

Crimes Act 1900 No 40

[1900-40]



New South Wales

Status Information

Currency of version

Historical version for 1 February 1988 to 14 February 1988 (accessed 13 September 2024 at 22:19)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Crimes \(Sentencing\) Amendment Act 1987 No 183](#) (not commenced)
 - [Crimes \(Personal and Family Violence\) Amendment Act 1987 No 184](#) (not commenced)
 - [Miscellaneous Acts \(Victims Compensation\) Repeal and Amendment Act 1987 No 238](#) (not commenced — to commence on 15.2.1988)

Authorisation

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File last modified 12 February 1988

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New South Wales

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Crimes Act 1900 No 40



New South Wales

An Act to consolidate the Statutes relating to Criminal Law.

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Short title and division into Parts

1 Name of Act and contents of Act

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Repeals and savings

2 Repeals and savings

- (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed, except as to offences committed and things done or commenced before the passing of this Act, which shall be dealt with and continued, and in respect of which every right and liability shall remain as if this Act had not been passed.
- (2) All persons appointed under any Act, or section of an Act, hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.
- (3) All proclamations, regulations, forms of indictments, records, informations, depositions, convictions, warrants, recognisances, and proceedings, and all orders or directions prescribing the form or kind of instrument to be used in the whipping of offenders, or the manner of its use, made, prescribed, or given under the authority of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made, prescribed, or given under the authority of this Act.

Application of certain sections and Parts

3 Application of certain Parts of Act

The sections mentioned in the Second Schedule, 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.

Interpretation

4 Definitions

- (1) In this Act, unless the context or subject-matter otherwise indicates or requires:

Aircraft includes any machine that can derive support in the atmosphere from the reactions of the air.

Banker includes 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.

Cattle includes any horse, mare, gelding, colt, foal, filly, ass, mule, bull, cow, ox, steer, heifer, calf, ram, ewe, sheep, lamb, pig, goat, deer, alpaca, llama, vicuna, camel, or dromedary, and every hybrid or cross thereof.

Counsel includes attorneys.

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.

Document of title to goods includes every bill of lading, India warrant, dock warrant, warehouse-keeper'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 authorise 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 includes 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.

Domestic violence offence means:

- (a) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 493 or 494 committed upon:
 - (i) a person who is or has been married to the person who commits the offence, or
 - (ii) a person who is living with or has lived with the person who commits the offence as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be, or
- (b) an offence of attempting to commit an offence referred to in paragraph (a).

Dwelling-house includes:

- (a) any building or other structure intended for occupation as a dwelling and capable of being so occupied, although it has never been so occupied,
- (b) a boat or vehicle in or on which any person resides, and
- (c) any building or other structure within the same curtilage as a dwelling-house, and occupied therewith or whose use is ancillary to the occupation of the dwelling-house.

Governor means, except in respect of the exercise of the pardoning power, the Governor with the advice of the Executive Council.

Grievous bodily harm includes any permanent or serious disfiguring of the person.

Indictment includes any information presented or filed as provided by law for the prosecution of offences.

Judge—see **Court**.

Justice means a Justice of the Peace.

Loaded arms means any gun, pistol, or other arms, loaded in the barrel or chamber or magazine with gunpowder or other explosive substance, and with ball, shot, slug, or other destructive material, although the attempt to discharge 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 is shown.

Member of the crew in relation to an aircraft means a person having functions or duties on board the aircraft.

Money includes all coined money, whether current within New South Wales or not, and all bank notes or instruments ordinarily so called, if current as such, and payable to the bearer.

Night means the period of time commencing at nine of the clock in the evening of each day and concluding at six of the clock in the morning of the next succeeding day.

Offensive weapon and **Offensive weapon, or instrument** include an imitation or replica of an offensive weapon or of an offensive weapon, or an instrument, as the case may require.

Officer, in relation to a body corporate or public company, includes a person who has been appointed, or acts, as an auditor of the body corporate or public company.

Person, Master, and **Employer** severally include, any society, company, or corporation.

Place of Divine worship includes any building or structure ordinarily used for Divine worship.

Property includes every description of real and personal property; 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 includes not only property originally in the possession or under the control of any person, 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.

Property belonging to a vessel includes every portion of its cargo, and property belonging to any of the officers, crew, or passengers thereof.

Railway includes a tramway, and also includes all stations, buildings, structures and equipment belonging to or associated with a railway or tramway.

Trustee means a trustee on some express trust howsoever created, and includes 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 and also an executor or administrator.

Valuable security includes 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 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 herein defined.

Vessel means any ship or vessel used in or intended for navigation, not being an undecked boat.

Weapon and **Weapon, or instrument** include an imitation or replica of a weapon or of a weapon, or an instrument, as the case may require.

- (2) A dwelling-house does not cease to be a dwelling-house by reason only of being temporarily unoccupied.
- (3) Notwithstanding section 35 of the [Interpretation Act 1987](#), every heading to a provision of this Act shall be taken to be part of this Act if it appears in italics or in capital letters.
- (4) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to an offence mentioned in a specified provision of this Act that has been amended or repealed is, or includes, a reference to an offence mentioned in the provision as in force before its amendment or repeal.

5 Maliciously

Maliciously: 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.

6 Month

In this Act, and in every sentence passed by any Court or Judge or Justice under this or any other Act or at Common Law, unless the contrary is expressed:

Month means a calendar month.

7 “Possession” when criminal

Where by this or any other Act the felonious receiving of any property, or its possession without lawful cause or excuse, is expressed to be an offence, every person shall be deemed to have such property in his possession within the meaning of such Act who:

- (a) has any such property in his custody, or
- (b) knowingly has any such property in the custody of another person, or
- (c) knowingly has any such property in a house, building, lodging, apartment, field, or other place, whether belonging to or occupied by himself or not, and whether such property is there had or placed for his own use, or the use of another.

8 “Public place” etc

Where, by this or any other Act, or by any rule, regulation, ordinance or by-law, duly made under or by virtue of the provisions of any 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.

9 What offences felonies

Whenever by this Act a person is made liable to the punishment of penal servitude, the offence for which such punishment may be awarded is hereby declared to be and shall be dealt with as a felony, and wherever in this Act the term **felony** is used, the same shall be taken to mean an offence punishable by penal servitude.

10 What offences misdemeanours

Whenever by this Act no greater punishment can be awarded than imprisonment, with or without hard labour, or the imposition of a fine, in addition to or without imprisonment, the offence shall be and be dealt with as a misdemeanour only.

Part 2 Offences against the Sovereign

Treason-felony

11 Provisions of 36 Geo III, c 7, and 57 Geo III, c 6, repealed except as to offences against the person of the Sovereign

The provisions of the Act of the Parliament of Great Britain, thirty-sixth George the Third chapter seven, made perpetual by the Act of the Parliament of Great Britain and Ireland

fifty-seventh George the Third chapter six, and all the provisions of the last mentioned Act in relation thereto, save such of the same respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim, or wounding, imprisonment, or restraint of the person of the heirs and successors of His said Majesty King George the Third, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them, shall be and the same are hereby repealed.

12 Compassing etc deposition of the Sovereign—overawing Parliament etc

Whosoever, within New South Wales or without, compasses, imagines, invents, devises, or intends to deprive or depose Our Most Gracious Lady the Queen, her heirs or successors, from the style, honour, or Royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, her heirs or successors, within any part of the United Kingdom, or any other of Her Majesty's dominions, in order, by force or constraint, to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe, both Houses or either House of the Parliament of the United Kingdom, or the Parliament of New South Wales, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other Her Majesty's dominions, or countries under the obeisance of Her Majesty, her heirs or successors, and expresses, utters, or declares such compassings, imaginations, inventions, devices, or intentions, or any of them, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, shall be liable to penal servitude for life.

13 Time within which prosecution shall be commenced and warrant issued

- (1) No person shall be prosecuted for any felony by virtue of this Part in respect of such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open and advised speaking only, unless:
 - (a) information of such compassings, imaginations, inventions, devices, and intentions, and of the words by which the same were expressed, uttered, or declared is given upon oath to one or more Justice or Justices within six days after such words were spoken, and
 - (b) a warrant, for the apprehension of the person by whom such words were spoken, is issued within ten days next after such information was given as aforesaid.
- (2) No person shall be convicted of any such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open or advised speaking as aforesaid, except upon his own confession in open Court, or unless the words so spoken are proved by two credible witnesses.

14 In informations more than one overt act may be charged

In any information for any felony under this Part, any number of the matters, acts, or deeds by which such compassings, imaginations, inventions, devices, or intentions as aforesaid, or any of them, have been expressed, uttered, or declared, may be charged against the accused.

15 Information for such felonies valid though the facts may amount to treason

If the facts or matters alleged in an information for any felony under this Part amount in law to treason, such information shall not by reason thereof be deemed void, erroneous, or defective, and if the facts or matters proved on the trial of any person informed against for any felony under this Part amount in law to treason, such person shall not by reason thereof be entitled to be acquitted of such felony, but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts.

16 Nothing herein to affect 25 Ed III, c 2

Nothing contained in this Part shall lessen the force of, or in any matter affect, anything enacted by the Statute passed in the twenty-fifth year of King Edward the Third "A declaration which offences shall be adjudged Treason".

16A Procedure in cases of treason

In all cases of treason, whether alleged to have been committed before or after the passing of the *Crimes (Amendment) Act 1951*, the person charged shall be arraigned and tried in the same manner, and according to the same course and order of trial in every respect as if such person stood charged with murder.

Part 3 Offences against the person

Homicide

17 (Repealed)

18 Murder and manslaughter defined

(1)

(a) Murder shall be taken to have been committed 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 a crime punishable by penal servitude for life.

(b) Every other punishable homicide shall be taken to be manslaughter.

(2)

(a) No act or omission which was not malicious, or for which the accused had lawful cause or excuse, shall be within this section.

(b) No punishment or forfeiture shall be incurred by any person who kills another by misfortune only, or in his own defence.

19 Murder—punishment

Whosoever commits the crime of murder shall be liable to penal servitude for life.

Except in the case of murder committed by a person who is under the age of 18 years, the provisions of section 442 shall not be in force with respect to the sentence to be passed under this section unless it appears to the Judge that the person's culpability for the crime is significantly diminished by mitigating circumstances, whether disclosed by the evidence in the trial or otherwise.

20 Child murder—when child deemed born alive

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

21 Child murder by mother—verdict of contributing to death etc

Whosoever, being a woman delivered of a child is indicted for its murder, shall, if the jury acquit her of the murder, and specially find that she has in any manner wilfully contributed to the death of such child, whether during delivery, or at or after its birth, or has wilfully caused any violence, the mark of which has been found on its body, be liable to penal servitude for ten years.

22 Trial for child murder—verdict of concealment of birth

Where, on the trial of a person for the murder or manslaughter of a child, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of an offence within section 85, they may acquit him of the offence charged and find him guilty of an offence under the said section, and he shall be liable to punishment accordingly.

22A Infanticide

(1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child.

- (2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to such child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this section they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide, and the woman may be dealt with and punished as if she had been guilty of the offence of manslaughter of the said child.
- (3) Nothing in this section shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter or a verdict of not guilty on the ground of insanity, or a verdict of concealment of birth.

23 Trial for murder—provocation

- (1) Where, on the trial of a person for murder, it appears that the act or omission causing death was an act done or omitted under provocation and, but for this subsection and the provocation, the jury would have found the accused guilty of murder, the jury shall acquit the accused of murder and find the accused guilty of manslaughter.
- (2) For the purposes of subsection (1), an act or omission causing death is an act done or omitted under provocation where:
 - (a) the act or omission is the result of a loss of self-control on the part of the accused that was induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused, and
 - (b) that conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control as to have formed an intent to kill, or to inflict grievous bodily harm upon, the deceased,whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.
- (3) For the purpose of determining whether an act or omission causing death was an act done or omitted under provocation as provided by subsection (2), there is no rule of law that provocation is negatived if:
 - (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission,
 - (b) the act or omission causing death was not an act done or omitted suddenly, or
 - (c) the act or omission causing death was an act done or omitted with any intent to take life or inflict grievous bodily harm.
- (4) Where, on the trial of a person for murder, there is any evidence that the act causing

death was an act done or omitted under provocation as provided by subsection (2), the onus is on the prosecution to prove beyond reasonable doubt that the act or omission causing death was not an act done or omitted under provocation.

(5) This section does not exclude or limit any defence to a charge of murder.

23A Diminished responsibility

- (1) Where, on the trial of a person for murder, it appears that at the time of the acts or omissions causing the death charged the person was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for the acts or omissions, he shall not be convicted of murder.
- (2) It shall be upon the person accused to prove that he is by virtue of subsection (1) not liable to be convicted of murder.
- (3) A person who but for subsection (1) would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.
- (4) The fact that a person is by virtue of subsection (1) not liable to be convicted of murder in respect of a death charged shall not affect the question whether any other person is liable to be convicted of murder in respect of that death.
- (5) Where, on the trial of a person for murder, the person contends:
 - (a) that he is entitled to be acquitted on the ground that he was mentally ill at the time of the acts or omissions causing the death charged, or
 - (b) that he is by virtue of subsection (1) not liable to be convicted of murder,evidence may be offered by the Crown tending to prove the other of those contentions, and the Court may give directions as to the stage of the proceedings at which that evidence may be offered.

24 Manslaughter—punishment

Whosoever commits the crime of manslaughter shall be liable to penal servitude for life:

Provided that, in any case, if the Judge is of the opinion that, having regard to all the circumstances, a nominal punishment would be sufficient, he may discharge the jury from giving any verdict, and such discharge shall operate as an acquittal.

25 Trial where the death or cause of death occurs out of New South Wales

Where, in any case of homicide, the cause of death happened on the sea, or elsewhere without New South Wales, but the death was within New South Wales, or the cause of death happened within New South Wales, but the death was on the sea or elsewhere

without New South Wales, the offence may be dealt with, in all respects, as if the same had been wholly committed within New South Wales.

Conspiracy to murder

26 Conspiring to commit murder

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.

Attempts to murder

27 Acts done to the person with intent to murder

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 penal servitude for life.

28 Acts done to property with the like intent

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 or thing upon or across a railway, or

removes, or displaces any sleeper, or other thing belonging to a railway,

with intent in any such case to commit murder,
shall be liable to penal servitude for life.

29 Certain other attempts to murder

Whosoever:

attempts to administer to, or cause to be taken by, any person any poison, or other destructive thing, or

shoots at, 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 such case to commit murder,
shall, whether any bodily injury is effected or not, be liable to penal servitude for life.

30 Attempts to murder by other means

Whosoever, by any means other than those specified in sections 27 to 29 both inclusive, attempts to commit murder shall be liable to penal servitude for life.

Letters threatening to murder

31 Letters threatening to murder

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.

Suicide

31A Suicide and attempt to commit suicide

The rule of law that it is a crime for a person to commit, or to attempt to commit, suicide is abrogated.

31B Survivor of suicide pact

- (1) The survivor of a suicide pact shall not be guilty of murder or manslaughter but may be guilty of an offence under section 31C.
- (2) In this section, ***suicide pact*** means a common agreement between 2 or more persons having for its object the death of all of them, whether or not each is to take his or her own life, but nothing done by a person who enters into a suicide pact shall be treated as being done by the person in pursuance of the pact unless it is done while the person has the settled intention of dying in pursuance of the pact.
- (3) The onus of proving the existence of a suicide pact shall lie with the accused person on the balance of probabilities.

31C Aiding etc suicide

(1) A person who aids or abets the suicide or attempted suicide of another person shall be liable to imprisonment for 10 years.

(2) Where:

(a) a person incites or counsels another person to commit suicide, and

(b) that other person commits, or attempts to commit, suicide as a consequence of that incitement or counsel,

the firstmentioned person shall be liable to imprisonment for 5 years.

Acts causing danger to life or bodily harm

32 Impeding endeavours to escape shipwreck

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.

32A-32C (Repealed)

33 Wounding etc with intent to do bodily harm or resist arrest

Whosoever:

maliciously by any means wounds or inflicts grievous bodily harm upon any person, or

maliciously shoots at, 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.

33A Discharging loaded arms with intent

Any person who maliciously discharges, or in any manner attempts to discharge, any kind of loaded arms with intent to do grievous bodily harm to any person, or with intent to resist, or prevent, the lawful apprehension or detention either of himself or any other

person, shall be liable to penal servitude for fourteen years.

33B Use of weapon to resist arrest etc

Any person who:

- (a) uses, attempts to use or threatens to use an offensive weapon or instrument, or
- (b) threatens injury to any person or property,

with intent to prevent or hinder the lawful apprehension or detention either of himself or any other person or to prevent or hinder a member of the police force from investigating any act or circumstance which reasonably calls for investigation by the member shall be liable to penal servitude for ten years.

34 Feloniously wounding—verdict of minor offence

Where, on the trial of a person for an offence under section 33, 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, they may acquit him of such intent and find him guilty of an offence under section 35, and he shall be liable to punishment accordingly.

35 Malicious wounding or infliction of grievous bodily harm

Whosoever maliciously by any means:

- (a) wounds any person, or
- (b) inflicts grievous bodily harm upon any person,

shall be liable to penal servitude for 7 years.

36 (Repealed)

37 Attempts to choke etc (garrotting)

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.

38 Using chloroform etc to commit an offence

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 over-powering 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.

39 Using poison etc so as to endanger life

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.

40 On trial for poisoning—verdict of minor offence

Where, on the trial of a person for an offence under section 39, the jury are not satisfied that the accused is guilty thereof, but are satisfied that he is guilty of an offence within section 41, they may acquit him of the offence charged, and find him guilty of an offence under the said last-mentioned section, and he shall be liable to punishment accordingly.

41 Administering poison etc with intent to injure or annoy

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.

41A Poisoning etc of water supply

Whosoever maliciously introduces any poison or other destructive or noxious thing into a supply of water with intent to injure any person or persons shall be liable to penal servitude for 5 years.

42 Injuries to child at time of birth

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.

43 Exposing or abandoning child under two

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.

44 Not providing wife, child or servant with food etc

Whosoever:

being legally liable to provide any wife, child, ward, apprentice, or servant or any insane person 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, apprentice or servant, or to any insane person

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.

45 (Repealed)

46 Causing bodily injury by gunpowder etc

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.

47 Using etc explosive substance or corrosive fluid etc

Whosoever:

maliciously causes any gunpowder or other explosive substance to explode, or

maliciously sends, or delivers to, or causes to be taken, or received by, any person, any explosive substance, or other dangerous or noxious thing, or

maliciously 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 is effected or not, be liable to penal servitude for life.

48 Placing gunpowder near a building etc

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 an explosion takes place or not, and whether bodily injury is effected or not, be liable to penal servitude for fourteen years.

49 Setting trap etc

(1) Any person who:

(a) places or sets, or causes to be placed or set, any trap, device or thing (whether its nature be electronic, electric, mechanical, chemical or otherwise) capable of destroying human life or inflicting grievous bodily harm on any person, or

(b) knowingly permits any such trap, device or thing to continue to be placed or set,

with intent to inflict grievous bodily harm shall be liable to imprisonment for five years.

- (2) Nothing in subsection (1) shall extend to any gin or trap, placed with the intention of destroying vermin, or to any trap, device or thing placed in a dwelling-house for the protection thereof.

50-52 (Repealed)

52A Culpable driving

- (1) Where the death of, or grievous bodily harm to, any person is occasioned through:
- (a) the impact with any object of a motor vehicle in or on which that person was being conveyed (whether as a passenger or otherwise),
 - (b) a motor vehicle in or on which that person was being conveyed (whether as a passenger or otherwise) overturning or leaving the highway,
 - (c) impact with a motor vehicle,
 - (d) the impact of a motor vehicle with any vehicle or other object in, on or near which that person was at the time of the impact,
 - (da) impact with anything on, or attached to, a motor vehicle, or
 - (db) impact with anything that is in motion through falling from a motor vehicle, and the motor vehicle was at the time of the impact, or at the time of overturning or leaving the highway, or at the time the thing fell from it, being driven by another person:
 - (e) under the influence of intoxicating liquor or of a drug, or
 - (f) at a speed or in a manner dangerous to the public,
- the person who was so driving the motor vehicle shall be guilty of the misdemeanour of culpable driving.
- (2) A person convicted of the misdemeanour of culpable driving is:
- (a) if the death of any person was occasioned, liable to imprisonment for five years, or
 - (b) if grievous bodily harm to any person was occasioned, liable to imprisonment for three years.
- (3) It shall be a defence to any charge under this section that the death or the grievous bodily harm occasioned, as the case may be, was not in any way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug

or, as the case may be, to the speed at which or the manner in which the vehicle was driven.

- (4) This section shall not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence, or affect the punishment which may be imposed therefor:

Provided that no person who has been convicted or acquitted of an offence under this section shall afterwards be prosecuted for murder or manslaughter or for any other offence under this Act on the same or substantially the same facts, nor shall any person who has been convicted or acquitted of murder or manslaughter or of any other offence be afterwards prosecuted for an offence under this section on the same or substantially the same facts.

- (5) Upon the trial of a person who is indicted for murder or manslaughter or for an offence under section 53 or 54 in connection with the driving of a motor vehicle by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.
- (6) In this section **drug** has the meaning ascribed to that expression by subsection (2) of section 5 of the *Motor Traffic Act 1909*, as amended by subsequent Acts.
- (7) Without limiting the generality of the meaning of the expression **object**, that expression, in subsections (1) and (2), includes animal, building, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post and tree.

