

# CRIMINAL LAW CONSOLIDATION AND AMENDMENT BILL.

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465.—Receiver's evidence of guilty knowledge.

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467.—Subsidiary provisions as to Prisoners Witnesses under sec. 356.

468.—Rule for construction of this Act.



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Legislative Council.

38<sup>o</sup> VICTORIÆ, 1874.

## A BILL

To consolidate and amend in certain respects the Criminal Law.

[MR. INNES;—5 November, 1874.]

*Reference to existing  
Enactments.*

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

- 5        1. This Act shall commence on the first day of *January* in the year one thousand eight hundred and seventy *five* and may be cited as "The Criminal Law Consolidation and Amendment Act of 1874" on which day the Acts and portions of Acts mentioned in the First Schedule hereto so far as the same are therein expressed to be repealed shall be  
10 and the same are hereby repealed except as to offences committed and matters and things done or commenced before that day which shall be dealt with and continued and every right and liability in respect thereof shall remain as if this Act had not been passed. Provided that the eighth and following parts of this Act so far as the provisions  
15 thereof severally can be applied shall be in force with respect to all offences whether at common law or by statute whensoever committed and in what Court soever tried.

*Reference to Imperial  
Acts.*

*Commencement &c.*

*Repeal of Acts.  
First Schedule.*



## Division of Act.

2. This Act shall be divided into the eleven following parts that is to say—(1) Offences against the Person (2) Larceny and similar Offences (3) Malicious Injuries to Property (4) Forgery (5) Offences relating to the Coin (6) Perjury (7) Abettors and Accessories (8) Pleading Procedure and Evidence (9) Proceedings after Verdict (10) Summary Proceedings (11) Miscellaneous Enactments. 5

## Interpretation of terms.

3. For the purposes of this Act the words “Court” and “Judge” respectively shall be equally taken to mean the Court in which or the Judge before whom the trial or proceeding is had in respect of which 10 either word is used :

## Indictment.

The term “Indictment” shall mean or be taken to include any information presented or filed as now provided or allowed by law for the prosecution of offences And

## Justice.

The word “Justice” or “Justices” shall be construed to mean 15 (whether used in the singular or plural number) a Justice or Justices of the Peace :

## Money.

The word “money” shall include equally all coined money whether current within the realm or not and all Bank notes or instruments ordinarily so called and current as such and payable to the bearer : 20

cf. 7 & 8 Geo. IV.  
c. 29 s. 5.  
9 Vic. No. 2 s. 2.

## Valuable security.

And the words “valuable security” shall include any 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 25 British Dominions or to any deposit in any bank and shall also include any debenture deed bond bill note cheque warrant order or security whatsoever for money or for payment of money whether of any part of the British Dominions or of any Foreign State and any document of title to land or goods :

Property.  
Ib.

The term “property” shall include every description of real and personal property money debts and legacies and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and shall also include not only such property as shall have been originally in 35 the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise :

cf. 1 Vic. c. 87 s. 12 &  
22 Vic. No. 16 s. 3.

Document of title  
to goods.  
24 & 25 Vic. c. 96  
s. 1.

The term “document of title to goods” shall include any bill of 40 lading India warrant dock warrant warehousekeeper’s certificate warrant or order for the delivery or transfer of any goods or valuable thing bought and sold note or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement 45 or by delivery the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to :

cf. 30 Vic. No. 13 s. 4.

Document of title  
to lands.  
Ib.

The term “document of title to land” shall include any deed certificate of title map paper or parchment written or printed or partly written and partly printed being or containing evidence of the 50 title or any part of the title to any real estate or to any interest in or out of any real estate :

cf. 7 & 8 Geo. IV.  
c. 29. s. 23.

## Banker.

The term “banker” shall include any director or manager of any banking company whether incorporated or not or of any branch thereof and every person carrying on the business of a banker :

Trustee.  
Ib.

The term “trustee” shall mean a trustee on some express trust 55 created by some deed will or instrument in writing and shall include the heir or personal representative of any such trustee and any other person upon or to whom the duty of such trust shall have devolved

22 Vic. No. 16 s. 3.

or



or come and also an executor and administrator and an official manager assignee liquidator or other like officer acting under any present or future Act relating to joint stock companies or bankruptcy or insolvency.

- 5 The words "person" "master" and "employer" shall severally <sup>Master or employer.</sup> be construed to include whenever applicable thereto any society company or corporation :

The term "cattle" shall include any horse mare gelding colt foal <sup>Cattle.</sup> filly ass mule bull cow ox steer heifer calf ram ewe sheep lamb pig <sup>Ib.</sup>

- 10 goat deer alpaca llama or vicuna or any hybrid or cross thereof:

"Night" shall be deemed to commence at *nine* of the clock in <sup>Night.</sup> the evening of each day and to conclude at *six* of the clock in the <sup>Ib.</sup> morning of the next succeeding day.

1 Vic. c. 86 s. 4  
adopted by 2 Vic.  
No. 10.

Law Ref. Com.

4. Whenever by any section of this Act a person is made liable <sup>What offences to be</sup> to the punishment of death or of penal servitude and the offence <sup>deemed felonies.</sup> for which such punishment may be awarded is not by such section declared to be a misdemeanor the same is hereby declared to be and shall be taken to be felony and the offender shall on conviction be deemed accordingly to have been convicted of felony and shall be subject to all the legal consequences of such a conviction and wherever in this Act the term felony is used the same shall be taken to mean an offence punishable as aforesaid But where by this Act no other <sup>What offences</sup> punishment can be awarded than imprisonment with or without hard <sup>misdemeanors.</sup> labour or the imposition of a fine in addition to or without imprisonment the offence shall be and be taken to be a misdemeanor only.

## PART I.—OFFENCES AGAINST THE PERSON.

### (1).—Homicide.

Reference to existing  
enactments.

Reference to Imperial  
Statute.

9 Geo. IV. c. 31 s. 3.  
Law. Ref. Com.

5. Whosoever shall be convicted of murder shall be liable to suffer death.

Murder.

24 & 25 Vic. c. 100  
sec. 1.

Law Ref. Com.

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

Child murder.

7. All persons who shall conspire confederate and agree to <sup>Conspiring to commit</sup> murder any person whether a subject of Her Majesty or not and <sup>murder.</sup> whether within the Queen's dominions or not or shall solicit <sup>Ib. sec. 4.</sup> encourage persuade or endeavour to persuade or shall propose to any person to murder any other person whether a subject of Her Majesty or not and whether within the Queen's dominions or not shall be liable to penal servitude for *life*.

Ib. sec. 9.

- 40 8. Whosoever shall be convicted of manslaughter shall be liable to penal servitude for *life* or any term not less than *three years* <sup>Manslaughter.</sup> or to imprisonment for any term not exceeding *four years* <sup>Ib. sec. 5.</sup> or to pay such fine with or without such imprisonment as the Court shall direct.

Ib. sec. 10.

- 45 9. No punishment or forfeiture shall be incurred by any person <sup>Excusable homicide.</sup> who shall kill another by misfortune or in his own defence or in any <sup>Ib. sec. 7.</sup> other manner without felony.



Petit treason.  
Ib. sec. 8.

10. Every offence which before the twenty-seventh day of June in the year one thousand eight hundred and twenty-eight would have amounted to petit treason shall be deemed to be murder only and all persons guilty in respect thereof whether as principals or as accessories shall be dealt with and punished as principals and accessories in murder. 5

Ib. sec. 2.

(2.)—*Attempts to Murder.*

Certain acts done  
with intent to  
murder.  
Ib. secs. 11 and 12.

11. Whosoever shall administer to or cause to be taken by any person any poison or other destructive thing or shall by any means whatsoever wound or inflict any grievous bodily harm upon any person or shall set fire to any ship or vessel or any chattel therein or any part of her tackle apparel or furniture or shall cast away or destroy any ship or vessel or by the explosion of gunpowder or other explosive substance destroy or damage any building with intent in any of the cases aforesaid to commit murder shall be liable to suffer death. 10 15

1 Vic. c. 85.  
1 Vic. c. 89 sec. 4  
adopted by 2 Vic.  
No. 10.  
9 & 10 Vic. c. 25  
sec. 2 adopted by  
14 Vic. No. 16.

Certain acts done  
whereby life  
endangered.  
Ib. sec. 13.

12. Whosoever shall maliciously set fire to any ship or vessel or any chattel therein or any part of her tackle apparel or furniture or shall cast away or destroy any ship or vessel or shall by the explosion of gunpowder or other explosive substance destroy or damage any building whereby in any such case the life of any person shall be endangered shall be liable to penal servitude for life. 20

9 & 10 Vic. c. 25  
sec. 2 adopted by  
14 Vic. No. 16.

Certain attempts  
with intent to  
murder.  
Ib. sec. 14.

13. Whosoever shall attempt to administer to or to cause to be taken by any person any poison or other destructive thing or shall shoot at any person or shall in any manner attempt to discharge any kind of loaded arms at any person or shall attempt to drown suffocate or strangle any person with intent in any of the cases aforesaid to commit murder shall whether any bodily injury be effected or not be liable to penal servitude for life. 25

1 Vic. c. 85 sec. 3  
adopted by 2 Vic.  
No. 10.

By other means  
attempting to com-  
mit murder.  
Ib. sec. 15.

14. Whosoever shall by any means other than those specified in any of the preceding sections attempt to commit murder shall be liable to penal servitude for life. 30

(3.)—*Letters threatening to Murder.*

Sending letters  
threatening to  
murder.  
Ib. sec. 16.

15. Whosoever shall maliciously send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing threatening to kill or murder any person shall be liable to penal servitude for the term of ten years. 35

10 & 11 Vic. c. 66  
sec. 1 adopted by 14  
Vic. No. 16.

(4.)—*Acts causing or with intent to cause Bodily Harm.*

Impeding persons  
endeavouring to  
escape from ship-  
wreck.  
Ib. sec. 17.

16. Whosoever shall maliciously prevent or impede any person being 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 shall maliciously prevent or impede any person in his endeavour to save the life of any such person as in this section first aforesaid shall be liable to penal servitude for life. 40

1 Vic. c. 89 sec. 7.

Shooting or wounding  
with intent to do  
grievous bodily harm.  
Ib. sec. 18.

17. Whosoever shall maliciously by any means whatsoever wound or inflict any grievous bodily harm upon any person or shoot at any person or in any manner attempt to discharge any kind of loaded arms at any person with intent in any such case to do grievous bodily harm to such person or to any other 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. 50

1 Vic. c. 85 sec. 4.

What shall constitute  
loaded arms.  
Ib. sec. 19.

18. Any gun pistol or other arms which shall be loaded in the barrel or chamber with gunpowder or any other explosive substance and ball shot slug or other destructive material shall be deemed to be loaded arms within the meaning of this Act although the attempt to



to discharge the same may fail from want of proper priming or from any other cause and every gun pistol or other arms which shall be unlawfully presented at any person shall be deemed to be loaded arms unless the contrary be shewn.

5 19. Whosoever shall maliciously by any means whatsoever wound or inflict any grievous bodily harm upon any person shall be liable to penal servitude for the term of *five years*. And any permanent or serious disfiguring of the person shall be deemed grievous bodily harm within the meaning of this and the said seventeenth section.

16 Vic. No. 17 sec. 4.

10 20. Whosoever shall by any means whatsoever attempt to choke suffocate or strangle any person or shall by any means calculated to choke suffocate or strangle attempt to render any person insensible unconscious or incapable of resistance with intent in any of such cases to enable himself or any person to commit or 15 with intent in any of such cases to assist any person in committing any indictable offence shall be liable to penal servitude for *life*.

16 Vic. No. 17 sec. 3.

21. Whosoever shall unlawfully apply or administer to or cause to be taken by or attempt to apply or administer to or attempt to cause to be administered to or taken by any person any chloroform laudanum 20 or other stupefying or overpowering drug matter or thing with intent in any of such cases to enable himself or any person to commit or with intent in any of such cases to assist any other person in committing any indictable offence shall be liable to penal servitude for *life*.

25 Vic. No. 12 s. 1.

22. Whosoever shall maliciously administer to or cause to 25 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 any grievous bodily harm shall be liable to penal servitude for the term of *ten years*.

Ib. s. 2.

23. Whosoever shall maliciously administer to or cause to 30 be administered to or taken by any person any poison or other destructive or noxious thing with intent to injure aggrieve or annoy or to have carnal connexion with such person shall be liable to penal servitude for the term of *five years*.

6 Vic. No. 17 sec. 7.

24. Whosoever being legally liable to provide any wife child 35 ward insane person apprentice or servant with necessary food clothing or lodging shall wilfully and without lawful excuse refuse or neglect to provide the same or maliciously do or cause to be done any bodily harm to any such wife child ward insane person apprentice or servant so that in any such case his or her life shall be endan- 40 gered or his or her health shall have been or shall be likely to be seriously injured shall be liable to penal servitude for the term of *five years*.

25. Whosoever shall unlawfully abandon or expose any child being under the age of two years whereby the life of such child shall 45 be endangered or the health of such child shall have been or shall be likely to be seriously injured shall be liable to penal servitude for the term of *five years*.

26. Whosoever shall negligently and without lawful excuse do or omit to do any act whereby grievous bodily injury is sus- 50 tained by any person shall be liable to imprisonment for any term not exceeding *two years*.

9 and 10 Vic. c. 25  
sec. 3.

27. Whosoever shall maliciously by the explosion of gunpowder or other explosive substance burn maim disfigure disable or do any grievous bodily harm to any person shall be liable to penal servitude 55 for *life*.

Ib. sec. 4 & 1 Vic. c.  
85 sec. 5.

28. Whosoever shall maliciously cause any gunpowder or other explosive substance to explode or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing or put or lay at any place or cast or 60 throw

Wounding  
disfiguring or other-  
wise injuring.  
Ib. s. 20.

Attempting to choke  
&c.  
Ib. sec. 21.

Using chloroform &c.  
to commit any indict-  
able offence.  
Ib. sec. 22.

Using poison &c. so as  
to endanger life.  
Ib. sec. 23.

Administering poison  
&c. with intent to  
injure aggrieve or  
annoy.  
Ib. sec. 24.

Not providing wife  
child apprentices  
servants &c. with  
food &c.  
Ib. sec. 26.

Exposing children  
whereby life endan-  
gered.  
Ib. sec. 27.

Negligently causing  
bodily injury.  
Victorian Act 27 Vic.  
No. 233 sec. 24.

Causing bodily injury  
by gunpowder.  
24 and 25 Vic. c. 109  
sec. 28.

Using or sending  
explosive substance  
or throwing corrosive  
fluid.  
Ib. sec. 29.



throw at or upon or otherwise apply to any person any corrosive fluid or any destructive or explosive substance with intent in any of the cases aforesaid to burn maim disfigure or disable any person or to do some grievous bodily harm to any person shall whether any bodily injury be effected or not be liable to penal servitude for *life*.

5

Placing gunpowder  
near a building.  
Ib. sec. 30.

29. Whosoever shall maliciously place or throw into upon against or near any building ship or vessel any gunpowder or other explosive substance with intent to do any bodily injury to any person shall whether or not any explosion take place and whether or not any bodily injury be effected be liable to penal servitude for the term 10 of *fourteen years*.

1 Vic. c. 85 sec. 6.

Setting spring-guns  
&c.  
Ib. sec. 31.

