessory to murder or manslaughter to charge the principal in the manner hereinbefore specified and then to charge the accused as an accessory in the manner heretofore accustomed.

Indecent assaults.

319. In every indictment for an indecent assault it shall be sufficient to state that the accused did on the day and at the place named commit an indecent assault on the person alleged to have been assaulted without stating the mode of such assault And in any indictment for rape or an unnatural crime or an attempt to commit the same a count may be added for an indecent assault.



Part VIII.—Procedure Evidence and Verdict.

320. In every indictment for an offence committed after a previous conviction for an offence whether indictable or punishable on summary conviction it shall be sufficient after charging the subsequent offence to state that the accused was at a certain time and place convicted of an indictable offence or an offence punishable on summary conviction (as the case may be) without particularly describing such previous offence—but the accused shall not be arraigned in respect of any previous conviction nor shall evidence thereof be offered except in reply to evidence of character unless he is convicted of the last offence upon which conviction the accused shall forthwith be arraigned and the Jury be charged as to the previous conviction or convictions and the trial shall proceed in respect thereof accordingly.

321. In every indictment containing a charge of feloniously stealing property a count may be added against the same person for feloniously receiving the same or any part thereof knowing the same to have been stolen and the prosecutor shall not be put to his election as to such charges.

322. Whenever any property has been stolen taken embezzled obtained or fraudulently applied or disposed of in such a manner as to amount to felony at common law or by statute any number of receivers at different times of such property or of parts thereof and in every case of felony at common law or by statute any number of accessories thereto whether before or after the fact may be charged with substantive felonies in the same indictment and be tried together although the principal felon is not included in such indictment or is not in custody or amenable to justice.

323. In every indictment for stealing taking receiving or embezzling or for the misappropriation or fraudulent application or disposal of money or any valuable security or for the obtaining of money or any valuable security by any threat or false pretence or wilfully false promise it shall be sufficient to describe the property as a certain amount of money or as a certain valuable security without specifying any particular kind of money or security which description shall be sustained by proof of the taking receiving embezzling appropriating disposal or obtaining of any money or valuable security although some part of the value thereof was agreed to be or was in fact returned and although as it respects money the particular kind of money is not proved or provable.

324. In every case of stealing any chattel let to be used in or with any house or lodging an indictment in the common form as for larceny and in every case of stealing any fixture so let as aforesaid an indictment in the same form as if the offender were not a tenant or lodger shall be sufficient and in either case the property may be laid in the owner or the person letting to hire And in every indictment for stealing destroying cancelling obliterating or concealing any document of title to land or any part thereof it shall be sufficient to allege such document to contain evidence of the title to such land and to mention the person or one of the persons having an interest in such land or some part thereof.

325. It shall not be necessary in an indictment or any proceeding before Justices in respect of any of the following matters to allege that the instrument document building chattel or other matter or thing in respect of which the offence was committed is the property of any person—that is to say stealing or destroying or injuring any testamentary instrument or any document of any Court or anything fixed or growing in any square or street or place dedicated to public use or ornament nor in respect of any offence committed in or respecting a place of Divine Worship or respecting property in any public library or building or respecting any matter or thing mentioned in any of the sections enumerated in the Third Schedule to this Act.

Criminal Law Amendment.

General averment
of intent to defraud
or injure.

326. In every case where it is necessary to allege an intent to defraud or injure it shall be sufficient to allege that the accused did the act with intent to defraud or injure as the case may be without alleging an intent to defraud or injure any particular person and in an indictment for doing an act fraudulently or for a fraudulent purpose it shall not be necessary to state what was the fraudulent intent or purpose.

Description of written
instruments.

327. In every case where a written or printed instrument or instrument partly written and partly printed is the subject of an indictment or it is necessary to make an averment in an indictment respecting such instrument it shall be sufficient to describe such instrument by any name or designation by which the same is usually known or by the purport thereof without setting out any copy thereof or otherwise describing the same and without stating the value thereof.

Description in
indictment for
engraving &c.

328. In an indictment for engraving or making the whole or any part of any instrument or thing or using or having possession of any plate or material upon which the whole or any part of any instrument or thing is engraved or made or for having possession of paper upon which the whole or any part of any instrument or thing is made or printed it shall be sufficient to describe such instrument or thing by any name or designation by which it is usually known without setting out any copy of the same or any part thereof.

Sale &c. of counter-
feit coin.

329. It shall not be necessary in any indictment under this Act respecting the unlawful buying or selling of counterfeit coin to allege at what rate or for what price the same was bought sold received or paid or put off or offered so to be.

Indictments for
perjury.

330. In every indictment for perjury it shall be sufficient to allege that the accused on a certain day and at a certain place before a person named falsely swore or falsely declared or affirmed the matter charged as false stating the substance only of such matter and averring that the same was so sworn declared or affirmed on an occasion when the truth of such matter was material—without specifying the occasion or showing how the matter was material or what was the cause or trial or inquiry (if any) pending or the judicial or official character of the person administering the oath or taking the declaration or affirmation charged as false—And every such person shall be presumed to have had authority to administer such oath or take such declaration or affirmation unless the contrary is shown.

Indictments for
conspiracy.

331. It shall not be necessary in an indictment for conspiracy to state any overt act and each defendant in any case of conspiracy (whether two or more defendants are included in the same indictment or not) may be charged separately in any count as having conspired with divers persons of whom it shall be sufficient to name one only or as having conspired with one other named person only and may be convicted on such count upon proof of his having unlawfully conspired for the purpose therein alleged with any one such person Provided always that no more than three counts against the same defendant shall be inserted in any such indictment and that the Court may in any case before plea pleaded order such particulars to be given as to such Court shall seem meet and that where conspiracies substantially different are charged in the same indictment the prosecutor may be put to his election as to the one on which he will proceed.

Special provisions.

(b.) Arraignment Plea and Trial.

Plea of "not guilty"
and cases of refusal
to plead.

332. If any person arraigned on an indictment pleads thereto "not guilty" he shall without further form be deemed to have put himself upon the country for trial and the Court shall in the usual manner

Part VIII.—Procedure Evidence and Verdict.

manner order a jury for his trial accordingly And if any person being so arraigned stands mute or will not answer directly to the indictment the Court may order a plea of “not guilty” to be entered on behalf of such person and the plea so entered shall have the same effect as if he had actually pleaded the same.

333. No plea setting forth an attainder shall be pleaded in bar of an indictment unless the attainder is for the same offence as that charged in the indictment And no indictment shall be abated by reason of any dilatory plea of misnomer or want of addition or of a wrong addition of the accused but the Court shall forthwith cause the indictment to be amended according to the truth and shall call upon such accused to plead thereto and shall proceed as if no such plea had been pleaded. Pleas of attainder and pleas dilatory &c.

334. In any plea of *autrefois convict* or of *autrefois acquit* it shall be sufficient for the accused to allege that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment without specifying the time or place of such previous conviction or acquittal. Plea of *autrefois convict* &c.

335. In every case whether of felony or misdemeanour the presiding Judge shall have power to order the accused to enter the dock or usual place of arraignment or to allow him to remain on the floor of the Court and in either case to sit down as such Judge shall see fit Provided that every defendant in a case of libel or of assault simply not being an indecent assault may remain on the floor of the Court as at present. Practice as to entering the dock.

336. The same right of challenge to jurors shall exist in cases of misdemeanour as in felonies But no person shall except for cause shown be allowed in either case more than eight or if the offence charged be capital twenty challenges and the Crown shall in every case have the same but no greater right And every peremptory challenge beyond the number so allowed shall be void and the trial shall proceed as if no such challenge had been made. Challenges to jurors.

337. Every Court sitting for the trial of prisoners shall have power on motion for that purpose made on behalf of either the Crown or any prisoner to order the Sheriff to summon and return to the Court an enlarged jury panel not exceeding twenty-four jurors in addition to those already summoned—or a separate jury panel of not less than thirty nor more than sixty jurors to be taken either from the general or the special jury list as the Court shall think it for the interest of justice to order—and every person liable to serve as a juror and residing within twenty miles of the place of trial being summoned under any such order and having no lawful excuse shall be bound to attend and liable to be proceeded against for non-attendance as if he had been summoned under a precept in the ordinary course. Enlarging jury panel.

338. At any time before the trial of a person committed or held to bail every Judge of the Supreme Court on application to him in Chambers on behalf of such person or of the Crown—of which last-mentioned application the accused has had due notice—shall have the same power as in the last section is mentioned in respect of the intended trial of such person whether in such Court or in a Circuit Court or Court of General Sessions. The like by any Judge.

339. Whenever any juror objects to be sworn it shall be lawful for the Court to permit him instead of taking an oath to make a solemn declaration which shall be in the form now in use but substituting the words “So you solemnly declare and promise” for the words “So help you God” And it shall not be necessary to allege in any record or proceeding that a particular juror made any such declaration but it shall be sufficient in all cases to state that the jurors solemnly declared or were sworn. Affirmation by jurors in certain cases.

Criminal Law Amendment.

Refreshment to and
discharge of juries.

340. In all cases whether of felony or misdemeanour it shall be lawful for the Court in its discretion to allow the jury such reasonable refreshment as the Court thinks fit to order and notwithstanding that they may have retired to consider of their verdict And where the jury have retired more than twelve hours if it be found after examination on oath of one or more of them that the jury are not likely to agree it shall be lawful for the Court in its discretion to discharge them.

Jury not to inquire
of lands &c.

341. It shall not be necessary in any case for the jury on the trial of any person indicted for treason or felony to inquire concerning his lands or goods nor whether he fled for such treason or felony.

Prisoner may be
defended by counsel
or attorney.

342. Every accused person shall in all Courts be admitted to make full answer and defence by counsel as the term is by this Act defined and in every case may reserve his address until the close of the evidence for the defence and in the latter case all evidence in reply for the Crown shall be given before such address And in all proceedings before Justices the accused shall be admitted to make full answer and defence and to have all witnesses examined and cross-examined by counsel or attorney.

(c.) Rules respecting Evidence.

Declaration instead
of oath.