52B Culpable navigation

- (1) In this section:

drug has the same meaning as it has in section 5 (2) of the *Motor Traffic Act 1909*.

object includes pier, wharf, jetty, pontoon, breakwater, bridge, bridge support, mooring post or platform, navigation aid, retaining wall, marina, boatshed, slipway and swimming enclosure.

vessel means a vessel within the meaning of the *Maritime Services Act 1935*, propelled or towed upon water otherwise than by human or animal power.

- (2) Where the death of, or grievous bodily harm to, any person is occasioned through:
- (a) the impact with any object of a vessel in or on which that person was being conveyed (whether as a passenger or otherwise),
- (b) a vessel in or on which that person was being conveyed (whether as a passenger or otherwise) overturning or running aground,

- (c) impact with a vessel,
- (d) the impact of a vessel with any vessel or other object in, on or near which that person was at the time of the impact,
- (e) impact with anything on, or attached to, a vessel, or
- (f) impact with anything that is in motion through falling from a vessel,

and the vessel was at the time of the impact, or at the time of overturning or running aground, or at the time the thing fell from it, being navigated by another person:

- (g) under the influence of intoxicating liquor or of a drug, or
- (h) at a speed or in a manner dangerous to the public,

the person who was so navigating the vessel shall be guilty of the misdemeanour of culpable navigation.

- (3) A person convicted of the misdemeanour of culpable navigation is:
 - (a) if the death of any person was occasioned, liable to imprisonment for 5 years, or
 - (b) if grievous bodily harm to any person was occasioned, liable to imprisonment for 3 years.
- (4) It shall be a defence to any charge under this section that the death or the grievous bodily harm occasioned, as the case may be, was not in any way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug or, as the case may be, to the speed at which or the manner in which the vessel was navigated.
- (5) This section does not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence or affect the punishment which may be imposed therefor, but:
 - (a) a person who has been convicted or acquitted of an offence under this section shall not afterwards be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts, and
 - (b) a person who has been convicted or acquitted of murder or manslaughter or of any other offence shall not afterwards be prosecuted for an offence under this section on the same, or substantially the same, facts.
- (6) Upon the trial of a person for murder or manslaughter or for an offence under section 54 in connection with the navigation of a vessel by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

53 Injuries by furious driving etc

Whosoever, being at the time on horseback, or in charge of any carriage or other vehicle, by wanton or furious riding, or driving, or racing, or other misconduct, or by wilful neglect, does or causes to be done to any person any bodily harm, shall be liable to imprisonment for two years.

54 Causing grievous bodily harm

Whosoever by any unlawful or negligent act, or omission, causes grievous bodily harm to any person, shall be liable to imprisonment for two years.

Possessing or making explosives, &c, with intent to injure the person

55 Possessing etc gunpowder etc with intent to injure the person

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:

- (a) with intent by means thereof to injure, or otherwise commit an offence being felony against the person of any one, or
- (b) 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.

Assaults upon clergymen, officers, and others

56 Obstructing clergyman in discharge of his duties

Whosoever:

by threats or force prevents, or endeavours to prevent, any clergyman, or other person duly authorised 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 two years.

57 Assault on persons preserving wreck

Whosoever wounds, strikes, or assaults, any person while in the execution of his duty concerning the preservation of a vessel in distress, or any vessel or effects, stranded, or cast on shore, or lying under water, with intent to obstruct him, or thereby in fact

obstructing him in the execution of such duty, shall be liable to penal servitude for seven years.

58 Assault with intent to commit felony on certain officers

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, prison 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 two years.

59 Assault occasioning actual bodily harm

Whosoever assaults any person, and thereby occasions actual bodily harm, shall be liable to penal servitude for five years.

60 Assault by husband on wife

Where any husband has been convicted of any assault within section 59, or of any aggravated assault, specially so found by the jury, 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.

Every such declaration shall have the effect, in all respects, of a decree of judicial separation on the ground of cruelty.

Common assaults

61 Common assault prosecuted by indictment

Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years.

Offences in the nature of rape, offences relating to other acts of sexual assault, &c

61A Definition of sexual intercourse etc

(1) For the purposes of sections 61A–66E, ***sexual intercourse*** means:

(a) sexual connection occasioned by the penetration of the vagina of any person or anus of any person by:

- (i) any part of the body of another person, or
 - (ii) an object manipulated by another person,
except where the penetration is carried out for proper medical purposes,
 - (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person,
 - (c) cunnilingus, or
 - (d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).
- (2) For the purposes of sections 61B–66E, a person shall not, by reason only of age, be presumed incapable of having sexual intercourse with another person or of having an intent to have sexual intercourse with another person.
- (3) Subsection (2) shall not be construed so as to affect the operation of any law relating to the age at which a child can be convicted of an offence.
- (4) The fact that a person is married to a person:
- (a) upon whom an offence under section 61B, 61C or 61D is alleged to have been committed shall be no bar to the firstmentioned person being convicted of the offence, or
 - (b) upon whom an offence under any of those sections is alleged to have been attempted shall be no bar to the firstmentioned person being convicted of the attempt.
- (5) For the purposes of sections 61D–66E, a person is under the authority of another person if the person is in the care, or under the supervision or authority, of the other person.

61B Sexual assault category 1—inflicting grievous bodily harm with intent to have sexual intercourse

- (1) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with the other person shall be liable to penal servitude for 20 years.
- (2) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 20 years.

61C Sexual assault category 2—inflicting actual bodily harm etc with intent to have sexual intercourse

- (1) Any person who:

- (a) maliciously inflicts actual bodily harm upon another person, or
- (b) threatens to inflict actual bodily harm upon another person by means of an offensive weapon or instrument,

with intent to have sexual intercourse with the other person shall be liable to penal servitude for 12 years.

(2) Any person who:

- (a) maliciously inflicts actual bodily harm upon another person, or
- (b) threatens to inflict actual bodily harm upon another person,

with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 12 years.

61D Sexual assault category 3—sexual intercourse without consent

(1) Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 7 years or, if the other person is under the age of 16 years, to penal servitude for 10 years.

(1A) Any person who has sexual intercourse with another person who:

- (a) is under the age of 16 years, and
- (b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,

without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 12 years.

(2) For the purposes of subsections (1) and (1A), a person who has sexual intercourse with another person without the consent of the other person and who is reckless as to whether the other person consents to the sexual intercourse shall be deemed to know that the other person does not consent to the sexual intercourse.

(3) For the purposes of subsections (1) and (1A) and without limiting the grounds upon which it may be established that consent to sexual intercourse is vitiated:

- (a) a person who consents to sexual intercourse with another person:
 - (i) under a mistaken belief as to the identity of the other person, or
 - (ii) under a mistaken belief that the other person is married to the person,shall be deemed not to consent to the sexual intercourse,

- (b) a person who knows that another person consents to sexual intercourse under a mistaken belief referred to in paragraph (a) shall be deemed to know that the other person does not consent to the sexual intercourse,
- (c) a person who submits to sexual intercourse with another person as a result of threats or terror, whether the threats are against, or the terror is instilled in, the person who submits to the sexual intercourse or any other person, shall be regarded as not consenting to the sexual intercourse, and
- (d) a person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.

61E Sexual assault category 4—indecent assault and act of indecency

- (1) Any person who assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to imprisonment for 4 years.
 - (1A) Any person who assaults another person who:
 - (a) is under the age of 16 years, and
 - (b) is (whether generally or at the time of the assault only) under the authority of the person,and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 6 years.
- (2) Any person who commits an act of indecency with or towards a person under the age of 16 years, or incites a person under that age to an act of indecency with that or another person, shall be liable to imprisonment for 2 years.
 - (2A) Any person who commits an act of indecency with or towards a person who:
 - (a) is under the age of 16 years, and
 - (b) is (whether generally or at the time the act is committed only) under the authority of the firstmentioned person,or who incites any such person to an act of indecency with that or another person shall be liable to imprisonment for 4 years.
- (3) For the purposes of this Act, a person who incites a person under the age of 16 years to an act of indecency, as referred to in subsection (2), shall be deemed to commit an offence on the person under the age of 16 years.

61F Attempt to commit offence under section 61B, 61C, 61D or 61E

Any person who attempts to commit an offence under section 61B, 61C, 61D or 61E shall be liable to the penalty provided for the commission of the offence.

61G Alternative verdicts

- (1) Where on the trial of a person for an offence under section 61B the jury is satisfied that the accused maliciously inflicted actual bodily harm with the intent charged but is not satisfied that the harm was grievous bodily harm, it may find the accused not guilty of the offence charged but guilty of an offence under section 61C, and the accused shall be liable to punishment accordingly.
- (2) Where on the trial of a person for an offence under section 61D committed before the commencement of Schedule 2 to the *Crimes (Child Assault) Amendment Act 1985* the jury is satisfied that the person upon whom the offence was alleged to have been committed was a girl under the age of 16 years, but above the age of 10 years, and that the accused had carnal knowledge of her but is not satisfied that carnal knowledge was had without her consent, it may find the accused not guilty of the offence charged but guilty of an offence under section 71, and the accused shall be liable to punishment accordingly.
- (2A) Where on the trial of a person for an offence under section 61D (1) committed on or after the commencement of Schedule 2 to the *Crimes (Child Assault) Amendment Act 1985* the jury is satisfied that the person upon whom the offence was alleged to have been committed was under the age of 16 years, but above the age of 10 years, and that the accused had sexual intercourse with the person but is not satisfied that the sexual intercourse was had without the person's consent, it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.
- (2B) Where on the trial of a person for an offence under section 61D (1A) the jury is not satisfied that the accused had sexual intercourse without the consent of the other person but is satisfied that the accused is guilty of an offence under section 66C (2), it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (2), and the accused shall be liable to punishment accordingly.
- (2C) Where on the trial of a person for an offence under section 61D (1A) or 61E (1A) or (2A) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 61D (1) or 61E (1) or (2), as the case may require, it may find the accused not guilty of the offence charged but guilty of an offence under section 61D (1) or 61E (1) or (2), as the case may be, and the accused shall be liable to punishment accordingly.
- (3) Where on the trial of a person for an offence under section 61D the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the

accused is guilty of an offence under section 78A or 78B, as the case may require, it may find the accused not guilty of the offence charged but guilty of an offence under section 78A or 78B, as the case may be, and the accused shall be liable to punishment accordingly.

62 Carnal knowledge—proof

- (1) “Carnal knowledge” shall, in every case under this Act, be deemed complete upon proof of penetration only.
- (2) In this Act, ***carnal knowledge*** includes sexual connection occasioned by the penetration of the anus of a female by the penis of any person, or the continuation of that sexual connection.

63 Common law offences of rape and attempted rape abolished

The common law offences of rape and attempted rape are abolished.

64 Trial for rape—verdict of carnal knowledge

Where on the trial of a person for rape committed before the commencement of Schedule 1 to the *Crimes (Sexual Assault) Amendment Act 1981*, the jury are satisfied that the female was a girl under the age of sixteen years, but above the age of ten years, and that the accused had carnal knowledge of her, but are not satisfied that carnal knowledge was had without her consent, they may acquit him of the rape charged and find him guilty of an offence under section 71, and he shall be liable to punishment accordingly.

65 (Repealed)

66 Procuring etc carnal knowledge by fraud

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, or

having by his language or conduct induced any woman to believe that he is her husband, when in fact he is not, has carnal knowledge of such woman with her consent while she is under such belief,

shall be liable to penal servitude for fourteen years.

66A Sexual intercourse—child under 10

Any person who has sexual intercourse with another person who is under the age of 10 years shall be liable to penal servitude for 20 years.

66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10

Any person who attempts to have sexual intercourse with another person who is under the age of 10 years, or assaults any such person with intent to have sexual intercourse, shall be liable to penal servitude for 20 years.

66C Sexual intercourse—child between 10 and 16

- (1) Any person who has sexual intercourse with another person who is of or above the age of 10 years, and under the age of 16 years, shall be liable to penal servitude for 8 years.
- (2) Any person who has sexual intercourse with another person who:
 - (a) is of or above the age of 10 years, and under the age of 16 years, and
 - (b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,shall be liable to penal servitude for 10 years.

66D Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16

Any person who attempts to commit an offence under section 66C upon another person who is of or above the age of 10 years, and under the age of 16 years, or assaults any such person with intent to commit such an offence, shall be liable to the penalty provided for the commission of the offence.

66E Alternative verdicts

- (1) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years, but is satisfied that:
 - (a) the other person was under the age of 16 years, and
 - (b) the accused had sexual intercourse with the other person,it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.
- (2) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years or that the accused had sexual intercourse with the other person, but is satisfied that:
 - (a) the other person was under the age of 16 years, and
 - (b) the accused is guilty of an offence under section 66D,

it may find the accused not guilty of the offence charged but guilty of an offence under section 66D, and the accused shall be liable to punishment accordingly.

67, 68 (Repealed)

69 Trial for carnal knowledge—girl in fact over 10

Where on the trial of a person for an offence under section 67, the jury are satisfied that the girl was of or above the age of ten years, but under the age of sixteen years, and that the accused had carnal knowledge of such girl, they may acquit him of the offence charged and find him guilty of an offence under section 71, and he shall be liable to punishment accordingly.

70 Trial for carnal knowledge—verdict of assault with intent

Where on the trial of a person for an offence under section 67, the jury are satisfied that the girl was of or above the age of ten years, but under the age of sixteen years, but are not satisfied that the accused had carnal knowledge of the girl, and are satisfied that he was guilty of an offence under section 72, they may acquit him of the offence charged and find him guilty of an offence under the said last-mentioned section, and he shall be liable to punishment accordingly.

71, 72 (Repealed)

72A Carnal knowledge of idiot or imbecile

Whosoever knowing a woman or girl to be an idiot or imbecile has or attempts to have unlawful carnal knowledge of her shall be liable to penal servitude for five years.

73 Carnal knowledge by teacher etc

Whosoever, being a schoolmaster or other teacher, or a father, or step-father, unlawfully and carnally knows any girl of or above the age of 16 years, and under the age of 17 years, being his pupil, or daughter, or step-daughter, shall be liable to penal servitude for 8 years.

74 Attempts

Whosoever, being a schoolmaster or other teacher, or a father, or step-father, by any means attempts unlawfully and carnally to know any girl of or above the age of 16 years, and under the age of 17 years, being his pupil, or daughter, or step-daughter, or assaults any such girl with intent carnally to know her, shall be liable to penal servitude for 8 years.

75 Alternative charge

Nothing in section 73 or section 74 as respectively in force before the commencement of Schedule 2 to the *Crimes (Child Assault) Amendment Act 1985* shall prevent such schoolmaster, teacher, father or step-father from being prosecuted under section 71 or

72.

76, 76A (Repealed)

77 Consent no defence in certain cases

- (1) Except as provided by subsection (2), the consent of the child or other person to whom the charge relates shall be no defence to a charge under section 61E (1A), (2) or (2A), 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76.
- (2) It shall be a sufficient defence to a charge which renders a person liable to be found guilty of an offence under section 61E (1A), (2) or (2A), 66C, 66D, 71, 72 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76 if the person charged and the child to whom the charge relates are not both male and it is made to appear to the court or to the jury before whom the charge is brought that:
 - (a) the child to whom the charge relates was over the age of 14 years at the time the offence is alleged to have been committed,
 - (b) the child to whom the charge relates consented to the commission of the offence, and
 - (c) the person so charged had, at the time the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the child to whom the charge relates was of or above the age of 16 years.

77A Proceedings in camera in certain cases

- (1) Any proceedings or any part of any proceedings in respect of an offence under section 61B, 61C, 61D, 61E, 63, 65, 66, 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74, 76 or 76A or of an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the Court so directs, be held in camera.
- (2) (Repealed)
- (3) Where, under this section, the Court directs that proceedings or a part of any proceedings be held in camera, it may, either absolutely or subject to conditions, exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose which the Court thinks fit.
- (4) A Court may make a direction under this section on its own motion or at the request of any party and, in determining whether to make such a direction in proceedings in respect of an offence alleged to have been committed upon a child under the age of 18 years, the Court shall consider:

- (a) the need of the child to have any person excluded from those proceedings,
- (b) the need of the child to have any person present in those proceedings,
- (c) the interests of justice, and
- (d) any other matter which the Court thinks relevant.

78 Limitation

No prosecution in respect of any offence under section 61E (1), 66C (1), 66D, 71, 72 or 76 shall, if the person upon whom the offence is alleged to have been committed was at the time of the alleged offence over the age of fourteen years and under the age of sixteen years, be commenced after the expiration of twelve months from the time of the alleged offence.

78A Incest

Whosoever, being a male, has carnal knowledge of a female of or above the age of 16 years who is his mother, sister, daughter, or grand-daughter, or being a female of or above the age of sixteen years, with her consent permits her grandfather, father, brother, or son to have carnal knowledge of her (whether in any such case the relationship is of half or full blood, or is or is not traced through lawful wedlock) shall be liable to penal servitude for seven years.

78B Incest attempts

Whosoever, being a male, attempts to commit any offence under section 78A, shall be liable to imprisonment for two years.

78C Defences

- (1) It shall be a sufficient defence to a charge under section 78A or section 78B that the person charged did not know that the person with whom the offence is alleged to have been committed was related to him or her, as alleged.
- (2) It shall be no defence to a charge under section 78A or section 78B that the person with whom the offence is alleged to have been committed consented thereto.

78D Removal from guardianship etc

On the conviction of a father or step-father of an offence under section 73 or section 74 or of a male person of an offence under section 72A or under section 78A or under section 78B, the court may divest the offender of all authority over the female with whom the offence has been committed and, if the offender is the guardian of such female, may remove the offender from such guardianship, and in any such case may appoint any person or persons to be the guardian or guardians of such female during her minority, or for any greater or less period.

78E Rape or attempt—verdict of incest or attempt

If on the trial of any male person for an offence under section 63 or 65 the jury are not satisfied that he is guilty of the offence charged, but are satisfied that he is guilty of an offence under section 78A or under section 78B, they may acquit such person of the offence charged, and find him guilty of an offence under section 78A or under section 78B, and he shall be liable to punishment accordingly.

78F Sanction of Attorney-General

- (1) No prosecution for an offence under sections 78A or 78B shall be commenced without the sanction of the Attorney-General.
- (2) All proceedings under the said sections shall be held in camera.

78G Definition of “homosexual intercourse” for sections 78H–78Q

In sections 78H–78Q, *homosexual intercourse* means:

- (a) sexual connection occasioned by the penetration of the anus of any male person by the penis of any person,
- (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another male person, or
- (c) the continuation of homosexual intercourse as defined in paragraph (a) or (b).

78H Homosexual intercourse with male under 10 (cf s 67)

A male person who has homosexual intercourse with a male person under the age of 10 years shall be liable to penal servitude for life.

78I Attempt, or assault with intent, to have homosexual intercourse with male under 10 (cf s 68)

A male person who attempts to have homosexual intercourse with a male person under the age of 10 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 14 years.

78J Trial for homosexual intercourse offence—male in fact between 10 and 18 (cf ss 69, 70)

- (1) Where on the trial of a male person for having homosexual intercourse with a male person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, and that the accused had homosexual intercourse with that person, it may acquit him of the offence charged and find him guilty of an offence under section 78K, and he shall be liable to punishment accordingly.
- (2) Where on the trial of a male person for having homosexual intercourse with a male

person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, but is not satisfied that the accused had homosexual intercourse with that person, and is satisfied that he was guilty of an offence under section 78L, it may acquit him of the offence charged and find him guilty of an offence under section 78L, and he shall be liable to punishment accordingly.

78K Homosexual intercourse with male between 10 and 18 (cf s 71)

A male person who has homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, shall be liable to penal servitude for 10 years.

78L Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18 (cf s 72)

A male person who attempts to have homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 5 years.

78M Homosexual intercourse with idiot or imbecile (cf s 72A)

A male person who, knowing a male person to be an idiot or imbecile, has or attempts to have homosexual intercourse with him shall be liable to penal servitude for 5 years.

78N Homosexual intercourse by teacher etc (cf s 73)

A male person who, being a schoolmaster or other teacher, or a father, or step-father, has homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 14 years.

78O Attempt, or assault with intent, to have homosexual intercourse with pupil etc (cf s 74)

A male person who, being a schoolmaster or other teacher, or a father, or step-father, by any means attempts to have homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 7 years.

78P Alternative charge (cf s 75)

Nothing in section 78N or 78O prevents a schoolmaster, teacher, father or step-father from being prosecuted under section 78K or 78L.

78Q Acts of gross indecency (cf s 81A)

(1) Any male person who commits, or is a party to the commission of, an act of gross indecency with a male person under the age of 18 years shall be liable to

imprisonment for 2 years.

- (2) Any person who solicits, procures, incites or advises any male person under the age of 18 years to commit or to be a party to the commission of an act of homosexual intercourse, or an act of gross indecency, with a male person shall be liable to imprisonment for 2 years.

78R Consent no defence in certain cases (cf s 77)

The consent of a male person the subject of the charge shall be no defence to any charge under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q.

78S Proceedings in camera in certain cases (cf s 77A)

Any proceedings or any part of any proceedings in respect of an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or of an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the Court so directs, be held in camera.

78T Limitations (cf ss 78, 78F)

- (1) No prosecution in respect of any offence under section 78K or 78L, shall, if the person upon whom the offence is alleged to have been committed was at the time of the alleged offence over the age of 16 years and under the age of 18 years, be commenced after the expiration of 12 months from the time of the alleged offence.
- (2) No prosecution for an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or for an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the accused was at the time of the alleged offence under the age of 18 years, be commenced without the sanction of the Attorney General.

79 Bestiality

Any person who commits an act of bestiality with any animal shall be liable to penal servitude for fourteen years.