30. Whosoever shall place or cause to be placed any spring-gun man-trap or other engine calculated to destroy human life or inflict grievous bodily harm or shall continue any such engine so placed or knowingly permit the same to continue so placed with intent in any 15 of the cases aforesaid to inflict grievous bodily harm shall be liable to imprisonment for any term not exceeding *four years* Provided that nothing in this section shall extend to any gun or trap usually placed with the intention of destroying vermin or to any spring-gun man-trap or other engine placed in a dwelling-house for the protection thereof. 20

7 &amp; 8 Geo. IV. c. 18.

Placing wood &c. on  
a railway.  
Ib. sec. 32.

31. Whosoever shall maliciously put or throw upon or across any railway any wood stone or other matter or thing or take up remove or displace any rail sleeper or other matter or thing belonging to any railway or turn move or divert or neglect to turn move or divert any point or other machinery belonging to any railway or shall 25 make shew hide or remove any signal or light upon or near to any railway or do or cause to be done or neglect to do or cause to be done any other matter or thing with intent in any of the cases aforesaid to injure or endanger the safety of any person travelling or being upon such railway shall be liable to penal servitude for *life*.

22 Vic. No. 19 sec. 129.

Casting stone &c. on  
a railway carriage.  
Ib. sec. 33.

32. Whosoever shall maliciously throw or cause to fall or strike at against into or upon any engine tender carriage or truck used upon any railway any wood stone or other matter or thing with intent to injure or endanger the safety of any person being in or upon such engine tender carriage or truck or in or upon any other 35 engine tender carriage or truck of any train of which such first-mentioned engine tender carriage or truck shall form part shall be liable to penal servitude for *life*.

Ib. sec. 130.

Doing anything  
whereby passengers  
are endangered.  
Ib. sec. 34.

33. Whosoever by any unlawful act omission or neglect shall endanger or cause to be endangered the safety of any person conveyed 40 or being in or upon a railway or shall aid or assist therein shall be liable to imprisonment for any term not exceeding *three years*.

Ib. sec. 132 *ad finem*.

Injuries by furious  
driving.  
Ib. sec. 35.

34. Whosoever having the charge of any carriage or vehicle shall by wanton or furious driving or racing or other misconduct or by wilful neglect do or cause to be done any bodily harm to any person 45 whatsoever shall be liable to imprisonment for any term not exceeding *two years*.

See 13 Vic. No. 5.

#### (5.)—Rape Abduction and Indecent Assaults.

Rape.  
Ib. sec. 48.  
Provision for cases  
of fraud.

35. Whosoever shall be convicted of the crime of rape shall be liable to suffer *death* Provided that where on the trial of any person 50 for rape it shall appear that he had carnal knowledge of the woman with her consent under the belief induced by the actings language or conduct of such person that he was the woman's husband it shall be lawful for the jury to find those facts specially and thereupon the offender shall be liable to penal servitude for the term of *fourteen years*. 55

Ib. sec. 16.

36.



- 11 Vic. No. 30 sec. 1. 36. Whosoever shall be convicted of an attempt to commit or of an assault with intent to commit the crime of rape shall be liable to penal servitude for the term of *fourteen years*. Punishment for attempt.
- 16 Vic. No. 17 sec. 8. 5 or other fraudulent means induce or procure any female to have illicit carnal connection with any man or shall by any such means have any such connection shall be liable to imprisonment for any term not exceeding *seven years*. Procuring the defilement of any female. 24 and 25 Vic. cap. 100 sec. 49.
- 9 Geo. IV. c. 31 sec. 17. 10 ten years shall be liable to suffer *death*. Carnally knowing a girl under ten years. Ib. sec. 50.
- 11 Vic. No. 30 secs. 1 & 2. 39. Whosoever shall be convicted of an assault with intent carnally to know any girl under the age of ten years or of an attempt to commit the same offence shall be liable to penal servitude for the term of *fourteen years* and the consent if any of the girl shall be no defence to any such charge. Punishment for an attempt.
- 9 Geo. IV. c. 31 sec. 17. 20 of an attempt to commit the same offence shall be liable to penal servitude for the term of *five years* and the consent if any of the girl shall be no defence to any such charge. Carnally knowing a girl between ten and twelve years. Punishment for attempt. Ib. sec. 51.
- 16 Vic. No. 18 sec. 23 and ib. sec. 3. 25 child shall be liable to penal servitude for the term of *five years* and any person who having been convicted of such offence shall afterwards commit any such misdemeanor shall be liable to penal servitude for the term of *ten years*. Indecent assault on child under twelve years. Second conviction a felony.
- 11 Vic. No. 30 secs. 4 & 5. 30 the age of twelve years shall be liable to imprisonment for any term not exceeding *three years*. Indecent assault on females. 24 & 25 Vic. c. 100 sec. 52.
- 9 Geo. IV. c. 31 s. 19. 35 kin to any one having such interest whosoever shall from motives of lucre take away or detain such woman against her will with intent to marry or carnally know her or to cause her to be married or carnally known by any person shall be liable to penal servitude for *fourteen years*. Abduction of a woman against her will. Ib. sec. 53.
- 40 any woman being under the age of twenty-one years out of the possession and against the will of her father or mother or of any other person having the lawful charge of her 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 the term of *five years* And 45 no offender under this or the last preceding section shall be capable of taking any estate or interest legal or equitable in any property in right of any such woman and if any marriage shall have taken place the property of the wife shall be settled in such manner as the Supreme Court shall upon an information at the suit of the Attorney General 50 appoint. The like against the will of parent.
- 9 Geo. IV. c. 31 s. 20. 55 will any woman of any age 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 the term of *fourteen years*. Forceful abduction of any woman with intent to marry her. Ib. sec. 54.
- 55 46. Whosoever shall unlawfully take or cause to be taken any unmarried girl being under the age of sixteen years out of the possession and against the will of her father or mother or of any other person having the lawful charge of her shall be liable to imprisonment for any term not exceeding *three years*. Abduction of a girl under sixteen years of age. Ib. sec. 55.



(6.)—*Certain other Assaults.*

Obstructing or assaulting a minister in the discharge of his duties.  
Ib. sec. 36.

47. Whosoever shall by threats or force obstruct or prevent or endeavour to obstruct or prevent any clergyman or other minister in or from celebrating divine service or otherwise officiating in any place of divine worship or in or from the performance of his duty in the lawful burial of the dead in any burial-place or shall strike or offer any violence to or shall upon any civil process or under the pretence of executing any civil process arrest any clergyman or other minister engaged in or to the knowledge of the offender about to engage in any of the rites or duties aforesaid or going to perform the same or returning from the performance thereof shall be liable to imprisonment for any term not exceeding *two years*.

9 Geo. IV. c. 31  
sec. 23.

Assaulting a magistrate &c. on account of his preserving wreck.  
Ib. sec. 37 and ib.

48. Whosoever shall wound or strike any magistrate officer or other person lawfully authorized while in the execution of his duty in or concerning the preservation of any vessel in distress or of any vessel goods or effects wrecked stranded or cast on shore or lying under water with intent to obstruct him or whereby he shall be obstructed in the execution of such duty shall be liable to penal servitude for the term of *seven years*.

Ib. sec. 24.

Assault with intent to commit felony or on peace officers &c.  
Ib. sec. 38.

49. Whosoever shall assault any person with intent to commit felony or shall assault resist or wilfully obstruct any peace officer in the execution of his duty or any person acting in aid of such officer or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence shall be liable to imprisonment for any term not exceeding *two years*.

Ib. sec. 25.

Assaults arising from combination.  
Ib. sec. 41.

50. Whosoever in pursuance of any unlawful combination or conspiracy to raise the rate of wages or of any unlawful combination or conspiracy respecting any trade business or manufacture or respecting any person concerned or employed therein shall unlawfully assault any person shall be liable to imprisonment for any term not exceeding *two years*.

Ib. sec. 25.

Assault occasioning bodily harm.  
Ib. sec. 47.

51. Whosoever shall be convicted upon an indictment for any assault occasioning actual bodily harm shall be liable to penal servitude for the term of *five years* and whosoever shall be convicted upon an indictment for a common assault shall be liable to imprisonment for any term not exceeding *one year*.

16 Vic. No. 18 sec.  
28.

Common assault.

(7.)—*Child Stealing.*

Child stealing.  
Ib. sec. 56.

52. Whosoever shall unlawfully either by force or fraud lead or take away or decoy or entice away or detain any child under the age of *fourteen years* with intent to deprive any parent guardian or other person having the lawful charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child to whomsoever such article may belong and whosoever shall receive or harbour any such child knowing the same to have been by force or fraud led taken decoyed enticed away or detained as in this section before mentioned shall be liable to penal servitude for the term of *ten years* Provided that no person who shall in good faith have claimed any right to the possession of such child shall be liable to prosecution under this section.

Ib. sec. 21.

50

(8.)—*Bigamy.*

Bigamy.  
Ib. sec. 57.

53. Whosoever being married shall marry any other person during the life of the former husband or wife shall be liable to penal servitude for any term not exceeding *seven years* Provided that nothing in this section contained shall extend to any person whose husband or wife

Ib. sec. 22.

wife



wife shall have been continually absent from such person for the space of *seven years* then last past and shall not have been known by such person to be living within that time or shall extend to any person who at the time of such second marriage shall have been divorced from the  
 5 bond of the first marriage or to any person whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

(9.)—*Attempts to procure Abortion.*

1 Vic. c. 85 sec. 6.

54. Every woman being with child who with intent to procure  
 10 her own miscarriage shall unlawfully administer to herself any matter or thing whatsoever or shall unlawfully use any instrument or other means whatsoever with the like intent and whosoever with intent to procure the miscarriage of any woman whether or not she is with child shall unlawfully administer to her or cause to be taken by her any  
 15 matter or thing whatsoever or shall unlawfully use any instrument or other means whatsoever with the like intent shall be liable to penal servitude for the term of *ten years*.

Administering drugs &c.  
Ib. s. 58.

55. Whosoever shall supply or procure any poison or other  
 20 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 or not she is with child shall be liable to penal servitude for the term of *five years*.

Procuring drugs &c.  
Ib. sec. 59.(10.)—*Concealing the Birth of a Child &c.*

9 Geo. IV. c. 31 s. 14.

56. Where any woman shall have been delivered of a child every  
 25 person who whether it died before or at or after its birth shall by any act whatsoever conceal or endeavour to conceal the birth of such child shall be liable to imprisonment for any term not exceeding *four years*.

Concealing the birth of a child.  
Ib. sec. 60.Ib. *ad finem*.

57. Where any woman shall have been so delivered if she shall  
 in any manner have wilfully contributed to the death of the child  
 30 whether during delivery or at or after its birth or if there shall be on the body of such child any mark of violence wilfully caused by her she shall be liable to imprisonment for any term not exceeding *ten years* nor less than *four years* And on the trial of any person for the murder of a child such person may if acquitted of the murder be con-  
 35 victed under this or the last preceding section in case the evidence shall warrant such finding.

The like on trial for murder.

(11.)—*Unnatural Offences.*

Ib. sec. 15 and Victorian Act.

58. Whosoever shall be convicted of the abominable crime of  
 40 buggery committed either with mankind or with any animal shall be liable to penal servitude for the term of *fourteen years* and where the crime shall have been committed on any person with violence or upon any child under the age of twelve years the offender shall be liable to suffer *death*.

Sodomy and bestiality.  
Ib. sec. 61.

As to part 16 Vic. No. 18 sec. 28.

59. Whosoever shall attempt to commit the said abominable  
 45 crime or shall be guilty of an assault with intent to commit the same shall be liable to penal servitude for the term of *ten years* And whosoever shall commit any indecent assault upon a male person of whatever age with or without the consent of such person shall be liable to penal servitude for the term of *five years*.

Attempt to commit the crime.  
Ib. sec. 62.

50

(12.)—*Carnal knowledge defined.*

9 Geo. IV c. 31 s. 18.

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

Carnal knowledge defined.  
Ib. sec. 63.

c 5—B

(13.)—



(13.)—*Making Gunpowder to commit Offences.*

Making or having  
gunpowder &c. with  
intent to commit  
felony.  
Ib. sec. 64.

61. Whosoever shall knowingly have in his possession or make or manufacture any gunpowder explosive substance or any dangerous or noxious thing or any machine engine instrument or thing with intent by means thereof to commit or for the purpose of enabling any other person to commit any offence against the person being felony shall be liable to imprisonment for any term not exceeding *three years*.

9 and 10 Vic. c. 25  
sec. 8.

## OFFENCES PUNISHABLE BY JUSTICES.

Assaults with intent  
to obstruct the sale  
of grain or its free  
passage.  
Ib. sec. 39.

62. Whosoever shall beat or use any violence or threat of violence to any person with intent to deter or hinder him from buying selling or otherwise disposing of or to compel him to buy sell or otherwise dispose of any wheat or other grain flour meal malt or any vegetable produce in any market or other place or shall beat or use any such violence or threat to any person having the care or charge of any such commodity whilst on the way to or from any place with intent to stop the conveyance of the same shall on conviction before two Justices be liable to imprisonment for any term not exceeding *six months* Provided that no person punished for any such offence under this section shall be punished for the same under any other law.

9 Geo. IV. c. 31 sec.  
26.

Certain assaults.  
Ib. sec. 40.

63. Whosoever shall unlawfully and with violence or by any threat of violence hinder or prevent any person from working at or exercising his lawful trade business or occupation or shall beat or use any violence to any such person with intent to hinder or prevent him from working at or exercising the same shall on conviction before two Justices be liable to imprisonment for any term not exceeding *six months* Provided that no person punished for any such offence under this section shall be punished for the same under any other law.

20 Ib.

Common assaults.  
Ib. sec. 42.

64. Whosoever shall unlawfully assault or beat any person shall upon conviction before two Justices either be imprisoned for a term not exceeding *three months* or shall pay a fine not exceeding together with costs (if ordered) the sum of *ten pounds* And where such assault or battery was upon a constable or member of the police force in the execution of his duty or upon any male child whose age does not in the opinion of such Justices exceed *fourteen years* or upon any female the offender shall be liable to imprisonment for any period not exceeding *six months* or to pay a fine not exceeding (together with costs) the sum of *twenty pounds*.

Ib. sec. 27 & 19 Vic.  
No. 24 s. 22 (Police)

Aggravated assaults.  
Ib. sec. 43.

18 Vic. No. 9 sec. 1.

Where jurisdiction  
not to be exercised.  
Ib. sec. 46.

65. In case the Justices shall be of opinion that the assault is for any reason a fit subject for prosecution by indictment they shall abstain from any adjudication thereupon and shall deal with the case in their ministerial jurisdiction only.

Ib. sec. 29.

Certificate of  
dismissal.  
Ib. sec. 44.

66. If the Justices upon the hearing of any such case of assault or battery upon the merits shall deem the offence not to be proved or shall find the assault or battery to have been justified or so trifling as not to merit any punishment and shall accordingly dismiss the complaint they shall forthwith make out a certificate under their hands stating the fact of such dismissal and shall deliver such certificate to the party against whom the complaint was preferred.

Ib. sec. 27 *ad finem*.

Certificate or con-  
viction a bar to other  
proceedings.  
Ib. sec. 45.

67. Any person who shall have obtained such certificate or who having been convicted shall have paid the whole amount adjudged to be paid or have suffered the imprisonment awarded shall be released from all further proceedings civil or criminal for the same cause.

Ib. sec. 28 and 8  
Vic. No. 9 sec. 1  
*ad finem*.