343. Whenever any person called as a witness or having to make a statement in an information complaint or proceeding in any Court or before any Justice objects to take an oath or is reasonably objected to as incompetent to take an oath or appears to the Court or Justice to be incompetent to take an oath he may make the following declaration instead of being sworn—I solemnly declare that the evidence now about to be given (or the statement now about to be made) by me shall be the truth the whole truth and nothing but the truth And whosoever having made such declaration wilfully makes any false statement before such Court or Justice knowing the same to be false shall be deemed guilty of perjury if the statement had it been on oath would by law have been perjury or may be found guilty if the evidence warrants such finding under the two hundred and ninety-second section of this Act and shall be liable to punishment accordingly.

Depositions by
persons dangerously
ill.

344. Whenever by the representation of any credible person on oath or in case of urgency without oath it is made to appear to any Justice that a person able to give material information respecting an indictable offence is dangerously ill whereby his evidence will probably be lost if not forthwith taken such Justice may take the deposition of the person so in danger touching the offence in like manner as if a prosecution for the same were then pending before the Justice and to transmit such deposition to the Attorney-General—And if afterwards on the trial of any person for the offence to which the deposition relates (or for the murder of the deponent in case of his death or alleged death by reason of such offence) it be proved to the satisfaction of the Judge that the witness is dead or unable from illness to attend the trial his deposition may be read in evidence for or against the accused although not taken in the presence or hearing either of the party prosecuting or of such accused person.

Proviso as to cross-
examination &c.

345. Provided always that every such deposition shall be in the form or substantially in the form contained in the Fourth Schedule hereto and shall be subscribed by the Justice taking the same of which fact and that such deposition was duly taken by him under the last section the deposition itself if purporting to be signed by such Justice shall be sufficient proof—Provided also that a copy of such deposition shall be delivered to every person whom the same may affect criminally as soon after the taking thereof as shall be practicable and that

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that if practicable every such person shall have full opportunity afforded him if he thinks fit of cross-examination before being placed on his trial or committed—And for the purpose of such cross-examination it shall be lawful for any Judge or Police Magistrate by any order or orders in writing to cause any person in custody to be conveyed to any place mentioned in any such order and afterwards to be returned to that custody.

346. After the passing of this Act it shall not be necessary at the close of the case for the prosecution on a charge of felony or indictable misdemeanour to read over the evidence or any part thereof unless the accused so desires but the Justice before committing the accused or holding him to bail shall inquire whether he desires to call any witness on his behalf and if that question is answered in the affirmative the Justice shall proceed to take the deposition of every such witness and if such Justice commits the accused or holds him to bail he shall transmit every such deposition with the other evidence to the Attorney-General—And every such witness (not being to character merely) whose evidence is in the opinion of such Justice material shall be bound by recognizance equally with the witnesses for the Crown to give evidence at the trial and every witness attending in obedience to any such recognizance shall be entitled to his expenses the same as if he were a witness for the Crown.

Witnesses for
prisoner.

347. For the purposes of the last section all provisions now in force as to summoning and enforcing the attendance of witnesses before Justices and taking recognizances to give evidence and giving copies of depositions to prisoners committed or held to bail and as to reading any such deposition in evidence in certain cases shall equally be in force with respect to witnesses for an accused person and depositions made by them (in all cases to which the said section applies) as with respect to witnesses for the prosecution and their depositions.

Provisions subsidiary
thereto.

348. Every witness examined as to character whether of the accused or of any other person may give evidence not only as to the general repute of such person but also as to the witness's own knowledge of his habits disposition and conduct But no witness shall be allowed to state that he would not believe another on his oath And evidence to the character of the accused shall in all cases be received and dealt with as evidence on the question of his guilt.

Witnesses to
character.

349. After the conviction of an accused person in any case and before sentence passed the Court may if it sees fit as well on application by the Crown as by or on behalf of the accused summon witnesses and examine them on oath in respect of any matter in extenuation of his offence.

Witnesses in
mitigation.

350. A witness may be cross-examined as to the contents of any paper written or supposed to have been written by him or as to evidence given or supposed to have been given by him before any Justice without putting in any such paper or the deposition of such witness unless the Judge otherwise orders.

Cross-examination of
witnesses.

351. Wherever by this Act the doing of a particular act or having a specified article or thing in possession without lawful authority or excuse is made or expressed to be an offence the proof of such authority or excuse shall lie on the accused Provided that in every such case he may as to the fact of such authority or excuse be a witness on his own behalf should he so desire.

Proof of
lawful authority
or excuse.

352. Depositions taken on the preliminary or other investigation of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence although of a higher or different nature if they would be admissible on his trial for the offence

Depositions on one
charge may be read
on trial of another.

Criminal Law Amendment.

offence in respect of which they were taken and such depositions may be proved in the same manner as if the accused were on trial for that offence.

Dispensing with
production of
banking books.

353. In any case where it is necessary to prove the state of an account in the books of a Banking Corporation or Company or that any person had not an account or any funds to his credit in the books of such Corporation or Company it shall not be necessary to produce any such book but evidence of the state of such account or that no such account or funds existed may be given by any officer or clerk of the Corporation or Company who has examined such books.

Cases of bigamy.

354. On the prosecution of a person for bigamy the wife or husband of the first marriage shall be competent but not compellable to give evidence for or against the accused provided that no such marriage shall be proved by the evidence of such witness alone And the accused may be a witness on his or her own behalf to prove the continual absence of such wife or husband and that the accused on reasonable ground believed such wife or husband at the time of the second marriage not to be living.

Cases of forged
stamps.

355. Upon the trial of a person for an offence against this Act relating to the stamps of the United Kingdom any stamp or impression transmitted to the Governor with a despatch purporting to be from one of Her Majesty's Secretaries of State as a genuine stamp or impression of any die-plate or instrument provided or used under the direction of the Commissioners of Stamps or other lawful authority for the purpose of denoting any stamp duty shall be evidence of such stamp or impression die-plate or instrument.

Proof of coin being
counterfeit.

356. Where on the trial of a person for an offence against this Act relating to the Queen's current coin it is necessary to prove that any coin is counterfeit it shall not be necessary to prove that fact by any officer of Her Majesty's Mint but it shall be sufficient to prove the same by the evidence of any other witness.

Confession obtained
by undue means.

357. No admission or statement tendered in evidence against an accused person shall be received which has been induced by any untrue representation made or threat or promise held out to him where such threat or promise has been held out by the prosecutor or some person in authority and every admission or statement made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown Provided that no admission or statement by the accused shall be rejected by reason only of his having been told by a person in authority that whatever he should say might be given in evidence for or against him.

Proof of judicial
proceedings or
previous conviction.

358. Where it is on any trial necessary to prove the acquittal or conviction of the accused or any other person in any case—or a previous summary conviction—or the pendency or hearing at any time of any suit action trial or proceeding or inquiry charge or matter civil or criminal before any Court Judge Justice or other official person—a certificate purporting to be signed by the officer having the custody of the records or minutes of the Court or Justices or Justice before which or whom such trial acquittal or conviction was had or such inquiry suit action charge proceeding or matter was heard or pending or purporting to be signed by any such Judge Justice or official person—and containing the substance (omitting the formal parts) of the indictment conviction acquittal or summary conviction or of the inquiry charge proceeding or matter in question—shall be sufficient evidence of the matter stated in such certificate without proof of the signature or official character of the person appearing to have signed the same And every summary conviction shall be presumed not to have been appealed from until the contrary is shown.

Records of Circuit
Courts.

359. During the sitting of any Circuit Court the Judge's Associate or other officer there acting as Clerk of Assize shall in respect
of

Part VIII.—Procedure Evidence and Verdict.

of all proceedings at such sitting be deemed for the purposes of the last section to be the officer having legally the custody of the records of such Court but at all other times they shall be taken to belong to and shall be kept in the Supreme Court and the Prothonotary shall have their legal custody.

360. When any writing or signature is in dispute the same may be compared with any other writing or signature proved to the satisfaction of the Judge to be genuine and such last-mentioned writings or signatures together with the evidence of witnesses respecting the same shall be evidence of the genuineness or otherwise of the disputed writing or signature And any instrument to the validity of which an attestation is not requisite may be proved by admission or otherwise although there is an attesting witness thereto.

Disputed writings
and attested
witnesses.

361. Every declaration by a person since deceased shall be admissible in evidence (in any case where a dying declaration is now admissible) if the declarant was at the time aware of his danger and on the whole believed that he would shortly die although he entertained some degree of hope And no such declaration if otherwise admissible as a dying declaration shall be excluded because of its having been or purporting to be on oath And no criminating statement by the accused offered in evidence in any case if the same was made voluntarily and before any charge of felony or misdemeanour preferred against him shall be rejected because of the statement having been on oath.

Dying declarations
or declarations on
oath.

(d.) Verdict generally.

362. Where on the trial of a person for a misdemeanour it appears that the facts in evidence amount in law to felony he may notwithstanding be found guilty of and sentenced for such misdemeanour and shall in that case not be liable to be prosecuted for felony on the same facts Provided always that the Court may discharge the jury from giving any verdict upon such trial and direct the person to be indicted for felony And no person tried for felony in any case where under this Act he may be acquitted thereof but be found guilty of some other offence shall be liable to prosecution on the same facts for any such other offence.

On trial for misdemeanour facts proved amounting to felony.

Where facts show
some other offence.

363. Where on the trial of a person charged with larceny or any offence which includes larceny and also with having feloniously received the property charged to have been stolen knowing it to have been stolen the jury find specially that he either stole or feloniously received the property specified but they are unable to say which of those offences was committed by him such person shall not by reason thereof be entitled to acquittal but the offender shall be liable to be sentenced on the information for the larceny charged or for the felonious receiving whichever of the two offences is subject to the lesser punishment.

Election in verdict
as to larceny or
receiving.

364. Where on the trial of a person for larceny it appears that the property alleged in any count to have been stolen at one time was taken at different times the prosecutor shall not be required to elect upon which taking he will proceed unless the Judge so orders Provided always that evidence shall not in any case be given of more than three takings nor of any taking which occurred more than six months in point of time from any other of such takings.

Where one taking is
charged and several
takings are proved.

365. Where on the trial of two or more persons for jointly receiving property it is proved that one or more separately received such property or part or parts thereof the jury may convict such of the said persons as is or are proved to have so received the same And on an indictment containing counts against two or more persons for feloniously stealing and also receiving property the jury may find all or any of such persons guilty

Persons indicted
for jointly receiving.

Criminal Law Amendment.

guilty either of stealing or receiving the property or part or parts thereof or may find one or more of the said persons guilty of stealing and the other or others of them guilty of receiving the property or part or parts thereof.