80 Attempt to commit bestiality

Any person who attempts to commit an act of bestiality with any animal shall be liable to penal servitude for five years.

81-81B (Repealed)

Misconduct with regard to corpses

81C Misconduct with regard to corpses

Any person who:

- (a) indecently interferes with any dead human body, or
- (b) improperly interferes with, or offers any indignity to, any dead human body or human remains (whether buried or not),

shall be liable to imprisonment for two years.

Attempts to procure abortion

82 Administering drugs etc to herself by woman with child

Whosoever, being a woman with child,

unlawfully administers to herself any drug or noxious thing, or

unlawfully uses any instrument or other means,

with intent in any such case to procure her miscarriage,
shall be liable to penal servitude for ten years.

83 Administering drugs etc to woman with intent

Whosoever:

unlawfully administers to, or causes to be taken by, any woman, whether with child or not, any drug or noxious thing, or

unlawfully uses any instrument or other means,

with intent in any such case to procure her miscarriage,
shall be liable to penal servitude for ten years.

84 Procuring drugs etc

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.

Concealing birth of a child

85 Concealment of birth

- (1) Whosoever by any disposition of the dead body of a child, whether the child died before or after or during its birth, wilfully conceals or attempts to conceal the birth of the child, shall be liable to imprisonment for two years.
- (2) It shall be a sufficient defence to any charge under this section if the accused person shall satisfy the court or jury that the dead body in respect of which the disposition took place had issued from the body of its mother before the expiration of the twenty-

eighth week of pregnancy.

Abduction

86 Abduction of woman against her will

Whosoever, from motives of lucre, takes away, or detains, against her will, a female of any age who has an interest in property or is a presumptive heiress or next of kin to any one having such interest, 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.

87 The like against the will of parent etc

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.

88 In such cases property of woman to remain hers

No offender under section 86 or section 87 shall be capable of taking any estate or interest in any property in right of any such female, 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.

89 Forcible abduction of a woman

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.

90 Abduction of girl under 16

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 three years.

90A Kidnapping

Whosoever leads takes or entices away or detains a person with intent to hold him for ransom or for any other advantage to any person shall be liable to penal servitude for twenty years or, if it is proved to the satisfaction of the judge that the person so led taken enticed away or detained was thereafter liberated without having sustained any substantial injury, to penal servitude for fourteen years.

This section does not apply to any person who shall, in good faith, have claimed a right to

the possession of a person so led, taken or enticed away or detained.

91 Taking child with intent to steal etc

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, or

receives or harbours any such child, knowing such child 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.

91A Procuring etc

Whosoever procures, entices or leads away any person (not being a prostitute), whether with that person's consent or not, for purposes of prostitution, either within or without New South Wales, shall, notwithstanding that some one or more of the various acts constituting the offence may have been committed outside New South Wales, be liable to penal servitude for seven years.

91B Procuring person by drugs etc

Whosoever by means of any fraud, violence, threat, or abuse of authority, or by the use of any drug or intoxicating liquor, procures, entices, or leads away any person for purposes of prostitution, either within or without New South Wales, shall, notwithstanding that some one or more of the various acts constituting the offence may have been committed outside New South Wales, be liable to penal servitude for ten years.

91C, 91D (Repealed)

Bigamy

92 Bigamy

Whosoever, being married, marries another person during the life of the former husband or wife, 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 New South Wales at the time of the first marriage, has been continually absent from New South Wales 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 proof shall lie on the accused.

Editorial note—

See *Marriage Act 1961* (Commonwealth), section 94.

93 Participator in bigamy

Whosoever, whether married or unmarried, marries the husband or wife of any person not continually so absent, as in the proviso to section 92 mentioned, 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.

Editorial note—

See *Marriage Act 1961* (Commonwealth), section 94.

Part 3A

93A-93I (Repealed)

Part 4 Offences relating to property

Chapter 1 Stealing and like offences

GENERAL

93J Property previously stolen

Where on the trial of a person for any offence which includes the stealing of any property it appears that the property was, at the time when it was taken by the accused, already out of the possession of the owner by reason of its having been previously stolen, the accused may be convicted of the offence charged notwithstanding that it is not proved that the taking by him amounted to an interference with the right to possession of, or a trespass against, the owner.

ROBBERY

94 Robbery or stealing from the person

Whosoever:

robs or assaults with intent to rob any person, or

steals any chattel, money, or valuable security from the person of another,

shall, except where a greater punishment is provided by this Act, be liable to penal servitude for fourteen years.

95 Same with striking

Whosoever robs, or assaults with intent to rob, any person, or steals any chattel, money, or valuable security, from the person of another, and immediately before, or at the time of, or immediately after such robbery, assault, or larceny from the person, strikes, or uses any other corporal violence to any person, shall be liable to penal servitude for twenty years.

96 Same with wounding

Whosoever commits any offence under section 95, and thereby wounds any person, shall be liable to penal servitude for life.

97 Robbery etc or stopping a mail, being armed or in company

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 twenty years.

98 Robbery with arms etc and wounding

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.

EXTORTION, &c, BY MENACE OR THREAT

99 Demanding money with intent to steal

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 ten years.

100 Letter demanding money etc with menaces

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.

100A Blackmail by threat to publish etc

(1) Whosoever with intent to cause gain for himself or any other person, or with intent to procure for himself or any other person any appointment or office, or with intent to cause loss to any person:

(a) makes any unwarranted demand, and

(b) supports that demand by making:

(i) any unwarranted threat to publish,

(ii) any unwarranted proposal to abstain from publishing, or

(iii) any unwarranted offer to prevent the publication of,

any matter or thing concerning any person (whether living or dead),

shall be liable to penal servitude for ten years.

(2) For the purposes of this section:

(a) **publish** means communicate to any person,

(b) a demand is unwarranted unless the person making it does so in the belief that he has reasonable grounds for making it,

(c) a threat, proposal or offer in support of a demand is unwarranted unless the person making it does so in the belief that it is a proper means of supporting the demand,

(d) **gain** means gain in money or other property, whether temporary or permanent, and includes a gain by keeping what one has, as well as a gain by getting what one has not, and

(e) **loss** means loss in money or other property, whether temporary or permanent, and includes a loss by not getting what one might get, as well as a loss by parting with what one has.

101 Threatening letters

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 defined in section 104, 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.

102 Accusing or threatening to accuse of crime to extort money etc

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 as is referred to in section 101, with intent in any such case to extort or gain property from any person, shall be liable to penal servitude for ten years.

103 Causing a person by violence or threats to execute deeds etc

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 as is defined in section 104, 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.

104 Term “infamous crime” defined

For the purposes of sections 101, 102 and 103 the term *infamous crime* shall include offences under sections 61B–61D, the crimes of rape, and buggery, or bestiality, with mankind, or an animal, and every assault with intent to commit, or attempt to commit, any such offence or crime, and every solicitation, promise, or threat, offered, or made, to any person whereby to induce him to commit, or permit, any such offence or crime.

105 Menace may be of violence or accusation etc

It shall be immaterial whether any such menace or threat, as is referred to in sections 99 to 103 both inclusive, 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 AND HOUSEBREAKING

106 Breaking and entering place of Divine worship and committing felony

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.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section, shall be liable to penal servitude for twenty years.

107 The like with intent to commit felony

Whosoever breaks and enters any place of Divine worship, with intent to commit felony therein, shall be liable to penal servitude for ten years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for fourteen years.

108 (Repealed)

109 Entering with intent, or stealing etc in dwelling-house and breaking out

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 shall be liable to penal servitude for fourteen years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for twenty years.

110 Breaking, entering and assaulting with intent to murder etc

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 penal servitude for life.

111 Entering dwelling-house in the night

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

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for fourteen years.

112 Breaking etc into any house etc and committing felony

Whosoever:

breaks and enters any dwelling-house, or any building within the curtilage of any dwelling-house and occupied therewith but not being part thereof, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to His Majesty or to any Government department,

or to any municipal or other public authority, and commits any felony therein, or being in any dwelling-house, or any such building as aforesaid, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory or workshop, or any building belonging to His Majesty or to any Government department, or to any municipal or other public authority, commits any felony therein and breaks out of the same,

shall be liable to penal servitude for fourteen years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for twenty years.

113 Breaking etc into any house etc with intent to commit felony

Whosoever breaks and enters any dwelling-house, or any building within the curtilage of any dwelling-house, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to His Majesty, or to any Government department, or to any municipal or other public authority, with intent to commit felony therein, shall be liable to penal servitude for ten years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for fourteen years.

114 Being armed etc with intent to commit offence

(1) Any person who:

- (a) is armed with any weapon, or instrument, with intent to commit an indictable offence or to enter a building and to commit a misdemeanour therein,
- (b) has in his possession, without lawful excuse, any implement of housebreaking or safebreaking, or any implement capable of being used to enter or drive or enter and drive a conveyance,
- (c) has his face blackened or otherwise disguised, or has in his possession the means of blacking or otherwise disguising his face, with intent to commit a felony or misdemeanour,
- (d) enters or remains in or upon any part of a building or any land occupied or used in connection therewith with intent to commit a felony or misdemeanour in or upon the building,

shall be liable to penal servitude for seven years.

(2) For the purposes of subsection (1) (b) **conveyance** means any cab, carriage, motor

car, caravan, trailer, motor lorry, omnibus, motor or other bicycle, or any ship, or vessel, whether decked or undecked, used in or intended for navigation, and **drive** shall be construed accordingly.

115 The like after a previous conviction

Whosoever, having been convicted of any felony or misdemeanour, afterwards commits any offence mentioned in section 114, shall be liable to penal servitude for ten years.

LARCENY

Declaratory

116 All larcenies to be of same nature

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 passing of the Act seventh and eighth George the Fourth, chapter twenty-nine.

General provisions

117 Punishment for larceny

Whosoever commits larceny, or any felony by this Act made punishable like larceny, shall, except in the cases hereinafter otherwise provided for, be liable to penal servitude for five years.

118 Intent to return property no defence

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.

119 Verdict where several takings proved

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 such case be given of any taking which occurred more than six months in point of time from any other of such takings.

120 Trial for larceny—verdict of embezzlement etc

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 the offence of embezzlement or fraudulent misappropriation, or the fraudulent application, or disposition, of property as a clerk, or

servant, or person employed in the Public Service, or of obtaining property by any false pretence or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, the jury may acquit him of the larceny charged, and find him guilty of such other offence, and he shall be liable to punishment accordingly.

121 Verdict of “larceny or receiving”

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, such property, and that 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 shall be liable to be sentenced for the larceny, or for the felonious receiving, whichever of the two offences is subject to the lesser punishment.

122 Verdict where persons indicted for joint larceny or receiving

On the trial of any two, or more, persons charged with larceny, and also with having feloniously received property, the jury may find all, or any, of such persons guilty, either of stealing, or feloniously 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 feloniously receiving the property, or part or parts thereof.

123 Verdict of misdemeanour

Where, on the trial of a person for larceny, it appears that the property in question was taken, appropriated, or retained, under circumstances amounting to a misdemeanour, the jury may acquit him of the offence charged and find him guilty of such misdemeanour, and he shall be liable to punishment accordingly.

124 Fraudulent appropriation

Where, upon the trial of a person for larceny, it appears:

- (a) that he had fraudulently appropriated to his own use or that of another, the property in respect of which he is indicted, although he had not originally taken the property with any fraudulent intent, or
- (b) that he had fraudulently retained the property in order to secure a reward for its restoration,

the jury may return a verdict accordingly, and thereupon he shall be liable to imprisonment for two years, or to a fine of \$2,000, or both.

Larceny by bailees

125 Larceny by bailee

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 does not break bulk, or otherwise determine the bailment, shall be deemed to be guilty of larceny and liable to be indicted for that offence.

The accused shall be taken to be a bailee within the meaning of 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.

Of animals

126 Stealing cattle or killing with intent to steal

Whosoever:

steals any cattle, or

wilfully kills any cattle with intent to steal the carcass, or skin, or other part, of the cattle so killed,

shall be liable to penal servitude for fourteen years.

127 Stealing or killing cattle—uncertainty as to sex or age not to entitle to acquittal

Where, on the trial of a person for an offence under section 126 it appears 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, such person shall not be entitled to acquittal by reason only of such uncertainty.

128 Trial for stealing cattle—verdict of stealing skins

Where, on the trial of a person for stealing cattle, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of stealing the carcass, or skin, or part, of such cattle, or of killing the said cattle within section 126, they may acquit him of the offence charged, and find him guilty of such last-mentioned stealing, or killing, and he shall be liable to punishment accordingly.

129 Trial for killing cattle—verdict of stealing

Where, on the trial of a person for the offence of killing cattle within the meaning of section 126, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of stealing such cattle, they may acquit him of the offence charged, and find him guilty of such stealing, and he shall be liable to punishment accordingly.

130 Trial for stealing cattle—verdict of misdemeanour

Where, on the trial of a person for stealing cattle, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of an offence within section 131, they may acquit him of the offence charged, and find him guilty of an offence under the said last mentioned section, and he shall be liable to punishment accordingly.

131 Unlawfully using etc another person's cattle

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

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, or

fraudulently brands, or ear-marks, or defaces, or alters, the brands or ear-marks of any cattle the property of another person,

shall be liable to imprisonment for three years.

132 Stealing dogs

Whosoever, having been summarily convicted under this or any former Act, of any such offence as is hereinafter in this section mentioned, afterwards,

steals any dog, or

has unlawfully in his possession any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen,

shall be liable to imprisonment for one year.

133 Taking money to restore dogs

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 other than its owner, shall be liable to imprisonment for one year.

Of written instruments

134 Stealing, destroying etc valuable security

Whosoever steals, embezzles, or for any fraudulent purpose destroys, cancels, obliterates, or conceals, the whole or any part of any valuable security, shall be liable, as if he had stolen a chattel, to be punished as for larceny.

135 Stealing, destroying etc wills or codicils

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.

136 Proviso to sections 134 and 135

No person shall be convicted under section 134 or section 135 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, or under compulsory examination in some matter in the liquidation of a corporation.

137 Civil remedies not affected by conviction

- (1) Nothing in section 134 or in section 135, 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.
- (2) No evidence of the conviction of any person under either of the said sections shall be admissible in any action, or suit, against him.

138 Stealing, destroying etc records etc of any court or public office

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.

Of things attached to or growing on land

139 Stealing etc metal, glass, wood etc fixed to house or land

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 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 liable to be punished as for larceny.

140 Stealing etc trees etc in pleasure-grounds

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, 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 two dollars, or

steals, or destroys or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood respectively growing elsewhere than in any situation beforementioned, where the value of the article stolen, or the amount of injury done, exceeds ten dollars,

shall be liable to be punished as for larceny.

141-143 (Repealed)

From mines

144 Stealing ore of metal, coal etc

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 liable to be punished as for larceny.

145 Miners removing ore with intent to defraud

Whosoever, being employed in or about any mine, or claim, or any land comprised in any lease, or promise of lease, for mining purposes by or on behalf of the Crown, 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 three years.

146 Concealing royalty

Whosoever, being the holder of any lease issued under any Act relating to the gold-fields

by any device or contrivance defrauds, or attempts to defraud, Her Majesty of any gold, or money payable under such lease, or

conceals, or makes a false statement as to the amount of any gold procured by him, or falsifies any account, with intent in any such case to defraud,

shall be guilty of a misdemeanour.

147 Fraud on partners in mines etc

Whosoever, with intent to defraud his co-partner, or co-adventurer, in any claim, or land comprised in any lease, or promise of lease, for mining purposes by or on behalf of the Crown, 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 liable to be punished as for larceny.

In dwelling-house

148 Stealing property in a dwelling-house

Whosoever steals in a dwelling-house any property shall be liable to penal servitude for seven years.

149 The same with menaces

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.

Of goods in process of manufacture, tools, &c

150 Stealing goods in process of manufacture

Whosoever steals, to the value of one dollar, 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 term not exceeding three years.

151 Selling etc materials to be manufactured

Whosoever, being, for the purpose of manufacture, or any special purpose connected with manufacture, employed to make, prepare, or work up, any goods, article, or material, or being for any such purpose entrusted with any such goods, article, or material, or with any tools, or apparatus, sells, pawns, purloins, secretes, embezzles, exchanges, or otherwise fraudulently disposes of the same, or any part thereof, shall be liable to imprisonment for four years.

From ships or wharfs

152 Stealing from ship in port or on wharfs etc

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.

153 Stealing from ship in distress or wrecked

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 two dollars belonging to such vessel, shall be liable to penal servitude for ten years.

By tenants or lodgers

154 Tenants etc stealing articles let to hire

Whosoever, being the tenant, or occupier, of any house, building, or lodging, steals any chattel, or fixture let to be used therewith, whether the contract was entered into by the accused, or by any person on his behalf, shall be liable to be punished as for larceny.

Of vehicles or boats

154A Taking a conveyance without consent of owner

- (1) Any person who:
 - (a) without having the consent of the owner or person in lawful possession of a conveyance, takes and drives it, or takes it for the purpose of driving it, or secreting it, or obtaining a reward for its restoration or pretended restoration, or for any other fraudulent purpose, or
 - (b) knowing that any conveyance has been taken without such consent, drives it or allows himself to be carried in or on it,

shall be deemed to be guilty of larceny and liable to be indicted for that offence.

- (2) For the purposes of this section **conveyance** means any cart, wagon, cab, carriage, motor car, caravan, trailer, motor lorry, tractor, earth moving equipment, omnibus, motor or other bicycle, or any ship, or vessel, whether decked or undecked, used or intended for navigation, and **drive** shall be construed accordingly.

Larceny and illegal use of aircraft

154B Stealing aircraft and unlawfully taking or exercising control of aircraft

- (1) Whosoever steals any aircraft shall be liable to penal servitude for ten years.
- (2) Whosoever without lawful excuse takes or exercises control, whether direct or through another person, of an aircraft shall be deemed to be guilty of larceny and be liable to penal servitude for seven years.
- (3) Whosoever without lawful excuse takes or exercises control, whether direct or through another person, of an aircraft while another person, not being an accomplice of the

first-mentioned person, is on board the aircraft shall be deemed to be guilty of larceny and be liable to penal servitude for fourteen years.

- (4) Whosoever without lawful excuse, by force or violence or threat of force or violence, or by any trick or false pretence, takes or exercises control, whether direct or through another person, of an aircraft while another person, not being an accomplice of the first-mentioned person, is on board the aircraft shall be deemed to be guilty of larceny and be liable to penal servitude for twenty years.

Of electricity

154C Malicious or fraudulent abstraction, waste etc of electricity

Whosoever maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity, shall be guilty of larceny, and punishable accordingly.

EMBEZZLEMENT OR LARCENY

By clerks and servants

155 Definition of clerk or servant

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 he had no authority from his employer to receive money, or other property, on his account, shall be deemed a clerk, or servant.

156 Larceny by clerks or servants

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 has been converted, or exchanged, shall be liable to penal servitude for ten years.

157 Embezzlement by clerks or servants

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.

158 Destruction, falsification of accounts etc by clerk or servant

Whosoever, being a clerk, or servant, or person acting in the capacity of a clerk, or servant,

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

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,

with intent in any such case to defraud,
shall be liable to penal servitude for five years.

By persons employed in the Public Service

159 Larceny by persons in Public Service

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.

160 Embezzlement etc by persons in the Public Service

Whosoever, being employed in the Public Service, 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 applies, or disposes of, the same, or any part thereof, shall be deemed to have stolen the same, and shall be liable to penal servitude for ten years.

General deficiency

161 Proof of general deficiency in accounts

On the prosecution of a person for larceny, or embezzlement as a clerk, or servant, or as a person employed in the Public Service, where the charge is in respect of money, it shall not be necessary to prove the larceny, or embezzlement, by the accused 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 he stole, or fraudulently embezzled the deficient money, or any part thereof.

By joint owners

162 Larceny etc by joint owners

Whosoever, being a member of any copartnership, or being one of two, or more, joint owners, steals, or embezzles, any property of, or belonging to, such copartnership, or joint owners, may be convicted of, and punished for, the offence as if he was not a member of the copartnership, or one of such joint owners.

Copartnership shall, for the purposes of this section, include all corporations and societies whatsoever.

Alternative verdict

163 Trial for embezzlement—verdict of larceny

Where, on the trial of any person for embezzlement, or the fraudulent application, or disposition, of property as a clerk, or servant, or person employed in the Public Service, 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 larceny, or of larceny as such clerk, servant, or person, as the case may be, and he shall be liable to punishment accordingly.

FRAUDS BY FACTORS AND OTHER AGENTS

164 Terms “agents”, “intrusted” and “misappropriate”

For the purposes of sections 165 to 171 both inclusive:

intrusted means intrusted, either solely, or jointly, with any other person.

agent includes bankers, merchants, attorneys, factors, brokers, and every other person acting in the capacity of an agent so intrusted.

misappropriate means 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.

165 Agent misappropriating money etc intrusted to him

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 liable to penal servitude for ten years.

166 The like as to goods etc intrusted to him

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 liable to penal servitude for ten years.

167 Not to affect trustees or mortgagees nor to restrain agents from receiving money on valuable securities etc

Nothing in section 165 or section 166 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.

168 Fraudulent sale of property by agent

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.

169 The same by person under power of attorney

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 liable to penal servitude for ten years.

170 Agent obtaining advances on property of his principal

Whosoever, being an agent intrusted with property for the purpose of sale, or otherwise disposing of the same,

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,

otherwise than for the use of his principal, and in violation of good faith, 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, or

assists in the making of any such transfer, consignment, pledge, or delivery, or in the obtaining of any such advance, knowing the same in any such case to be in violation of good faith,

shall be liable to penal servitude for ten years:

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.