68. Nothing in the last preceding *six* sections shall authorize any Justices to hear and determine any case of assault or battery in which any question shall arise as to the title to any land or any interest therein or accruing therefrom or as to any bankruptcy or insolvency or any execution under the process of any Court of Justice.

Exception from jurisdiction.

## PART II.—LARCENY AND SIMILAR OFFENCES.

### (1.)—Larceny in general or by Bailees.

7 & 8 Geo. IV. c. 29  
s. 2.

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

All larcenies to be of the same nature.  
Ib. s. 2.

21 Vic. No. 9 s. 1.

70. Whosoever being a bailee of any property shall fraudulently take or convert the same or any part thereof or any property into or for which it may have been converted or exchanged to his own use or the use of any person other than the owner thereof although he shall not break bulk or otherwise determine the bailment shall be guilty of larceny and may be convicted thereof upon an indictment for larceny.

Bailees fraudulently converting property.  
Ib. s. 3.

7 & 8 Geo. IV. c. 29  
ss. 3 & 4.

71. Whosoever shall be convicted of simple larceny or of any felony hereby made punishable like simple larceny shall (except in the cases hereinafter otherwise provided for) be liable to penal servitude for the term of *five years*.

Punishment for simple larceny.  
Ib. s. 4.

### (2.)—Larceny of Cattle or other Animals.

Ib. s. 25.

72. Whosoever shall steal any cattle shall be liable to penal servitude for the term of *ten years*.

Stealing cattle.  
Ib. s. 10.

7 & 8 Geo. IV. c. 29  
s. 25.

73. Whosoever shall wilfully kill any cattle with intent to steal the carcase skin or any part of the cattle so killed shall be liable to the same punishment as if he had been convicted of stealing such cattle.

Killing cattle with intent to steal the carcase &c.  
Ib. s. 11.

Law Reform Commission.

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

Stealing or killing cattle.

7 & 8 Geo. IV. c. 29  
s. 26.

75. Whosoever shall unlawfully and wilfully course hunt snare or kill or wound or attempt to kill or wound any deer in or upon any inclosed land of the owner of such deer shall be liable to imprisonment for any term not exceeding *one year*.

Injuring deer in any inclosed ground.  
Ib. s. 13.

8 & 9 Vic. c. 47 s. 2  
*ad finem* adopted by  
14 Vic. No. 16.  
Ib. s. 3.

76. Whosoever shall steal any dog or shall unlawfully have in his possession or on his premises any stolen dog or the skin of any stolen dog knowing such dog to have been stolen after a previous summary conviction for any such offence as hereinafter provided shall be liable to imprisonment for any term not exceeding *one year*.

Stealing or possession of dogs.  
Ib. s. 18.

Ib. s. 6.

77. Whosoever shall corruptly take any money or reward directly or indirectly under pretence or upon account of aiding any person to recover any dog which shall have been stolen or which shall be in the possession of any person not being the owner thereof shall be liable to imprisonment for any term not exceeding *one year*.

Taking money to restore dogs.  
Ib. s. 20.

(3.)—



(3.)—*Larceny of Written Instruments.*

Bonds bills &c. or documents relating to real property.

78. Whosoever shall steal or for any fraudulent purpose destroy cancel obliterate or conceal the whole or any part of any valuable security or of any document of title to land shall be liable to the same punishment as if he had stolen a chattel and been convicted 5 of simple larceny in respect thereof.

Wills or codicils.  
Ib. s. 29.

79. Whosoever shall steal or for any fraudulent purpose destroy cancel obliterate or conceal the whole or any part of any will codicil or other testamentary instrument either during the life of the testator or after his death and whether the same shall relate to real or personal 10 estate or to both shall be liable to penal servitude for the term of *seven years*.

Ib. s. 22.

Other remedies not to be affected.  
Ib. s. 29.

80. Nothing in either of the two last preceding sections mentioned nor any proceeding conviction or judgment thereupon shall affect any remedy at law or in equity which any party aggrieved would 15 have had if this Act had not been passed but no conviction of any offender shall be received in evidence in any action or suit against him and no person shall be liable to be convicted under either of the said sections in respect of any act done by him if he shall before being charged with such offence have first disclosed such act on oath in con- 20 sequence of any compulsory process in any action suit or proceeding *bonâ fide* instituted by any party aggrieved or in any compulsory examination upon the hearing of any matter in bankruptcy or insolvency.

Ib. s. 22.

Stealing records or other documents.  
Ib. s. 30.

81. Whosoever shall steal or for any fraudulent purpose take from its place of deposit for the time-being or from any person having 25 the lawful custody thereof or shall unlawfully and maliciously cancel obliterate injure or destroy 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 begun depending or terminated in any Court or in anywise relating to the business of any office or 30 employment under Her Majesty and being in any public office shall be liable to penal servitude for the term of *seven years*.

(4.)—*Larceny of Things attached to or growing on Land.*

Metal glass wood &c. fixed to house or land.  
Ib. s. 31.

82. Whosoever shall steal or rip cut sever or break with intent to steal any glass or woodwork belonging to any building what- 35 soever or any lead iron copper brass or other metal or any utensil or fixture whether made of metal or other material or of both respectively fixed in or to any building whatsoever or anything made of metal fixed in any land being private property or for a fence to any dwelling-house garden or area or in any square or street or in any place 40 dedicated to public use or ornament or in any burial-ground shall be liable to be punished as in the case of simple larceny.

Ib. s. 44.

Trees in pleasure-grounds of the value of £1 or elsewhere of the value of £5.  
Ib. s. 32.

83. Whosoever shall steal or cut break root up or otherwise 45 destroy or damage with intent to steal the whole or any part of any tree sapling or shrub or any underwood respectively growing in any park pleasure ground garden orchard or avenue or in any ground adjoining or belonging to any dwelling-house shall (in case the value of the articles stolen or the amount of the injury done exceeds the sum of one pound) be liable to be punished as in the case of simple larceny and whosoever shall steal or shall cut break root up or otherwise destroy 50 or damage with intent to steal the whole or any part of any tree sapling or shrub or any underwood respectively growing elsewhere than in any of the situations in this section before mentioned shall (in case the value of the articles stolen or the amount of the injury done exceeds the sum of *five pounds*) be liable to be punished as in the case of simple 55 larceny.

Ib. s. 32.



Ib. s. 39 *ad finem*

84. Whosoever shall steal or cut break root up or otherwise destroy or damage with intent to steal the whole or any part of any tree sapling or shrub or any underwood the stealing whereof or the injury done thereto being to the amount of a *shilling* at the least after 5 having been *twice* summarily convicted as hereinafter provided of any such offence shall be liable to be punished as in the case of simple larceny.

Trees &c. of the value of 1s.  
Third offence.  
Ib. s. 33 *ad finem*.

9 Vic. No. 11 s. 1.

85. Whosoever shall steal or cut break up or otherwise damage or destroy with intent to steal any dead wood lying on land in the 10 occupation of another person such wood being of the value of *one shilling* at the least after having been *twice* summarily convicted as hereinafter provided of any such offence shall be liable to be punished as in the case of simple larceny.

Dead wood.  
Third offence.

7 and 8 Geo. IV.  
c. 29 s. 42 *ad finem*.

86. Whosoever shall steal or destroy or damage with intent to 15 steal any plant root fruit or vegetable production growing in any garden orchard pleasure-ground nursery-ground hot-house green-house or conservatory after a previous summary conviction as hereinafter provided for any such offence shall be liable to be punished as in the case of simple larceny.

Fruit or vegetable production in garden &c.  
Second offence.  
Ib. s. 36.

### 20 (5.)—Larceny from Mines.

b. s. 37.

87. Whosoever shall steal or sever with intent to steal any gold 25 or the ore of any metal or any lapis calaminaris manganese or mundick or any wad black cawke or black lead or any coal or cannel coal from any mine bed or vein thereof respectively or from any claim or from any land comprised in any lease or license for mining purposes granted or to be granted by or on behalf of the Crown shall be liable to be punished as in the case of simple larceny.

Ore of metal coal &c.  
Ib. s. 38.

88. Whosoever being employed in or about any mine or claim 30 or any land comprised in any such lease or license as aforesaid shall take remove or conceal any gold or the ore of any metal or any lapis calaminaris manganese mundick or other mineral found or being in such mine claim or land with intent to defraud any mining association company or partnership or any proprietor of or any adventurer in such mine claim or land or any workman or miner employed therein shall be 35 liable to imprisonment for any term not exceeding *three years*.

Miners removing ore with intent to defraud.  
Ib. s. 39.

33 Vic. No. 8 s. 25.

89. Whosoever being the holder of any lease or license issued 40 under the provisions of any Act relating to the gold fields shall by any fraudulent device or contrivance defraud or attempt to defraud Her Majesty or any person authorized to receive the same of any gold or money payable or reserved by such lease or license or conceal or make a false statement as to the amount of any gold procured by him or falsify any account with a fraudulent intent shall be guilty of a misdemeanor.

Penalty for concealing royalty.  
27 Vic. No. 233 s. 106 (Victorian).

90. Whosoever with intent to defraud his co-partner co-adven- 45 turer joint tenant or tenant in common in any claim or in any share or interest in any claim shall secretly keep back or conceal any gold found in or upon or taken from such claim shall be liable to be punished as in the case of simple larceny.

Punishment of fraud on partners.  
Ib. s. 107.

### (6.)—Robbery and similar Offences.

1 Vic. c. 87 s. 5  
adopted by 2 Vic.  
No. 10.

50 91. Whosoever shall rob or assault with intent to rob any person or shall steal any chattel money or valuable security from the person of another shall unless where a greater punishment is provided by this Act be liable to penal servitude for the term of *ten years*.

Robbery or stealing from the person.  
24 and 25 Vic. c. 96 s. 40.

Ib. s. 2.

92. Whosoever shall commit any such felony as is mentioned in 55 the last preceding section and shall immediately before or at the time of or immediately after the commission thereof strike or use any other corporal violence to any person shall be liable to penal servitude for the

Same with striking or wounding.



Robbery with arms  
or in company or  
stopping a mail.

the term of *fourteen years* And if the person so offending shall thereby wound any person he shall be liable to penal servitude for *life*.

93. Whosoever shall being armed with any offensive weapon or instrument or together with any other person or persons rob or assault with intent to rob any person or stop any mail (or vehicle or person conveying a mail) with intent to rob or search the same shall be liable to penal servitude for *life*. 5

Robbery with arms  
and in company and  
wounding.

94. Whosoever being armed with any offensive weapon or instrument shall together with any other person or persons so armed rob or assault with intent to rob any person and shall immediately before or at the time of or immediately after such robbery or assault wound or inflict any grievous bodily harm upon such person shall be liable to penal servitude for *life*. 10

1 Vic. c. 87 s. 3.

Demanding money  
&c. with intent to  
steal.  
Ib. s. 45.

95. Whosoever shall with menaces or by force demand any property from any person with intent to steal the same shall be liable to penal servitude for the term of *seven years*. 15

1 Vic. c. 87 s. 7.

Letter demanding  
money &c. with  
menaces.  
Ib. s. 44.

96. Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing demanding of any person with menaces and without any reasonable cause any property shall be liable to penal servitude for the term of *ten years*. 20

7 & 8 Geo. IV c. 29  
s. 8.

Threatening letters.  
Ib. s. 46.

97. Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing accusing or threatening to accuse any person of a felony or an attempt to commit rape or of any infamous crime as hereinafter defined with a view or intent to extort or gain any property from any person shall be liable to penal servitude for the term of *fourteen years*. 25

Accusing or  
threatening to  
accuse.  
Ib. s. 47.

98. Whosoever shall accuse or threaten to accuse either the person to whom the accusation or threat is made or any other person of any of the offences mentioned in the last preceding section or of any such infamous crime as aforesaid with the view or intent to extort or gain from any person any property shall be liable to penal servitude for the term of *ten years*. 30

1 Vic. c. 87 ss. 4 & 10  
& 11 Vic. c. 16 s. 2.

Inducing a person by  
violence or threats  
to execute deeds &c.  
Ib. s. 48.

99. Whosoever with intent to defraud or injure any person shall by any 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 any person of any of the crimes or offences mentioned in the said ninety-eighth section or of any such infamous crime as aforesaid compel or induce 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 shall be liable to penal servitude for the term of *fourteen years*. 40

" Infamous crime "  
defined.  
Ib. s. 46.  
*ad finem*.

100. The crime of buggery either with mankind or with beast and every assault with intent to commit the said crime and every attempt or endeavour to commit the said crime and every solicitation persuasion promise or threat offered or made to any person whereby to move or induce such person to commit or permit the said crime shall be deemed to be an infamous crime within the meaning of the three last preceding sections. 50

Evidence of menaces  
Ib. s. 49.

101. It shall be immaterial whether any of the menaces or threats hereinbefore mentioned be of violence injury or accusation to be caused or made by the offender or by any other person.

#### (7.)—*Sacrilege Burglary and Housebreaking.*

Breaking and enter-  
ing a church or  
chapel &c.  
Ib. s. 50.

102. Whosoever shall break and enter any place of divine worship and commit any felony therein or being in any place of divine worship shall commit any felony therein and break out of the same shall be liable to penal servitude for the term of *fourteen years*. 55

7 & 8 Geo. IV. c. 29  
s. 10.

103.



1 Vic. c. 86 s. 3.  
Ib. s. 2.

Ib. s. 11.

103. Whosoever shall be convicted of the crime of burglary shall be liable to penal servitude for the term of *fourteen years*.

Burglary.  
Ib. s. 52.

104. Whosoever shall enter the dwelling-house of another with intent to commit any felony therein or being in such dwelling-house shall commit any felony therein and shall in either case break out of the said dwelling-house in the night shall be deemed guilty of burglary.

Burglary by  
breaking out.  
Ib. s. 51.

105. Whosoever shall burglariously break and enter any dwelling-house and while therein or on any part of the premises occupied therewith shall assault with intent to murder any person or shall inflict any grievous bodily harm upon any person shall be liable to suffer *death*.

Burglary with intent  
to murder &c.

106. Whosoever shall enter any dwelling-house in the night with intent to commit any felony therein shall be liable to penal servitude for the term of *seven years*.

Entering a dwelling-  
house in the night.  
Ib. s. 54.

7 & 8 Geo. IV. c. 29  
s. 13.

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

What building  
deemed part of  
dwelling-house.  
Ib. s. 53.

Ib. s. 14 & 1 Vic. c.  
90 s. 2.

108. Whosoever shall break and enter any building within the curtilage of a dwelling-house and occupied therewith but not being part thereof and shall commit any felony therein or being in any such building shall commit any felony therein and break out of the same shall be liable to penal servitude for the term of *ten years*.

Breaking into build-  
ing within the cur-  
tilage.  
Ib. s. 55.

Ib. ss. 12 15 & ib.

109. Whosoever shall break and enter any dwelling-house school-house shop warehouse or counting-house and commit any felony therein or being in any dwelling-house school-house shop warehouse or counting-house shall commit any felony therein and break out of the same shall be liable to penal servitude for the term of *ten years*.

Breaking into any  
house &c. and com-  
mitting felony.  
Ib. s. 56.

110. Whosoever shall break and enter any place of divine worship or any dwelling-house or any building within the curtilage school-house shop warehouse or counting-house with intent to commit any felony therein shall be liable to penal servitude for the term of *seven years*.

Housebreaking &c.  
with intent to com-  
mit felony.  
Ib. s. 57.

16 Vic. No. 17 s. 1.

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

Being found in the  
night with intent to  
commit felony.  
Ib. s. 58.

Ib. s. 2.