Embezzlement or false pretences &c. verdict of larceny and co. versely.

366. Where on the trial of a person for embezzlement or the fraudulent application or disposition of property as a clerk or servant or person employed in the Public Service or for obtaining property by any false pretence or wilfully false promise it appears that he obtained the property in such manner as to amount in law to larceny the jury may acquit him of the offence charged and find him guilty of simple larceny or of larceny as such clerk servant or person as the case may be and the offender shall be liable to punishment accordingly And where on the trial of a person for larceny it appears that he took the property in such manner as to amount in law to one of the said other offences the jury may acquit him of the larceny and find him guilty of such other offence and the offender shall be liable to punishment accordingly.

On trial for killing cattle. Verdict of stealing and conversely.

367. Where on the trial of a person for the offence of killing cattle within the meaning of the seventy-third section of this Act it appears that he is not guilty thereof but is guilty of stealing the animal the jury may find him guilty of such last-mentioned offence and he shall be liable to punishment accordingly And where on the trial of a person for stealing cattle it appears that he is not guilty thereof but is guilty of stealing the carcass or skin or part of such cattle or of killing the said cattle within the said seventy-third section the jury may find him guilty of such last-mentioned stealing or killing and he shall be liable to punishment accordingly.

Intent to return property.

368. Where on the trial of a person for larceny it appears that the accused appropriated the property in question to his own use or for his own benefit or that of another but intended eventually to restore the same or in the case of money to return an equivalent amount such person shall not by reason only thereof be entitled to acquittal.

Cases of rape and carnal knowledge.

369. Where on the trial of a person for rape it appears that the female was a girl under the age of fourteen years but above ten years and the jury are satisfied that the accused had carnal knowledge of her but with her consent they may acquit the accused of rape and find him guilty of such carnal knowledge and he shall be liable to punishment accordingly And where on the trial of a person for carnally knowing a girl under the age of ten years the jury are satisfied that she was of or above that age but under fourteen years and that the accused had carnal knowledge of such girl the jury may specially find those facts and he shall be liable to punishment accordingly.

On trials for murder as to provocation and verdict of manslaughter.

370. Where on the trial of a person for murder it appears that the act causing death was induced by the use of grossly insulting language or gestures on the part of the deceased the jury may consider the provocation offered as in the case of provocation by a blow And where on any such trial it appears that the act or omission causing death does not amount to murder but does amount to manslaughter the jury may acquit the accused of murder and find him guilty of manslaughter and he shall be liable to punishment accordingly Provided always that in no case shall the crime be reduced from murder to manslaughter by reason of provocation unless the jury find that (1) such provocation was not intentionally caused by any word or act on the part of the accused (2) that it was reasonably calculated to deprive an ordinary person of the power of self-control and did in fact deprive the accused of such power (3) and that the act causing death was done suddenly in the heat of passion caused by such provocation without intent to take life.

(e.)

(e.) Verdict finding a minor or cognate Offence.

371. Where on the trial of a person for larceny it appears that he is not guilty thereof but is guilty of having taken appropriated or retained the property in question under circumstances amounting to a misdemeanour the jury may acquit him of the larceny and find him guilty of such misdemeanour and the offender shall be liable to punishment accordingly. And where on the trial of any person for larceny it appears that he took the property under circumstances constituting an offence punishable summarily under this Act the jury may return a verdict accordingly and thereupon he shall be punished as if dealt with summarily for that offence.

On trial for larceny
verdict of misde-
meanour.

372. Where on the trial of a person for any offence under the twenty-second section of this Act the jury are satisfied that the accused is guilty of the wounding or inflicting grievous bodily harm mentioned in the indictment but are not satisfied that he is guilty of the intent charged therein the jury may acquit the accused of such intent and find him guilty under the twenty-fourth section of this Act and he shall be liable to punishment accordingly.

Wounding with
intent.

373. Where on the trial of a person for any offence mentioned in the twenty-seventh section of this Act the jury are not satisfied that the accused is guilty of such offence but are satisfied that he is guilty of an offence within the then next following section the jury may acquit him of the offence charged and find him guilty under the last-mentioned section and he shall be liable to punishment accordingly.

On trial for poisoning
verdict of misde-
meanour.

374. Where on the trial of a person for any felony or misdemeanour the jury are not satisfied that he is guilty thereof but are satisfied that he is guilty of an attempt to commit or of an assault with intent to commit the same the jury may acquit him of the offence charged and find him guilty of such attempt or assault and he shall be liable to punishment accordingly.

On trial for any
felony or misde-
meanour verdict of
attempt.

375. Where on the trial of a person for stealing cattle the jury are not satisfied that he is guilty of the offence charged but are satisfied that he is guilty of an offence within the one hundred and fifty-fifth section of this Act the jury may acquit the accused of the offence charged and find him guilty under the said section and he shall be liable to punishment accordingly.

Cattle-stealing—
verdict of misde-
meanour.

376. Where on the trial of a person for an offence within the one hundred and eighty-fifth section of this Act the jury are not satisfied that the accused is guilty thereof but are satisfied that he is guilty of an offence within the next following section the jury may acquit him of the offence charged and find him guilty under the last-mentioned section and he shall be liable to punishment accordingly.

Riotous demolition—
verdict of misde-
meanour.

377. Where on the trial of a person for an offence relating to the obstruction of railways mentioned in the two hundred and seventh section of this Act the jury are not satisfied that the accused is guilty thereof but are satisfied that he is guilty of an offence within the two hundred and ninth section of this Act the jury may acquit him of the offence charged and find him guilty under the last-mentioned section and he shall be liable to punishment accordingly.

Obstructing railways
verdict of misde-
meanour.

PART IX.

PROCEEDINGS AFTER VERDICT.

General Provisions.

What not sufficient
to stay or reverse
judgment.

378. No judgment after verdict in any case shall be stayed or reversed for want of a similiter nor by reason that the jury process was awarded to a wrong officer nor for any misnomer or misdescription of the officer returning such process or of any juror nor because any person served upon the jury who was not returned as a juror—nor shall any verdict be affected because of the jury not having been instructed that the accused might on the evidence be convicted of a less offence than the one charged—and where the offence charged is created by statute or subjected to a greater degree of punishment by any statute the indictment shall after verdict be sufficient if it described the offence in the words of the statute.

Certain felonies only
capital.

379. No person shall suffer death unless for some offence punishable by death at the commencement of this Act or some offence by this Act or hereafter made so punishable and whosoever is convicted of an offence not punishable with death shall be punished in the manner prescribed by the statute relating thereto and where no punishment is specially provided shall be liable to penal servitude for five years.

New trials in
misdemeanours.

380. A new trial may be granted in any case of misdemeanour (for any cause for which a new trial may now be granted) in respect of all or some or one only of the defendants where two or more are included in the same indictment although all are not present nor are parties to the motion nor have been tried And a new trial may be granted by the Supreme Court in any case of misdemeanour although the indictment was preferred and the trial had in a Circuit Court and sentence passed there on the defendant or defendants or some or one of them.

Sentences by Courts-
martial under
Imperial Acts.

381. In all cases where under an Imperial Act now or hereafter passed relating to Her Majesty's Land or Sea Forces the Supreme Court or a Judge thereof is authorized to carry into effect a sentence to penal servitude or any commutation of a capital sentence passed by a Court-martial on any soldier marine or seaman and an order is accordingly made by such Court or Judge such sentence or commutation shall be carried into effect (according to the terms of such order) under the provisions of this Act so far as it can be applied and subject thereto this Act shall equally apply to every such sentence or commutation and to every such soldier marine or seaman.

Deferring sentence
on juvenile offenders.

382. Where any person under the age of sixteen years is convicted on an indictment under this Act the Court may abstain from passing any sentence upon him on his entering into a recognizance with sureties that he will appear and receive sentence if within three years required so to do and will keep the peace and be of good behaviour for that period Or the Court may instead of or in addition to any sentence whether of penal servitude or imprisonment direct that the offender shall be sent forthwith or at the expiration of his sentence to a Reformatory School under the provisions of the "Reformatory Schools Act of 1866."

Sending offender to
Reformatory School.

Inquiries subsequent
to a prisoner's con-
viction.

383. Whenever after the conviction of a prisoner any doubt or question arises as to his guilt or any mitigating circumstance in the case or any portion of the evidence therein it shall be lawful for any Justice by direction of the Governor on the petition of the prisoner or some person on his behalf representing such doubt or question—or by direction of a Judge of the Supreme Court of his own motion—to summon and examine on oath all persons likely to give material information on the matter suggested Provided that where on such inquiry

Part IX.—Proceedings after Verdict.

inquiry the character of any person who was a witness on the trial is affected thereby the Justice shall allow such person to be present and to examine any witness produced before such Justice. And such Justice shall transmit every deposition taken by him under this section as soon as shall be practicable to the Governor if the inquiry was directed by him or to the Judge directing the inquiry and the matter shall thereafter be disposed of as to the Governor on the report of such Judge or otherwise shall appear to be just.

384. The attendance of every person so summoned may be enforced and his examination compelled and any statement made by him wilfully false shall be punishable in like manner as if he had been summoned by or been duly sworn and examined before the same Justice in a case lawfully pending before him. Provided that every deposition taken under the last section shall be stated in the commencement to have been so taken and in reference to what case and in pursuance of whose direction mentioning the date thereof. Proceedings thereon.

385. Where a person is convicted of an offence whether punishable with death or otherwise and sentence is deferred the Court before which he was tried or the Supreme Court may pronounce judgment against him at any time afterwards. Dealing with sentences deferred.

Capital Sentences.

386. Every sentence of death may be carried into effect on a day to be appointed for that purpose by the Governor and when executed shall take place within the walls or enclosed yard of such gaol as the Governor directs and be carried into effect by the Sheriff or some deputy appointed by him and all other proceedings in respect thereof shall be taken in the manner now by law provided. And it shall not be necessary in any case that the disposal of the body should form part of the sentence but the body of every person executed shall be buried within the precincts of the prison unless the Governor otherwise directs. Carrying capital sentence into execution.

387. In every case of murder or rape sentence of death shall be pronounced but in every other case where under this Act an offender is liable to the punishment of death the Judge may abstain from passing such sentence and direct such sentence to be recorded and every sentence so recorded shall have the same effect in law as if it had been pronounced in open Court. Recording sentence of death.