171 What to be deemed intrusting with goods etc

For the purposes of section 170:

- (1) 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,
- (2) every transfer, pledge, or delivery, of any such document shall be deemed a transfer, pledge, or delivery, of the property indicated by the same,
- (3) 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,
- (4) 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 is shown.

172 Trustees fraudulently disposing of property

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 liable to penal servitude for ten years:

Provided that no prosecution shall be instituted under this section without the leave of the Supreme Court or of the Attorney-General.

173 Directors etc fraudulently appropriating etc property

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 purpose of such body corporate, or company, or

fraudulently destroys any of the property of such body corporate, or company,

shall be liable to penal servitude for 10 years.

174 Directors etc omitting certain entries

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 liable to penal servitude for 10 years.

175 Director etc wilfully destroying etc books of company etc

Whosoever, being a director, officer, or member, of any body corporate, or public company,

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,

with intent in any such case to defraud,
shall be liable to penal servitude for 10 years.

176 Director or officer publishing fraudulent statements

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 liable to penal servitude for 10 years.

176A Directors etc cheating or defrauding

Whosoever, being a director, officer, or member, of any body corporate or public company, cheats or defrauds, or does or omits to do any act with intent to cheat or defraud, the body corporate or company or any person in his dealings with the body corporate or company shall be liable to imprisonment for 10 years.

177 Proviso to sections 165 to 176 inclusive

No person shall be convicted of any offence under any of the sections from section 165 to section 176 both inclusive 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, or under compulsory examination in some matter in the liquidation of a corporation.

178 No relief from compulsory disclosures

- (1) Nothing in sections 165 to 176 both inclusive shall relieve any person from making a full discovery, by answer to interrogatories, or from answering any question in a civil proceeding.
- (2) No evidence of the conviction of any person, under any of the said sections, shall be admissible in any suit against him.
- (3) Nothing in the said sections, nor any proceeding or conviction under them, shall affect any remedy which any party would 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.

FRAUDULENT MISAPPROPRIATION

178A Fraudulent misappropriation of moneys collected or received

Whosoever having collected or received any money or valuable security upon terms requiring him to deliver or account for or pay to any person the whole or any part of:

- (a) such money or valuable security or the proceeds thereof, or
- (b) any balance of such money, valuable security, or proceeds thereof after any authorised deductions or payments have been made thereout,

fraudulently misappropriates to his own use or the use of any other person, or fraudulently omits to account for or pay the whole or any part of such money, valuable security, or proceeds, or the whole or any part of such balance in violation of the terms on which he collected or received such money or valuable security, shall be liable to penal servitude for seven years.

For the purposes of this section any such money, valuable security, or proceeds thereof, or any balance thereout shall be deemed to be the property of the person who authorised the collection or receipt of the money or valuable security or from whom the money or valuable security was received notwithstanding that the accused may have been authorised to make any deduction thereout on his own behalf, or any payment thereout to another person, or to mix such money, valuable security, or proceeds thereof, or such balance with his own moneys.

VALUELESS CHEQUES

178B Valueless cheques

Whosoever obtains any chattel, money or valuable security by passing any cheque which is not paid on presentation shall, unless he proves:

- (a) that he had reasonable grounds for believing that that cheque would be paid in full on

presentation, and

(b) that he had no intent to defraud,

be liable to imprisonment for one year, notwithstanding that there may have been some funds to the credit of the account on which the cheque was drawn at the time it was passed.

OBTAINING MONEY, ETC, BY DECEPTION

178BA Obtaining money etc by deception

- (1) Whosoever by any deception dishonestly obtains for himself or another person any money or valuable thing or any financial advantage of any kind whatsoever shall be liable to imprisonment for 5 years.
- (2) For the purposes of subsection (1), **deception** means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

OBTAINING MONEY, ETC, BY FALSE OR MISLEADING STATEMENTS

178BB Obtaining money etc by false or misleading statements

Whosoever, with intent to obtain for himself or another person any money or valuable thing or any financial advantage of any kind whatsoever, makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) which he knows to be false or misleading in a material particular or which is false or misleading in a material particular and is made with reckless disregard as to whether it is true or is false or misleading in a material particular shall be liable to imprisonment for 5 years.

OBTAINING CREDIT BY FRAUD

178C Obtaining credit by fraud

Whosoever incurring any debt or liability obtains credit by any false pretence or by any wilfully false promise or partly by a false pretence and partly by a wilfully false promise or by any other fraud shall be liable to imprisonment for one year.

FALSE PRETENCES

179 False pretences etc

Whosoever, by any false pretence or by any wilfully false promise, 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.

180 Causing payment etc by false pretence etc

Where the accused, by any false pretence or by any wilfully false promise, 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, he shall be deemed to have obtained the same within the meaning of section 179.

181 False pretence of title

Where the accused 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 property, he shall be deemed to have obtained the same within the meaning of section 179.

182 Accused may be convicted on a charge of false pretences etc though property obtained partly by a false promise

Where, on the trial of a person for obtaining property by any false pretence or by any wilfully false promise, it appears that the property was obtained partly by a false pretence and partly by a wilfully false promise, such person shall not by reason thereof be entitled to acquittal.

183 Trial for false pretences etc—verdict of larceny

Where, on the trial of a person for obtaining property by any false pretence or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, it appears that he obtained the property in such manner as to amount in law to larceny or fraudulent misappropriation, the jury may acquit him of the offence charged, and find him guilty of larceny, or of larceny as a clerk, or servant, or a person employed in the Public Service, or of fraudulent misappropriation, as the case may be, and he shall be liable to punishment accordingly.

184 Fraudulent personation

Whosoever falsely personates, or pretends to be, some other person, with intent fraudulently to obtain any property, shall be liable to penal servitude for seven years.

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.

185 Inducing persons by fraud to execute instruments

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, in order that the same may be afterwards made or converted into, or used

or dealt with as a valuable security, shall be liable to penal servitude for seven years.

Fraudulent arrangements

185A Inducing persons to enter into certain arrangements by misleading etc statements etc

- (1) Whosoever, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to take part or offer to take part in any arrangements with respect to property other than marketable securities, being arrangements the purpose or effect, or pretended purpose or effect, of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of the property or otherwise) to participate in or receive profits or income alleged to arise or to be likely to arise from the acquisition, holding, management or disposal of such property, or sums to be paid or alleged to be likely to be paid out of such profits or income, shall be liable to penal servitude for five years.
- (2) Any person guilty of conspiracy to commit an offence under subsection (1) shall be punishable as if he had committed such an offence.
- (3) Without limiting the generality of subsection (1) a statement, promise or forecast shall, for the purposes of that subsection, be deemed to be misleading or deceptive if it is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement, promise or forecast indicates that that state of affairs does exist.
- (4) Where a body corporate is convicted of an offence under subsection (1) any director of the body corporate, or any manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity shall, if he consented to or connived at the commission of that offence, be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (5) Without limiting the generality of subsection (4), a person shall, for the purposes of that subsection, be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the company or any of them act:

Provided that a person shall not, by reason only that the directors of a body corporate act on advice given by him in a professional capacity, be taken, for the purposes of this subsection, to be a person in accordance with whose directions or instructions those directors act.

(6) In this section **marketable securities** has the meaning ascribed to that expression in the *Companies (New South Wales) Code*.

CORRUPT REWARDS

186 Taking reward for helping to recover stolen property

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 recover 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

187 Term “stealing” in sections 188 and 189

For the purposes of sections 188 and 189:

Stealing includes the taking, extorting, obtaining, embezzling, or otherwise disposing of the property in question.

188 Receiving etc where principal guilty of felony

Whosoever receives, or disposes of, or attempts to dispose of, 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 been previously tried or not, or is amenable to justice or not, and in either case shall be liable to penal servitude for ten years.

189 Receiving etc where principal guilty of misdemeanour

Whosoever receives, or disposes of, or attempts to dispose of, any property, the stealing whereof is a misdemeanour, knowing the same to have been stolen, shall be guilty of a misdemeanour, and whether the person guilty of the principal offence has been previously tried or not, or is amenable to justice or not, shall be liable to imprisonment for three years.

189A Receiving etc goods stolen out of New South Wales

- (1) Whosoever, without lawful excuse, receives or disposes of, or attempts to dispose of, or has in his possession, any property stolen outside the State of New South Wales, knowing the same to have been stolen, and whether or not he took part in the stealing of the property, shall be liable to penal servitude for ten years.
- (2) For the purposes of this section property shall be deemed to have been stolen if it has been taken, extorted, obtained, embezzled, converted, or disposed of under such

circumstances that if the act had been committed in the State of New South Wales the person committing it would have been guilty of an indictable offence according to the law for the time being of the State of New South Wales.

- (3) No person shall be liable to conviction under this section if the taking, extorting, obtaining, embezzling, converting, or disposing is not a criminal offence in the country in which the act is committed.

189B Prosecution under section 188 or 189 where property stolen in course of transmission

- (1) Where in the trial of a person for the offence under section 188 or 189 of receiving, or disposing of, or attempting to dispose of, any property knowing it to have been stolen, it is proved that the property was stolen in the course of transmission between New South Wales and any other jurisdiction or between any other jurisdiction and New South Wales:
- (a) the person shall be liable to be convicted of the offence without proof that the stealing took place in New South Wales, and
 - (b) for the purpose of determining whether or not the stealing amounts to a felony or a misdemeanour, the stealing shall be deemed to have taken place in New South Wales.
- (2) For the purposes of subsection (1) **other jurisdiction** means a State (other than New South Wales) or Territory of the Commonwealth.

190 Receiving etc cattle feloniously killed, or carcass etc

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, or disposes of, or attempts to dispose of, 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.

191 Uncertainty as to sex or age not to entitle to acquittal

Where, on the trial of a person for an offence under section 190, it appears that the animal was of the species mentioned in the indictment, but it is uncertain on the evidence what was its sex or age, such person shall not be entitled to acquittal by reason only of such uncertainty.

192 Receiving material or tools intrusted for manufacture

Whosoever receives any 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, within the meaning of section 151, or that the person offering the same is fraudulently disposing thereof, shall be liable to imprisonment for four years.

193 Verdict where several persons are indicted for jointly receiving

Where, on the trial of two or more persons for jointly receiving property, it appears that one, or more, separately received such property, or any part thereof, the jury may convict such one or more of the said persons as is, or are, proved to have so received the same.

Chapter 2 Criminal destruction and damage

Division 1 Interpretation

194 Interpretation

- (1) In this Chapter, a reference to property does not include a reference to property that is not of a tangible nature.
- (2) In this Chapter, a reference to property includes a reference to wild creatures that have been tamed or are ordinarily kept in captivity and also includes any other wild creatures or their carcasses but only if they:
 - (a) have been reduced into possession that has not been lost or abandoned, or
 - (b) are in the course of being reduced into possession.
- (3) For the purposes of this Chapter, an act done by a person under a reasonable belief that the person had a right to do the act shall be taken not to have been done maliciously.

Division 2 Crimes against property generally

195 Maliciously destroying or damaging property

A person who maliciously destroys or damages property belonging to another or to that person and another is liable:

- (a) to penal servitude for 5 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 10 years.

196 Maliciously destroying or damaging property with intent to injure a person

A person who maliciously destroys or damages property, intending by the destruction or

damage to cause bodily injury to another, is liable:

- (a) to penal servitude for 7 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

197 Dishonestly destroying or damaging property

A person who dishonestly, with a view to making a gain for that person or another, destroys or damages property is liable:

- (a) to penal servitude for 7 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

198 Maliciously destroying or damaging property with the intention of endangering life

A person who maliciously destroys or damages property, intending by the destruction or damage to endanger the life of another, is liable to penal servitude for life.

199 Threatening to destroy or damage property

A person who, without lawful excuse, makes a threat to another, with the intention of causing that other to fear that the threat would be carried out:

- (a) to destroy or damage property belonging to that other or to a third person, or
- (b) to destroy or damage the first-mentioned person's own property in a way which that person knows will or is likely to endanger the life of, or to cause bodily injury to, that other or a third person,

is liable to penal servitude for 5 years.

200 Possession, custody or control of an article with intent to destroy or damage property

A person who has possession, custody or control of an article with the intention that it should be used maliciously to destroy or damage property belonging to:

- (a) some other person, or
- (b) the first-mentioned person or the user, or both of them, and some other person,

is liable to penal servitude for 3 years.

Division 3 Crimes relating to particular kinds of property etc

201 Interfering with a mine

A person who maliciously:

- (a) causes water to run into a mine or any subterranean channel connected to it,
 - (b) destroys, damages or obstructs any shaft, passage, pit, airway, waterway or drain of, or associated with, a mine,
 - (c) destroys, damages or renders useless any equipment, building, road or bridge belonging to a mine, or
 - (d) hinders the working of equipment belonging to a mine,
- is liable to penal servitude for 7 years.

202 Causing damage etc to sea, river, canal and other works

A person who:

- (a) maliciously destroys, damages, removes or interferes with piles or other materials that form part of, or have been fixed or placed in position in order to secure:
 - (i) a sea wall or other structure designed to prevent erosion by the sea,
 - (ii) the bank or bed of, or a dam, weir or lock located on, a river or canal,
 - (iii) a drain, aqueduct, marsh or reservoir, or
 - (iv) a dock, quay, wharf, jetty or other harbour installation,
- (b) maliciously opens a floodgate or sluice that is located at or on a dam, weir, reservoir or watercourse, or
- (c) with the intention of obstructing or hindering the navigation of vessels or boats on a navigable river or canal:
 - (i) interferes with or obstructs the flow of the river or canal,
 - (ii) damages or interferes with the bank or bed of the river or canal, or
 - (iii) destroys, damages or interferes with any structure or equipment constructed or installed in connection with the use of the river or canal for the purposes of navigation,

is liable to penal servitude for 7 years.

203 False statement that a person or property is in danger

If:

- (a) a person:
 - (i) makes to another person a statement that the first-mentioned person knows to be false or misleading, or

(ii) sends to another person a document containing such a statement, and

(b) the statement is likely to make that other person fear for the safety of a person (including the maker of the statement or the person to whom it is made) or for the safety of property, or both,

the first-mentioned person is liable to imprisonment for 5 years.

Part 4AA Offences relating to transport services

Division 1 Offences relating to aircraft, vessels etc

204 Destruction of, or damage to, an aircraft or vessel with intent or reckless indifference

Any person who:

(a) with intent to cause the death of a person, or

(b) with reckless indifference for the safety of the life of a person,

destroys or damages an aircraft or vessel is liable to penal servitude for life.

205 Prejudicing the safe operation of an aircraft or vessel

A person who, whether on board the aircraft or vessel or not, does anything with the intention of prejudicing the safety of an aircraft or vessel is liable to penal servitude for 14 years.

206 Assault etc on member of crew of aircraft or vessel

A person who, while on board an aircraft or vessel, assaults or threatens with violence a member of the crew of the aircraft or vessel:

(a) so as to interfere with the functions or duties performed by the crew member in connection with the safe operation of the aircraft or vessel, or

(b) so as to diminish the ability of the crew member to perform those functions or duties,

is liable to penal servitude for 14 years.

207 Placing etc dangerous articles on board an aircraft or vessel

(1) In this section:

dangerous article means:

(a) a firearm, ammunition for a firearm, a weapon or an explosive, or

(b) a substance or thing that, because of its nature or condition, could endanger the safety of an aircraft or vessel or persons on board an aircraft or vessel.

(2) A person who:

- (a) places or carries on board an aircraft or vessel an article knowing that it is a dangerous article,
- (b) knowing that an article is a dangerous article, delivers the article to a person for the purpose of having the article placed or carried on board an aircraft or vessel, or
- (c) has possession of an article while on board an aircraft or vessel knowing that the article is a dangerous article,

is liable to penal servitude for 7 years.

(3) Subsection (2):

- (a) does not apply to or in relation to anything done with an article in relation to an aircraft or vessel with the consent of the owner or operator of the aircraft or vessel where that consent is given with a knowledge of the nature or condition of the article, and
- (b) does not apply to or in relation to the carrying or placing of a firearm or ammunition for a firearm on board an aircraft or vessel with permission given in accordance with regulations in force under the [Air Navigation Act 1920](#) of the Commonwealth.

208 Threatening to destroy etc an aircraft, vessel or vehicle

(1) In this section:

threat includes:

- (a) an expression of intention, or
- (b) the making of a statement from which an expression of intention could reasonably be inferred.

transport vehicle means:

- (a) a mechanically or electrically driven vehicle that is used or designed to be used for the purpose of conveying passengers or goods, or passengers and goods, or for the purpose of drawing a vehicle or vehicles of the kind referred to in paragraph (b), or
- (b) a vehicle not so driven that is directly or indirectly connected to and drawn by or designed to be connected to and drawn by, a vehicle of the kind first referred to in paragraph (a),

but does not include an aircraft or vessel.

(2) A person who makes a demand of another person with a threat:

- (a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle, or
- (b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

is liable to penal servitude for 14 years.

(3) A person who makes a demand of another person together with a threat to do any of the things mentioned in subsection (2) (a) or (b) and, while that threat still has effect:

- (a) discharges a firearm,
- (b) causes an explosion, or
- (c) inflicts grievous bodily harm on, or wounds, a person,

is liable to penal servitude for life.

(4) A person who makes a threat:

- (a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle, or
- (b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

is liable to imprisonment for 5 years.

209 False information as to plan etc to prejudice the safety of an aircraft or vessel or persons on board an aircraft or vessel

A person who makes a statement or conveys information, knowing it to be false, to the effect, or from which it could reasonably be inferred, that there has been, is or is to be a plan, proposal, attempt, conspiracy or threat to:

- (a) take, or exercise control of, an aircraft or vessel by force,
- (b) destroy or damage, or endanger the safety of, an aircraft or vessel, or
- (c) kill, or inflict bodily injury on, persons in or on an aircraft or vessel,

is liable to imprisonment for 2 years.

210 Destroying, damaging etc an aid to navigation

A person who:

- (a) maliciously destroys, damages, removes, conceals or interferes with a mark, device or

equipment used or designed to be used to assist the navigation of aircraft or vessels,
or

- (b) does any act with the intention of causing any such destruction, damage,
concealment or interference,

is liable to penal servitude for 7 years.

Division 2 Offences relating to railways etc

211 Criminal acts relating to railways

(1) A person who:

- (a) maliciously does any act on or in connection with the operation of a railway, or
(b) maliciously omits to do any act on or in connection with a railway that it is the
person's duty to do,

with the intention of causing the death of, inflicting bodily injury on or endangering
the safety of any person who is on the railway, or who is in or on any locomotive or
other rolling stock on the railway, is liable to penal servitude for life.

(2) A person who:

- (a) maliciously does any act on or in connection with the operation of a railway, or
(b) maliciously omits to do any act on or in connection with the operation of a railway
that it is the person's duty to do,

with the intention of causing any locomotive or other rolling stock on the railway to be
derailed, destroyed or damaged, is liable to penal servitude for 14 years.

212 Endangering passengers etc on railway

A person who, by an unlawful act or a negligent omission, endangers the safety of any
person who is on, or who is being conveyed on, a railway is liable to imprisonment for 3
years.

213 Obstructing a railway

A person who:

- (a) intentionally and without lawful excuse, does an act, or omits to do an act, which
causes the passage or operation of a locomotive or other rolling stock on a railway to
be obstructed, or
(b) assists a person to do or omit to do such an act, with the knowledge that the person's
intention to do or omit to do that act is without lawful excuse,

is liable to imprisonment for 2 years.

214 Obstructing a railway—verdict of misdemeanour

- (1) If, on the trial of a person for an offence under section 211, the jury is not satisfied that the person is guilty of the offence, but is satisfied that the person is guilty of an offence under section 212 or 213, it may acquit the person of the offence charged and instead find the person guilty of an offence under section 212 or 213.
- (2) If, in accordance with subsection (1), a jury finds a person guilty of an offence under section 212 or 213, the person is liable to be punished as provided by that section.

215-249 (Repealed)

Part 4A Corruptly receiving commissions and other corrupt practices

249A Definitions

In this Part:

agent includes:

- (a) any person employed by, or acting for or on behalf of, any other person (who in this case is referred to in this Part as the person's principal) in any capacity,
- (b) any person purporting to be, or intending to become, an agent of any other person (who in this case is referred to in this Part as the person's principal), and
- (c) any person serving under the Crown (which in this case is referred to in this Part as the person's principal).

benefit includes money and any contingent benefit.

249B Corrupt commissions or rewards

- (1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:
 - (a) as an inducement or reward for or otherwise on account of:
 - (i) doing or not doing something, or having done or not having done something,
or
 - (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,in relation to the affairs or business of the agent's principal, or
 - (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the

affairs or business of the agent's principal,

the agent is liable to imprisonment for 7 years.

(2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:

(a) as an inducement or reward for or otherwise on account of the agent's:

(i) doing or not doing something, or having done or not having done something,
or

(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal, or

(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the firstmentioned person is liable to imprisonment for 7 years.

(3) For the purposes of subsection (1), where a benefit is received or solicited by anyone with the consent or at the request of an agent, the agent shall be deemed to have received or solicited the benefit.

249C Misleading documents or statements used or made by agents

(1) Any agent who uses, or gives to the agent's principal, a document which contains anything that is false or misleading in any material respect, with intent to defraud the agent's principal, is liable to imprisonment for 7 years.

(2) Any agent who makes a statement to the agent's principal which is false or misleading in any material respect, with intent to defraud the principal, is liable to imprisonment for 7 years.