112. Whosoever shall be convicted of any such offence after a previous conviction either for felony or misdemeanor shall on such subsequent conviction be liable to penal servitude for the term of *seven years*.

The like after a pre-  
vious conviction.  
Ib. s. 59.

#### (8.)—Larceny in the House.

7 & 8 Geo. IV c. 29  
s. 12 *ad finem*.

113. Whosoever shall steal in any dwelling-house any property to the value in the whole of *five pounds* or more shall be liable to penal servitude for the term of *seven years*.

Stealing in a  
dwelling-house to  
value of £5.  
Ib. s. 60.

1 Vic. c. 86 s. 5.

114. Whosoever shall steal any property in any dwelling-house and shall use any menace or threat to any one being therein shall be liable to penal servitude for the term of *fourteen years*.

The like with  
menaces.  
Ib. s. 61.

(9.)—



(9.)—*Larceny in Manufactories.*

Stealing goods in process of manufacture.  
Ib. s. 62.

115. Whosoever shall steal to the value of *ten shillings* any goods article or material while anywhere placed or exposed during the process or progress of manufacture shall be liable to penal servitude for the term of *five years*.

7 & 8. Geo. IV. c. 29 s. 16 & 1 Vic. c. 90 s. 2.

5

Pawning or embezzling any materials to be manufactured.

116. Whosoever shall for the purpose of manufacture or for any special purpose connected with manufacture be employed to make prepare or work up or shall be intrusted with any goods article or material or with any tools or apparatus for the purpose of manufacture and shall sell pawn purloin secrete embezzle exchange or otherwise fraudulently dispose of the same or any part thereof shall be liable to imprisonment for any term not exceeding *four years*.

13 Vic. No. 22 s. 1.

Receiving purloined materials or tools.

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

Ib. s. 2.

(10.)—*Larceny from Ships Wharves &c.*

Stealing from ships docks wharves &c.

118. Whosoever shall steal any chattel money or valuable security 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 shall steal any chattel money or valuable security from any dock wharf or quay shall be liable to penal servitude for the term of *seven years*.

7 and 8 Geo. IV. c. 29 s. 17.

25

Stealing from ship in distress or wrecked.  
Ib. s. 64.

119. Whosoever shall plunder or steal any part of any ship or vessel in distress or wrecked stranded or cast on shore or any property of any kind belonging to such ship or vessel shall be liable to penal servitude for any term not exceeding *fourteen years*.

1 Vic. c. 87 s. 8.

(11.)—*Embezzlement or Larceny by Clerks and Servants.*

30

Larceny by clerks or servants.  
Ib. s. 67.

120. Whosoever being a clerk or servant shall steal any property belonging to or in the possession or power of his master or employer or any property into or for which it may have been converted or exchanged shall be liable to penal servitude for any term not exceeding *ten years*.

7 and 8 Geo. IV. c. 29 s. 46.

35

Embezzlement by clerks or servants.  
Ib. s. 68.

121. Whosoever being a clerk or servant shall fraudulently embezzle 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 any term not exceeding *ten years*.

Ib. s. 47.

Embezzlement.  
General deficiency in accounts.

122. On the prosecution of any person for the larceny or embezzlement by him as a clerk or servant of any money the property of his master or employer the books of account or entries of receipts and payments kept or made by him as such clerk or servant shall be admissible in evidence against him and any such person may be convicted without showing the larceny or embezzlement of any specific sum of money if there be proof of a general deficiency on the examination of such books or entries or otherwise and the jury shall be satisfied that the accused stole or fraudulently embezzled the deficient money or any part thereof.

Law Reform Commission.



Law Ref. Com.

123. Every person being employed for the purpose or in the capacity of a clerk or servant or as a collector of moneys and although temporarily only shall be deemed a clerk or servant within the meaning of the *two* last preceding sections.

Definition of clerk or servant.

5 124. Whosoever being employed in the public service shall steal 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 any term not exceeding *ten years*.

Larceny by persons in the Queen's service. *Ib.* s. 69.

10 125. Whosoever being so employed as last aforesaid shall fraudulently embezzle 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 shall fraudulently secrete remove or in any manner fraudulently appropriate or dispose of the same or any part thereof shall be

What acts within preceding section. *Ib.* and s. 70.

15 deemed to have stolen the same.

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

Property may be laid in the Queen.

20 (12.)—*Larceny or Embezzlement by Joint Owners.*

Law Ref. Com.

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

Larceny &amp;c. by joint owners. 31 and 32 Vic. c. 116 s. 1.

(13.)—*Larceny by Tenants or Lodgers.*

7 &amp; 8 Geo. IV. c. 29 s. 45.

30 128. Whosoever shall steal any chattel or fixture let to be used by him or her in or with any house building or lodging whether the contract shall have been entered into by him or her or by her husband or by any person on behalf of him or her or her husband shall be liable to be punished as in the case of simple larceny.

Tenants &c. stealing articles let to hire. *Ib.* s. 74.

(14.)—*Frauds by Bankers Factors and other Agents.*

*Ib.* s. 49.

35 129. 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 shall in violation of good faith and contrary to the terms of such direction in anywise misappropriate such money security or proceeds or any part thereof respectively shall be guilty of felony.

Banker &c. embezzling money &c. intrusted to him. *Ib.* s. 75.

40 130. 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 shall in violation of good faith and contrary to the purpose for which such chattel security or power of attorney was

50 intrusted to him in any manner misappropriate 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 shall be guilty of felony.

The like as to goods &c. entrusted to him. *Ib.* s. 75 *ad finem*.



Not to affect trustees or mortgagees nor the receiving of money due on securities &c. Ibid.

131. Nothing in either of the last two sections shall affect any trustee under any instrument whatsoever 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 any agent from receiving money payable upon any valuable security according to the tenor and effect thereof or from disposing of any property upon which he has any claim entitling him by law so to do. 5

Ib. s. 50.

Meaning of agent intrusted and mis appropriate.

132. For the purposes of the said two sections and the two now next following the word "*intrusted*" shall mean intrusted either solely or jointly with any other person the word "*agent*" shall include bankers merchants attorneys factors brokers and every other person acting in the capacity of an agent so intrusted and the word "*misappropriate*" shall mean appropriate in any manner (whether by sale pledge or otherwise) to the agent's own use or benefit or the use or benefit of some one other than the person by or for whom he was so intrusted as aforesaid. 15

Bankers &c. or persons under powers of attorney fraudulently selling property. Ib. s. 76 and 77.

133. Whosoever being an agent and intrusted with the property of any person for safe custody shall fraudulently sell negotiate transfer pledge or in any manner misappropriate the same or any part thereof shall be guilty of a misdemeanor and whosoever being intrusted with any power of attorney for the sale or transfer of property shall fraudulently sell transfer or otherwise misappropriate the same or any part thereof shall be guilty of felony. 20

22 Vic. No. 16 s. 4.

Factors &c. obtaining advances on property of their principals. Ib. sec. 78.

134. Whosoever being an agent intrusted with property for the purpose of sale or otherwise disposing of the same shall without the authority of and otherwise than for the use of his principal and in violation of good faith transfer consign pledge or deliver the same or any part thereof as or by way of security for money or other valuable thing borrowed or received or to be borrowed or received by such agent or obtain any advance of money or other valuable thing upon any undertaking by him to transfer consign pledge or deliver such property or any part thereof shall be guilty of felony And every person who shall assist in the making of any such transfer consignment pledge or delivery knowing the same to be in violation of good faith shall be guilty of felony Provided that no agent or person shall be liable to prosecution where the transfer consignment pledge or delivery is 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. 40

What to be deemed an intrusting with goods or a pledge thereof &c. Ib. sec. 79.

135. For the purposes of the last preceding section every agent intrusted with the possession of any document of title to property whether derived immediately from the owner of the property or obtained by such agent by reason of his having possession of such property or of some other document of title thereto shall be deemed to have been intrusted with the property indicated by such document and every transfer pledge or delivery of any such document shall be deemed a transfer pledge or delivery of the property indicated by the same And where any such document or the property thereby indicated is held by any person on the behalf or subject to the control of any such agent the same shall be taken to be in the possession of such agent And where any money or valuable security or other thing shall have been lent advanced or delivered to any agent intrusted as aforesaid on the faith of a contract or undertaking by him to transfer consign pledge or deliver any such property or document such money or valuable security or thing shall be deemed a loan or advance on the security of such property or document although the property or document may not be actually received by the person making such loan or advance 55



advance until a period subsequent thereto And every agent in possession of property or of any such document of title shall be taken to have been intrusted therewith by the owner unless the contrary be shewn.

22 Vic. No. 16 s. 1.

5

136. Whosoever being a trustee of any property for the use or benefit either wholly or partially of some other person or for any public or charitable purpose shall with intent to defraud convert or appropriate the same or any part thereof to or for his own use or benefit or the use or benefit of any person other than such person as aforesaid or for any purpose other than such public or charitable purpose as aforesaid or otherwise dispose of or destroy such property or any part thereof shall be guilty of felony Provided that no prosecution shall be instituted for an offence under this section without the leave of the Supreme Court or a Judge thereof or of Her Majesty's Attorney General.

Trustees fraudulently disposing of property.  
Ib. s. 80.

No prosecution without sanction of a Judge &c.

Ib. s. 5.  
And 11 Vic. No. 56  
s. 3. (Joint Stock  
Companies.)

15

137. Whosoever being a director member or officer of any body corporate or public company shall with intent to defraud take or apply for his own use or benefit or any use or purpose other than the use or purposes of such body corporate or company or shall destroy any of the property of such body corporate or company shall be guilty of felony.

Directors &c. of any company fraudulently appropriating property.  
Ib. s. 81.

Ib. s. 6.

20

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

Or keeping fraudulent accounts  
Ib. s. 82.

Ib. s. 7.

30

139. Whosoever being a director officer servant or member of any body corporate or public company shall with intent to defraud destroy alter mutilate or falsify any book entry paper writing or valuable security belonging to such body corporate or company or make or concur in the making of any false entry or omit or concur in omitting any material particular in any book of account or other document shall be guilty of felony.

Willfully destroying books &c.  
Ib. s. 83.

Ib. s. 8.

35

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

Publishing fraudulent statements.  
Ib. s. 84.

45

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

Punishment for offences under preceding sections.

Ib. s. 11.

50

142. Nothing in any of the said *twelve* sections shall relieve any person from making a full discovery by answer to any bill in equity or from answering any question in any civil proceeding Provided that no person shall be liable to be convicted of any offence in any of the said sections mentioned in respect of any act or omission by him if he shall at any time before being charged with the offence have first disclosed such act or omission on oath in consequence of any compulsory process in any action suit or proceeding instituted by any party aggrieved or if he shall have first disclosed the same in any compulsory examination upon the hearing of any matter in bankruptcy or insolvency.

As to exemption from answering questions in Court and making compulsory disclosures.  
Ib. s. 85.



Civil remedies not affected.  
Ib. c. 86.

Convictions not evidence in civil suits.

Definition of "Company."

143. Nothing in any of the said *twelve* sections nor any proceeding conviction or judgment against any person under any of the said sections shall affect any remedy at law or in equity which any party aggrieved might have had if this Act had not been passed but no conviction of any such person shall be received in evidence in any action or suit against him and nothing in the said sections shall affect any agreement entered into or security given by any trustee having for its object the restoration or repayment of any trust property misappropriated.

Ib. s. 12.

144. The word "company" in the *one hundred and thirty-first* section shall include every copartnership association and society whatsoever and the words "public company" in the *one hundred and thirty-eighth* and *three* following sections shall include every public copartnership association and society whatsoever.

10 Law Reform Commission.

(15.)—*Obtaining Money &c. by False Pretences.*

15

False pretences.  
Ib. s. 88.

145. Whosoever shall by any false pretence obtain from any other person any property with intent to defraud shall be liable to penal servitude for the term of *five years*.

7 and 8 Geo. IV. c. 29 s. 53.  
Law Ref. Com.

Causing payment or delivery to any other person by false pretence.

146. Whosoever shall by any false pretence cause or procure any money to be paid or any property to be delivered to himself or any other person for the use or benefit or on account of himself or any other person with intent to defraud shall be deemed to have obtained such money or property within the meaning of the last preceding section.

Law Ref. Com.

False pretence of title.

147. Whosoever shall falsely and with intent to defraud represent 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 shall thereby obtain any chattel money or valuable security shall be deemed to have obtained the same within the meaning of the said *one hundred and forty-sixth* section.

25 Law Ref. Com.

Inducing persons by fraud to execute instruments.  
Ib. s. 90.

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

30 25 Vic. No. 13 s. 1.

Taking reward for helping to recover stolen property.  
Ib. s. 101.

149. Whosoever shall corruptly take or offer or agree to take any money or reward directly or indirectly under pretence or upon account of helping any person to any property which shall have been stolen taken obtained extorted embezzled converted or disposed of in such manner as to amount to an offence punishable by this Act shall (unless he shall have used all due diligence to cause the offender to be brought to trial for the same) be liable to penal servitude for the term of *five years*.

35 7 & 8 Geo. IV. c. 29 s. 58 & 8 & 9 Vic. c. 47 s. 6.  
adopted by 14 Vic. No. 16.

(16.)—*Receivers.*

Receiving where the principal is guilty of felony.  
24 & 25 Vic. c. 96 s. 91.

150. Whosoever shall receive any property the stealing taking extorting obtaining embezzling or otherwise disposing whereof shall amount to felony knowing the same to have been feloniously stolen taken extorted obtained embezzled or disposed of shall be guilty of felony and may be indicted and convicted either as an accessory after the fact or for a substantive felony and in the latter case whether the principal felon shall or shall not have been previously convicted or tried or shall not be amenable to justice and every such receiver shall be liable to penal servitude for the term of *ten years*.

45 24 & 25 Vic. c. 96 s. 91

151.



Law Ref. Com.

151. Whosoever shall receive 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 shall receive the carcass or skin or any part of any such animal so killed or of any such animal feloniously stolen knowing it to have been so killed or so stolen shall be guilty of felony and may be indicted convicted and punished as if the animal in question had been stolen and he had feloniously received the same. And such person shall not be entitled to an acquittal by reason only of uncertainty in the evidence as to the sex or age of such animal if it be of the species of animal described in the indictment.

Receiving cattle or carcass &amp;c.

152. Whosoever shall receive any property the stealing taking obtaining converting or disposing whereof is a misdemeanor knowing the same to have been unlawfully stolen taken obtained converted or disposed of shall be guilty of a misdemeanor and may be indicted and convicted thereof whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted or tried or shall or shall not be amenable to justice and every such receiver shall be liable to penal servitude for the term of *five years*.

Receiving where the principal has been guilty of a misdemeanor. 24 &amp; 25 Vic. c. 96 s. 95.

## OFFENCES PUNISHABLE BY JUSTICES.

20

(1.)—*Larceny &c. triable by Consent.*

153. Where any person shall be charged before two Justices with simple larceny or any offence punishable as in the case of simple larceny or with larceny or embezzlement as a clerk or servant or larceny from the person or with attempting to commit any of those offences and the evidence when the case for the prosecution has closed is in the opinion of such Justices sufficient to put the accused on his trial but it appears to them that the charge may properly be disposed of in a summary way and that the offence would be adequately punished under the section next but one succeeding then if the accused consents to the case being so disposed of such Justices shall reduce the charge into writing and read it to him and shall ask him whether he is guilty or not of such charge and if the accused confesses that he is guilty the Justices shall proceed to pass sentence upon him but if the accused says that he is not guilty the Justices shall inquire whether he has any defence to make to the charge and if he states that he has a defence they shall hear the same and then proceed to dispose of the case as hereinafter mentioned.