388. The Sheriff or his deputy together with the gaoler and such officers of the gaol as he requires including the medical officer shall be present within the gaol at every such execution. And every Justice Minister of Religion and Officer of Police desiring so to do and such military guard and adult spectators as such Sheriff or deputy thinks fit to admit may also attend thereat. Sheriff officers of gaol &c. to witness execution.

389. Every person present at any such execution shall remain within the walls or enclosed yard of the gaol until the sentence has been completed and until the medical officer has signed a certificate in the form set forth in the Fifth Schedule to this Act. And the said Sheriff or deputy and the gaoler and officers shall before their departure subscribe a declaration in the form also set forth in that Schedule. Medical officer to sign certificate.

390. The body of the person executed shall not be buried or removed from the gaol within eight hours next after such execution nor until an inquest has been held as hereinafter provided. And every person who within that time produces to the gaoler an order from a Judge or Police Magistrate requiring him to admit the bearer to view the body shall be admitted by such gaoler accordingly. Body not to be buried within eight hours.

391. The Coroner for the district in which the gaol is situated shall as soon after as is practicable hold an inquest upon the body of the executed person and the jury on such inquest shall inquire and find whether the sentence was duly carried into execution. Inquest to be held on the body.

Criminal Law Amendment.

Certificate and declaration to be recorded.

392. Every such certificate and declaration as aforesaid shall be forthwith transmitted by the Sheriff or his deputy to the Prothonotary of the Supreme Court and be kept in his office as of record and shall be by him published in the *Gazette*. And whosoever subscribes any such certificate or declaration knowing it to contain any false statement or buries or removes from such gaol within eight hours the executed person's body shall be liable to penal servitude for seven years.

Cumulative Sentences.

Sentences on second or third convictions.

393. In every case where on the conviction of a person of an offence punishable under this Act by penal servitude it is made to appear to the Judge that the offender has been previously convicted of and sentenced for an indictable offence such Judge may pass a sentence on him of penal servitude for ten years or not less than two years in addition to the term provided for the last offence and where the offender has been twice or oftener previously so convicted and sentenced he may be sentenced to penal servitude for fourteen years or not less than three years in addition to the term provided for the last offence. And where a person is convicted under this Act of an offence punishable by imprisonment who has been previously convicted of and sentenced for an indictable offence the Judge may pass a sentence on him of imprisonment for eighteen or not less than six months in addition to the term provided for the last offence.

Sentences after any unexpired sentence.

394. Where the term of any previous sentence on an offender whether of penal servitude or imprisonment is in any case unexpired the Judge may direct that the last sentence shall commence at a future day to be named by him within or at the expiration of the period of such unexpired sentence. And where no such direction is given the sentences shall be concurrent.

Proof of previous conviction.

395. Any such previous conviction and sentence may be proved by certificate under the three hundred and fifty-eighth section of this Act or other evidence (together with evidence of the identity of the offender) to the satisfaction of the Judge. Provided that where an offender is convicted of an offence and sentenced for the same and is in the same Court and during the same sittings convicted a second time or oftener judicial notice may be taken of every such previous conviction and sentence.

Previous sentences to be noted in new sentence.

396. Whenever a cumulative or additional term of sentence is passed as aforesaid the fact of the previous sentence or sentences specifying the date or dates thereof and of the term or terms of sentence shall be entered on the minutes and record of the sentence lastly passed.

Sentences on two or more counts.

397. Where a person is in any case convicted on the same indictment of two or more offences similarly punishable sentence may be passed on the second and third counts respectively if the Judge thinks fit for a term to commence at a future day named by him within or at the expiration of the term of sentence passed on the last preceding count.

Hard Labour—Solitary Confinement—And Sureties.

Imprisonment where endured.

398. Whenever imprisonment under this or any other Act is awarded the Court wheresoever sitting may direct that the offender be imprisoned or if a male be imprisoned and kept to hard labour or in the case of a female to light labour in any gaol in New South Wales. And such Court may in the sentence direct that the offender be kept in solitary confinement for any portion or portions of the term not exceeding one month at one time and not exceeding three months within any year—and also may require him or her to enter into a recognizance with or without sureties for keeping the peace and being of good behaviour for a term not exceeding three years. Provided that no person shall be imprisoned under this Act more than one year for not finding sureties.

Solitary confinement.

Recognizance and sureties.

Effect

*Part IX.—Proceedings after Verdict.**Effect of Penal Servitude Sentences.*

399. Penal servitude for the purposes of this Act shall be taken to mean in the case of male offenders hard labour on the roads or other public works of the Colony either in or out of irons according to the sentence passed on the offender. Provided that the Governor may cause the whole or any part of such servitude to be endured and in the absence of any direction by him to the contrary the servitude shall be endured and the sentence in all other respects be carried out within the walls of any goal. And penal servitude shall mean in the case of females hard labour in some goal penitentiary or reformatory as the Governor shall from time to time by general regulations or in any case specially direct.

Meaning and effect of penal servitude sentences.

400. All the laws now in force respecting sentences to hard labour on the roads or other public works and pardons on condition of such hard labour shall apply to every sentence of penal servitude passed on any offender and to all offenders hereafter capitally convicted but pardoned on condition of penal servitude.

Existing laws to be applicable.

Whipping or Irons.

401. Any male person under the age of sixteen years convicted on an indictment of an offence under this act may be sentenced instead of or in addition to any other punishment authorized by this Act to be once twice or thrice privately whipped. Provided that the number of strokes on each occasion and the time or times of such whippings shall be specified by the Court in the sentence not exceeding six months from the time of the passing thereof and that no more than twenty-five strokes (or under the next section fifty strokes) shall be awarded at any one of such times.

Whipping juvenile offenders.

402. Where a male person of or above the age of sixteen years is convicted of an offence under any section of this Act mentioned in the Sixth Schedule hereto—or being at the time of the offence a prisoner in goal is convicted of a felonious assault upon or of maliciously wounding any person in such goal—the Court may in addition to any other punishment prescribed for such offence (subject to the proviso contained in the last section) sentence the offender to be once twice or thrice privately whipped.

Whipping for adults in certain cases.

403. In all cases where whipping is by this Act directed the medical officer of the goal in which the offender is confined shall be present on every occasion when such punishment is inflicted and if of opinion that carrying out the whole or part of such whipping is likely to be attended with dangerous results to the offender such officer may by writing under his hand delivered to the goaler order the postponement of the whole or part of such whipping to some day to be specified in such order.

Surgeon may remit whipping in certain cases.

404. The Comptroller-General of Prisons with the approval of the Governor may prescribe the form and kind of instrument to be used in the whipping of offenders under the age of fourteen or of or above that age and under the age of sixteen years and of or above the last-mentioned age and to direct the manner of its use in each case. And no other kind of instrument or manner of using the same shall thereafter be used in the carrying out of the sentence on any offender.

Kind of instrument to be used.

405. Whenever any person has been convicted under this Act of a felony attended with violence to the person or committed by the offender when armed with any offensive weapon or instrument or by means of any threat or by putting in fear the Court may direct that the offender be kept in irons for any portion not exceeding the first three years of his term of punishment.

Irons in what cases.

Commutation

*Criminal Law Amendment.**Commutation or Mitigation of Sentences.*

Commutation of
capital sentences.

406. In all cases in which the Governor is authorized on behalf of Her Majesty to exercise the pardoning power it shall be lawful for him to extend mercy to any offender under sentence of death on condition of his being kept in penal servitude—or imprisoned with or without hard labour for life or for any less term—and also if the Governor thinks fit to direct that the offender be kept in irons for any time not exceeding the first three years of such servitude or imprisonment—and in addition thereto in cases of rape or of carnal knowledge of a girl under ten years to direct that the offender shall be once twice or thrice publicly or privately whipped at such times and with so many strokes at each time not more than fifty as the Governor shall think fit.

Cases of rape &c.

Judge to make
order accordingly.

407. Upon any such extension of mercy being signified to the Judge before whom the offender was convicted such Judge shall make an order that the offender be dealt with according to the terms of such extension which order shall have the effect of a valid sentence passed by the court before which the offender was convicted and shall be entered on the records of the Court accordingly.

General Regulations
for remission of
sentences.

408. The Governor may make such General Regulations as he thinks fit for the mitigation or remission conditional or otherwise of the punishments of penal servitude or imprisonment or of imprisonment with hard labour whether under the sentence of a Court or under any order made as last aforesaid as an incentive to or reward for good conduct whilst the offender shall be serving under any such sentence or order and to mitigate or remit the term of punishment accordingly.

Tickets-of-leave and
other mitigations.

409. The Governor may grant at any time to an offender under sentence a remission of the whole or any portion of such sentence on condition of his giving security by recognizance for his good behaviour as to the Governor shall seem meet—and may grant to any offender a written license to be at large within limits specified in the license but not elsewhere during the unexpired portion of his sentence subject to such conditions indorsed on the license as the Governor shall prescribe—and while such offender continues to reside within the limits specified and to perform the conditions so prescribed his sentence shall be suspended.

Revocation or
cancellation of
ticket.

410. Every such license may be revoked by the Governor at discretion and on such revocation or on breach of any condition subject to which the license was granted to be proved in a summary way before a Justice the offender may by warrant be committed to any goal there to undergo the remainder of his sentence or to remain until thence removed in pursuance of his sentence.

Arrest on breach of
conditions.

411. Where the holder of any such license is found out of the limits specified therein or reasonably suspected of having broken any other condition of his license any constable may arrest the person so offending or so suspected and bring him before some Justice to be dealt with summarily under this or the last section And if adjudged to have wilfully and without lawful excuse broken any such condition the offender may by such Justice be dealt with under that section.

Remissions of
sentence where
more than one.

412. Where an offender is under more than one sentence of penal servitude or imprisonment and one of such sentences is vacated or avoided by due course of law or remitted by the Governor the remaining sentences or sentence shall take effect and be computed on and from the day of such vacation avoidance or remission or such earlier day as the Governor shall direct.

Restitution of Property Stolen &c.

Prosecutor in certain
cases to have
property restored.