249D Corrupt inducements for advice

(1) If a person corruptly gives a benefit to another person for giving advice to a third person, being advice which the person giving the benefit intends will influence the third person:

(a) to enter into a contract with the person who gives the benefit, or

(b) to appoint the person who gives the benefit to any office,

and, at the time the benefit is given, the person who gives the benefit intends the giving of the benefit not be made known to the person advised, the person who gives

the benefit is liable to imprisonment for 7 years.

(2) If a person corruptly receives a benefit for giving advice to another person, being advice which is likely to influence the other person:

- (a) to enter into a contract with the person who gave the benefit, or
- (b) to appoint the person who gave the benefit to any office,

and, at the time the benefit is received, the person who receives the benefit intends the giving of the benefit not be made known to the person to be advised, the person who receives the benefit is liable to imprisonment for 7 years.

(3) For the purposes of subsections (1) and (2), where a benefit is given or received by anyone with the consent or at the request of another person, the other person shall be deemed to have given or received the benefit.

(4) If any person corruptly offers or solicits a benefit for the giving of advice by one person to another:

(a) intending that the advice will influence the person advised:

- (i) to enter into a contract with anyone, or
- (ii) to appoint anyone to any office, and

(b) intending that the giving or receipt of the benefit not be made known to the person advised,

the firstmentioned person is liable to imprisonment for 7 years.

(5) In this section:

(a) a reference to the giving of advice includes a reference to the providing of information orally or in writing,

(b) a reference to entering into a contract includes a reference to offering to enter into a contract, and

(c) a reference to the appointment of a person includes a reference to:

- (i) joining in the appointment of the person, and
- (ii) voting for or assisting in the election or appointment of the person.

249E Corrupt benefits for trustees and others

(1) In this section, a reference to a person entrusted with property is a reference to:

- (a) a trustee of the property,

- (b) an executor or administrator appointed for the purpose of dealing with the property,
 - (c) a person who, because of a power of attorney or a power of appointment, has authority over the property, and
 - (d) a person or a member of a committee managing or administering the property (or appointed or employed to manage or administer the property) under the *Mental Health Act 1958* or *Protected Estates Act 1983*.
- (2) Any person who offers or gives a benefit to a person entrusted with property, and any person entrusted with property who receives or solicits a benefit for anyone, without the consent:
- (a) of each person beneficially entitled to the property, or
 - (b) of the Supreme Court,
- as an inducement or reward for the appointment of any person to be a person entrusted with the property, are each liable to imprisonment for 7 years.
- (3) In this section, a reference to the appointment of a person includes a reference to:
- (a) joining in the appointment of the person, and
 - (b) assisting in the appointment of the person.
- (4) Proceedings for an offence under this section shall not be commenced without the consent of the Attorney General.
- (5) A consent to commence any such proceedings purporting to have been signed by the Attorney General is evidence of that consent without proof of the signature of the Attorney General.

249F Aiding, abetting etc

- (1) A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Part is guilty of an offence and is liable to imprisonment for 7 years.
- (2) A person who, in New South Wales, aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Part, is guilty of an offence and is liable to imprisonment for 7 years.

249G Repayment of value of gift etc

- (1) If a person is convicted of an offence under this Part, the court may (as well as imposing a penalty for the offence) order the person to pay to such other person as the court directs the whole or part of the amount or the value, assessed by the court,

of any benefit received or given by the person.

- (2) Any money payable to a person under this section may be recovered in a court of competent jurisdiction as a debt due to the person.

249H Disqualification for office

If a person is convicted of an offence under this Part, the person is disqualified for a civic office, within the meaning of the *Local Government Act 1919*, for the period of 7 years from the conviction or such lesser period as the court may order.

249I Dismissal of trivial case

If, in any proceedings for an offence under this Part, it appears to the court that the offence is of a trivial or merely technical nature, the court may in its discretion dismiss the case.

249J Custom not a defence

In any proceedings for an offence under this Part, it is not a defence that the receiving, soliciting, giving or offering of any benefit is customary in any trade, business, profession or calling.

Part 5 Forgery

Declaratory and general

250 Forging and uttering defined

For the purposes of this Act:

Forging means the counterfeiting, or altering in any particular, by whatsoever means effected, with intent to defraud, of an instrument, or document, or of some signature, or other matter, or thing, or of any attestation, or signature of a witness, whether by law required or not to any instrument, document, or matter, the forging of which is punishable under this Act.

Utter, or **uttering**, wherever used herein with respect to any forged instrument, document, signature, matter, or thing, or any instrument, document, or matter with a forged attestation or signature of a witness thereto, means that the person uttered, offered, disposed of, or put off, the same with intent to defraud, knowing it to be forged.

251 Uttering to be offence of same degree and subject to same punishment as forging

The uttering of any forged instrument, document, signature, matter, or thing, or of any instrument, document, or matter with a forged attestation or signature of a witness thereto, whether in any such case the same was made, or purports to have been made, in or out of New South Wales, shall, wherever the forging of the same is punishable under

this Act, be an offence of the same degree, and punishable in the same manner as such forgery.

Forgeries not specially provided for

252 Forgeries not specially provided for

Whosoever forges, or utters, any instrument, or matter, the forging or uttering of which is not by any provision in this Part otherwise punishable, shall be liable to imprisonment for two years.

Forgery, &c, of public seals or official signatures

253 Royal or public seals

Whosoever:

forges any of Her Majesty's seals, or the 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.

254 Signature of Governor, Minister of the Crown etc

Whosoever forges, or utters, the signature of the Governor, or of any of Her Majesty's Principal or Under Secretaries of State, or of any Minister of the Crown, or Under Secretary in New South Wales, or of the Surveyor-General, Deputy Surveyor-General or Auditor-General, to any grant, commission, warrant, order, or other official instrument or document, shall be liable to penal servitude for ten years.

Forgery of Acts, Proclamations, &c

255 Acts, proclamations etc

Whosoever:

prints any copy of any Act, or of any proclamation or commission issued by the Governor, which copy falsely purports to have been printed by the Government Printer, or

tenders in evidence any such copy knowing the same was not printed by the Government Printer,

shall be liable to penal servitude for fourteen years.

Forgery, &c, of transfers of stock, &c

256 Transfer of certain stock, or power of attorney relating thereto

Whosoever:

forges, or utters, any transfer of any share or 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 by 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 10 years.

257 Personating owner of stock or property

Whosoever falsely and deceitfully personates any owner of any such share, or interest, as is referred to in section 256, 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 10 years.

258 Falsifying books of public funds

Whosoever:

wilfully makes any false entry in, or alters any 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, 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 in any such case to defraud,
shall be liable to penal servitude for 10 years.

259 Public Servant making false dividend warrants etc

Whosoever being employed in the Public Service knowingly and with intent to defraud, makes out, or delivers, any dividend 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.

Forgery of India bonds, Exchequer bills, &c

260 East India bonds, Exchequer bills, or debentures etc

Whosoever forges, or utters, any 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 New South Wales, or receipt, or certificate for interest accruing thereon, shall be liable to penal servitude for fourteen years.

261 Making plates etc like those used for Exchequer bills etc

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 New South Wales, 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, or

without lawful authority causes any such act as aforesaid to be done, or assists in the doing thereof,

shall be liable to penal servitude for seven years.

262 Making paper like that used for Exchequer bills etc

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 mentioned in section 261, 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

without lawful authority 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 lawful authority takes any impression of any such plate, die, or seal, as in the said section mentioned, or

without lawful authority causes any such act as aforesaid to be done, or assists in the doing thereof,

shall be liable to penal servitude for seven years.

263 Having paper etc to be used for Exchequer bills etc

Whosoever without lawful authority receives, or knowingly has in his possession, any such plate, die, or seal, as mentioned in section 261 or 262, or any paper manufactured under the direction of Her Majesty's Treasury, or of the Government of New South Wales, for the purpose of being used as Exchequer bills, bonds, or debentures, or Treasury bills, or debentures of the Government of New South Wales, before such paper shall have been lawfully issued for public use, shall be liable to imprisonment for three years.

Forgery, &c, of stamps, or having forged dies, &c

264 Forging stamps or possessing false dies etc

Whosoever:

forges, or utters, any stamp authorised to be issued under the authority of any Act 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 New South Wales, or of any other Colony, for denoting stamp duty, or any material having thereon, wholly or in part, the impression of any such 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 for 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.

Forgery, &c, of, or engraving plate, &c, for, Bank notes, &c

265 Forging a bank note etc

Whosoever:

forges, or utters, any note, or bill of exchange, of any company or person carrying on the business of banking, whether in New South Wales 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, or

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.

266 Engraving or having any plate etc for making bank notes or paper

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 in New South Wales, 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.

267 Engraving etc any part of a bank note etc

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 company or person carrying on the business of banking in New South Wales or elsewhere, 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.

268 Instruments in blank

Every instrument in blank, which in a complete state would be a bank note, bank bill of exchange, or bank post bill, shall be within sections 266 and 267.

269 Having moulds for paper with the name of any banker

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 company or person carrying on the business of banking in New South Wales or elsewhere 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 for 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.

270 Engraving plates for foreign bills or notes

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 under seal or not, 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.

Forgery, &c, of wills, deeds, bills of exchange, &c

271 Forging wills

Whosoever forges, or utters, any will, testament, codicil, or testamentary instrument shall be liable to penal servitude for fourteen years.

272 Forging deeds

Whosoever forges any deed, bond, or writing obligatory, or any assignment thereof, shall be liable to penal servitude for 10 years.

273 Forging bills, notes, or orders, receipts for goods etc

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 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.

274 Signing bill, note etc by procuration without authority

Whosoever:

draws, makes, signs, accepts, or indorses, any bill of exchange or promissory-note, or any such undertaking, warrant, order, authority, or request, as is referred to in section 273, 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,

with intent in any such case to defraud,
shall be liable to penal servitude for ten years.

275 Obliterating crossings on cheques

Whosoever, when any cheque or draft on any banker is crossed with

- (a) the name of a banker between two parallel transverse lines, or
- (b) the word "bank" or the words "and company" or any abbreviation of them respectively between two parallel transverse lines, or
- (c) two parallel transverse lines simply, or
- (d) the word "credit" followed by the name of any individual or firm between two parallel transverse lines,

either with or without the words "not negotiable",

obliterates, adds to, or alters, any such crossing, or

utters any cheque or draft whereon any such obliteration, addition, or alteration has been made, knowing the same to have been made,

with intent in any such case to defraud,
shall be liable to penal servitude for ten years.

276 Forging debentures

Whosoever forges, or utters, any debenture, or other security, or instrument, issued, or purporting to be issued, under any lawful authority whatsoever, either within Her Majesty's dominions or elsewhere, the forging, or uttering, of which is not by any provision of this Part otherwise punishable, shall be liable to penal servitude for ten years.

Forgery of instruments, &c, made by Judges, Officers of Court, Justices of the Peace, &c, or of signature thereto

277 Forging instruments etc made by Judges etc or signature thereto

Whosoever forges, or utters, any instrument, document, writing, or signature, made, or purporting, or appearing to be made, by any Judge, or by a master in any Division of the Supreme Court, or by any officer of any Court, or by any Justice or any officer authorised to take affidavits or solemn declarations, shall be liable to penal servitude for ten years.

278 Forging signature of Supreme Court Judge to decree etc or tendering same in

evidence with forged signature

Whosoever:

forges the signature of any Judge of the Supreme Court purporting to be attached or appended to any decree, order, certificate, or other official, or judicial document, or tenders in evidence any such decree, order, certificate, or document, as aforesaid, with a false or counterfeit signature of any such Judge thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for fourteen years.

Forgery, &c, of records, &c, or copies thereof

279 Term “Court”—sections 280 to 284

For the purposes of sections 280 to 284 both inclusive—**Court** includes the District Court and every Court of Petty Sessions.

280 Forging records etc of any Court

Whosoever forges any record, entry, minute, process, instrument, or document, of or belonging to, or issued by, or filed in, any Court in New South Wales, shall be liable to penal servitude for ten years.

281 Forging seal or stamp on records etc

Whosoever forges the seal of any Court in New South Wales, or any stamp or seal used for stamping or sealing any such record, entry, minute, process, instrument, or document, or the impression thereof on any such matter, shall be liable to penal servitude for seven years.

282 Forging copy of certificate of record etc

Whosoever:

forges, or utters, any copy or certificate of any such record, entry, minute, process, instrument, or document, or

utters any such copy or certificate having thereon any forged signature, or,

not being an officer or clerk of or in the Court, signs or certifies any such copy or certificate as such officer or clerk,

shall be liable to penal servitude for seven years.

283 Serving etc forged process

Whosoever:

serves, or enforces, any forged process of any 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
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.

Forgery, &c, of instruments of evidence

284 Forging documents etc used as evidence

Whosoever forges any document or writing, or any copy of any document or writing, used,
or intended to be used, as evidence in any Court, shall be liable to penal servitude for ten
years.

285 Forgery of signature to copies admissible in evidence of decrees etc

Whosoever, where any copy of any judgment, decree, rule, or order filed or recorded in
the Supreme Court at Sydney, or formerly filed or recorded in the Supreme Court of New
South Wales for the district of Port Phillip, is admissible in evidence when certified under
the hand of the proper officer of such Court,

forges the signature of such officer to any such copy, or

tenders in evidence any such copy with a false or counterfeit signature thereto,
knowing the same to be false,

shall be liable to penal servitude for fourteen years.

286 Forgery of signature to certificate admissible in evidence of facts relating to trials etc

Whosoever, where the fact that any particular cause or case or matter was tried, or was
under inquiry, in any Court, or before any Judge or Justice, or that any person was
acquitted, or convicted of any offence, or sentenced to any punishment or fine, or was
ordered to pay any sum of money, may be proved by a certificate under the hand, or
purporting so to be, of the officer having ordinarily the custody of such records, or
documents, or proceedings,

forges, or procures to be forged, the signature of any such officer, or person, to any
such certificate, or to any paper purporting to be such a certificate, or

fraudulently alters any such certificate after it has been signed, or

gives or tenders in evidence, any such forged, or altered, certificate or paper, knowing
the same to be forged or fraudulently altered, or

signs, issues, gives or tenders in evidence, any such certificate or paper, knowing the same to be false in any particular,

shall be liable to imprisonment for five years.

287 Clerk of Court or other officer wilfully certifying false copy of record of conviction etc or of public document

Whosoever, being an officer to whose custody is intrusted any book or document of such a public nature as to be admissible in evidence on its mere production from the proper custody, and being authorised, or required, by any Act to furnish certified copies or extracts of such books or documents, wilfully certifies any document as being a true copy or extract of any such book or document, knowing that the same is not a true copy or extract, as the case may be, shall be liable to imprisonment for eighteen months.

288 Forgery of seal etc on such copy etc or on examined copy of any document inspected by order of Judge

Whosoever:

forges the seal, stamp, or signature, of any document, being such certified copy or extract as mentioned in section 287, or being an examined copy or extract of any document in the said section mentioned, or being an examined copy of any document inspected under an order of the Supreme Court or any Judge thereof, or

tenders in evidence any such certified copy or extract, or any such examined copy or extract, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for seven years.

289 Forgery of seal etc on public documents etc and copies admissible in evidence

Whosoever, where any certificate, or official, or public document, or any document or proceeding of any corporation, or joint stock or other company, now or hereafter to be established, or any certified copy of any document, or by-law, or entry in any register or other book, or of any other proceeding, is admissible in evidence under any Act, now or hereafter in force, when purporting to be sealed or stamped and signed as directed by the Act under which the same is so admissible,

forges the seal, stamp, or signature appended to any such certificate, or document, or proceeding, or to any such certified copy, as aforesaid, or

tenders in evidence any such certificate, or document, or proceeding, or any such certified copy, as aforesaid, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for fourteen years.

290 Forging signature or seal on copy admissible in evidence of treaty etc of a State or proceeding of a Court outside New South Wales

Whosoever, where any copy of any proclamation, treaty, or other act of State of Great Britain, or of any British Colony, or of any Foreign State, or any judgment, decree, order, or other judicial proceeding of any Court of Justice in Great Britain, or any British Colony, or in any Foreign State, or any affidavits, pleadings, or other legal documents, filed or deposited in any such Court, is admissible in evidence when such copy is an examined copy, or is authenticated by purporting to be sealed, or signed, as directed by the Act under which the same is so admissible,

forges the seal, or signature, or any such copy, or

tenders in evidence any such copy with a false and counterfeit seal or signature thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for seven years.

291 Forging etc certificate issued by officer outside New South Wales

Whosoever, where a certificate of the birth, marriage, or death, of any person in any part of the British dominions other than New South Wales, is admissible in evidence when purporting to be issued by the officer authorised by the law in that behalf of such part of the said dominions,

forges, or utters any such certificate, or

tenders, or causes to be tendered, in evidence any such certificate, knowing the same to be forged,

shall be liable to penal servitude for fourteen years.

292 Forging instruments made evidence by statute

Whosoever forges, or utters, any instrument, whether written or printed, or partly written and partly printed, which is made evidence by any Act or Imperial Act, the forging, or uttering, of which is not by any provision of this Part otherwise punishable, shall be liable to penal servitude for seven years.

Forgery of instruments, &c, under registration legislation

293 Forgery of deeds etc made etc under registration legislation

Whosoever:

forges, or utters, any instrument, document, entry, 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 any register kept or to be kept by the Registrar-General, or

forges the seal of, or belonging to, any office of the Registrar-General, 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.

Falsely acknowledging recognizances, &c

294 Acknowledging recognizances etc in the name of another

Whosoever, without lawful authority or excuse, confesses a judgment in any Court, or signs any cognovit, or acknowledges any recognizance, deed, or instrument, or gives any bail undertaking, or enters into any agreement or makes any acknowledgment pursuant to a bail condition, in the name of another person before any Court or person lawfully authorised in that behalf, shall be liable to penal servitude for seven years.

Forgery, &c, of matters relating to marriage

295 Forging marriage certificates etc

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.

Editorial note—

See [Marriage Act 1961](#) (Commonwealth), section 98.

Falsifying entries of births, deaths, &c

296 Falsifying entries of births etc or giving false certificates

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 local, district or other registrar, or

causes, or knowingly permits, the doing of any such act as aforesaid,

shall be liable to penal servitude for fourteen years.

297 Making false entries in copies sent to registrar

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 birth, 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, or

causes, or knowingly permits, the doing of any such act as aforesaid,

shall be liable to penal servitude for fourteen years.

Obtaining or demanding property on forged instruments

298 Demanding property on forged instruments

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.

Part 6

299-326 (Repealed)

Part 7 Perjury and like offences

327 Perjury

Whosoever commits the crime of perjury shall be liable to penal servitude for seven years.

328 Same with intent to procure conviction etc

Whosoever commits 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.

329 Conviction for false swearing on indictment for perjury

Where, on the trial of any person for perjury, it appears that the offence does not amount in law to perjury, but is an offence within section 330, the jury may acquit him of the offence charged, and find him guilty of an offence under the said last-mentioned section and he shall be liable to punishment accordingly.

330 False swearing not being perjury

Whosoever, before any person authorised to administer an oath, wilfully makes on oath any false statement, knowing the same to be false, shall, where such offence does not amount in law to perjury, be liable to penal servitude for five years.

331 Contradictory statements on oath

Where, on the trial of a person for perjury, or for wilfully making a 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.

332 Certain technical defects provided for

Where, on the trial of a person for perjury, or for wilfully making a false statement on oath not amounting to perjury, any affidavit, deposition, examination, or solemn declaration, offered in evidence, is wrongly intitled, 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.

333 (Repealed)

334 Subornation of perjury etc

Whosoever procures, or causes, any person to make, any false statement on oath, the making of which 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 he had himself been convicted of perjury.

335 Attempting to suborn etc

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.

336 Tampering with witness

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 before a Court, or Justice, or Coroner, shall be liable to imprisonment for three years.

337 False statements respecting births, marriages etc

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.

338 (Repealed)

339 False statement in solemn declaration

Whosoever, where a solemn declaration is required to be taken, or is authorised to be received, wilfully makes any false statement in any such declaration, shall be guilty of a misdemeanour.

340 Directing prosecution for perjury

(1) Where any statement on oath has been made by any person in any suit, proceeding, or matter, pending in the Supreme Court, or District Court, or before any Judge of any such Court or any magistrate, the Judge or magistrate before whom the same was so made, may, if reasonable cause appears for so doing, direct such person to be prosecuted for perjury in respect thereof, and may, subject to the [Bail Act 1978](#), commit him to take his trial at the proper court, and may require any person then present to enter into a recognizance to give evidence against the person whose prosecution is so directed. Where there is a committal by a magistrate and bail is not granted the magistrate may issue any necessary warrant.

(2) In this section, **magistrate** includes a stipendiary magistrate, a Children's Magistrate and an industrial magistrate appointed under the [Industrial Arbitration Act 1940](#).

341 For restraining vexatious prosecutions

- (1) No prosecution in respect of any such statement on oath, as in section 340 mentioned, shall be instituted without such direction as in the said section provided, or without the leave of the Court, or Judge, or magistrate, therein mentioned.
- (2) No prosecution in respect of any statement on oath made before any Registrar, or District Registrar in Bankruptcy, or Justice, or Justices, other than a magistrate as defined in section 340 (2), shall be instituted without the leave of a Judge of the Supreme Court or of a District Court Judge.
- (3) Where by reason of the death, illness, termination of appointment, or absence, of any judge or magistrate, it is impossible to apply to such judge or magistrate for leave to prosecute under subsection one of this section, in respect of any statement on oath as in section 340 mentioned, or it is for any other reason impracticable to do so, a prosecution in respect of any such statement on oath may be instituted with the leave of a judge of the Supreme Court.

342 Application of Act

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, and shall extend to every declaration made, or purporting, or intended to have been made, under any Act directing, or authorising 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.