Petty cases of larceny &amp;c. tried by consent.

154. Provided always that whenever the Justices before whom any person is charged as aforesaid shall think the case a fit one to be disposed of under the last preceding section they shall after the evidence for the prosecution has been given and before asking the accused whether he is guilty explain to him that he is not obliged to plead before them and shall ask him whether he consents to the case being dealt with under these provisions or desires that it shall be disposed of in the ordinary course of law.

Accused to be warned.

155. Where the person so charged has pleaded guilty or the Justices after hearing the whole case find the charge to be proved and the accused having consented as aforesaid it shall be lawful for them to convict such person of the offence and thereupon to commit him to some common gaol there to be imprisoned for any term not exceeding *six months* or where the offender's age in the opinion of the Justices is under *sixteen years* then for any term not exceeding *three months* in either case but if the Justices find the charge not proved they shall dismiss the same and shall if so requested make out and

Punishment in such cases.

14 Vic. No. 2 s. 1.  
16 Vic. No. 6. 19  
Vic. No. 24 s. 11  
(Police).

16 Vic. No. 6 s. 3.



and deliver to the accused a certificate under their hands stating the fact of such dismissal And where the accused shall not have consented as aforesaid or the Justices are finally of opinion that the charge ought to be prosecuted by indictment or the Justices shall be equally divided in opinion they shall deal with the case as if this and the *two* preceding sections had not been passed. 5

Effect of summary conviction or certificate.

156. Every such conviction and certificate as aforesaid shall contain a statement that the accused consented to the disposal summarily of his case And every such conviction shall have the same effect as a conviction upon an indictment for the offence would have had and no person who shall have been convicted or have obtained a certificate of dismissal under the aforesaid provisions shall be afterwards liable to prosecution for the same cause. 10

(2.)—*Larceny or Unlawful Taking of Animals.*

Unlawfully using &c. another person's cattle.

157. Whosoever shall take use or work any cattle the property of another person without any real claim or colour of right and without the consent of the owner or person in lawful possession thereof and whosoever without such consent or any color of right and without reasonable ground for believing himself entitled so to do shall brand or ear-mark any cattle the property of another person shall be guilty of a misdemeanor and on conviction before two Justices shall be liable to imprisonment for any term not exceeding *six months* or to pay such fine not exceeding *fifty pounds* as to such Justices shall seem meet. 15 17 Vic. No. 3 s. 6. 20

Cases of indictable offence.

158. If the Justices before whom any person is charged with any such misdemeanor shall be of opinion that the offence ought to be dealt with as a felony or is a fit subject for prosecution by indictment they shall commit the offender for trial for felony or the misdemeanor as they may see fit. 25 lb. s. 8.

Possession of skin &c. of stolen cattle.

159. Whenever the skin or carcass of any stolen cattle or cattle reasonably suspected to have been stolen or any part of any such skin or carcass shall be found in the possession of any person or on his premises and there shall be reasonable cause to believe that the same has been dishonestly come by and such person shall fail to satisfy the Justices before whom the case shall be heard as hereinafter provided that he obtained the same without any knowledge or reasonable ground to suspect that the same was the skin or carcass or part of the skin or carcass of any stolen cattle he shall pay such fine not exceeding *fifty pounds* and not less than *five pounds* as to such Justices shall seem meet. 30 17 Vic. No. 3 s. 5 (Cattle Stealing Prevention Act.) 35

Proceedings in respect thereof.

160. Every person in whose possession or on whose premises any such skin or carcass or part thereof shall have been found may be summoned to appear before any two Justices to show from whom he obtained or in what other manner he became possessed of the same And upon the oath of any credible person that he believes (and if the Justice before whom such oath is made shall see cause to believe) that any such skin or carcass or part of any such skin or carcass is on the premises of any person such Justice may grant a warrant authorizing any constable to search such premises in the day-time and to take into his custody any skin or carcass or any part of any skin or carcass there found and retain the same until the disposal of the case under this and the last preceding section Provided that any constable who may find any such skin or carcass or part of any such skin or carcass reasonably suspected to have been part of any stolen cattle may seize and retain the same without a warrant. 40 45 50

Search warrant.

Constable may seize.



8 and 9 Vic. c. 47 s. 2  
adopted by 14 Vic.  
No. 16.

Ib. s. 3.

7 and 8 Geo. IV. c.  
29 s. 31.

Ib. s. 32.

Ib. s. 15.

Ib. s. 33.

Ib. s. 34.

Ib. s. 39.

161. Whosoever shall steal any dog shall on conviction before two Justices be liable to imprisonment for any term not exceeding *six months* or to pay over and above the value of the dog such sum not exceeding *twenty pounds* as to such Justices shall seem meet.

Stealing dogs.  
24 & 25 Vic. c. 9 s.  
18.

5 162. Whosoever shall unlawfully have in his possession or on his premises any stolen dog or the skin of any such dog knowing the dog to have been stolen shall on conviction before two Justices be liable to pay such sum not exceeding *twenty pounds* as to them shall seem meet.

Possession of stolen  
dog—first offence:  
Ib. s. 19.

10 163. Whosoever shall steal any bird or animal ordinarily kept in a state of confinement or for any domestic purpose but not being the subject of larceny at common law or shall wilfully kill any such bird or animal with intent to steal the same or any part thereof shall on conviction before two Justices be liable to imprisonment for any term not exceeding *three months* or shall pay over and above the value of the bird or animal such sum not exceeding *twenty pounds* as to the Justices shall seem meet and whosoever having been convicted of any such offence shall afterwards commit any offence in this section mentioned and be convicted in like manner shall be imprisoned for 20 such term not exceeding *six months* as the Justices shall think fit.

Stealing beasts or  
birds ordinarily kept  
in confinement.  
Ib. s. 21.

Second offence.

164. If any such bird or any of the plumage thereof or any such animal or any dog or the skin thereof respectively shall be found in the possession or on the premises of any person any Justice may restore the same to the owner thereof and the person in whose 25 possession such bird or plumage or such animal or dog or skin shall be so found (such person knowing that the bird or animal has been stolen or that the plumage is the plumage of a stolen bird or the skin is the skin of a stolen animal) shall on conviction before two Justices be liable for the first offence to such penalty and for every subsequent 30 offence to such punishment as any person convicted under the last preceding section is liable to.

Persons found in pos-  
session of stolen  
beasts &c. liable to  
penalties.  
Ib. s. 22.

165. Whosoever shall unlawfully and wilfully set or use any snare or engine for the purpose of taking or killing deer in or upon any inclosed land or shall unlawfully and wilfully destroy any part of 35 the fence of any land where deer shall be then kept shall on conviction before two Justices pay such sum of money not exceeding *twenty pounds* as to the Justices shall seem meet.

Setting engine for  
taking deer or pull-  
ing down park  
fences.  
Ib. s. 15.

166. Whosoever shall unlawfully and wilfully kill wound or take any house-dove or pigeon under such circumstances as shall not amount 40 to larceny at common law shall on conviction before two Justices pay over and above the value of the bird any sum not exceeding *two pounds*.

Killing pigeons.  
Ib. s. 23.

167. Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall be private property shall on conviction 45 before two Justices pay over and above the value of the fish taken or destroyed such sum not exceeding *five pounds* as to the Justices shall seem meet.

Taking fish in any  
water situate in land  
belonging to a  
dwelling-house.  
Ib. s. 24.

### (3.)—Larceny of Things attached to Land.

168. Whosoever shall steal or cut break root up or otherwise 50 destroy or damage with intent to steal the whole or any part of any tree sapling or shrub or any underwood the value of or the injury done to which shall be to the amount of a *shilling* at the least shall on conviction before two Justices pay over and above the value of the property stolen or intended to be stolen or the amount of the 60 injury

Stealing trees shrubs  
&c. of the value  
of 1s.  
Ib. s. 33.



injury done such sum not exceeding *five pounds* as to the Justices shall seem meet And whosoever having been convicted of any such offence shall afterwards commit any such offence and be convicted in like manner shall be imprisoned for such term not exceeding *twelve months* as the Justices shall think fit.

Stealing &c. any live or dead fence &c.  
Ib. s. 34.

169. Whosoever shall steal or cut break or throw down with intent to steal any part of any live or dead fence or any wooden post pale wire or rail set up or used as a fence or any stile or gate or any part thereof respectively shall on conviction before two Justices pay over and above the value of the property so stolen or the amount of the injury done such sum not exceeding *five pounds* as to the Justices shall seem meet and whosoever having been convicted of any such offence shall afterwards commit any such offence and be convicted in like manner shall be imprisoned for such term not exceeding *twelve months* as the Justices shall think fit.

Suspected persons in possession of wood &c.  
Ib. s. 35.

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

Stealing dead wood.

171. Whosoever shall steal or cut break up or otherwise damage or destroy with intent to steal any dead wood lying on land in the occupation of another person such wood being of the value of *one shilling* at the least shall on conviction before two Justices pay over and above the value of the wood a sum not exceeding *five pounds* and whosoever having been convicted of any such offence shall afterwards commit any such offence and be convicted in like manner shall pay over and above the value of the wood such sum not exceeding *ten pounds* as to the Justices shall seem meet.

Stealing &c. fruit or vegetable.  
Ib. s. 36.

172. Whosoever shall steal or cut root up or otherwise destroy or damage with intent to steal any plant root fruit or vegetable production growing in any garden orchard pleasure-ground nursery-ground hothouse greenhouse or conservatory shall on conviction before two Justices be liable to imprisonment for any term not exceeding *six months* or to pay over and above the value of the article or articles stolen or the amount of the injury done such sum not exceeding *twenty pounds* as to the Justices shall seem meet.

Stealing &c. vegetable productions not growing in gardens &c.  
Ib. s. 37.

173. Whosoever shall steal or destroy or damage 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 thereof before two Justices be liable to imprisonment for any term not exceeding *one month* or shall pay over and above the value of the property so stolen or the amount of the injury done such sum not exceeding *twenty shillings* as to the Justices shall seem meet.

#### (4.)—Larceny of Shipwrecked Goods.

Persons in possession of shipwrecked goods.  
Ib. s. 65.

174. If any property of any kind of the value of *five shillings* or upwards belonging to any vessel in distress or wrecked stranded or cast on shore shall be found in the possession of any person or on his premises with his knowledge and such person being taken or summoned before two

5  
Ib. s. 40.

15  
Ib. s. 41.

25 9 Vic. No. 14 s. 1.

35 7 & 8 Geo. IV. c. 29 s. 42.

Ib. s. 43.

50

Ib. s. 19.



two Justices shall not satisfy them that he came lawfully by the same such property shall by order of the Justices be forthwith delivered over to or for the use of the rightful owner thereof and the offender shall on conviction be liable to imprisonment for any term not exceeding *six months* or shall pay over and above the value of the property such sum not exceeding *twenty pounds* as to the Justices shall seem meet.

Ib. s. 20.

175. If any person shall offer or expose for sale any property whatsoever unlawfully taken or reasonably suspected to have been so taken from any vessel in distress or wrecked stranded or cast on shore any person to whom the same is offered for sale or any officer of the customs or of the police may lawfully seize the same and shall with all convenient speed carry the same or give notice of such seizure to some Justice and if the person who offered or exposed the same for sale being duly summoned shall not satisfy two Justices that he came lawfully by such property or received the same without knowing or having cause to suspect that it had been so taken as aforesaid then the same shall by order of the Justices be forthwith delivered over to or for the use of the rightful owner thereof upon payment of a reasonable reward (to be ascertained by the Justices) to the person who seized the same and the offender shall on conviction be liable to imprisonment for any term not exceeding *six months* or shall pay over and above the value of the property such sum not exceeding *twenty pounds* as to the Justices shall seem meet.

Shipwrecked goods  
for sale.  
Ib. s. 66.

## (5.)—Miscellaneous provisions.

176. If any servant shall contrary to the orders of his master take from his possession any food for the purpose of its being given to any animal in the possession of his master the servant so offending shall not by reason thereof be deemed guilty of an indictable offence but shall on conviction before two Justices be liable to imprisonment for any term not exceeding *three months* or to pay a penalty not exceeding the sum of *five pounds* Provided that if the Justices shall be of opinion that the circumstances render it inexpedient to inflict any punishment they shall have power to dismiss the charge.

Misappropriation of  
corn &c. by servants.  
26 & 27 Vic. cap. 103.

Law Ref. Com.

177. Whosoever shall steal or remove secrete or damage with intent to steal any book or print or manuscript or any other article or thing or any part thereof deposited or kept for the purposes of reference or exhibition or of art science or literature in any Public Library or any building belonging to the Queen or any University or College or the Council of any Municipality shall on conviction before two Justices be liable to imprisonment for any term not exceeding *twelve months* and not less than *one month* and to pay a sum equal to *four* times the value of the book print manuscript or other article or thing so stolen or intended to have been stolen.

Stealing &c. books  
prints &c.

Law Ref. Com.

178. Every collection of books prints manuscripts or other such articles as aforesaid deposited or 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 so called shall be deemed a Public Library within the meaning of the last preceding section.

Meaning of Public  
Library.

Ib. s. 59 and ib. s. 4.

179. Whosoever shall advertise a reward for the return of any property stolen or lost and shall use words purporting that no questions will be asked or shall make 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 shall promise or offer in any advertisement to return to any person who may

Advertising a reward  
for the return of  
stolen property &c.  
Ib. s. 102.



have bought or advanced money upon any such property the money so paid or advanced or shall print or publish any such advertisement shall on conviction before two Justices pay any sum not exceeding *fifty pounds* and not less than *ten pounds*.

Receivers where original offence punishable summarily. 24 & 25 Vic. cap. 96 sec 97.

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

### PART III.—MALICIOUS INJURIES TO PROPERTY.

Reference to Imperial Act.

#### (1.)—Injuries by Fire to Buildings, &c.

Reference to existing Enactments.

Setting fire to church &c. or to dwelling-house 24 and 25 Vic. c. 97 s. 1 2.

181. Whosoever shall maliciously set fire to any place of divine worship or to any dwelling-house any person being in such dwelling-house shall be liable to penal servitude for *life*.

1 Vic. c. 89 s. 3. Adopted by 2 Vic. No. 10. Ib. s. 2.

Setting fire to certain other buildings. Ib. s. 3.

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

Ib. s. 3.

Setting fire to railway station or public building. Ib. ss. 4 and 5.

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

16 Vic. No. 17 s. 6.

Setting fire to other buildings. Ib. s. 6.

184. Whosoever shall maliciously set fire to any building or erection other than such as are hereinbefore mentioned shall be liable to penal servitude for the term of *ten years*.

Setting fire to things adjacent to buildings. Ib. s. 7.

185. Whosoever shall maliciously set fire to any matter or thing being in against or under any building under such circumstances that if the building were thereby set on fire the offence would amount to felony shall be liable to penal servitude for the term of *seven years*.

16 Vic. No. 17 s. 6.

Attempting to set fire to buildings. Ib. s. 8.

186. Whosoever shall maliciously attempt to set fire to any such building or matter or thing as aforesaid shall be liable to penal servitude for any term not exceeding *seven years*.

9 and 10 Vic. c. 25 s. 7. Adopted by 14 Vic. No. 16.

#### (2.)—Injuries by Explosive Substances to Buildings &c.

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Destroying or damaging a house with gunpowder. Ib. s. 9.