413. Where a person is convicted under this Act of stealing embezzling or receiving property the Court may order the restitution hereof in a summary manner to the owner or his representative And where

Part IX.—Proceedings after Verdict.

where any person indicted for any such offence is acquitted the Court in its discretion on being satisfied that any property mentioned in the indictment has been stolen embezzled or received contrary to this Act may order in like manner the restitution of such property Provided that where any valuable security has been paid by some person liable to the payment thereof or being a negotiable instrument has been taken for a valuable consideration without notice or cause to suspect that the same had been dishonestly come by the Court shall not order such restitution.

414. The preceding section shall equally apply to property in any manner taken or otherwise acquired received retained or disposed of in violation of any provision of this Act. Application of preceding section.

Disposal of Insane persons.

415. Where a person indicted for any offence is acquitted on the ground that he was insane at the time of committing such offence the Court shall order such person to be detained in custody in such gaol or place as to the Court may seem fit until the Governor's pleasure is known And the Governor may by warrant under his hand direct that such person be conveyed to and kept in some hospital for insane persons during Her Majesty's pleasure subject however to such classification as may be directed in that behalf—And the like where a person committed for any offence is on arraignment found to be insane provided that his detention in any such hospital shall not on recovery prevent or affect his trial for such offence. Person acquitted on ground of insanity.

Forfeiture of Property by Conviction.

416. No inquest conviction or judgment in respect of any felony committed after the passing of this Act shall cause any escheat or forfeiture of land or goods Provided always that on or at any time after the conviction of a person for a felony so committed the Court in which he was tried or any Judge thereof may direct a sum not exceeding five hundred pounds to be paid out of the property of the offender to any aggrieved person by way of compensation for injury or loss sustained through or by reason of such felony. Provision substituted for forfeiture in felonies.

417. Every such direction shall be entered in a book kept in the office of the Prothonotary of the Supreme Court and after such entry shall be deemed to be of record and shall have the effect of a judgment of that Court at law and be enforceable by execution as any such judgment is ordinarily enforced And every alienation of the offender's property or any part thereof executed or made by him or any person by his direction after the commission of his offence and within twelve months before his conviction shall as against every such writ be absolutely void Provided that nothing in this section shall affect any alienation to a person for valuable consideration and without notice or knowledge of such offence. Enforcing such provision.

418. After the conviction of an offender for any felony until he has endured the punishment to which he was sentenced or the punishment if any substituted for the same or the unremitted portion of such punishment or has received a free pardon for his offence he shall be incapable of holding or being elected or appointed to any office or of exercising any electoral or municipal franchise And for the maintenance of herself and her children or for enforcing the payment of wages earned by her or them or the recovery of property to which she may be entitled or of damages for any personal injury the wife of every such offender while under disability may maintain any suit or action and any property acquired by her since her husband's conviction may in an indictment be described as the property of the wife as if she were unmarried. Disabilities of felony.

Criminal Law Amendment.

Effect of reversing judgment in such cases.

419. Upon the avoidance or vacating of the conviction of any such person or reversal of the judgment against him the provisions of the three last sections shall with respect to such person determine and every order made for the payment of money out of his property shall become of no effect and he shall be restored to all that he may have lost thereby.

Power to place offender's property in trust.

420. The Supreme Court or any Judge thereof at any time within six months after any such conviction for felony may on the application of the Crown or of any creditor of the offender direct that such offender's estate shall be placed under sequestration in the hands of an Official Assignee of Insolvent Estates or in the hands of some other person appointed by such Court or Judge—And every such direction after entry thereof in the book kept in the Prothonotary's office as aforesaid shall have the effect of an adjudication under any Act then in force providing for the administration of insolvent or bankrupt estates and shall vest in such assignee or person for the benefit of the creditors and family of the offender all his estate rights and credits then existing or to accrue during his disability—And every person having any claim legal or equitable against the offender whether for damages in respect of any wrong or otherwise shall be deemed a creditor within the meaning of this section—and the matter of such claim shall be inquired into and determined and such damages be assessed in such manner as the Court or a Judge may direct.

Who to be deemed creditors.

Provision for offender's family.

421. The Chief Commissioner of Insolvent Estates or Officer having corresponding duties hereafter in bankruptcy may cause to be set apart from time to time out of such estate and credits such sums for the support of the offender's wife and children as such Commissioner or Officer thinks proper subject nevertheless to the payment of the creditors of the offender or such of them as have proved their claims—Provided that on the termination of such offender's disability by any means the Official Assignee or other person appointed as aforesaid shall restore to him all property and moneys if any in the estate then unappropriated or on the death of the offender if that first happens shall deliver and pay such property and moneys to the person or persons then entitled thereto.

Restoration on disability ceasing.

Reserving Questions of Law.

Questions of law may be reserved.

422. Where any question of law arises on the trial of any person or is submitted before sentence passed on him the Court shall on the application of his counsel or attorney then made and may in its discretion without any application reserve every such question for the consideration of the Judges of the Supreme Court And thereupon the Court shall either commit the person to prison or take his recognizance with one or more surety or sureties to appear at such time and place as the Supreme Court may direct and receive judgment or if judgment has been given that he will render himself in execution And the like proceedings may be taken so far as they are applicable where any question of law arises on the arraignment of any person or as to the verdict or judgment given or to be given thereon.

proceedings thereon.

423. The Judge by whom any such question is reserved shall as soon as practicable state a case setting forth the same with the facts and circumstances out of which every such question arose and shall transmit such case to the Judges of the Supreme Court who shall determine the questions and may affirm amend or reverse the judgment given or avoid or arrest the same or may order an entry to be made on the record that the person convicted ought not to have been convicted or may make such other order as justice requires Provided that no conviction or judgment thereon shall be reversed arrested or avoided on any case so stated unless for some substantial wrong or other miscarriage of justice.

Part X.—Summary Proceedings before Justices.

424. Every such determination and order shall be certified under the hand of the Prothonotary to the proper officer of the Court in which the conviction took place who shall enter the same on the record and if the person convicted is in custody a certificate shall be transmitted to the gaoler having such custody which certificate shall be a sufficient warrant for the execution of the judgment if against the convicted person or for his discharge from imprisonment if the judgment has been reversed avoided or arrested And such judgment shall be executed or the person be forthwith discharged or his recognizance if on bail be vacated accordingly. Certificate of affirmation or reversal.

425. The Judges of the Supreme Court may if they think fit cause any case so stated to be sent back for amendment and thereupon the same shall be amended and judgment be delivered thereon accordingly. Case may be sent back for amendment.

426. Every judgment of the Judges on any such case shall be delivered in open Court (after hearing counsel or the parties in case the Attorney-General or prosecutor or the person convicted appears to argue the same) as other judgments of the Supreme Court are delivered. Argument and judgment.

Writs of Error.

427. Wherever after a conviction in England for felony or misdemeanour a Writ of Error might on the fiat of the Attorney-General be brought for reversal of the judgment thereon the like writ may by rule or order for that purpose on motion or on application in Chambers on behalf of either the Crown or the prisoner and after cause shown be issued out of the Supreme Court returnable therein for reversal of the judgment on any conviction in that or any other Court in this Colony Provided that no judgment shall be reversed or avoided for any error unless some substantial wrong appears to have been done or some other miscarriage of justice occasioned by reason of such error And where any such error appears to the Judges to be amendable the same shall be amended accordingly and they may either thereupon make the necessary amendments or may remit the record to the Court whence it came that the same may be amended there And in either case all such orders may be made and such writs issued as to the Judges or (where the record is so remitted) as to the Court below may seem proper. Writ of Error how obtained. Amending record.

PART X.

SUMMARY PROCEEDINGS BEFORE JUSTICES.

General Provision.

428. Where by this Act a person is made liable to imprisonment or to pay a sum of money on conviction before Justices such person may be proceeded against and convicted in a summary way under the statute passed in England in the twelfth year of Her Majesty and adopted in this Colony by the "Justices Act of 1850" for regulating proceedings on summary convictions or under the present Act so far as it may be applicable to any such proceeding or conviction or in such other manner as shall be directed by any Act hereafter passed for the like purpose and every provision contained in such Acts shall be applicable to such proceedings as if the same were incorporated in this Act. Proceedings before Justices to be summary.

Apprehension

Apprehension of Offenders and Search Warrants.

Arrest of persons.

429. Every constable or other person may without a warrant apprehend any person in the act of committing or immediately after having committed an offence punishable whether by indictment or on summary conviction under this or any other Act and take such person together with any property found upon him before a Justice to be dealt with according to law—And may in like manner apprehend and deal with any offender who has committed a crime punishable by death or penal servitude and for which he has not been tried—And every constable may without warrant apprehend and in like manner deal with any person whom he with reasonable cause suspects of having committed any such crime—And where any credible witness on oath before a Justice shows reasonable cause to suspect that any person has unlawfully in his possession or on his premises any property with respect to which an offence punishable by indictment has been or is reasonably believed to have been committed the Justice may grant a warrant to search for such property which warrant may be executed as in the case of stolen goods.

Search warrants.

Search warrant for explosive substances.

430. A search warrant may be granted by a Justice on the oath of any credible witness showing reasonable cause to suspect that a person named or described has unlawfully in his possession or on his premises any machine or implement or gunpowder or other explosive dangerous or noxious substance or thing suspected to be made or kept for the purpose of committing felony or any frame mould implement or material the making or knowingly having of which without lawful authority or excuse is by this Act made punishable or any forged security or instrument or stamp machinery frame mould or other thing used or intended to be used in the forging of any instrument or stamp or any counterfeit coin or instrument tool or engine intended for counterfeiting coin.

Implements used in forging or for counterfeit coin.

Proceedings upon finding property &c.

431. Every warrant granted under either of the two last sections shall authorize the searching for the property or things mentioned in those sections and in the warrant issued in pursuance thereof and the person finding any such property or thing under any such warrant shall carry the same before a Justice who shall if necessary cause the same to be secured for the purposes of evidence and after it has been produced in evidence or when it is not required as evidence such property or thing shall be disposed of as the Court or any two Justices shall direct But no such warrant (whether any property or thing be so found or not) shall authorize the apprehension of any person.

Persons offering stolen property arrested.

432. Where any property is offered to be sold pawned or delivered to any person if with reasonable cause he suspects that an offence has been committed with respect to such property he is hereby authorized and if in his power is required to apprehend and forthwith take before a Justice the party offering the same together with such property to be dealt with according to law.

Persons loitering at night and suspected of felony.