343 Saving of other punishments

Nothing in this Part shall prevent, or affect, any other punishment, or any forfeiture, provided under any Act now or hereafter passed.

Part 8 Conspiracy to accuse of crime

344 Conspiracy to accuse of crime felony

Any conspiracy falsely to accuse a person of a crime shall be punishable by penal servitude for fourteen years.

Part 8A Attempts

344A Attempts

- (1) Subject to this Act, any person who attempts to commit any offence for which a penalty is provided under this Act shall be liable to that penalty.
- (2) Where a person is convicted of an attempt to commit an offence and the offence concerned is a felony he shall be deemed to have been convicted of a felony.

Part 9 Abettors and accessories

345 Principals in the second degree—how tried and punished

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, shall be liable to the same punishment as the principal in the first degree.

346 Accessories before the fact—how tried and punished

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 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, whether the principal felon has been tried or not, or is amenable to justice or not.

347 Accessories after the fact—how tried

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 amenable to justice or not.

348 Punishment of accessories after the fact to treason

Every accessory after the fact to any felony under Part 2, relating to treason-felony, shall be liable to imprisonment for two years.

349 Punishment of accessories after the fact to murder etc

- (1) Every accessory after the fact to murder shall be liable to penal servitude for life.
- (2) Every accessory after the fact to the crime of robbery with arms or in company with one or more person or persons, or the crime of kidnapping referred to in section 90A, shall be liable to penal servitude for fourteen years.

350 Punishment of accessories after the fact to other felonies etc

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.

351 Abettors in misdemeanours—how tried and punished

Any person who aids, abets, counsels, or procures, the commission of any misdemeanour, whether the same is a misdemeanour at Common Law or by any statute, may be indicted, convicted, and punished as a principal offender.

Part 13 Proceedings after sentence

(A) EXECUTION OF SENTENCE

448-456 (Repealed)

Enforcing payment of compensation

457 Direction for compensation to be enforceable by execution etc

- (1) Where, pursuant to section 437, a Court directs that a sum be paid to an aggrieved person and the whole or any part of the sum is not paid in accordance with section 437, the registrar, officer or clerk shall, on the application of the aggrieved person, issue to the aggrieved person a certificate specifying the direction of the Court and the amount of the sum required by the direction to be paid which has not, at the date of the certificate, been paid to the registrar, officer or clerk, as the case may be.
- (2) Where a certificate is issued pursuant to subsection (1) the registrar, officer or clerk shall not thereafter accept any payments from the offender in respect of the direction specified in the certificate.
- (3) An aggrieved person may file in the District Court a certificate issued to him under subsection (1), and thereupon the registrar shall enter judgment in favour of the aggrieved person against the offender specified in the certificate for the amount specified in the certificate as having not been paid and any fees payable to the registrar in respect of the certificate.

Sentences of Courts-martial

458 Sentences by Courts-martial under Imperial Acts

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 authorised to carry into effect a sentence of 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 apply to every such sentence or commutation, and to every such soldier, marine, or seaman.

(B) COMMUTATION OR MITIGATION OF SENTENCES

459-462 (Repealed)

463 Tickets-of-leave

- (1) The Governor, with the advice of the Executive Council, and on the recommendation of the Minister, may grant to any offender a written licence to be at large, within limits

specified in the licence, but not elsewhere, during the unexpired portion of his sentence, subject to such conditions indorsed on the licence as the Governor, with the advice of the Executive Council, and on the recommendation of the Minister, 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.

- (2) Any such licence may at any time be revoked by the Governor, with the advice of the Executive Council, and on the recommendation of the Minister, and shall be revoked by a justice on proof before him in a summary way that the licensee has been guilty of a breach of any condition of the licence.

Where a licence is revoked as aforesaid the person released on licence may be taken by any member of the police force with or without a warrant and returned to gaol, and may be detained there to undergo the remainder of his sentence.

Any justice may issue a warrant for the apprehension of any person who has been convicted of an offence committed within the State whether the offence is indictable or punishable on summary conviction, and whose licence is revoked as aforesaid. Any such warrant may be in the form stated in the Eighth Schedule.

- (3) Where the holder of any such licence is found out of the limits specified therein, or reasonably suspected of having broken any other condition of his licence, any constable may arrest the person so offending, or so suspected, and bring him before some Justice to be dealt with summarily, under this subsection or subsection (2).
- (4) If adjudged to have wilfully and without lawful excuse broken any such condition, the offender may be dealt with by such Justice under subsection (2) or subsection (3).

- (4A) Where the Chairman of the Release on Licence Board or the Deputy Chairman is of the opinion that:

(a) the matter of whether a licence is to be revoked is being considered by the Board or will shortly be considered by the Board, and

(b) circumstances exist that justify the immediate apprehension of the licensee,

the Chairman or Deputy Chairman may issue a warrant to a member of the police force directing that the licensee be apprehended and returned to gaol.

- (4B) A direction in a warrant under subsection (4A) for the apprehension by a member of the police force of a licensee and the return of the licensee to gaol is sufficient authority for that apprehension and for the detention of the licensee in gaol pending a decision as to whether or not the licence will be revoked.

- (5) A recommendation shall not be made for the purposes of subsection (1), nor shall any limits be specified in or conditions indorsed on any such licence, except in accordance with:

- (a) a recommendation made by the Release on Licence Board under section 60 of the *Prisons Act 1952*, or
 - (b) a report of a Judge of the Court of Criminal Appeal as referred to in section 27 of the *Criminal Appeal Act 1912*.
- (6) A recommendation shall not be made for the purposes of subsection (2) except in accordance with a recommendation made by the Release on Licence Board under section 60 of the *Prisons Act 1952*.

464 Remissions where more than one sentence

Where an offender is under more than one sentence of penal servitude, or imprisonment, and one of such sentences is duly vacated, avoided or remitted, 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.

464A (Repealed)

(C) CONSEQUENCES, &c, OF CONVICTION FOR FELONY

465 Forfeiture in felonies abolished

- (1) No inquest, conviction, or judgment, in respect of any felony, shall cause any escheat or forfeiture of lands or goods.
- (2) There shall be no forfeiture of any chattel which may have moved to, or caused, the death of any human being for or in respect of such death.

466 Disabilities of felony

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.

467 (Repealed)

468 Effect of reversing judgment in such cases

Upon the avoidance or vacating of the conviction of any such person, or reversal of the judgment against him, the provisions of sections 437, 457 and 466 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.

469-474 (Repealed)

(E) ENQUIRY SUBSEQUENT TO CONVICTION

475 Governor or Judge may direct inquiry etc

- (1) Whenever, after the conviction of any person, any doubt or question arises as to his guilt, or any mitigating circumstances in the case, or any portion of the evidence therein, the Governor on the petition of the person convicted, or some person on his behalf, representing such doubt or question, or the Supreme Court of its own motion, may direct any Justice to, and such Justice may, summon and examine on oath all persons likely to give material information on the matter suggested.
- (2) The attendance of every person so summoned may be enforced, and his examination compelled, and any false statement wilfully made by him 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.
- (3) Where on such 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.
- (4) Every deposition taken under this 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, and shall be transmitted by the Justice, before whom the same was taken, as soon as shall be practicable together with his report as to the conclusions to be drawn therefrom, to the Governor if the inquiry was directed by him, or to the Supreme Court, if the inquiry was directed by the Supreme Court, and the matter shall thereafter be disposed of, as to the Governor, on the report of the Supreme Court, if the inquiry was directed by the Supreme Court, or otherwise, shall appear to be just.

Part 13A Offences punishable by the Supreme Court in its summary jurisdiction

475A Offences punishable summarily

- (1) Subject to subsection (2) and section 475B but notwithstanding any other law, proceedings for any offence mentioned in the Tenth Schedule may, pursuant to an application made under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* by the Attorney-General or the Director of Public Prosecutions, be taken before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence mentioned in paragraph (f) of the Tenth Schedule may not be taken under subsection (1) unless, in the application made under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* in respect of the offence, the person against whom the offence is charged is also charged with an offence mentioned in paragraph (a), (b), (c), (d), (d1) or (e) of that Schedule.

- (3) A person may be convicted of an offence mentioned in paragraph (f) of the Tenth Schedule notwithstanding that he is not convicted of the offence mentioned in paragraph (a), (b), (c), (d), (d1) or (e) of that Schedule that was also charged in the application made under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* in respect of the offence mentioned in paragraph (e) of that Schedule.
- (4) The penalty that may be imposed by the Supreme Court in its summary jurisdiction on a person convicted of an offence mentioned in the Tenth Schedule is the penalty provided by law (other than this subsection), except that any fine imposed shall not exceed \$10,000 and any term of penal servitude or imprisonment imposed shall not exceed 10 years, whether the penalty imposed is either a fine or a term of penal servitude or imprisonment only or is both a fine and a term of penal servitude or imprisonment.
- (5) Subsection (1) does not prevent proceedings for any offence referred to in that subsection from being taken otherwise than before the Supreme Court in its summary jurisdiction.
- (6) The reference in subsection (1) to the Attorney-General or the Director of Public Prosecutions includes, in relation to any proceedings, a reference to any person who is authorised in writing by the Attorney-General or Director to act, for the purposes of that subsection, on behalf of the Attorney-General or Director in relation to those proceedings or in relation to proceedings for all offences mentioned in the Tenth Schedule.
- (7) A document purporting to be signed:
 - (a) by the Attorney-General or the Director of Public Prosecutions and to authorise a person specified in the document to act as referred to in subsection (6) is, in any proceedings referred to in subsection (1), admissible in evidence as prima facie evidence that the person is authorised so to act, or
 - (b) by the Attorney-General or the Director of Public Prosecutions for the purpose of any proceedings referred to in subsection (1) is admissible in evidence as prima facie evidence that the Attorney-General or the Director of Public Prosecutions signed the document.

475B Election for summary trial

- (1) Section 475A (1) applies only if, upon the completion of the pre-trial procedures in any proceedings in respect of an offence to which an application under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* relates, being procedures prescribed by rules made under that Act, the defendant makes an election to be tried for that offence in the Supreme Court in its summary jurisdiction.
- (2) Notwithstanding subsection (1) where the defendant in any proceedings is the subject

of an application (not being an application referred to in subsection (3)), under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* relating to 2 or more offences, he is not entitled to make an election under subsection (1) unless he makes it in respect of every offence to which the application relates.

- (3) Where 2 or more defendants are the subject of an application under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967*, an election under subsection (1) made by one of the defendants in respect of any offence to which the application relates and alleged to have been committed by him has no effect for the purposes of this section unless such an election is made by that defendant in respect of every other offence to which the application relates and which is alleged to have been committed by him and by each of the other defendants in respect of every offence to which the application relates and which is alleged to have been committed by each of them.
- (4) A reference in subsection (1), (2) or (3) to an offence to which an application under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* relates does not include a reference to such an offence to which the person charged with the offence has, upon such an application, pleaded guilty.
- (5) Where the defendant does not make an election under subsection (1):
 - (a) the Supreme Court shall order that the proceedings for the offence to which the election relates shall be tried in the Supreme Court otherwise than in its summary jurisdiction, and
 - (b) the provisions of section 475A (1) shall cease to apply to or in respect of the proceedings for that offence.
- (6) A person tried pursuant to an order under subsection (5) (a) shall for all purposes, be deemed to be tried on indictment and if convicted to have been convicted on indictment.
- (7) A reference in this section to a plea of guilty does not include a reference to such a plea if the plea has been withdrawn or has not been accepted.

Part 14 Offences punishable by Justices and procedure before Justices generally

Chapter 1 Indictable offences punishable summarily only by consent of the accused

Extent of jurisdiction

476 Indictable offences punishable summarily with consent of accused

- (1) Where a person is charged before a stipendiary magistrate with an offence mentioned

in subsection (6) the magistrate may require the person to state whether he intends to plead guilty or not guilty to the charge, and if the person does not so state he shall be taken for the purposes of this section to have stated that he intends to plead not guilty.

- (2) Where a person states under subsection (1) that he intends to plead not guilty to a charge, and it appears to the magistrate that the case may properly be disposed of summarily and that the person consents to it being so disposed of, the magistrate shall have jurisdiction to hear and determine the charge in a summary manner and pass sentence upon the person.
- (3) Where a person states under subsection (1) that he intends to plead guilty to a charge the magistrate may accept or reject the plea.
- (4) Where a magistrate rejects a plea under subsection (3) the proceedings before the magistrate shall continue as though the person had stated under subsection (1) that he intends to plead not guilty.
- (5) Where a magistrate accepts a plea under subsection (3) and it appears to the magistrate:
 - (a) that the case may be properly disposed of summarily and that the person consents to it being so disposed of, the magistrate shall have jurisdiction to pass sentence upon the person, or
 - (b) that the case may not properly be disposed of summarily, or that the person does not consent to it being so disposed of, the provisions of section 51A of the *Justices Act 1902* shall apply as though the person had pleaded guilty to the charge under that section.
- (6) The offences referred to in subsection (1) are:
 - (a)
 - (i) larceny, and any offence which under this Act is deemed to be, or is made punishable as, larceny or stealing,
 - (ii) the offence of stealing any chattel, money, or valuable security from the person of another, and
 - (iii) any offence mentioned in section 126, 131, 145, 146, 148, 150, 151, 152, 156, 157, 159, 160, 165, 166, 168, 169, 170, 178A, 178B, 178C, 179, 184, 186, 188, 189, 189A, 190, 192, 195, 196, 197, 201, 202, 210, 249B, 249D, 249E, 249F, 273, 274 or 275,

where (except in the case of a conveyance as defined for the purposes of section 154A) the value of the property, matter or thing the subject of the charge or the damage thereto, or the amount of money or reward the subject of the charge,

does not exceed \$15,000,

- (aa) any offence mentioned in section 52A or 52B except an offence whereby death was occasioned,
- (b) any offence mentioned in section 61E, 66C (1), 66D, 71, 72, 76 or 76A, where the person upon whom the offence was committed was at the time of the commission of the offence of or above the age of 14 years,
- (c) any offence mentioned in section 81 where the person upon whom the assault was committed was at the time of the assault of or above the age of fourteen years,
- (d) any offence mentioned in section 35 (a), 53, 54, 56, 57, 58, 59, 61, 78Q, 81A, 81B, 81C, 114, 132, 133, 154A, 158, 172, 173, 174, 175, 176, 176A, 178BA, 178BB, 199, 200, 203, 207, 208 (4), 209, 212, 213, 249C, 249F (where no benefit is concerned) or 252,
- (e) any offence mentioned in section 85 where the person charged is the mother of the child and is not charged with any other person,
- (f) any offence mentioned in section 112 where:
 - (i) the felony alleged is stealing,
 - (ii) the value of the property stolen does not exceed \$15,000, and
 - (iii) the person charged was neither armed with an offensive weapon or instrument, nor equipped with an implement of safe-breaking, nor in company with a person so armed or equipped,
- (g) any offence mentioned in section 111 or 113 where:
 - (i) the felony intended is stealing, and
 - (ii) the person charged was neither armed with an offensive weapon or instrument, nor equipped with an implement of safe-breaking, nor in company with a person so armed or equipped,
- (h) escape from lawful custody, except where the escape constitutes an offence against prison discipline within the meaning of Part 4 of the *Prisons Act 1952*, and
 - (i)
 - (i) attempting to commit,
 - (ii) where the offence is a felony, being an accessory before or after the fact to, or
 - (iii) where the offence is a misdemeanour, aiding, abetting, counselling or

procuring the commission of,

any offence mentioned in paragraph (a), (aa), (b), (c), (d), (f), (g) or (h).

(7) Notwithstanding anything in this Act to the contrary, subsection (7A) excepted:

- (a) the maximum term of imprisonment, or penal servitude, to which a person may be sentenced by a magistrate under this section in respect of any one offence is two years, or the maximum term of imprisonment, or penal servitude, fixed by law (other than by this subsection) in respect of the offence, whichever is the shorter term,
- (b) the maximum fine which may be imposed by a magistrate under this section is, in respect of any one offence, \$2,000, or the maximum fine fixed by law (other than by this subsection) in respect of the offence, whichever is the smaller, and
- (c) where the maximum punishment which may be imposed by law (other than by this subsection) in respect of an offence is a term of imprisonment or penal servitude, or a fine, or both, the maximum punishment which may be imposed by a magistrate under this section in respect of the offence is that term, or two years, whichever is the shorter term, or that fine, or \$2,000, whichever is the smaller fine, or both.

(7A) Notwithstanding anything in this Act to the contrary:

- (a) the maximum term of imprisonment to which a person may be sentenced by a magistrate for any one offence mentioned in section 52A or 52B is 18 months,
- (b) a magistrate may, instead of imposing a term of imprisonment for an offence disposed of under this section, impose a penalty not exceeding \$2,000, and
- (c) the maximum term of imprisonment to which a person may be sentenced by a magistrate for any one offence mentioned in section 53 or 54 is 12 months.

(8) (Repealed)

(9) Where, before the commencement of the *Crimes and Other Acts (Amendment) Act 1974*, a conviction in respect of an offence mentioned in this section would have been a conviction in respect of a felony, a conviction by a magistrate under this section in respect of that offence shall for all purposes be deemed to be a conviction in respect of a felony.

(10) Where, pursuant to this section, a magistrate decides to hear and determine a charge in a summary manner after written statements have been admitted as evidence under section 48A of the *Justices Act 1902*:

- (a) the magistrate shall enquire of the parties if any of them wish to have any person who made a statement admitted as evidence called to give evidence in the

proceedings,

- (b) if a party requires the attendance of any person referred to in paragraph (a), or if the magistrate is of the opinion that any such person should be called:
 - (i) the magistrate shall direct the attendance of that person to give evidence, and
 - (ii) the statement shall, as soon as the direction is given, be thereafter treated as not being admitted as evidence in the proceedings, unless that party, after requiring the attendance of that person, consents to the re-admission in evidence of the statement or the magistrate, after giving the direction, withdraws the direction, and
- (c) if the attendance of any person referred to in paragraph (a) is not required, the statement made by the person shall continue to be evidence in the proceedings.

(11) Where in any proceedings in which a magistrate decides to hear and determine a charge in a summary manner there are 2 or more defendants, the provisions of subsection (10):

- (a) apply in relation to each such defendant to the extent only that a written statement referred to in that subsection has been admitted as evidence against that defendant under section 48A of the *Justices Act 1902*, and
- (b) so apply in relation to each such defendant as if that defendant were the only defendant,

and references in that subsection to a party shall be construed accordingly.

(12) Without limiting the powers of the magistrate to adjourn proceedings, the magistrate shall grant such adjournments as appear to be just and reasonable as a consequence of any of the provisions of subsection (10).

477, 478 (Repealed)

Procedure in such cases

479, 479A (Repealed)

480 Certificate of dismissal

Where a charge is disposed of summarily under section 476, the magistrate shall, if the case is dismissed and he is requested to do so, make out and deliver to the person charged with the offence so disposed of, a certificate under the magistrate's hand stating the fact of the dismissal.

481 Summary conviction or dismissal a bar to indictment

Every conviction upon a charge disposed of summarily under section 476 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 section 480, shall be afterwards liable to prosecution for the same cause.

482-492 (Repealed)

Chapter 3 Other offences punishable summarily

(A) ASSAULTS

493 Common assaults

Whosoever assaults any person shall on summary conviction be liable to imprisonment for six months, or to a fine of \$500, or both.

494 Aggravated assaults

Whosoever unlawfully assaults an officer, being a justice, constable, or other peace officer, custom-house officer, prison officer, sheriff's officer or bailiff, while in the execution of his duty, or any person acting in aid of such officer, or a child under twelve years of age, or any female, or being in company with any person together with such person assaults any other person, shall on conviction before two Justices be liable to imprisonment for a term not exceeding six months, or to pay a fine, exclusive of costs if ordered, of \$500, or both.

495-497 (Repealed)

498 Certificate of dismissal

If, on the hearing of any case of assault under section 493 or 494 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.

499 Certificate or conviction a bar to other proceedings

- (1) Any person who obtains a certificate of dismissal under section 498, or, who having been convicted, pays the amount adjudged to be paid, or suffers the imprisonment awarded, shall be released:
 - (a) from all criminal proceedings for the same cause, and
 - (b) from all civil proceedings for the same cause at the suit of the person laying the information in respect of the proceedings for assault.
- (2) Any person against whom civil proceedings have been taken in respect of any act done by him which is an offence of which he might have been convicted under section 493 or 494 shall be released from all criminal proceedings for the same cause on the information of the person by whom the civil proceedings were taken.

500 Exception from jurisdiction

Nothing in sections 493 to 499 both inclusive shall authorise Justices to hear and determine any case of assault, in which any question arises as to the title to land, or any interest therein, or accruing therefrom, unless such determination does not involve any determination as to the title to the land or to any interest therein or accruing therefrom.

(B) LARCENY AND SIMILAR OFFENCES

Larceny, &c, of animals, &c

501 Indictable offences punishable summarily without consent of accused

(1) Whosoever commits or attempts to commit:

(a) larceny,

(b) the offence of stealing any chattel, money, or valuable security from the person of another, or

(c) any offence mentioned in section 125, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192, 247, 249B, 249D, 249E or 249F,

and the amount of money or the value of the property in respect of which the offence is charged, or of the reward, does not exceed \$5,000, shall on conviction in a summary manner before two justices be liable to imprisonment for twelve months or to pay a fine of \$2,000, or both.

(2) The jurisdiction conferred on two justices by this section shall be exercisable only by a stipendiary magistrate.

(3) The provisions of section 56 of the *Justices Act 1902* shall not apply to proceedings under this section.