187. Whosoever shall maliciously by the explosion of gunpowder or other explosive substance destroy throw down or damage the whole or any part of any dwelling-house any person being therein or the whole or any part of any building whereby the life of any person shall be endangered shall be liable to penal servitude for *life*.

Ib. ss. 1 2.

188.

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Ib. s. 6.

188. Whosoever shall maliciously place or throw any gunpowder or other explosive substance in into upon under against or near any building with intent to destroy or damage the same or any engine machinery tools fixtures or other property whether or not any explosion take place and whether or not any damage be caused shall be liable to penal servitude for the term of *fourteen years*.

Attempting to destroy building with gunpowder.  
Ib. s. 10.

## (3.)—Injuries to Buildings by Rioters &amp;c.

7 and 8 Geo. IV  
c. 30 s. 8 and 9 Vic.  
No. 11 ss. 1-2.

189. If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force demolish or pull down or destroy or begin to demolish pull down or destroy any place of divine worship or any such building or erection as is mentioned in the said *one hundred and eighty-sixth* and *one hundred and eighty-seventh* sections or either of them or any machinery whether fixed or movable prepared for or employed in any manufacture or in any branch thereof or any steam-engine or other engine for sinking working ventilating or draining any mine or any staith building or erection used in conducting the business of any mine or any bridge waggonway tramway trunk or shoot for conveying minerals from any mine every such offender shall be liable to penal servitude for *life* or for any term not less than *three years*.

Rioters demolishing buildings or machinery.  
Ib. s. 11.

190. If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force injure or damage any place of divine worship or any such building or erection as is mentioned in the said *one hundred and eighty-sixth* and *one hundred and eighty-seventh* sections or either of them or in the last preceding section every such offender shall be liable to penal servitude for the term of *seven years*.

Rioters injuring the like.  
Ib. s. 12.

## (4.)—Injuries to Buildings by Tenants.

191. Whosoever being possessed of any building or part of any building held for any term of years or other less term or at will or held over after the termination of any tenancy shall maliciously pull down or demolish or begin to pull down or demolish the same or any part thereof or shall maliciously pull down or sever from the freehold any fixture belonging to such building shall be liable to imprisonment for any term not exceeding *three years*.

Tenants maliciously injuring houses.  
Ib. s. 13.

## (5.)—Injuries to Manufactures Machinery &amp;c.

192. Whosoever shall maliciously cut break or destroy or damage with intent to destroy or to render useless any goods article or material in any stage process or progress of manufacture or shall unlawfully and maliciously cut break or destroy or damage with intent to destroy or render useless any loom frame machine engine rack tackle tool or implement whether fixed or movable prepared for or employed in manufacturing or preparing any such goods article or material or shall by force enter into any building or place with intent to commit any such offence shall be liable to penal servitude for any term not exceeding *fourteen years*.

Injuring machinery or goods in process of manufacture.  
Ib. s. 14.



Injuring agricultural  
machines.  
Ib. s. 15.

193. Whosoever shall maliciously cut break or destroy or damage with intent to destroy or to render useless any machine or engine whether fixed or movable used or intended to be used for performing any agricultural operation shall be liable to penal servitude for any term not exceeding *seven years*.

Ib. s. 4.

Injuring other  
machines.

194. Whosoever shall unlawfully and maliciously cut break or destroy or damage with intent to destroy or to render useless any machine or engine used or intended to be used for sheep-washing wool-pressing sugar-crushing cotton-ginning or for performing any process connected with the preparation of any agricultural or pastoral produce or with the preservation of meat or other animal substances or any appliance or apparatus in connection with any such machine or engine shall be liable to penal servitude for any term not exceeding *seven years*.

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(6.)—Injuries to Corn or Hay-stacks Trees &c.

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Setting fire to crops.  
Ib. s. 16.

195. Whosoever shall maliciously set fire to any crop of hay grass sugar-cane corn grain pulse cotton or cultivated vegetable produce of any kind whether standing or cut down or to any wood coppice or plantation of trees or to any heath gorse furse or fern wheresoever the same may be growing shall be liable to penal servitude for the term of *fourteen years*.

Ib. s. 17 *ad finem*.

Setting fire to stacks.  
Ib. s. 17.

196. Whosoever shall maliciously set fire to any stack of corn grain pulse tares hay straw haulm stubble or cultivated vegetable produce or furze gorse heath fern turf peat coals charcoal wood or bark or to the fence of any stockyard or sheepyard or enclosed paddock shall be liable to penal servitude for the term of *ten years*.

1 Vic. c. 89 s. 10.

Attempting to set  
fire to crops stacks  
&c.  
Ib. s. 18.

197. Whosoever shall maliciously attempt to set fire to any matter or thing in either of the last *two* preceding sections mentioned shall be liable to penal servitude for the term of *seven years*.

9 & 10 Vic. c. 25 s. 7.

Destroying hop-  
binds.  
Ib. s. 19.

198. Whosoever shall maliciously destroy or damage any hop-binds growing on poles in any plantation of hops or any vines growing in any vineyard or any growing or planted cotton or sugar-canes shall be liable to penal servitude for the term of *ten years*.

7 & 8 Geo. IV c. 30  
s. 18.

Injuring trees shrubs  
&c. in pleasure  
ground &c.  
Ib. s. 20.

199. Whosoever shall maliciously destroy or damage any tree sapling or shrub or any underwood growing in any park pleasure-ground garden orchard or avenue or in any public place or in any ground adjoining or belonging to any dwelling-house (in case the amount of the injury done shall exceed the sum of *one pound*) shall be liable to penal servitude for the term of *five years*.

Ib. s. 19.

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The like to value of  
over £2 elsewhere.  
Ib. s. 21.

200. Whosoever shall maliciously destroy or damage any tree sapling or shrub or any underwood growing elsewhere than in any place mentioned in the last preceding section (in case the amount of injury done exceeds the sum of *two pounds*) shall be liable to imprisonment for the term of *two years*.

Ib. s. 19 *ad finem*.

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Injuring trees  
wheresoever after two  
summary convictions.  
Ib. s. 22.

201. Whosoever shall maliciously destroy or damage any tree sapling or shrub or any underwood the injury done being to the amount of *one shilling* at the least after having been *twice* summarily convicted of any such offence shall be liable to imprisonment for any term not exceeding *two years*.

Ib. s. 20.

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Destroying any plant  
&c. in a garden after  
one summary conviction.  
Ib. s. 23.

202. Whosoever shall maliciously destroy or damage with intent to destroy any plant root fruit or vegetable produce growing in any garden orchard nursery ground hothouse greenhouse or conservatory after a previous summary conviction for any such offence shall be liable to penal servitude for the term of *five years*.

Ib. s. 21.

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203.



203. Whosoever shall maliciously drive any cattle into or upon any enclosed land then being under cultivation or shall maliciously pull or break down or remove cut or sever any fence wall dyke or palisade or maliciously open or leave open any gate or slip-rail with intent in any such case to allow cattle to stray in or upon such enclosed land shall be liable to imprisonment for any term not exceeding *three years*.

Driving cattle &c.  
to cultivated land.

## (7.)—Injuries to Mines.

204. Whosoever shall maliciously set fire to any mine of coal cannel coal anthracite kerosene shale or other mineral fuel or to any well of mineral oil shall be liable to penal servitude for *life*.

Setting fire to a  
coal mine.  
Ib. s. 26.

205. Whosoever shall maliciously attempt to set fire to any such mine or well shall be liable to penal servitude for the term of *fourteen years*.

Attempting to set  
fire to a mine.  
Ib. s. 27.

206. Whosoever shall maliciously cause any water to be conveyed or run into any mine or into any subterraneous passage communicating therewith with intent thereby to destroy or damage such mine or to hinder or delay the working thereof or shall with the like intent maliciously pull down fill up or obstruct or damage with intent to destroy obstruct or render useless any airway waterway drain pit level or shaft of or belonging to any mine shall be liable to penal servitude for the term of *seven years*.

Conveying water  
into a mine shaft &c.  
Ib. s. 28.

207. Whosoever shall maliciously set fire to or pull down or destroy or damage with intent to destroy or render useless any engine employed or about to be employed in sinking draining ventilating or working any mine or any appliance or apparatus in connection therewith or any staith building or erection bridge waggon-way or trunk used or intended to be used in or about the business of any mine (whether such engine staith building erection bridge waggon-way or trunk be completed or in an unfinished state) or shall maliciously prevent or obstruct the working of any such engine appliance or apparatus or cut break unfasten or damage with intent to destroy or render useless any rope chain or tackle used in any mine or in or upon any way or work whatsoever employed in or connected with any mine or the business thereof shall be liable to penal servitude for the term of *seven years*.

Damaging engines  
staiths waggonways  
&c.  
Ib. s. 29.

## (8.)—Injuries to Sea and River Banks Works on Rivers &amp;c.

208. Whosoever shall maliciously break down or cut down or otherwise damage or destroy any sea bank or sea wall or the bank dam or wall of or belonging to any river creek canal drain reservoir pool or marsh whereby any land or building shall be or shall be in danger of being overflowed or damaged or shall maliciously throw break or cut down level undermine or otherwise destroy any quay wharf jetty lock sluice floodgate weir tunnel towing-path drain watercourse or other work belonging to any port harbour dock or reservoir or on or belonging to any navigable river creek or canal shall be liable to penal servitude for *life* or for any term not less than *five years* or to imprisonment for any term not exceeding *four years*.

Destroying sea bank  
or wall on canal.  
Ib. s. 30.

209. Whosoever shall maliciously cut off draw up or remove any materials fixed in or placed on the ground and used for securing any sea bank or sea wall or the bank dam or wall of any river canal drain aqueduct

Removing piles of  
sea bank &c.  
obstructing the navi-  
gation of a river or  
canal.  
Ib. s. 31.



aqueduct marsh reservoir pool port harbour dock quay wharf jetty or lock or shall maliciously open or draw up any floodgate or sluice or do any other injury to any navigable river or canal with intent to obstruct or prevent the carrying on completing or maintaining the navigation thereof shall be liable to penal servitude for the term of *seven years*. 5

(9.)—*Injuries to Ponds Reservoirs &c.*

Breaking down dam  
&c. poisoning fish.  
Ib. s. 32.

210. Whosoever shall maliciously cut through break down or destroy the dam floodgate or sluice of any fish-pond or of any water which shall be private property with intent thereby to take or destroy any of the fish in such pond or water or so 10 as thereby to cause the loss or destruction of any of the fish or shall maliciously put any lime or other noxious material in any such pond or water with intent thereby to destroy any fish then or that may thereafter be therein or shall maliciously cut through break down or destroy the dam or floodgate of any mill-pond reservoir or pool shall 15 be liable to imprisonment for the term of *four years*. Ib. s. 15.

(10.)—*Injuries to Bridges Viaducts and Toll-bars.*

Injury to a public  
bridge.  
Ib. s. 33.

211. Whosoever shall maliciously pull or throw down or in anywise destroy any bridge viaduct or aqueduct over or under which any highway railway road or canal shall pass or do any injury with 20 intent thereby to render such bridge viaduct or aqueduct or the highway railway road or canal passing over or under the same or any part thereof dangerous or impassable shall be liable to penal servitude for *life*. Ib. s. 13.

Destroying turn-  
pike gate &c.  
Ib. s. 34.

212. Whosoever shall maliciously throw down level or other- 25 wise destroy in the whole or in part any turnpike gate or toll-bar or any wall chain rail post bar or other fence belonging to any turnpike gate or toll-bar or erected to prevent passengers passing by without paying toll or any house building or weighing engine erected for the better collection ascertainment or security of any such toll shall be 30 liable to imprisonment for any term not exceeding *twelve months*. Ib. s. 14 and cf. 2 Wm. IV No. 12 s. 23 (Tolls.)

(11.)—*Injuries to Railway Carriages and Telegraphs.*

Placing wood &c. on  
railway with intent  
to obstruct or over-  
throw engine &c.  
Ib. s. 35.

213. Whosoever shall maliciously put place cast or throw upon or across any railway any wood stone or other matter or thing or take up remove or displace any rail sleeper or other matter or 35 thing belonging to any railway or turn move or divert or neglect to turn move or divert any point or other machinery belonging to any railway or make or show hide or remove any signal or light upon or near to any railway or do or cause to be done any other matter or thing with intent in any of the cases aforesaid to obstruct upset 40 overthrow injure or destroy any engine tender carriage or truck using such railway shall be liable to penal servitude for *life*. 22 Vic. No. 19 s. 129 (Railways.)

Obstructing engine  
or carriages on rail-  
ways.  
Ib. s. 36.

214. Whosoever by any unlawful act or by any wilful omission or neglect shall obstruct or cause to be obstructed any engine or carriage using any railway or shall aid or assist therein shall be liable to 45 imprisonment for any term not exceeding *three years*. cf. ib. s. 132.

Injuring telegraph  
posts &c.

215. Whosoever shall maliciously destroy break remove or in any manner damage any telegraph post or wire or any part thereof or any battery or machinery used therewith or any insulator attached to any such post or shall by any unlawful act wilfully obstruct the 50 passing of any message along any such wire shall be liable to imprisonment for any term not exceeding *three years*. And whosoever shall maliciously attempt to commit any such offence shall be liable to imprisonment for any term not exceeding *twelve months*. 20 Vic. No. 41 ss. 10 11.

(12.)—



## (12.)—Injuries to Works of Art.

13 Vic. No. 2 ss. 1—4.

216. Whosoever shall maliciously destroy damage or deface any manuscript picture print statue bust or vase or any other article or thing kept for the purposes of art science or literature or as an object of curiosity in any building belonging to the Queen or in any museum gallery cabinet library school of arts or other repository habitually or from time to time open for the admission of the public or of any considerable number of persons either gratuitously or by the payment of money or any picture statue monument or other memorial painted glass or other ornament or work of art in any place of divine worship or in any building belonging to the Queen or to the council or body corporate of any municipal institution or to any university or college or in any street burial-ground or public garden or ground or shall maliciously destroy damage or deface any statue or monument exposed to public view or any ornament belonging to or railing or fence surrounding the same or any post office receiving box or pillar or any drinking fountain or any erection place or object which shall have been notified in the *Gazette* to be of public or scientific interest shall be liable to imprisonment for any term not exceeding *three years*.

Injuring works of art in museums churches public places &c.  
Ib. s. 39.

## (13.)—Injuries to Cattle.

7 &amp; 8 Geo. IV. c. 30 s. 16.

217. Whosoever shall maliciously kill maim or wound any cattle shall be liable to penal servitude for the term of *ten years* Provided that where such cattle shall at the time be unlawfully trespassing on enclosed land under cultivation the killing maiming or wounding of such cattle by the occupier of such land or any person by his order shall only be punishable by imprisonment for a term not exceeding *two years* or a fine not exceeding *fifty pounds* with or without imprisonment And provided also that the word cattle in this section shall not include any pig or goat.

Killing or maiming cattle.  
Ib. s. 40.  
Provisoes.

## (14.)—Injuries to Ships.

1 Vic. c. 89 s. 6.

218. Whosoever shall maliciously set fire to cast away or in anywise destroy any ship or vessel whether the same be complete or in an unfinished state shall be liable to penal servitude for *life*.

Setting fire to a ship  
Ib. s. 42.

9 and 10 Vic. c. 25 s. 7.

219. Whosoever shall maliciously attempt to set fire to cast away or destroy any such ship or vessel shall be liable to penal servitude for the term of *fourteen years*.