433. Any constable may take into custody without a warrant any person lying or loitering in any highway yard or other place during the night who is with reasonable cause suspected by him of having committed or being about to commit any felony and shall take such person before a Justice to be dealt with according to law.

Enforcing Appearance—Adjudication—Committal.

Compelling the appearance of defendants.

434. Where any person is by information in writing charged before a Justice with an offence punishable on summary conviction under this Act such Justice may summon the person charged to appear
at

Part X.—Summary Proceedings before Justices.

at a time and place named in the summons and if he does not appear accordingly then—upon proof by affidavit or otherwise of service of the summons upon such person by delivering the same to him personally or by leaving it at his usual place of abode—two Justices may either proceed to hear and determine the case *ex parte* or issue their warrant for apprehending such person and bringing him before themselves or some other Justices—Or where the information is by any credible person on oath the Justice before whom the charge is made may without any previous summons issue such warrant—And the Justices before whom the person charged appears or is brought shall proceed to hear and determine the case.

435. Every sum forfeited for the amount of any injury shall be assessed by the convicting Justices and be paid to the party aggrieved except where he is unknown in which case such sum shall be applied in the same manner as a penalty and every sum imposed as a penalty by Justices whether in addition to such amount or otherwise shall be applied in the manner provided by the “Acts Shortening Act of 1852” or any enactment hereafter passed providing for the application of penalties—Provided that where several persons have joined in the commission of the same offence and on conviction are severally adjudged to forfeit a sum equivalent to the amount of the injury done no greater sum shall be paid to the party aggrieved than such amount and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by Justices is applied. Application of forfeitures and penalties.

436. In every case of a summary conviction under this Act where the sum adjudged to be paid or forfeited or imposed as a penalty is not paid into the hands of the Clerk of the Bench together with the costs imposed if any immediately upon the conviction or within such period as the Justices shall at the time of conviction have appointed such Justices or one of them may commit the offender to prison for non-payment there to remain according to the amount unpaid for the terms hereinafter specified respectively that is to say—for the term of twenty-one days where the unpaid amount does not exceed two pounds—or for two months where such unpaid amount is above that sum does not exceed five pounds—for four months where such unpaid amount is above five does not exceed ten pounds—and for six months in any other case—the imprisonment to cease in each case nevertheless on payment of the amount stated in the warrant to be unpaid. Committal on non-payment.

437. Whenever any person is so committed as last aforesaid the commitment may be to any gaol and whenever imprisonment is awarded for an offence punishable on summary conviction under this Act the Justices may in their discretion direct that the offender be imprisoned in any gaol with or without hard labour. Award of hard labour.

438. Where any person under the age of sixteen years is summarily convicted before Justices under this Act other than the one hundred and fiftieth section and it is a first conviction the Justices may if they think fit discharge the offender upon his making such satisfaction to the party aggrieved for damages and costs as they think just or upon his entering into a recognizance with one or more surety or sureties that he will be of good behaviour for a term to be fixed by them of not exceeding twelve months next ensuing. Discharge of offender making amends.

439. Where any person summarily convicted under this Act pays the sum or sums adjudged to be paid together with costs or receives a remission thereof from the Crown or suffers the imprisonment provided for non-payment thereof or the imprisonment adjudged in the first instance or is discharged from his conviction by the Justices as last aforesaid he shall not be liable to any other proceeding for the same cause. Summary conviction a bar to further proceedings.

Appeals

*Criminal Law Amendment.**Appeals &c.*

When appeal
allowed &c.

440. In all cases of summary conviction the person convicted may appeal to the next Court of General Sessions appointed to be holden in the District where the cause of complaint arose or where the day of sitting is within ten days then to the next Court but one after the conviction—Provided that such person shall give to the prosecutor and also to the Clerk of the convicting Justices a notice in writing of such appeal within three days after such conviction—and shall either remain in custody until the Sessions or shall within eight days after the conviction enter into a recognizance with two sureties before one of such Justices conditioned to appear at the Sessions and prosecute such appeal and abide the judgment of the Court thereupon and to pay such costs as shall be awarded—or where only money has been adjudged to be paid shall at his option deposit with the Clerk of the Justices the sum so adjudged together with the costs of the conviction and the sum of ten pounds in respect of the costs of the appeal.

Proceedings upon
appeal

441. Upon such notice being given and such recognizance entered into or such deposit made the convicting Justices or one of them shall liberate the convicted person if in custody and the Court appealed to shall hear and determine the matter of the appeal and make such order therein with or without costs to either party as to the Court seems meet—and in case of affirmance of the conviction shall adjudge the offender to be punished according to the conviction and to pay such costs as are awarded and where any such deposit has been made as aforesaid may order the sum adjudged to be paid together with the costs of the conviction and of the appeal to be satisfied so far as the same will extend out of the money deposited and the residue if any (or if the conviction be quashed the whole of such money) to be repaid to the person convicted.

Convictions when
appealed from to
be sent to the
Sessions.

442. For the purposes of such appeal when perfected by such notice and recognizance or deposit as aforesaid (or by such notice and the remaining of the appellant in custody) the convicting Justices shall transmit the conviction to the Court of Sessions appealed to there to be kept among the records of the Court and whenever thereafter it is necessary to prove such conviction a certificate thereof to the effect mentioned in this Act purporting to be signed by the person having the custody of such records shall be sufficient evidence to prove such conviction.

Where conviction
is quashed.

443. Where any conviction is quashed on appeal the Clerk of the Peace or other proper officer shall forthwith indorse on the conviction a memorandum to that effect and whenever any certificate of such conviction is given a copy of such memorandum shall be added and in every case where such certificate would be evidence of the conviction it shall be sufficient evidence that such conviction has been quashed Provided always that no conviction shall be quashed in any case where evidence not before the convicting Justices is given on behalf of the appellant unless it appears to the Court and is so stated in the judgment that such evidence was not at the time of the hearing accessible to or procurable by the appellant.

Formal Matters—Jurisdiction &c.

As to proof of
jurisdiction &c.

444. Every district or place mentioned in any information deposition conviction summons warrant or order before or by any Justice shall without any allegation to that effect be taken to be in this Colony and within the jurisdiction of such Justice unless the contrary be shown—And no conviction or adjudication on appeal shall be removed by any writ or order into the Supreme Court and no

Certiorari.

warrant

Part X.—Summary Proceedings before Justices.

warrant of commitment shall be held void by reason of any defect therein provided it is therein alleged that the party has been convicted and if there is a valid conviction to sustain such commitment.

445. Notwithstanding any power of apprehension or arrest without warrant given by this Act the several provisions in the Acts regulating summary proceedings before Justices in force for the time being for the issue of summonses and warrants shall be applicable for the purpose of compelling the appearance of a person charged with an offence under this Act before any Justice whether a Police or Stipendiary Magistrate or not And wherever the Justice is of opinion that the offence charged is a fit subject for prosecution by indictment he shall abstain from adjudication thereon and deal with the case for the purpose of committal only.

Offenders may be summoned &c.

When jurisdiction not to be exercised.

Certain Offences by Boys and Youths.

446. For the purposes of this and the two following sections the word "boy" means a male person apparently above the age of ten and under fourteen years and the word "youth" means a male person apparently of or above fourteen and under eighteen years And any such boy or youth who commits any of the offences in this section enumerated shall on conviction before a Police or Stipendiary Magistrate be liable to a penalty not exceeding forty shillings or to detention in custody in any lock-up or police office or building or yard attached thereto or such other place as the Magistrate directs for the period mentioned in the next section and in any case in which upon conviction the offender would be liable to whipping under this section or the four hundred and forty-ninth section of this Act the Court adjudicating in such case shall consist of two or more Justices one at least of whom shall be a Police or Stipendiary Magistrate and such Court may upon conviction of the offender either unanimously or by a majority order him to pay a penalty as aforesaid or to be detained in the place and for the period mentioned and referred to as aforesaid and to be there once privately whipped—that is to say—(a) who in company with any other person commits any wanton or unprovoked assault or (b) in any public place or in view thereof exposes his person or commits any other indecent act or uses obscene or blasphemous language or (c) in any public place or in view thereof writes or marks upon any building pavement wall hoarding fence scaffolding or any foot-way or road-way any obscene or disgusting word or form or sign or (d) throws any missile or throws places or deposits any noxious or filthy matter or fluid so as to endanger the safety of or with intent to injure or annoy any person or so as to create a nuisance or (e) in any public place park or reserve or cemetery or any public or private garden or ornamental grounds wantonly destroys or damages or attempts to destroy or damage any road or pathway tree shrub or plant trellis-stand flower-stand railing seat fountain or other structure or (f) wantonly destroys damages or disfigures or attempts to destroy damage or disfigure any portion of a public building statue work of art or pedestal or structure belonging thereto or any tombstone or monument in any cemetery or church-yard or (g) cruelly maims wounds or injures any dumb animal.

Definition—Offences enumerated.

Penalties provided.

447. For boys the number of strokes inflicted shall not exceed eighteen and for youths the number shall not be less than six nor more than twenty and the number of strokes to be inflicted shall in each case be specified by the Court with the place of infliction In every case the offender shall be kept in custody for not less than six nor more than ninety-six hours after conviction in such place as is aforesaid and the whipping shall be inflicted during such custody and not less than six hours after conviction.

Number of strokes if whipping is ordered.

Criminal Law Amendment.

Discharge on security
for good behaviour.

448. Provided that any boy or youth prosecuted under the four hundred and forty-sixth section may if it appears to be his first offence be discharged after six hours detention upon some approved person on his behalf entering into a recognizance in not less than twenty nor more than forty pounds for the offender's good behaviour during the next six months. Provided also that where the offender is a boy only and the offence appears to be his first—or where the offender is a youth but the offence appears to be his first and is not one of the offences indicated in the said section by the italic letters *b* or *c* or *f* or *g*—he shall not be liable to the punishment of whipping.

The like offence by
adults.

449. Any of the acts enumerated in the said four hundred and forty-sixth section if committed by a male person apparently of or above the age of eighteen years shall be equally an offence punishable under that and the then next section by detention in custody and by whipping. And in the case of any such person the Court may order a number of strokes not less than ten nor more than thirty.

PART XI.

MISCELLANEOUS ENACTMENTS.

For protection
of persons acting
under this Act.