502 Possession of skin etc of stolen cattle

Whosoever, in whose possession there has been found the skin or carcass of any stolen cattle, or of any cattle reasonably suspected to have been stolen, or any part of any such skin or carcass, may be brought before or may be summoned to appear before any two Justices to show in what manner he became possessed of the same, and if there is reasonable cause to believe that he has dishonestly come by the same, and if he fails to satisfy the Justices before whom the case is heard 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 six months, or to pay a fine of \$500, or both.

503 Stealing dogs

Whosoever steals any dog shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

504 Possessing stolen dog or skin

Whosoever has unlawfully in his possession 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 fine of \$500.

505 Stealing animals etc ordinarily kept in confinement

Whosoever:

steals any animal or bird 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 or bird with intent to steal the same, or any part thereof,

shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

506 Stealing animals etc ordinarily kept in confinement—second offence

Whosoever, having been convicted under this or any former Act of any such offence as is mentioned in section 505, afterwards commits any offence in the said section mentioned shall, on conviction before two Justices, be liable to imprisonment for one year.

507 Possession of stolen animals etc

Whosoever in whose possession there has been found any such animal or bird as in section 505 mentioned, or the skin thereof, respectively, which to his knowledge has been stolen, or is the skin of a stolen animal or bird, shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

508 Possession of stolen animals etc—second offence

Whosoever, having been convicted, under this or any former Act, of any such offence as is mentioned in section 507, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to imprisonment for one year.

509 Restoration of such stolen animals etc

Any such animal or bird as is mentioned in section 505, or the skin thereof, which has been found in the possession of any person may be restored to the owner thereof by the order of any Justice.

510 Setting engine for deer etc

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, be liable to pay a fine of \$500.

511 Killing pigeons

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, be liable to pay a fine of \$200.

512 Taking fish in waters on private property

Whosoever unlawfully and wilfully takes, or destroys, any fish in any water being private property, shall, on conviction before two Justices, be liable to pay the value of the fish taken or destroyed, in addition to a fine of ten dollars.

Larceny of things attached to land

513 Stealing shrubs etc

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 shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

514 (Repealed)

515 Stealing etc live or dead fence etc

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, be liable to pay the value of the property stolen, or the amount of injury done, in addition to a fine of \$100.

516 (Repealed)

517 Unlawful possession of trees, fences etc

Whosoever, in whose possession 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 has been found, on being taken or summoned before two Justices fails to satisfy them that he came lawfully by the same, shall on conviction, before such Justices, be liable to pay the value of the property found, in addition to a fine of

\$100.

518 Stealing dead wood

Whosoever steals, or destroys, or damages with intent to steal, any dead wood, lying on land in the occupation of another person shall, on conviction before two Justices, be liable to pay the value of the wood, in addition to a fine of \$100.

519 (Repealed)

520 Stealing plants etc in gardens

Whosoever steals, or destroys, or damages with intent to steal, any plant, root, fruit, or vegetable produce, growing in any garden, orchard, pleasure-ground, nursery-ground, hothouse, greenhouse, or conservatory, shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

521 Stealing plants etc not growing in gardens

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 inclosed land, not being a garden, orchard, pleasure-ground, or nursery-ground, shall, on conviction before two Justices be liable to pay a fine of \$200.

521A Stealing of rock, stone etc

Whosoever steals:

- (a) any rock or rocks,
- (b) any stone or stones, or
- (c) any gravel, soil, sand or clay,

that is or are in, on or under, or forms or form part of any land shall, on conviction before 2 Justices, be liable to imprisonment for 6 months, or to pay a fine of \$500, or both.

Larceny of shipwrecked goods

522 Possession of shipwrecked goods

Whosoever in whose possession any article belonging to a vessel in distress, or wrecked, stranded, or cast on shore, has been found, on being summoned before two Justices, fails to satisfy them that he came lawfully by the same, shall be liable to imprisonment for six months, or to pay a fine of \$500, or both:

And such article shall, by the order of such Justices, be delivered to or for the use of the owner.

523 Offering shipwrecked goods for sale

Whosoever offers for sale any article unlawfully taken, or reasonably suspected to have been so taken, from any vessel in distress, or wrecked, stranded, or cast on shore, and who, on being summoned before two Justices, fails to satisfy them 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, shall be liable to imprisonment for six months, or to pay a fine of \$500, or both.

And such article shall, by the order of such 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.

524 Seizure of such goods

Any person, to whom any article mentioned in section 523 is offered, or any officer of customs or police, may seize the same, and shall carry it to, or give notice of such seizure to, some Justice.

Larceny from a public library, &c

525 Stealing or damaging books etc in public library etc

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 in 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 one year, and to pay a fine of \$1,000 in addition to a fine equal to four times the value of the article stolen, or intended to have been stolen.

526 Term "Public Library"

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 section 525.

Unlawfully using vehicle or boat

526A Taking a conveyance without the consent of the owner

- (1) Any person who:
 - (a) without having the consent of the owner or person in lawful possession of a conveyance takes and drives it, or takes it for the purpose of driving it, or secreting it, or obtaining a reward for its restoration or pretended restoration, or for any other fraudulent purpose, or

(b) knowing that any conveyance has been taken without such consent, drives it or allows himself to be carried in or on it,

shall be guilty of larceny and shall, on conviction before two justices, be liable to imprisonment for twelve months, or to pay a fine of \$1,000, or both.

(1A) For the purposes of this section **conveyance** means any cart, waggon, cab, carriage, motor car, caravan, trailer, motor lorry, tractor, earth moving equipment, omnibus, motor or other bicycle, or any ship, or vessel, whether decked or undecked, used in or intended for navigation, and **drive** shall be construed accordingly.

(2) The jurisdiction conferred on two justices by this section shall be exercisable only by a stipendiary magistrate.

526B (Repealed)

Fraudulently appropriating or retaining property

527 Fraudulently appropriating or retaining property

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

fraudulently retains any such property in order to procure a reward for its restoration,

shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

Obtaining money, &c, by false representation

527A Obtaining money etc by a wilfully false representation

Any person who by any wilfully false representation obtains or attempts to obtain any money or valuable thing, or any benefit, from another person, shall be liable on conviction before a stipendiary magistrate to imprisonment for 6 months or to a fine of \$400.

Framing a false invoice

527B Framing a false invoice

Any person who fraudulently prepares, causes to be prepared or produces an invoice, receipt or document containing a false statement, with intent to induce the belief that any thing was not stolen or otherwise unlawfully obtained or to prevent any thing from being seized on suspicion of being stolen or otherwise unlawfully obtained or from being produced in evidence concerning an alleged offence, shall be liable on conviction before a stipendiary magistrate to imprisonment for 3 months, or to a fine of \$200.

Persons unlawfully in possession of property

527C Persons unlawfully in possession of property

- (1) Any person who:
- (a) has any thing in his custody,
 - (b) has any thing in the custody of another person,
 - (c) has any thing in or on premises, whether belonging to or occupied by himself or not, or whether that thing is there for his own use or the use of another, or
 - (d) gives custody of any thing to a person who is not lawfully entitled to possession of the thing,

which thing may be reasonably suspected of being stolen or otherwise unlawfully obtained, shall be liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$500.

- (2) It is a sufficient defence to a prosecution for an offence under subsection (1) if the defendant satisfies the court that he had no reasonable grounds for suspecting that the thing referred to in the charge was stolen or otherwise unlawfully obtained.
- (3) In this section, ***premises*** includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built upon or not, and any part thereof.

Offering rewards for stolen property

528 Advertising reward for return of stolen property

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, or

publishes any such advertisement,

shall, on conviction before two Justices, be liable to pay a fine of \$500.

Receivers

529-545 (Repealed)

(D1) BOGUS ADVERTISEMENTS

545A Bogus advertisements

- (1) Any person who tenders for insertion or causes to be inserted in any newspaper any bogus advertisement, knowing the same to be bogus, shall, on conviction before two justices, be liable to imprisonment for three months or to pay a fine of \$200, or both.
- (2) For the purposes of this section a bogus advertisement shall mean any advertisement or notice containing any material false statement or representation with respect to any birth, death, engagement, marriage, or employment, or with respect to any matter concerning any person other than the person who tenders the advertisement or causes it to be inserted, or concerning the property of such other person.

(D2) INTIMIDATION, &c

545B Intimidation or annoyance by violence or otherwise

- (1) Whosoever:
 - (a) with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, or
 - (b) in consequence of such other person having done any act which he had a legal right to do, or of his having abstained from doing any act which he had a legal right to abstain from doing,
wrongfully and without legal authority:
 - (i) uses violence or intimidation to or toward such other person or his wife, child, or dependant, or does any injury to him or to his wife, child, or dependant, or
 - (ii) follows such other person about from place to place, or
 - (iii) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof, or
 - (iv) watches or besets the house or other place where such other person resides or works, or carries on business, or happens to be, or the approach to such house or place, or
 - (v) follows such other person with two or more other persons in a disorderly manner in or through any street, road, or public place,
- shall, on conviction before two justices, be liable to imprisonment for six months, or to a fine of \$500, or both.

- (2) In this section:

Intimidation means the causing of a reasonable apprehension of injury to a person or to any member of his family or to any of his dependants, or of violence or damage to any person or property, and **intimidate** has a corresponding meaning, and

Injury includes any injury to a person in respect of his property, business, occupation, employment, or other source of income, and also includes any actionable wrong of any nature, and

Watches or besets includes attending at or near any house or place in such numbers or otherwise in such manner as is calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.

(D3) JOINING UNLAWFUL ASSEMBLIES, &c

545C Knowingly joining or continuing in an unlawful assembly

- (1) Whosoever knowingly joins an unlawful assembly or continues in it shall be taken to be a member of that assembly, and shall, on conviction before a stipendiary magistrate, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding \$500, or both.
- (2) Whosoever being armed with any weapon or loaded arms, or with anything which used as a weapon of offence is likely to cause death or grievous bodily harm, is a member of an unlawful assembly, shall be liable, on conviction before a stipendiary magistrate, to imprisonment for a term not exceeding twelve months or to a fine not exceeding \$1,000, or both.
- (3) Any assembly of five or more persons whose common object is by means of intimidation or injury to compel any person to do what he is not legally bound to do or to abstain from doing what he is legally entitled to do, shall be deemed to be an unlawful assembly.

(D4) UNLAWFUL MAKING OR POSSESSION OF EXPLOSIVES

545D Unlawful making or possession of explosives

Whosoever being charged before two Justices with:

- (a) having made, or
- (b) knowingly having in his possession or under his control,

any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he did not make such substance, or did not have such substance in his possession or under his control, for a lawful purpose, does not satisfy such Justices that he made the explosive substance, or had such substance in his possession or under his

control, for a lawful purpose, shall be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding \$1,000, or both.

(E) ABETTORS

546 Abetting or procuring

Whosoever, where any offence is by this Act punishable on summary conviction, aids, 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.

(E1) CONSORTING

546A Consorting with convicted persons

Any person who habitually consorts with persons who have been convicted of indictable offences, if he knows that the persons have been convicted of indictable offences, shall be liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$400.

(E2) INTENT TO REPEAT INDICTABLE OFFENCE

546B Convicted persons found with intent to commit offence

- (1) Any person who, having been convicted of an indictable offence, is found in or near any premises or public place with intent to commit an indictable offence shall be liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$400.
- (2) In this section, **premises** includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built upon or not, and any part thereof.

(E3) RESISTING, &c, POLICE

546C Resisting etc police

Any person who resists or hinders or incites any person to assault, resist or hinder a member of the police force in the execution of his duty shall be liable on conviction before a stipendiary magistrate to imprisonment for 3 months, or to a fine of \$200.

(F) APPREHENDED VIOLENCE OR INJURY

547 Apprehended violence or injury—recognizance to keep the peace

- (1) 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, any Justice may on the complaint of the person apprehending such violence or injury, 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 any 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, for a term not exceeding six months, and, in default of its being entered into forthwith, the defendant may be imprisoned for three months, unless such recognizance is sooner entered into.

- (2) If in any such case 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 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 twelve months, and, in default of its being entered into forthwith, the defendant may be imprisoned for six months, unless such recognizance is sooner entered into.
- (3) 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.

547AA Apprehended domestic violence orders

- (1) Where, upon complaint made in accordance with subsection (2), a court of summary jurisdiction is satisfied on the balance of probabilities that a person apprehends:
 - (a) the commission by another person of a domestic violence offence upon the person, or
 - (b) the commission by:
 - (i) another person who is or has been married to the person, or
 - (ii) another person who is living with or has lived with the person as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be,

or conduct consisting of harassment or molestation of the person, being conduct which falls short of actual or threatened violence but which, in the opinion of the court, is sufficient to warrant the making of an order under this section,

and is satisfied on the balance of probabilities that the apprehension is reasonable, the court may make an order imposing, for a period not exceeding 6 months, such restrictions or prohibitions on the behaviour of the defendant as appear necessary or desirable.

- (1A) In this section, ***aggrieved spouse of the defendant***, in relation to a complaint under this section or an order made upon such a complaint, means the person whose apprehension concerning the commission of a domestic violence offence or conduct

referred to in subsection (1) (b) is the subject of the complaint.

- (2) A complaint under this section shall be made in the manner prescribed by regulations made under subsection (16) and may be made by:
 - (a) the aggrieved spouse of the defendant, or
 - (b) a member of the police force.
- (3) Without limiting the generality of subsection (1), an order made under this section may do all or any of the following things:
 - (a) prohibit or restrict approaches by the defendant to the aggrieved spouse of the defendant,
 - (b) prohibit or restrict access by the defendant to any specified premises occupied by, any specified place of work of, or any other specified premises or place frequented by, the aggrieved spouse of the defendant, whether or not the defendant has a legal or equitable interest in the premises or place,
 - (c) prohibit or restrict specified behaviour by the defendant which might affect the aggrieved spouse of the defendant.
- (4) Before making an order under this section which prohibits or restricts access by a person to premises or a place in which the defendant resides, the court shall consider the accommodation needs of all relevant parties and the effect of making such an order on any children.
- (5) Where a person stands charged before a court of summary jurisdiction with an offence which appears to the court to be a domestic violence offence, the court shall enquire whether a complaint under this section has been made or is to be made either by a member of the police force or the person upon whom the domestic violence offence is alleged to have been committed and, where such a complaint has been made or is made, the court may deal with the complaint forthwith.
- (6) An order under this section may, if in all the circumstances it appears to the court to be necessary or appropriate, be made in the absence of the defendant.
- (7) A person against whom an order has been made under this section and who:
 - (a) has been served personally with a copy of a record of the order made in the form and in the manner prescribed by regulations made under subsection (16), and
 - (b) after having been so served, knowingly fails to comply with a restriction or prohibition specified in the order so served,shall be guilty of an offence and liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$2,000, or both.

- (8) Where a member of the police force believes on reasonable grounds that a person has committed an offence under subsection (7), the member of the police force may, without warrant, arrest and detain the person.
- (9) A person arrested and detained as referred to in subsection (8) shall be brought as soon as practicable before a stipendiary magistrate to be dealt with for the offence.
- (10) Where an order has been made under this section:
- (a) the complainant,
 - (b) where the complainant was a member of the police force—the aggrieved spouse of the defendant, or
 - (c) the defendant,
- may at any time apply to a court of summary jurisdiction for variation or revocation of the order and the court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke the order by a further order.
- (11) Where a complaint or order is made under this section or an order so made is varied or revoked, the clerk of the court at which the complaint is made or by which the order is made, varied or revoked shall forward a copy of the complaint, order, variation or revocation, as the case may be, to the Commissioner of Police and, where the complaint is made by a member of the police force, to the aggrieved spouse of the defendant.
- (12) Upon a complaint under this section, the court may award costs to the complainant or the defendant, to be recovered as costs in summary jurisdiction cases are recoverable.
- (13) Nothing in this section prevents or restricts the application of section 547 in relation to cases to which this section may apply.
- (14) Where a complaint has been made under this section:
- (a) a Justice may issue a summons for the appearance of the defendant or (except in the case of a complaint relating exclusively to the apprehension by a person of conduct referred to in subsection (1) (b)) a warrant for the arrest of the defendant as if the complaint alleged the commission of an offence, and
 - (b) the *Bail Act 1978* applies to and in respect of the defendant as if:
 - (i) where the defendant is arrested pursuant to a warrant issued upon the complaint or first appears before a court in answer to a summons so issued, the defendant were an accused person charged with an offence, and
 - (ii) proceedings in respect of the complaint or an order made under this section

upon the complaint were proceedings in respect of an offence.

(15) Where an order has been made under this section:

- (a) the order shall be deemed to be an order whereby the defendant is punished within the meaning of section 122 of the *Justices Act 1902*, and
- (b) in the application of section 123 of that Act and the *Bail Act 1978* to and in respect of the defendant, the defendant shall be deemed to be an accused person who, by reason of the restrictions or prohibitions imposed by the order on the behaviour of the defendant, is in custody.

(16) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed under this section or that is necessary or convenient to be prescribed for carrying out or giving effect to this section.

(G) FALSE STATEMENT RESPECTING BIRTHS, DEATHS, OR MARRIAGES

547A False statements respecting births, deaths and marriages

- (1) Every person who wilfully gives to any district registrar, or assistant district registrar, appointed under any Act providing for the registration of births or deaths, any false information concerning any birth or death, or the cause of any death, or who wilfully makes any false declaration under or for the purpose of any Act relating to the registration of births or deaths, shall on conviction before two justices be liable to imprisonment for a term not exceeding six months, or to pay a fine not exceeding one hundred dollars.
- (2) Any person who wilfully makes any false statement before any minister of religion, or district registrar, authorised to celebrate marriages, or before any person authorised to give his written consent to the marriage of any minor, for the purpose of procuring the celebration of any marriage, or any person who induces or endeavours to induce any person to celebrate a marriage between parties where such first-mentioned person knows that one of such parties is under age, and that the written consent required by law has not previously been obtained, shall upon conviction before two justices be liable to imprisonment for a term not exceeding six months, or to pay a fine not exceeding one hundred dollars.

Editorial note—

See *Marriage Act 1961* (Commonwealth), sections 96–98.

- (3) Proceedings for an offence against this section may be commenced within one year after the date of the commission of the offence, and subject to the permission of the Attorney-General.

(H) PUBLIC MISCHIEF

547B Public mischief

- (1) Any person who, by any means, knowingly makes to a member of the police force any false representation that an act has been, or will be, done or that any event has occurred, or will occur, which act or event as so represented is such as calls for an investigation by a member of the police force, shall be liable on conviction before a stipendiary magistrate to imprisonment for six months, or to a fine of \$500, or both.
- (2) For the purposes of subsection (1), a person shall be deemed to make a representation to a member of the police force if he makes the representation to any other person and the nature of the representation reasonably requires that other person to communicate it to a member of the police force and that person does so communicate it.

(I) PRYING

547C Peeping or prying

Any person who is in, on or near a building without reasonable cause with intent to peep or pry upon another person shall be liable on conviction before a stipendiary magistrate to imprisonment for 3 months, or to a fine of \$200.

Chapter 4 Procedure, &c, before Justices

Alternative methods of procedure

548 Alternative methods of proceeding before Justices

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 this Act, so far as it is applicable, or under any Act in force for the time being regulating proceedings on summary convictions, and every provision contained in any such Act shall be applicable to such proceedings as if the same were incorporated in this Act.

548A (Repealed)

Enforcing appearance

549 Offenders may be summoned under existing Acts

The several provisions in any Act regulating summary proceedings before Justices, in force for the time being, respecting 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,

notwithstanding any power of apprehension, or arrest without warrant, given by this Act.

Certain averments

550 Where not necessary to allege particular ownership

In any proceeding before Justices in respect of any of the matters mentioned in the Fourth Schedule, it shall not be necessary 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.

551 General averment of intent to defraud or injure

In any proceeding before Justices where it is necessary to allege an intent to defraud, or to injure, it shall be sufficient to allege that the accused did the act with such intent, without alleging an intent to defraud or to injure any particular person.

Jurisdiction of Magistrates not affected by certain matters

552 Jurisdiction of Magistrates in respect of offences arising under Chapter 2 of Part 4

In a case where, by virtue of section 476 or 501, a Magistrate has jurisdiction to deal with a charge arising under Chapter 2 of Part 4 (Criminal destruction and damage), the Magistrate may hear the charge irrespective of whether, in order to determine the charge, it is necessary to determine title to any property.

Reduction of sentence below fixed term

553 Sentence may be for less term or fine of less amount than that fixed

Where by any Act an offender is for any offence made liable to imprisonment for a fixed term or to a fine of any fixed amount the Justice or Justices may nevertheless pass a sentence of imprisonment of less duration or inflict a fine of less amount.

Sentence to hard labour

554 Hard or light labour

- (1) Wherever imprisonment is awarded by a Court of summary jurisdiction for an offence punishable under this, or any other Act, the Court may direct that the offender be imprisoned in any gaol, with either hard labour or light labour.
- (2) The said Court may, in addition to, or in substitution for any sentence imposing a fine or a term of imprisonment, require the offender to enter into a recognizance, with or without a surety or sureties to be of good behaviour for a term which shall not be less than twelve months or more than three years, and in default of entering into such recognizance, may direct that the offender be imprisoned, or further imprisoned, for a period not exceeding three months with either hard labour or light labour, unless such

recognizance is sooner entered into:

Provided that in no case shall the total term of such imprisonment and further imprisonment together exceed twelve months.