Attempting to set fire to a vessel.  
Ib. s. 44.

Ib. s. 6.

220. Whosoever shall maliciously place or throw in or into or upon against or near any ship or vessel any gunpowder or other explosive substance with intent to destroy or damage such ship or vessel or any machinery working tools or chattel in or near the same shall whether or not any explosion take place and whether or not any damage be caused be liable to penal servitude for the term of *fourteen years*.

Placing gunpowder near a vessel with intent to damage it.  
Ib. s. 45.

7 and 8 Geo. IV. c. 30 s. 10.

221. Whosoever shall maliciously damage otherwise than by fire gunpowder or other explosive substance any ship or vessel whether complete or in an unfinished state with intent to destroy the same or render the same useless shall be liable to penal servitude for the term of *seven years*.

Damaging ships otherwise than by fire.  
Ib. s. 46.

1 Vic. c. 89 s. 5.  
Under which the offence was in certain cases capital.

222. Whosoever shall unlawfully mask alter or remove any light or signal or unlawfully exhibit any false light or signal with intent to bring any ship vessel or boat into danger or shall maliciously do anything with intent to cause the loss or destruction of any ship vessel or boat for which offence no punishment hereinbefore provided shall be liable to penal servitude for *life*.

Exhibiting false signals &c.  
Ib. s. 47.

223.



Removing or concealing buoys and other sea marks.  
Ib. s. 48.

223. Whosoever shall maliciously cut away cast adrift remove alter deface sink or destroy or do any act with intent to cut away cast adrift remove alter deface sink or destroy or in any other manner injure or conceal any boat buoy buoy-rope perch or mark used or intended for the guidance of seamen or the purposes of navigation 5 shall be liable to penal servitude for the term of *seven years*.

Destroying wrecks &c.  
Ib. s. 49.

224. Whosoever shall maliciously destroy any part of any ship or vessel in distress or wrecked stranded or cast on shore or any goods or article of any kind belonging to such ship or vessel shall be liable to penal servitude for any term not exceeding *fourteen years*. 10

Vic. c. 89 s. 8.

(15.)—*Sending Letters threatening to Burn or Destroy.*

Sending letters threatening to destroy houses ships &c.  
Ib. s. 50.

225. Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing threatening to burn or destroy any ship or vessel or any building or any rick or stack of grain hay or straw or other agricultural produce or any grain hay straw or other agricultural produce in or under any building shall be liable to penal servitude for the term of *seven years*. 15

10 and 11 Vic. c. 66  
.1.

(16.)—*Indictable Injuries not otherwise provided for.*

Persons committing other malicious injuries over £5.  
Ib. s. 51.

226. Whosoever shall maliciously injure any real or personal property whatsoever (either of a public or private nature) for which act no punishment is hereinbefore provided such injury being to an amount exceeding *five pounds* shall be liable to imprisonment for any term not exceeding *two years* and where such offence is committed in the night shall be liable to penal servitude for the term of *five years*. 25

(17.)—*Making gunpowder to commit offences.*

Making or having gunpowder &c. with intent to commit felony.  
Ib. s. 54.

227. Whosoever shall make or knowingly have in his possession any gunpowder or other explosive substance or any dangerous or noxious thing or any machine engine instrument or thing with intent thereby or by means thereof to commit or for the purpose of enabling any other person to commit any malicious injury within the meaning of this Act shall be liable to imprisonment for any term not exceeding *three years*. 30

9 and 10 Vic. c. 25  
s. 8.

(18.)—*Cruelty to Animals.*

Cruelly wounding or torturing cattle  
14 Vic. No. 40.

228. Whosoever shall cruelly wound or torture any cattle whether his own property or that of another shall be guilty of a misdemeanor and be liable to imprisonment for any term not exceeding *twelve months* or to a fine not exceeding *one hundred pounds* Provided that nothing in this section shall prevent the summary conviction of the offender under the Act passed in the fourteenth year of Her Majesty respecting Cruelty to Animals and that after any such conviction or after acquittal by the Justice or Justices on the merits he shall not be liable to prosecution under this Act for the same cause. 40

(19.)—*General Declaratory Clauses.*

As to nature and possession of the property injured.

229. Every act of malicious injury to property the doing of which is made punishable under any provision of this Act is hereby declared to be equally an offence so punishable whether the property in respect of which it was committed belonged to a private person or to Her Majesty or was otherwise of a public nature And every act of malicious injury done to property by any person with intent to injure or defraud another shall be an offence within such provision although the offender was at the time of its commission in lawful possession of the property or had an interest in the same. 50

230.



230. It shall not be necessary in any prosecution for any such act whether by indictment or before Justices to prove the existence of malice against the owner of the property in respect of which the act was committed or against any other person. Provided that no act shall be deemed malicious within the meaning of any such provision which shall have been done by the accused under a reasonable supposition in fact entertained by him that he had a right to do such act.

What acts deemed malicious.  
Ib. s. 58.

## OFFENCES PUNISHABLE BY JUSTICES.

(1.)—*Injuries to Trees and Vegetable Produce.*

7 & 8 Geo. IV c. 30  
s. 20.

231. Whosoever shall maliciously destroy or damage any tree sapling or shrub or any underwood wheresoever growing the injury done being to the amount of *one shilling* at the least shall on conviction before two Justices be liable to imprisonment for any term not exceeding *three months* or to pay over and above the amount of injury done such sum not exceeding *five pounds* as to the Justices shall seem meet and for a second offence after any such conviction to imprisonment for such term not exceeding *six months* as the Justices shall think fit.

Damaging trees to the amount of one shilling.  
Ib. s. 22.

Ib. s. 21.

232. Whosoever shall maliciously destroy or damage with intent to destroy any plant root fruit or vegetable produce growing in any garden orchard nursery ground hothouse greenhouse or conservatory shall on conviction before two Justices be liable to imprisonment for any term not exceeding *six months* or to pay over and above the amount of the injury done such sum not exceeding *twenty pounds* as to the Justices shall seem meet.

Destroying fruit or vegetable produce in a garden.  
Ib. s. 23.

Ib. s. 22.

233. Whosoever shall maliciously destroy or damage with intent to destroy any cultivated root or plant used for the food of man or beast or for medicine or for distilling or dyeing or for any manufacture and growing in any enclosed land not being a garden orchard or nursery ground shall on conviction before two Justices be liable to imprisonment for any term not exceeding *one month* or to pay over and above the amount of the injury done such sum not exceeding *twenty shillings* as to the Justices shall seem meet and for every subsequent offence after any such conviction shall be liable to imprisonment for such term not exceeding *six months* as the Justices shall think fit.

Destroying cultivated roots &c. not in a garden.  
Ib. sec. 24.

(2.)—*Injuries to Fences.*

Ib. s. 23.

234. Whosoever shall maliciously cut break throw down or in anywise destroy any fence of any description whatsoever or any wall stile or gate or any part thereof respectively shall on conviction before two Justices for the first offence pay over and above the amount of the injury done such sum not exceeding *five pounds* as to the Justices shall seem meet and for every subsequent offence after any such conviction shall be liable to imprisonment for such term not exceeding *six months* as the Justices shall think fit.

Destroying &c. any fence wall stile or gate.  
Ib. s. 25.

Second offence.

(3.)—*Injuries to certain Animals.*

235. Whosoever shall maliciously kill maim or wound any dog bird beast or other animal not being cattle within the meaning of this Act but being either the subject of larceny at common law or ordinarily kept in a state of confinement or for any domestic purpose shall on conviction before two Justices be liable to imprisonment for any term not exceeding *four months* or to pay over and above the amount of injury done such sum not exceeding *twenty pounds* as

Killing or maiming animals not being cattle.  
Ib. ss. 41 and 52.



Second offence.

to the Justices shall seem meet and for every subsequent offence after any such conviction shall be liable to imprisonment for such term not exceeding *six months* as the Justices shall think fit.

(4.)—*Injuries not otherwise provided for.*

Injuring property  
not previously  
provided for.  
Ib. sec. 51.

236. Whosoever shall maliciously injure any real or personal property whatsoever (including any tree sapling shrub or under-wood) for which no punishment is hereinbefore provided shall on conviction before two Justices be liable to imprisonment for any term not exceeding *two months* or to pay such sum not exceeding *five pounds* as to them shall seem meet and also such further sum as shall appear to the Justices to be a reasonable compensation for the injury done not exceeding *five pounds* which shall in the case of private property be paid to the party aggrieved and in the case of property of a public nature or wherein any public right is concerned be applied as the Justices shall think fit.

15

Reference to  
Imperial Statutes.

## PART IV.—FORGERY.

Reference to  
Existing Enactments.

(1.)—*Declaratory and General Clauses.*

Forgery defined.  
Altering to be  
deemed forgery.

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

Law Ref. Com.

Uttering offering &amp;c.

238. For the purposes of this Act the uttering of any such signature instrument document matter or thing (and the term utter or uttering wherever used in this Act with respect to any such signature instrument document matter or thing) shall be taken to mean that the person uttered offered disposed of or put off the same with intent to defraud knowing such signature instrument document matter or thing to be counterfeited And whosoever shall so utter any such signature instrument document matter or thing shall be guilty in the same degree and be liable to the same punishment as if he had committed and been convicted of the forgery.

Law Ref. Com.

Forging or uttering  
any attestation.

239. Wherever the forging of any instrument or document is by this Act expressed to be an offence or made punishable the forging of the signature of any witness thereto (whether by law required or not) shall equally be within the enactment And the uttering of such instrument or document by any person knowing such signature to be counterfeited shall be equally an offence and punishable as if he had committed and been convicted of the forgery.

Ib.

Instruments forged  
out of the Colony.

240. Wherever the forging of any instrument or document matter or thing would be an offence punishable by this Act if committed in this Colony the uttering of such instrument document matter or thing in this Colony by any person knowing the same to be forged (wheresoever it was made or purports to have been made) shall be equally an offence of the same degree and punishable as if the forgery had been committed in this Colony.

Ib.

(2.)—



(2.)—*Forging Public Seals or Official Signatures.*

11 Geo. IV. & 1 Wm.  
IV. c. 66 s. 2.  
Adopted by 4 Wm.  
IV. No. 4 s. 1.  
4 Wm. IV. No. 4 s. 6.

241. Whosoever shall forge any of Her Majesty's seals used or appointed to be used in any part of Her dominions or the seal of New South Wales or of any British Colony or the impression of any such seal or shall utter any instrument whatsoever having thereon or affixed thereto the impression of any such forged seal knowing the same to be the impression of such forged seal or shall utter any forged impression made or apparently intended to resemble the impression of any of the seals aforesaid or shall forge any instrument having any such impression thereon or affixed thereto shall be liable to penal servitude for the term of *fourteen years*.

Forging royal or  
public seals.  
24 & 25 Vic. c. 98  
s. 1.

4 Wm. IV. No. 4. s.

242. Whosoever shall forge or utter 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 this Colony or of the Surveyor General Deputy Surveyor General Auditor General Chief Commissioner of Crown Lands or any Collector of Customs to any grant commission warrant order or other official instrument or document shall be liable to penal servitude for the term of *ten years*.

Forging signature of  
Governor Minister  
of the Crown &c.

(3.)—*Forging Transfers of Stock &c.*

1 Wm. IV. c. 66 s. 6

243. Whosoever shall forge or utter 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 any Imperial or Colonial Act or shall forge or utter any power of attorney or other authority to transfer any such share or interest or to receive any dividend or money payable in respect thereof or shall knowing the same to be forged and with intent to defraud demand or endeavour 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 shall be liable to penal servitude for the term of *fourteen years*.

Forging transfer of  
certain stock or  
power of attorney  
relating thereto,  
Ib. s. 2.

Ib. ss. 6-7.

244. Whosoever shall deceitfully personate any owner of any such share or interest or any owner of any dividend or money payable in respect thereof or any owner of any property whatever or any estate or interest therein or any charge or encumbrance thereon and shall thereby transfer or endeavour to transfer any share estate or interest belonging to any such owner or thereby receive or endeavour to receive any money due to any such owner as if such offender were the true and lawful owner shall be liable to penal servitude for the term of *fourteen years*.

Personating the  
owner of stock or  
property &c.  
Ib. s. 3.

Ib. s. 5.

245. Whosoever shall wilfully make any false entry in or alter 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 shall be entered or shall wilfully falsify any of the accounts of any such owner in any such book with intent in any such case to defraud or shall wilfully make 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 and lawful owner of such share or interest with intent to defraud shall be liable to penal servitude for the term of *fourteen years*.

Falsifying books of  
public funds.  
Ib. s. 5.

Ib. s. 2.

246. Whosoever being employed in the public service shall knowingly make out or deliver 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 with intent to defraud shall be liable to penal servitude for the term of *seven years*.

Persons making out  
false dividend  
warrants &c.  
Ib. s. 6.

(4.)—



(4.)—*Forging India Bonds Exchequer Bills &c.*

Forging East India  
bond Exchequer bills  
or debentures &c.  
Ib. s. 7.

247. Whosoever shall forge any bond commonly called an East India bond or any bond debenture or security made under the authority of any Act relating to the East Indies or any indorsement on or assignment of any such bond debenture or security or any Exchequer bill 5  
bond or debenture or any indorsement on or assignment of any such bill bond or debenture or any Treasury bill or Debenture or Funded Stock Certificate of the Government of New South Wales or receipt or certificate for interest accruing thereon shall be liable to penal servitude for the term of *fourteen years*. 10

Ib.

Making plates &c.  
like those used for  
Exchequer bills &c.  
Ib. s. 9.

248. Whosoever without lawful authority or excuse shall make or cause to be made or shall assist in making or shall knowingly have in his possession any frame mould or instrument having therein any words letters figures marks lines or devices peculiar to and appearing in the substance of any paper provided or used for Exchequer bills 15  
bonds or debentures or Treasury bills or debentures of the Government of New South Wales or any machinery for working any 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 Exchequer bills or bonds or such Treasury 20  
bills or debentures or any die or seal peculiarly used for preparing any such plate or for sealing such Exchequer bills or bonds or such Treasury bills or Debentures or any plate die or seal intended to imitate any such plate die or seal as aforesaid shall be liable to penal servitude for the term of *seven years*. 25

Making paper like  
that used for  
Exchequer bills &c.  
Ib. s. 10.

249. Whosoever without lawful authority or excuse shall make or cause to be made or assist in making any paper in the substance of which shall 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 such Exchequer bills or bonds or such Treasury 30  
bills or Debentures or any part of such words letters or other matter and intended to imitate the same or shall knowingly have in his possession any paper whatsoever in the substance whereof shall appear any such words letters or other matter as aforesaid or any parts of such words letters or other matter and intended to imitate the same or shall 35  
cause or assist in causing 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 whatever or shall take or assist in taking any impression of any such plate die or seal as in the last preceding section mentioned shall be liable to penal servitude for the 40  
term of *seven years*.

Having paper plates  
or dies to be used  
for Exchequer bills  
&c.  
Ib. s. 11.

250. Whosoever without lawful authority or excuse shall purchase or receive or knowingly have in his possession 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 45  
bills bonds or debentures or Treasury bills or Debentures of the Government of New South Wales before such paper shall have been stamped signed and issued for public use or any such plate die or seal as in the last *two* preceding sections mentioned shall be liable to imprisonment for any term not exceeding *three years*. 50

(5.)—*Forging Stamps.*

Forging or possess-  
ing false dies or  
stamps.