450. All actions against any person for anything done or reasonably supposed to have been done in pursuance of this Act shall be commenced within six months after the fact committed and notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before commencement of the action and in any such action the defendant may plead the general issue and give the special matter in evidence thereupon—And no plaintiff shall recover in any such action if a tender of sufficient amends was made before action brought or if a sufficient sum is paid into Court on behalf of the defendant after action brought—And if a verdict passes for the defendant or the plaintiff becomes nonsuit or discontinues his action after issue joined or if upon demurrer or otherwise judgment is given against the plaintiff the defendant shall recover costs as between attorney and client.

No Court fees to be
taken in criminal
cases.

451. It shall not be lawful to receive any Court fees for the issuing of process on behalf of a person charged with felony or misdemeanour in any Court or before any Justice nor to receive a fee from any such person for taking a recognizance of bail or issuing any writ or recording any appearance or plea to an indictment or discharging any recognizance.

Power of Courts
to bring prisoners
before them.

452. Every Court or Judge shall for the purposes of any trial or prosecution have power by order in writing directed to any gaoler to cause any prisoner to be brought before such Court or Judge under secure conduct in order to be tried or examined or to give evidence before such Court or Judge or before any other Court or any Justice and immediately after such prisoner's trial or examination or his having so given evidence to be returned to his former custody. Provided that nothing in this section shall affect the power of a Court of Gaol Delivery sitting for the delivery of a gaol to cause any prisoner therein to be brought before it for any purpose without order in writing.

Facilitating process
in *habeas corpus*
cases.

453. In every case where the Supreme Court grants a rule to show cause why a writ of *habeas corpus* should not issue such Court on the return of such rule and the appearance of the party called on to show

Part XI.—Miscellaneous.

show cause or on proof of service of such rule may make all such orders as might be made after issue of the writ and the bringing up of the body. Provided that any such writ may be issued after the return of the rule if the Court thinks fit.

454. On the return of any such writ or rule where the truth of the return or any matter shown for cause is disputed the Court may refer such return or matter to any officer of the Court or Commissioner for Affidavits for the taking of evidence thereon orally or by affidavit and for the purposes of such reference may make all necessary orders for the attendance of witnesses and otherwise—and on the completion of the evidence the Court may dispose of the case as the circumstances appear to require with costs to be paid by and to any party or without costs as the Court may think fit. Proceedings thereupon.

455. The powers conferred by the two last sections respectively may in vacation be exercised by any Judge of the Supreme Court and the words Court and Supreme Court shall for that purpose be taken equally to mean any such Judge. Power of a Judge therein in vacation.

456. Whosoever has in his custody any matter the felonious receiving of which or its possession without lawful cause or excuse is by this or any other Act expressed to be an offence—or knowingly has any such matter in the custody of another person—or knowingly has any such matter in a house building lodging or apartment or field or other place whether belonging to or occupied by himself or not—and whether such matter is there had or placed—for his own use or the use of another—shall be deemed to have such matter in his possession within the meaning of such Act. Meaning of term possession when criminal.

457. Where by any section of this Act an offender is made liable to a greater punishment on a second or subsequent conviction whether on an indictment or before Justices—or is for any second or third offence of the same kind after a conviction or two convictions before Justices made punishable as for felony or a misdemeanour—it shall be immaterial whether any such previous conviction is under the present or any former Act. Declaratory provision as to previous convictions.

458. Whenever a person is convicted of any of the offences hereinafter mentioned as a misdemeanour at common law the Court may sentence him to be kept to hard labour during the whole or any part of the term of his imprisonment that is to say—any cheat or fraud or conspiracy to cheat or defraud—any conspiracy to extort property or in any manner to obstruct prevent or defeat the course of justice—any escape or rescue from lawful custody on a criminal charge—any indecent exposure of the person or any act of selling or exposing for sale or to public view any obscene book print picture photograph or other indecent exhibition—any riot or the offence of keeping any brothel or common gambling-house. Provided that any conspiracy falsely to accuse a person of a crime shall hereafter be deemed a felony and be punishable by penal servitude for fourteen years. Hard labour for certain common law misdemeanours.

459. Every Court of General Sessions and Court of Petty Sessions hereafter established shall have respectively the same jurisdiction Criminal and Civil as the Courts of Quarter Sessions or General Sessions and Petty Sessions now possess respectively. And the Governor may by Proclamation establish additional Courts of General Sessions and Petty Sessions and direct that they be holden severally at such places and for such districts as he thereby appoints and in like manner he may abolish any such Court whether now existing or hereafter established. Conspiracy to accuse of crime.

460. Every accused person shall be entitled on his trial to inspect without fee or reward all depositions taken against him and returned into or which shall be in the Court before which he is under trial. Establishment and Jurisdiction of General and Petty Sessions.

Criminal Law Amendment.

Supreme Court
Judges may prescribe
forms of indictments.

461. The Judge of the Supreme Court or any two of them may from time to time frame and prescribe forms of indictments records informations depositions convictions warrants recognizances and proceedings in all Courts and before all Justices in respect of any of the offences and matters mentioned in this Act and every such form so prescribed shall thereafter be sufficient for the purpose and be deemed sufficiently to state the offence or matter for or in respect of which it is framed.

Provision for wife
assaulted by husband.

462. In every case of aggravated assault by a husband on his wife where a declaration is made under the fifty-third section of this Act to the effect there mentioned any Judge may at any time make an order or orders (which may be varied by any Judge from time to time) as to the legal custody of the children of the marriage and also as to the payment by the husband to the wife or some person for her use after the expiration of his sentence of a weekly or monthly sum for her support And every such last-mentioned order may be enforced as any order under the Act commonly called the Deserted Wives and Children's Act may be.

Prosecutions for
blasphemy.

463. No person shall be liable to prosecution in respect of any publication by him orally or otherwise of words or matter charged as blasphemous where the same is by way of argument or statement—and not for the purpose of scoffing or reviling—nor of violating public decency—nor in any manner tending to a breach of the peace.

Witnesses neglecting
to attend trial.

464. Where a person bound by recognizance or served with a subpœna to attend as a witness in any Court at a trial fails to appear when called in open Court either at such trial or on the day appointed for such trial the Court may upon proof of such recognizance or of his having been duly served with such subpœna call upon such person to show cause why execution upon his recognizance or why an attachment for disobedience to such subpœna should not be issued against him—or upon proof of those facts and also that the person's non-appearance was without reasonable excuse the Court may issue a warrant to bring him before such Court at its then or next sitting to give evidence at such trial—Provided that after capture under such warrant bail may be taken before any Justice for the person's appearance at the trial.

Modes of proceeding.

465. Such proof may be taken orally or by affidavit sworn before any Commissioner for Affidavits or Justice of the Peace And every rule or order to show cause as aforesaid may be returnable either before the Court itself at its then sitting or at some future sitting or in respect of the non-appearance of a witness at a Circuit Court or on the trial of a case pending in the Supreme Court the rule or order may be made returnable in the Supreme Court And on the return of such rule or order the Court may deal with the case as the Supreme Court might have done upon a rule to the like effect issued out of that Court.

Recognizance to keep
the peace in cases of
apprehended
violence.

466. In every case of apprehended violence by any person to the person of another or of his wife or child or of apprehended injury to his property it shall be lawful for any Justice on the complaint of the person apprehending such violence or injury to issue a summons or warrant as in any case of apprehended violence to the person where at present security is required to keep the peace and such Justice may examine the complainant and defendant and their witnesses as to the truth of the matter alleged and if it appears that the apprehension alleged is reasonable but not otherwise the Justice may require the defendant to enter into a recognizance to keep the peace with or without sureties as in any case of a like nature If nevertheless the defendant has spoken any offensive or defamatory words to or of the complainant on an occasion when a breach of the peace might have been induced

Recognizance for
good behaviour.

Part XI.—Miscellaneous.

induced thereby he may be required by the Justice to enter into a recognizance with or without sureties to be of good behaviour for a term not exceeding six months and in default of its being entered into forthwith the defendant may be imprisoned for a term not exceeding three months unless such recognizance is sooner entered into. The Justice in every such case may award costs to either complainant or defendant to be recovered as costs in summary jurisdiction cases are recoverable. Costs.

467. Where by this or any other Act any offence conduct or language in a public place or open and public place or place of public resort is made punishable or a person guilty thereof is made liable to apprehension the place shall be deemed public for the purposes of the enactment or taken to be otherwise within its meaning if the same (although a vessel or vehicle only or a room or field or place ordinarily private) was at the time used for a public purpose or as a place of common resort or was open to the public on the payment of money or otherwise. Meaning of the term "public place" &c.

468. Every indecent exposure of the person which is punishable at common law or by statute if seen by two or more persons shall be equally an offence and punishable if such exposure was or could have been seen by one person. Indecent exposure of the person.

469. On the trial of a person for feloniously receiving stolen property evidence may be given of his having been within seven years previously convicted of larceny or the felonious receiving of stolen property or of obtaining property by false pretences and evidence may also be given that other stolen property if stolen within twelve months before such trial has been found in his possession or on his premises and such facts may be taken into consideration by the jury as evidence of guilty knowledge. Provided always that the same facts have been given in evidence against the accused on his committal or that ten days notice at the least was given him before his trial of the intention to adduce such evidence. Receivers evidence of guilty knowledge.

470. Every accused person on his trial may if so advised by counsel make any admissions as to matters of fact whatever the crime charged or give any consent which might lawfully be given in a civil case—and whether defended by counsel or not he may make any statement at the close of the case for the prosecution and before calling any witness in his defence without being liable to examination thereupon by counsel for the Crown or by the Court—and may thereafter personally or by his counsel address the jury. As to conducting defence at trial.

471. In every case of prosecution before Justices in the exercise of their summary jurisdiction if upon the close of the case for the prosecution it appears to such Justices that the offence ought to be dealt with by indictment then may dismiss the case on that ground and thereupon hold the defendant to bail to answer the charge at such Court as they think proper. Indictable offences where prosecuted summarily.

472. In all cases where by virtue of any enactment power to make by-laws or regulations has been or shall be conferred upon any persons or body any printed paper purporting to be such by-laws or regulations and to be printed by the Government Printer shall be evidence that by-laws or regulations in the words printed in such paper were duly made by such persons or body and if appearing by such paper to have been approved of or confirmed by the Governor the same shall be evidence also of such approval or confirmation. Proof of by-laws

Criminal Law Amendment—Schedules.