- (3) Subject to subsection (8), where a person is convicted by a Court (other than the Supreme Court) exercising summary jurisdiction of an offence punishable under this or any other Act, the Court may, on the conviction or at any time thereafter, upon notice given to the offender, direct that a sum not exceeding \$1,000 be paid to any aggrieved person, or to any aggrieved persons in such proportions as may be specified in the direction, by way of compensation for any injury or loss sustained through, or by reason of, the offence.
- (4) A direction under subsection (3) that a sum be paid to an aggrieved person may be given by a Court on its own motion or upon application being made to it by or on behalf of the aggrieved person.
- (5) A sum directed by a Court under subsection (3) to be paid by an offender to an aggrieved person shall be paid by the offender to the clerk of the Court, to be paid by that clerk to the aggrieved person.
- (6) A direction under subsection (3) shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the *Justices Act 1902*.
- (7) A direction given under subsection (3) shall specify the sum, if any, to be paid by way of compensation for injury and the sum, if any, to be paid by way of compensation for loss.
- (8) A Court shall not give a direction under subsection (3) in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums:
 - (a) specified in a direction previously given under section 437 or subsection (3):
 - (i) on the conviction of any other person for that offence, or
 - (ii) on the conviction of that or any other person for a related offence, or
 - (b) stated in a certificate previously granted under section 4 of the *Criminal Injuries Compensation Act 1967*:
 - (i) on the acquittal of, or dismissal of an information against, any other person, being a certificate granted in respect of that offence, or
 - (ii) on the acquittal of, or dismissal of an information against, that or any other person, being a certificate granted in respect of a related offence,exceeds \$1,000.

- (9) For the purposes of subsection (8), an offence is related to another offence if:
- (a) both of the offences were committed against the same person, and
 - (b) in the opinion of the Court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.
- (10) In determining whether or not to give a direction under subsection (3) and in determining the sum to be paid under such a direction, the Court shall have regard to:
- (a) any behaviour of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person,
 - (b) whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the offence, living with the convicted person as his wife or her husband or as a member of the convicted person's household,
 - (c) the provisions of the [Criminal Injuries Compensation Act 1967](#), and
 - (d) such other circumstances as it considers relevant.

(11) In this section:

compensation for injury includes compensation for:

- (a) actual and future expenses,
 - (b) actual loss of earnings, and
 - (c) loss of future earnings or a capacity to earn,
- sustained as a direct consequence of injury.

compensation for loss does not include compensation for injury.

injury means bodily harm, and includes pregnancy, mental shock and nervous shock.

Penalties, &c—application

555 Application of forfeitures and penalties

Every sum forfeited for the amount of any injury shall be assessed by the convicting Justices, and 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:

Every sum imposed as a penalty by Justices, whether in addition to such amount, or otherwise, shall be applied as directed by the Acts in force for the time being 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.

Summary conviction, &c, a bar

556 Summary conviction a bar to further proceedings

- (1) 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, he shall not be liable:
 - (a) to any other criminal proceedings for the same cause,
 - (b) to any civil proceedings for the same cause at the suit of the person laying the information upon which he was summarily convicted under this Act.
- (2) Any person against whom civil proceedings have been taken in respect of any act or thing done or omitted to be done by him which is an offence of which he might have been convicted summarily without consent under this Act shall be released from all criminal proceedings for the same cause on the information of the person by whom the civil proceedings were taken.

Part 15 Conditional release of offenders

556A Power to permit release of offenders

- (1) Where any person is charged before any court with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, or to any other matter which the court thinks it proper to consider, it is inexpedient to inflict any punishment, or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either:
 - (a) dismissing the charge, or
 - (b) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.
- (1A) A recognizance mentioned in subsection (1) shall be conditioned upon and subject to such terms and conditions as the court shall order.

- (1B) The power conferred on a court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.
- (2) Where an order is made under this section the order shall, for the purpose of re-vesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner, and as to the payment of money upon or in connection with such restitution or delivery, and for the purpose of the exercise of any power conferred by section 437 or section 554 (3), have the like effect as a conviction.
- (3) Where under subsection (1) a charge is dismissed or an offender is conditionally discharged, the person charged shall have the same rights as to appeal on the ground that he was not guilty of the offence charged as he would have had if convicted of the offence.

556B Proceedings on breach of condition of recognizance

If the court before which an offender is bound by recognizance (whether entered into for the purposes of section 556A or otherwise) to appear for conviction or sentence, or any court of like jurisdiction to that court, is satisfied by information on oath that the offender has failed to observe any condition of his recognizance, it may issue a warrant for his apprehension and upon his apprehension, on being satisfied that he has failed to observe any condition of his recognizance, may convict and sentence him, or sentence him, as the case may require, for the offence with which he was originally charged as if he had not been released on recognizance.

557 (Repealed)

558 Deferring sentence

- (1) A Court before which a person comes to be sentenced for any offence may if it thinks fit defer passing sentence upon the person and order his release upon his entering into a recognizance, with or without sureties, in such amount as the Court directs, to be of good behaviour for such period as the Court thinks proper and to come up for sentence if called upon.
- (1A) The power conferred on a Court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.
- (2) A recognizance mentioned in subsection (1) shall be conditioned upon and subject to such terms and conditions as the Court shall order.
- (3) Where a person has entered into a recognizance mentioned in subsection (1) he may be removed to such gaol, or other place, as the Court may determine, and there forthwith submitted to the examination customary for securing future identification, and may be detained for whatever period, not exceeding forty-eight hours, as may be necessary for this purpose.

- (4) Where the penalty provided by law in respect of an offence is a sentence of imprisonment or a fine or both, nothing in this section prevents the imposition of a fine for the offence when sentence for the offence is deferred under subsection (1).
- (5) The provisions of section 82 of the *Justices Act 1902* apply to a fine imposed as referred to in subsection (4).
- (6) A person may be called up for sentence and sentenced on the breach by him of any of the terms or conditions of a recognizance entered into by him under this section if the breach occurs during the period of the recognizance fixed under subsection (1), notwithstanding that the period has expired.
- (7) Any power conferred upon a Court by the operation of this section shall be in addition to, and not in substitution for, any power conferred upon the Court otherwise.

559-560 (Repealed)

560A Probation officers, regulations etc

- (1) The Governor may appoint probation officers for the purposes of this Act, and may make regulations relating to the supervision of offenders by such probation officers.
- (2) (Repealed)

561, 562 (Repealed)

Part 16 Miscellaneous enactments

563 (Repealed)

564 No Court fees to be taken in criminal cases

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, or issuing any writ, or recording any appearance, or plea to an indictment, or discharging any recognizance.

Editorial note—

So much of section as relates to proceedings before any Justice repealed: Act No 14, 1904, Sch.

565 Power of Courts to bring prisoners before them

Every Court or Judge, for the purposes of any trial or prosecution, shall 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.

565A Bail Act 1978 to prevail

The *Bail Act 1978* shall prevail to the extent of any inconsistency between that Act and this Act.

566 Witnesses neglecting to attend trial captured under warrant may be admitted to bail

Where a person bound by recognizance, or served with a subpoena, to attend as a witness in any Court at a trial, who has failed to appear when called in open Court, either at such trial, or on the day appointed for such trial, has been captured under a warrant issued by such Court, bail may be taken before any Justice for his appearance at the trial.

567 Supreme Court rules may prescribe forms of indictments etc

Without limiting the rule-making powers conferred by the *Supreme Court Act 1970* rules may from time to time be made under that Act framing and prescribing 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.

567A Counts for felonies and misdemeanours in one indictment

An indictment may contain counts for felonies or misdemeanours or both.

568-572 (Repealed)

573 Provision for wife where husband convicted of aggravated assault

In every case of aggravated assault by a husband on his wife, where a declaration is made under section 60, to the effect therein 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.

Every such last-mentioned order may be enforced in the same manner as any order under the *Maintenance Act 1964*.

574 Prosecutions for blasphemy

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.

574A Information etc for obscene or blasphemous libel

- (1) It shall not be necessary to set out in an information, indictment or criminal proceeding instituted against the publisher of an obscene or blasphemous libel the obscene or blasphemous passages.
- (2) It shall be sufficient to deposit the book, newspaper or other document containing the alleged libel with the information, indictment or criminal proceedings, together with particulars showing precisely, by reference to pages, columns and lines, in what part of the book, newspaper or other document the alleged libel is to be found.
- (3) The particulars under subsection (2) shall be deemed to form part of the record.
- (4) All proceedings may be taken thereon as though the passages complained of had been set out in the information, indictment or proceeding.

574B Prevention of suicide

It shall be lawful for a person to use such force as may reasonably be necessary to prevent the suicide of another person or any act which the person believes on reasonable grounds would, if committed, result in that suicide.

575 Misappropriation of corn etc by servants

No servant who, 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, shall by reason thereof be guilty of an indictable offence, but shall be liable to be dealt with under any Act for the time being in force, regulating the duties and liabilities of masters and servants.

576 Indecent exposure of the person

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.

577 Change of venue

In any criminal proceeding, if it is made to appear to the Court:

- (a) that a fair or unprejudiced trial cannot otherwise be had, or
- (b) that for any other reason it is expedient so to do,

the Supreme Court may change the venue, and direct the trial to be had in such other district, or at such particular place, as the Court thinks fit, and may for that purpose make all such orders as justice appears to require.

578 Publication of evidence may be forbidden in certain cases

- (1) Any Judge presiding at the trial of any person for an offence under section 61B, 61C, 61D, 61E, 63, 65, 66, 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q, 79, 80, 81, 81A, 81B, 86, 87, 89, 90, 91A or 91B or an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections may at any stage of the trial and from time to time make an order forbidding publication of the evidence therein or any report or account of that evidence either as to the whole or portions thereof:

Provided that if the accused or counsel for the Crown indicates to the Judge that it is desired that any particular matter given in evidence should be available for publication, no such order shall be made in respect of that matter.

(1A) (Repealed)

- (2) Any person who commits a breach of an order made under this section shall, on conviction before two Justices, be liable to a penalty of two thousand dollars.
- (3) The provisions of this section are subject to any Act or law under which evidence relating to a child under the age of 18 years, or a report or account of that evidence, may not be published.

579 Evidence of proceedings dealt with by way of recognizance after 15 years

- (1) Where, following the conviction of any person for an offence or a finding that a charge of an offence has been proved against any person, whether the conviction or finding was before or after the commencement of the *Crimes (Amendment) Act 1961*:
 - (a) sentence in respect of the conviction was suspended or deferred upon the person entering into a recognizance or, in substitution for sentence in respect of the conviction, the person was required to enter into a recognizance, or no conviction in respect of the finding was made and the person was discharged conditionally on his entering into a recognizance, and
 - (b) a period of fifteen years has elapsed since the recognizance was entered into:
 - (i) without the recognizance having been forfeited during that period or a court having found during that period that the person failed to observe any condition of the recognizance, and
 - (ii) without the person having, during that period, been convicted of an indictable offence on indictment or otherwise or of any other offence punishable by imprisonment (otherwise than under section 82 of the *Justices Act 1902* as amended by subsequent Acts) or without a finding during that period that a charge of such an indictable or other offence has been proved against the person,

the conviction or finding shall, where that period expired before the commencement of the *Crimes (Amendment) Act 1961*, as on and from that commencement, or, where that period expires or has expired after that commencement, as on and from the expiration of that period:

- (c) be disregarded for all purposes whatsoever, and
- (d) without prejudice to the generality of paragraph (c), be inadmissible in any criminal, civil or other legal proceedings as being no longer of any legal force or effect.

Without prejudice to the generality of the foregoing provisions of this section, any question asked of or concerning that person in or in relation to any criminal, civil or other legal proceedings otherwise than by his counsel, attorney or agent or other person acting on his behalf may be answered as if the conviction or finding had never taken place or the recognizance had never been entered into.

- (2) Notwithstanding the provisions of subsection (1), where in any criminal, civil or other legal proceedings the person first referred to in that subsection, by himself, his counsel, attorney or agent or other person acting on his behalf, otherwise than in answer to a question that can, in accordance with the last paragraph of that subsection, be answered in the negative, makes an assertion that denies the fact that the conviction or finding took place or that the recognizance was entered into, then the conviction, finding or recognizance is admissible:
 - (a) in those proceedings, as to the character, credit or reputation of the person so referred to,
 - (b) in any prosecution for perjury or false swearing founded on the assertion.

The non-disclosure of the conviction, finding or recognizance in the making or giving of a statement or evidence as to the good character, credit or reputation of the person so referred to shall not of itself be taken, for the purposes of this subsection, to mean that the statement or evidence contains such an assertion.

- (3) In this section **legal proceedings** includes any application for a licence, registration, authority, permit or the like under any statute.
- (4) This section does not affect the operation of section 55 of the *Defamation Act 1974*, or the operation of section 23 of the *Evidence Act 1898*, for the purposes of section 55 of the *Defamation Act 1974*.

580 Certain charges not to be brought at common law

A person may not be charged with any common law offence in respect of any act committed upon or in relation to another person, being an act which could, but for the amendment of sections 79 and 80 and the repeal of sections 81, 81A and 81B by the

Crimes (Amendment) Act 1984, have been the subject of a charge for an offence under any of those sections.

First Schedule

Repeal of Acts

Reference to Act	Subject or short title	Extent of repeal
4 Vic No 22	Administration of Justice	So much of s 10 as relates to appointment of Crown Prosecutor at Quarter Sessions, s 12, and so much of s 15 as relates to criminal proceedings.
7 Vic No 16	Deeds Registration	Section 28.
11 & 12 Vic, c 42, adopted by 14 Vic No 43.	Duties of Justices (Indictable Offences Act).	Section 17.
13 Vic No 16	Law of Evidence	So much of s 5 as is hitherto unrepealed.
13 Vic No 18	Deodands Abolition	Sections 1 and 3.
14 Vic No 43	Imperial Acts Adoption and Application.	Section 16.
16 Vic No 14	Law of Evidence Amendment.	Section 10 and so much of s 11 as is hitherto unrepealed.
17 Vic No 39	<i>"The Justices Act Amendment Act of 1853"</i> .	Section 13.
22 Vic No 7	Law of Evidence Further Amendment.	Section 10.
22 Vic No 18	<i>"District Courts Act of 1885"</i> .	Section 25.
23 Vic No 1	Quarter Sessions Chairman.	The whole.
24 Vic No 6	Common Law Procedure Act Extension.	Sections 1 and 2 so far as they relate to criminal trials.
30 Vic No 9	<i>"District Courts Amendment Act of 1866"</i> .	All hitherto unrepealed, except so far as it relates to District Courts.
31 Vic No 25	<i>"Treason Felony Act of 1868"</i> .	The whole.

46 Vic No 17	"Criminal Law Amendment Act".	All hitherto unrepealed, except s 295, from the words "And every solemn declaration" to the end of the section; ss 336 to 340 inclusive; the last clause of s 342; s 343; ss 346, 347; so much of s 359 as relates to the custody of records by the Prothonotary; s 434; s 436; ss 440 to 444 inclusive; the last clause of s 445; ss 453, 454, 455; so much of s 459 as relates to Courts of Petty Sessions; s 471; and the Seventh Schedule.
52 Vic No 6	" <i>Criminal Law Amendment Act of 1888</i> ".	The whole, except s 2.
55 Vic No 5	" <i>Criminal Law and Evidence Amendment Act of 1891</i> ".	All hitherto unrepealed, except ss 17, 23, 24, 26, and 34, and so much of s 35 as relates to 40 Vic No 14.
57 Vic No 23	" <i>First Offenders Probation Act of 1894</i> ".	The whole.
No 11, 1898	" <i>Evidence Act 1898</i> ".	Sections 7, 27, 31, 37, 38, 39, 40, 41, and 48.
No 12, 1898	"Evidence (Penalties) Act".	The whole.
No 30, 1898	" <i>Accused Persons Evidence Act of 1898</i> ".	The whole.

Second Schedule

(Section 3)

Parts and sections in force, so far as their provisions are applicable, with respect to all offences and courts.

Sections 4 to 10 inclusive, 23, 34, 40, 62, 77, 78, 116, 118 to 124 inclusive, 128 to 130 inclusive, 163, 183, 191, 193, 194, 250, 251, 344A, 345 to 347 inclusive, 351, Parts 10 to 13 inclusive, sections 547 to 556B inclusive, section 558 and Part 16.

Third Schedule

(Section 358)

Form No 1

Discharge of persons committed for trial

Certificate of Attorney-General or Director of Public Prosecutions

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 of _____, 18 ____.

- (1) 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.
- (2) Any offence committed in or respecting a place of Divine Worship or respecting property in any public library or building.
- (3) Any thing mentioned in section 202 or 210.

Fifth Schedule

(Section 406)

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 *Crimes Act 1899*—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.]

Sixth, Seventh Schedules (Repealed)

Eighth Schedule

(Section 463)

Warrant for arrest of person whose licence has been revoked

To the Commissioner of Police and all other Peace Officers in the State of New South Wales—
Whereas A.B. was on the day of convicted of (the indictable offence of or and offence punishable upon summary conviction) and the said offence was committed within the said State. And Whereas for his said offence the said A.B. was sentenced to be imprisoned for the space of thereafter. And Whereas the said A.B. was afterwards released under licence from the gaol at in the said State. And Whereas the said licence has been revoked. These are therefore to command you to take the said A.B. and (him or her) safely to convey to the said gaol and deliver (him or her) to the keeper thereof together with this precept. And I do hereby command you, the said keeper of the said gaol to receive the said A.B. into your custody in the said gaol there to undergo the remainder of (his or her) said sentence.

Given under my hand and seal this day of , in the year of Our Lord one thousand nine hundred and at in the said State.

C.D. (L.S.)

A Justice of the Peace for the State of New South Wales.

Ninth Schedule

(Section 447B)

Form of list of other offences charged

Police Department,
Criminal Investigation Branch,

Sydney (or.....
..... Police Station.)

TO

indicted on a charge of for trial at the sittings of the Supreme Court at (or, as the case may be at Quarter Sessions) commencing on, 19 ..

Memorandum for Accused's Information

- (1) The list on the back hereof gives particulars of other alleged offences with which you are charged.
- (2) If you are found guilty of the charge of first mentioned above, you may before sentence is passed, if the presiding Judge so decides and counsel for the Crown consents, admit all or any of the other offences set out on the back hereof and ask that any of those offences that you have admitted be taken into account by the presiding Judge in passing sentence upon you.
- (3) If you are found guilty and the presiding Judge does take any of the other offences that you have admitted into account, the maximum sentence that may be imposed upon you will nevertheless be the maximum sentence for the offence of first mentioned above.
- (4) No further proceedings may be taken against you in respect of the other offences taken into account unless the decision of the Court in respect of the offence of first mentioned above is set aside or quashed.
- (5) If proceedings are taken in the circumstances mentioned in (4) or if the presiding Judge does not for any reason take any one or more of the other offences that you have admitted into account, your admission cannot be used as evidence against you in any proceedings taken in the circumstances mentioned or taken in respect of the offences not taken into account.

Signature of member of the police force

Date

Signature of accused acknowledging receipt of copy of this document

Date

Certificate

In sentencing for the offence of this day, I have taken into account the following offences alleged against and admitted by him, that is to say, the offences numbered in the list on the back hereof.

Dated this day of , 19 ..

.....

A Judge of the Supreme Court or a Chairman of Quarter Sessions.

[BACK OF FORM]

Number	Place where offence was committed	Date of offence	Offence(s) (Brief description)	Whether or not committed for trial? Yes or No.

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Tenth Schedule

(Section 475A)

Offences punishable by the Supreme Court in its summary jurisdiction

- (a) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 173, 174, 175, 176, 176A or 179 of this Act; any offence arising under section 185A (1) or (2) of this Act; the common law offence of attempting to commit any offence arising under section 185A (1) of this Act.
- (b) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 124, 374A (1) or (3), 374B, 374C (2), 374G, 375 (2), 375A or 376 (2) of the *Companies Act 1961*.
- (c) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 14 (1), 27, 59 (7), 109 (1) or (2), 110, 111, 112 (1), (2), (3), (4), (5) or (6) or 121 (1) of the *Securities Industry Act 1975*.
- (d) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 70, 71 (1) or (3), 72 (1) or 73 of the *Securities Industry Act 1970*.
- (d1) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under:
 - (i) section 37 (1), 73 (7), 124 (1) or (2), 125, 126, 128 (1), (2), (3), (4), (5) or (6) or 137 of the *Securities Industry (New South Wales) Code*, or
 - (ii) section 16 (1) of the *National Companies and Securities Commission (State Provisions) Act 1981*.
- (e) The common law offence of conspiracy to cheat and defraud.
- (f) Subject to section 475A (2) of this Act, any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under:
 - (i) section 165, 166, 168, 169, 170, 172, 178A, 178BA, 178BB, 178C, 185, 252, 256, 257, 258, 259, 272, 273, 274, 275, 276, 292, 327, 330 or 339 of this Act,
 - (ii) section 47 (1), 51 (3), 64 (10), 86 (1), 163 (1) (being an offence committed as referred to in section 163 (3)), 179A (1), 180J (1) or (1A), 180W or 374F (1) or (2) of the *Companies Act 1961*,
 - (iii) section 12 (6), 25 (1), 54 (1) or 58 (1), (2), (3) or (4) of the *Securities Industry Act 1975*,
 - (iv) section 14 (6), 34 (1), 68 (1) or 72 (1), (2), (3) or (4) of the *Securities Industry (New South Wales) Code*,
 - (v) section 44 or 53 of the *Companies (Acquisition of Shares) (New South Wales) Code*, or

(vi) section 108 (1), 123 (1), 174 (1), 276 (1) (being an offence committed as referred to in section 276 (1) (b)), 310 (1), 559 or 560 of the *Companies (New South Wales) Code*.