SCHEDULES.

FIRST SCHEDULE.

REPEAL OF ACTS.

Reference to Act.	Subject of Act.	Extent of Repeal.
1 Edw. VI c. 7 ...	Actions &c. after the demise of the Crown	Section 7.
5 Eliz. c. 9 ...	Perjury	The whole.
9 & 10 Wm. III c. 32	Blasphemy	The whole.
2 Geo. II c. 25 ...	Perjury	Section 2.
23 Geo. II c. 11 ...	Ibid	The whole.
37 Geo. III c. 126 ...	Coinage	The whole.
41 Geo. III c. 57 ...	Forgery	The whole.
43 Geo. III c. 139 ...	Ibid	The whole.
1 Geo. IV c. 4 ...	Negligent driving	The whole.
1 Geo. IV c. 92 ...	Forgery	The whole.
4 Geo. IV c. 48 ...	Capital Sentences	The whole.
4 Geo. IV c. 53 ...	Benefit of Clergy	The whole.
4 Geo. IV c. 54 ...	Ibid	The whole.
7 Geo. IV c. 64 ...	Administration of Criminal Justice	The whole except sections 4 5 and 6.
7 and 8 Geo. IV c. 18	Prohibition of spring guns &c. ...	The whole.
7 and 8 Geo. IV c. 28	Administration of Criminal Justice	The whole.
7 and 8 Geo. IV c. 29	Larceny	The whole.
7 and 8 Geo. IV c. 30	Malicious Injuries	The whole.
9 Geo. IV No. 1 ...	Adoption of certain Acts ...	The whole.
9 Geo. IV c. 31 ...	Offences against the person ...	So much of section 22 as relates to punishment and all the other unrepealed sections except sections 8 and 32.
10 Geo. IV No 7 ...	Quarter Sessions	The unrepealed portion.
3 Wm. IV No. 3 ...	Felons	The whole.
4 Wm. IV No. 4 ...	Adoption of certain Acts. (Forgery)	The whole.
4 Wm. IV No. 16 ...	Quarter Sessions	The whole.
5 Wm. IV No. 17 ...	Ibid	The whole.
6 and 7 Wm. IV c. 111	Evidence of previous conviction ...	The whole.
8 Wm. IV No. 2 ...	Adoption of certain Acts ...	The whole.
2 Vic. No. 10 ...	Ibid	The whole except so much as adopts 1 Vic. c. 88.
2 Vic. No. 11 ...	Offenders Apprehension	The whole.
3 Vic. No. 10 ...	Quarter Sessions	The unrepealed portion.
3 Vic. No. 22 ...	Female Offenders—Punishment of	The whole.
4 Vic. No. 10 ...	Punishment	The whole.
4 Vic. No. 27 ...	Prisoners defence	The whole.
5 Vic. No. 3... ..	Female Offenders	The whole.
6 Vic. c. 7 ...	Tickets of Leave &c.	The whole.
7 Vic. No. 5... ..	Discharge of persons under Committal	The whole.
7 Vic. No. 14 ...	Lunatics	Section 4.
9 Vic. No. 1... ..	Coinage	The whole.
9 Vic. No. 2... ..	Embezzlement	The whole.
9 Vic. No. 3... ..	Adoption of Acts. (Forgery.) ...	The whole.
9 Vic. No. 11 ...	Adoption of Acts. (Punishments.)	The whole.
9 Vic. No. 14 ...	Stealing dead wood	The whole.
11 Vic. No. 30 ...	Indecent assaults	The whole.
11 Vic. No. 34 ...	Punishments	The whole except sections 5 and 6.
11 Vic. No. 55 ...	Punishments. (Females.) ...	The whole.
13 Vic. No. 2... ..	Protection of works of art &c. ...	The whole.
13 Vic. No. 5... ..	Negligent driving	So much as relates to punishment.
13 Vic. No. 7... ..	Administration of Criminal Justice	The whole.
13 Vic. No. 8 ...	Reservation of Points	The whole.
13 Vic. No. 22 ...	Embezzlement	The whole.

Criminal Law Amendment—Schedules.

Reference to Act.	Subject of Act.	Extent of Repeal.
14 Vic. No. 1...	Forgery ...	The whole.
14 Vic. No. 2...	Juvenile Offenders ...	The whole.
14 Vic. No. 16	Adoption of Acts ...	The whole.
15 Vic. No. 5...	Punishments ...	The whole.
16 Vic. No. 6...	Larceny ...	The whole.
16 Vic. No. 17	Offenders Prevention ...	The whole.
16 Vic. No. 18	Administration of Criminal Justice	The whole.
16 Vic. No. 22	Forgery ...	The whole.
16 Vic. No. 36	Quarter Sessions ...	The unrepealed portion.
17 Vic. No. 3...	Cattle-stealing Prevention ...	The whole.
17 Vic. No. 9...	Partnership ...	Sec. 14.
17 Vic. No. 15	Punishments ...	The whole.
17 Vic. No. 40	Executions ...	The whole.
18 Vic. No. 7...	Felons ...	The whole.
18 Vic. No. 9...	Aggravated Assaults ...	The whole.
19 Vic. No. 24	Police ...	Secs. 11 22 & 25
19 Vic. No. 30	Marriages ...	Sec. 20.
19 Vic. No. 34	Registration of Births &c...	Secs. 34 & 35.
20 Vic. No. 41	Electric Telegraphs ...	Secs. 10 & 11.
22 Vic. No. 2...	Punishments ...	The whole.
22 Vic. No. 9...	Larceny by Bailees &c. ...	The whole.
22 Vic. No. 16	Frauds by Trustees ...	The whole.
22 Vic. No. 19	Railways ...	Secs. 129 130 and 131 and so much of s. 132 as relates to punishment.
25 Vic. No. 12	Administration of Poison ...	The whole.
25 Vic. No. 13	False Pretences ...	The whole.
26 Vic. No. 9...	Real Property ...	Secs. 132, 133.
28 Vic. No. 9...	Trade Marks ...	So much of s. 8 as relates to punishment.
31 Vic. No. 4...	Post Office Stamps ...	Sec. 55.
39 Vic. No. 27	Sureties of the Peace ...	The whole.
37 Vic. No. 16	Garotting ...	The whole.
40 Vic. No. 8...	Evidence to character ...	Sec. 2.
40 Vic. No. 16	Public Place Definition ...	The whole.

SECOND SCHEDULE.

See s. 307.

(Discharge of Prisoners.)

THIS is to certify that I decline to file any Information against A.B. a prisoner now in the Gaol at _____ under the Warrant of R.W. Esquire Justice of the Peace upon a charge of *(stating same)*.

Given under my hand this _____ day 18 ____
 To their Honors the Judges of }
 the Supreme Court. } L.M. Attorney-General.

(Warrant thereupon.)

SUPREME COURT OF NEW SOUTH WALES.

WHEREAS A.B. is detained in your custody under the Warrant of R.W. Esquire Justice of the Peace upon a charge of *(as in certificate)* and it has been certified to the Judges of this Court by Her Majesty's Attorney-General that he declines to file any Information against the said A.B. for the said offence You are therefore hereby required forthwith to discharge the said A.B. from your custody under the said Warrant.

Given under my hand this _____ day of 18 ____
 To the Sheriff and to the Keeper of } S.M.
 H.M.'s Gaol at } A Judge of the Supreme Court.

THIRD SCHEDULE.

See s. 325

(As to allegation of property.)

Sections enumerated The one hundred and seventy-ninth the one hundred and eighty-eighth the two hundred and fifth and next following section the two hundred and eighth and two hundred and tenth the two hundred and sixteenth and next following section and the two hundred and twenty-fifth section.

FOURTH

Criminal Law Amendment—Schedules.

See. s. 345.

FOURTH SCHEDULE.

(Form of Deposition.)

THE deposition of A.B. a person now dangerously ill taken before the undersigned Justice at S. in the County (or Police District) of _____ which said A.B. being duly sworn saith as follows:—

[The witness's statement is to be in the first person and it ought to be reasonably full as to all material facts. The witness's signature or mark if from any cause unable to write should be added. *Then will follow this jurat and certificate.*]

Sworn before me this _____ day of _____ 18

And I hereby certify that I have taken this deposition under the provisions of the "Criminal Law Amendment Act of 1883" because it has been made to appear to me that the deponent is dangerously ill and that his evidence if not forthwith taken would probably be lost.

[*Signature of Justice.*]

[If the deposition be by Solemn Affirmation or Declaration the form will be varied accordingly.]

See. s. 389.

FIFTH SCHEDULE.

Certificate and Declaration at Executions.

I W.S. being the Medical Officer of the Gaol at _____ hereby certify that

I have this day witnessed the execution of C.D. lately sentenced to death in the [Supreme or Circuit] Court holden at _____ on the _____ day of _____ last which said C.D. was in pursuance of such sentence hanged by the neck until his body was dead And we the undersigned L.M. and S.W. do hereby declare that we were this day present at the said execution and that the said C.D. was in pursuance of his sentence hanged by the neck until his body was dead.

Witness our hands this _____ day of _____ A.D. 18 _____,

See. s. 402.

SIXTH SCHEDULE.

(Where Whipping to be inflicted.)

Sections Enumerated.	Offences.
Twenty-fifth	Garotting.
Twenty-sixth	Using chloroform to commit indictable offences.
Thirty-fifth	Placing wood &c. on railway with intent.
Thirty-sixth	Casting stone &c. on railway carriage &c.
Thirty-ninth	Attempt to commit rape &c.
Fortieth	Procuring or having carnal knowledge by fraud.
Forty-first forty-second and } forty-third	Carnal knowledge of young girls.
Forty-fourth	Indecent assaults.
Fifty-ninth	Sodomy and bestiality.
Sixtieth	Attempt to commit such crimes &c.
Ninety-third	Robbery with arms and wounding.
Two hundred and seventh ...	Injuries to railways &c.
Two hundred and tenth ...	Injuries to works of art.
Two hundred and twenty-first ...	Maliciously and cruelly wounding cattle.

See. s. 295.

SEVENTH SCHEDULE.

(Solemn Declarations.)

I (*name*) of (*residence*) do hereby solemnly declare and affirm that (*the facts to be stated according to the Declarant's knowledge belief or information severally*) And I make this Solemn Declaration as to the matter (*or matters*) aforesaid according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such Declaration.