251. Whosoever shall without lawful authority or excuse make or use or knowingly have in his possession the whole or any part of any forged die plate or other instrument resembling or apparently intended to resemble either wholly or in part any die plate or 55  
instrument provided or used under the direction of the Commissioners of  
of

14 Vic. No. 1 s. 1 and  
16 Vic. No. 22.



of Stamps in England or Ireland or of any lawful authority in this Colony or any other part of Her Majesty's dominions for the purpose of denoting any stamp duty or any vellum parchment or paper having thereon wholly or in part the impression of any such forged die plate or  
 5 instrument or having thereon any forged stamp or impression resembling or apparently intended to resemble wholly or in part the impression of any such die plate or instrument provided or used as aforesaid knowing such impression to be forged or shall fraudulently use join fix or place  
 10 for with or upon any vellum parchment or paper any stamp or impression removed from any other vellum parchment or paper or fraudulently erase cut or get from any stamp vellum parchment or paper any name sum date or other matter thereon expressed with intent to use any stamp then upon such vellum parchment or paper or that the same may be used for any deed instrument or thing in respect  
 15 whereof any stamp duty is or may become payable or knowingly use utter sell or expose to sale or knowingly and without lawful authority or excuse have in his possession any stamped vellum parchment or paper from which any such name sum date or other matter shall have been fraudulently erased cut or gotten as aforesaid shall be liable  
 20 to penal servitude for the term of *ten years*.

Affixing stamps &amp;c.

Erasing names &amp;c.

Using or selling &amp;c.

(6.)—*Forging Bank Notes.*

252. Whosoever shall forge or utter any note or bill of exchange of any body corporate company or person carrying on the business of bankers or banking whether in this Colony or elsewhere commonly called  
 25 a bank note bank bill of exchange or bank post bill or any indorsement on or assignment of any such note or bill shall be liable to penal servitude for the term of *fourteen years*. And whosoever shall without lawful authority or excuse purchase or receive from any person or have in his possession any such forged bank note bank bill of exchange or  
 30 bank post bill knowing the same to be forged shall be liable to penal servitude for the term of *fourteen years*.

Forging a bank note &c.  
Ib. s. 12.Purchasing or receiving same.  
Ib. s. 13.(7.)—*Engraving Plates &c. for Bank Notes &c.*

253. Whosoever without lawful authority or excuse shall engrave or make upon any plate wood stone or other material any promissory  
 35 note bill of exchange or bank post bill or part of any such note or bill purporting to be a bank note bank bill of exchange or bank post bill of any body corporate company or person carrying on the business of bankers or banking whether in this Colony or elsewhere or to be part of any such instrument or any name word or character resembling  
 40 or apparently intended to resemble any subscription to any such instrument issued by any such body corporate company or person or shall use any plate wood stone or other material or any implement or device for making or printing any such instrument or any part thereof or knowingly have in his possession any such plate wood stone or material  
 45 or any such implement or device or shall knowingly offer utter dispose of or put off or have 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 the term of  
 50 *fourteen years*.

Engraving or having any plate &amp;c. for making bank notes or paper. Ib. s. 16.

254. Whosoever without lawful authority or excuse shall engrave or make upon any plate or upon any wood stone or other material any word number figure device character or ornament the impression taken from which resembles or apparently is intended to resemble any  
 55 part of a bank note bank bill of exchange or bank post bill of any such body corporate company or person as aforesaid carrying on the business

Engraving &c. any part of a bank note &c.  
Ib. s. 17.

Wm. IV. c. 63 s.

Ib. s. 12.

Ib. s. 151.

Ib. s. 16.



business of bankers or banking or shall use or knowingly have in his possession any such plate wood stone or other material or instrument or device for the 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 bank note bank bill of exchange or bank post bill or shall knowingly offer utter dispose of or put off or have 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 the term of *fourteen years*.

As to blank bank bills &c.

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

Having moulds for paper with the name of any banker.  
Ib. s. 18.

256. Whosoever without lawful authority or excuse shall make or use any frame mould or instrument for the manufacture of paper with the name or firm of any such body corporate company or person carrying on the business of bankers or banking appearing visible in the substance of the paper or knowingly have in his possession any such frame mould or instrument or make use sell expose to sale utter or dispose of or knowingly have in his possession any paper in the substance of which the name or firm of any such body corporate company or person shall appear visible or by any art or contrivance shall cause the name or firm of any such body corporate 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 the term of *fourteen years*.

Engraving plates for foreign bills or notes &c.  
Ib. s. 19.

257. Whosoever without lawful authority or excuse shall engrave or make upon any plate or upon any wood stone or other 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 may be expressed and whether the same is or not under seal or intended so to be 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 shall use or knowingly have in his possession any plate stone wood or other material upon which any such foreign bill note undertaking or order or any part thereof is engraved or made or shall knowingly offer utter dispose of or put off or have in his possession any paper upon which any part of any such instrument is made or printed shall be liable to penal servitude for the term of *fourteen years*.

#### (8.)—Forging Deeds Wills Bills of Exchange &c.

Forging deeds or wills.  
Ib. ss. 20 and 21.

258. Whosoever shall forge or utter any will testament codicil or testamentary instrument shall be liable to penal servitude for *life*. And whosoever shall forge or utter any deed bond or writing obligatory or any assignment thereof shall be liable to penal servitude for the term of *fourteen years*.

Ib. s. 10.  
Ib. s. 3.

Forging bills or notes or orders receipts &c. for goods &c.  
Ib. ss. 22 & 23.

259. Whosoever shall forge or utter 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 shall forge or utter 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 shall forge or utter any acquittance or receipt for money or goods or for any note bill or other security or shall forge or utter any indorsement on or assignment



assignment of any such undertaking warrant order authority request receipt or other instrument shall be liable to penal servitude for the term of *ten years*.

260. Whosoever with intent to defraud shall draw make sign  
5 accept or indorse any bill of exchange or promissory note or any  
such undertaking warrant order authority or request as aforesaid by  
procuration or otherwise for or in the name or on the account of any  
other person without lawful authority or excuse or shall offer utter  
dispose of or put off any such instrument so drawn made signed  
10 accepted or indorsed knowing the same to have been so drawn made  
signed accepted or indorsed shall be liable to penal servitude for the  
term of *ten years*.

Signing bill note  
&c. by procuration  
without authority.  
Ib. s. 24.

261. Whenever any cheque or draft on any banker shall be  
crossed with the name of a banker or with two transverse lines with  
15 the words "bank" or the words "and company" or any abbreviation  
thereof respectively or with the word "credit" followed by the name  
of any individual or firm whosoever shall with intent to defraud  
obliterate add to or alter any such crossing or shall with the like intent  
offer utter dispose of or put off any cheque or draft whereon any such  
20 obliteration addition or alteration has been made knowing the same  
to have been made shall be liable to penal servitude for the term of  
*ten years*.

Obliterating cross-  
ings on cheques.  
Ib. s. 25.

262. Whosoever shall forge or utter any debenture or other  
security or instrument not otherwise hereinbefore provided for issued or  
25 purporting to be issued under any lawful authority whatsoever either  
within Her Majesty's dominions or elsewhere shall be liable to penal  
servitude for the term of *ten years*.

Forging securities  
&c. not specially pro-  
vided for.  
Ib. s. 26.

(9.)—*Forging Records Process Instruments of Evidence &c.*

16 Vic. No. 14 s. 11

263. Whosoever shall forge or fraudulently alter any record  
30 entry minute or process or any instrument or document whatsoever of  
or belonging to or issued by or filed in any Court whatsoever in this  
Colony (including herein the Court of Vice Admiralty and every Court  
of General Sessions of the Peace District Court and Court of Petty  
Sessions) or any document or writing or copy of any document or  
35 writing used or intended to be used as evidence in any such Court  
shall be liable to penal servitude for the term of *seven years*.

Forging proceedings  
of Courts.  
Ib. s. 27.

7 and 8 Geo. IV.  
c. 28 s. 11.  
9 Vic. No. 1 s. 8.  
13 Vic. No. 16 s. 5.  
16 Vic. No. 14 s. 11.  
17 Vic. No. 7 s. 23.  
17 Vic. No. 21 s. 21.  
22 Vic. No. 7 s. 10.  
22 Vic. No. 18 s. 44.

264. Whosoever shall utter any false copy or certificate of any  
such record entry minute process instrument or document and who-  
soever not being an officer or clerk of or in any such Court shall sign  
40 or certify any such copy or certificate as such officer or clerk and  
whosoever shall forge or utter any copy or certificate of any such  
record or other matter having thereon any forged signature and who-  
soever shall forge the seal of any such Court or any stamp or seal used  
for stamping or sealing any such matters or the impression thereof on  
45 any such matter or shall serve or enforce any forged process of any such  
Court knowing the same to be forged or deliver or cause to be delivered  
to any person any parchment or paper falsely purporting to be any such  
process or a copy thereof or to be a decree or order of any such Court  
or a copy thereof knowing the same to be false or shall act or profess to  
50 act under any such false process knowing the same to be false shall be  
liable to penal servitude for the term of *seven years*.

Uttering &c. false  
certificates and using  
forged process.  
Ib. s. 28.

265. Whosoever shall forge or utter any instrument whether  
written or printed or partly written and partly printed which is or  
shall be made evidence by any Act passed or to be passed in this  
55 Colony or by the Imperial Legislature and for which offence no  
punishment is herein provided shall be liable to penal servitude for the  
term of *seven years*.

Forging instruments  
made evidence by  
Statute.  
Ib. s. 29.

(10.)—



(10.)—*Forging matters respecting Registration of Deeds.*

Forgery as to the  
registry of deeds.  
Ib. s. 31.

266. Whosoever shall forge or utter any instrument document or writing whatsoever made or issued or purporting so to be under the provisions of any Act passed or hereafter to be passed for or relating to the registry of deeds or other instruments or shall forge the seal of or 5 belonging to any office for the registry of deeds or other instruments or any stamp or impression of any such seal or shall forge or utter any signature purporting to be the signature of any person to any such instrument document or writing shall be liable to penal servitude for the term of *ten years*. 10

7 Vic. No. 16 s. 28 *ad finem*.  
26 Vic. No. 9 s. 132.

(11.)—*Forging Signature of Justices or Officers of Courts &c.*

Forging name of  
any Justice Master  
in Equity &c.  
Ib. ss. 32 & 33.

267. Whosoever shall forge or utter any instrument document writing or signature made or purporting or appearing to be made by a Judge or by the Master in Equity Chief Commissioner of Insolvent Estates or any Officer of any Court or by any Justice of the Peace or 15 any Officer authorized to take affidavits or solemn declarations shall be liable to penal servitude for any term not exceeding *ten years*.

26 Vic. No. 9 s. 132.

(12.)—*Falsely acknowledging Recognizances &c.*

Acknowledging  
recognizances &c. in  
the name of another.  
Ib. s. 34.

268. Whosoever without lawful authority or excuse shall in the name of any other person confess a judgment in any Court or sign any 20 cognovit or acknowledge any recognizance deed or instrument before any Court Judge or person lawfully authorized in that behalf shall be liable to penal servitude for the term of *seven years*.

1 Wm. IV c. 66 s. 11.

(13.)—*Forging matters relating to Marriage.*

Forging marriage  
certificates &c.  
Ib. s. 35.

269. Whosoever shall forge or utter any consent or writing 25 purporting to be a consent to the marriage of any 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 shall sign or transmit to any Registrar District Registrar or other officer appointed 30 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 to be false shall be liable to penal servitude for the term of *ten years*.

Ib. s. 20 and 19 Vic.  
No. 30 s. 20.

19 Vic. No. 30 s. 20  
*ad finem*.

(14.)—*Falsifying or Defacing Registers or Entries of Births Deaths &c.* 35

Falsifying entries of  
births &c. or giving  
false certificates.  
Ib. s. 36.

270. Whosoever shall unlawfully destroy deface or injure 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 shall forge or fraudulently obliterate or alter in any such register or copy any entry relating to any birth marriage death or burial or shall 40 fraudulently insert in any such register or copy any false entry or matter relating to any birth marriage death or burial or shall fraudulently give any false certificate relating to any birth marriage death or burial or certify any writing to be a copy or extract from any such register knowing such writing or the entry to which it relates to be 45 false or shall forge or utter the signature or any seal or stamp of or belonging to or used by the Registrar General or any District or other Registrar shall be liable to penal servitude for the term of *fourteen years*.

1 Wm. IV. c. 66 s.  
20 4 Wm. IV. No. 4  
s. 2 and 19 Vic. No.  
34 s. 35.

Making false entries  
in copies sent to  
Registrar.  
Ib. s. 37.

271. Whosoever shall wilfully insert in any copy of any register 50 required by law to be transmitted to any Registrar any false entry or matter relating to any baptism marriage or burial or shall forge or utter

1 Wm. IV. c. 66 s. 22  
And 4 Wm. IV. No.  
4 s. 4.



utter any copy of any such register or wilfully sign or verify any copy of any such register which copy shall be false in any part thereof knowing the same to be false or shall forge or unlawfully destroy deface or injure or for any fraudulent purpose take from its place of  
 5 deposit or conceal any such register or copy shall be liable to penal servitude for the term of *fourteen years*. And whosoever shall cause or knowingly permit the doing of any act made punishable by this or the last preceding section shall be equally punishable as if he had himself committed such act.

Causing or permitting any such act.

10 (15.)—*Receiving or demanding Property on Forged Instruments.*

272. Whosoever with intent to defraud shall demand or obtain or cause to be delivered or paid to any person or endeavour to obtain or cause to be delivered or paid to any person any property whatsoever upon or by virtue of any forged instrument knowing the same to be  
 15 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 the term of *fourteen years*.

Demanding property on forged instruments.  
 lb. s. 38.

20 (16.)—*Forging Trade Marks &c.*

28 Vic. No. 9 s. 8. 273. Whosoever shall forge any trade mark or label ordinarily and lawfully used by the maker or vendor of any article of merchandize or shall with intent to defraud or to enable any other person to defraud affix stamp or place to or upon any goods or article or case vessel or  
 25 cover containing the same any such forged trade mark or label or sell or dispose of or offer to sell or dispose of any goods or article having thereon or affixed thereto or to or upon such case vessel or cover any such forged trade mark or label knowing the same to be forged or shall with the like intent affix stamp or place to or upon any goods or  
 30 article or any such case vessel or cover any trade mark or label resembling or apparently intended to resemble and intended to be mistaken for any trade mark or label ordinarily and lawfully used by any such maker or vendor as aforesaid shall be liable to imprisonment for any term not exceeding *three years* and to pay a sum not exceeding  
 35 *one hundred pounds* in addition to or without such imprisonment.

Forging or fraudulently using trade marks &c.

(17.)—*Forging matters not already specified.*

274. Whosoever shall forge any instrument or matter the forging of which is not punishable under any of the preceding sections shall be liable to imprisonment for any term not exceeding *two years*.

Forgeries not already specified.

Reference to existing 40 enactments.

PART V.—COINAGE OFFENCES.

Reference to Imperial Statutes.

(1.)—*Interpretation and General Clauses.*

9 Vic. No. 11 s. 8. 275. For the purposes hereinafter contained the expression “the Queen’s gold or silver coin” shall include any gold or silver coin coined in any of Her Majesty’s Mints or lawfully current by virtue of any Act  
 45 or proclamation or otherwise in any part of Her Majesty’s Dominions and the expression “the Queen’s copper coin” shall include any copper coin or coin of bronze or mixed metal so coined or lawfully current as aforesaid and the expression “the Queen’s current coin” shall include any coin so coined or lawfully current as aforesaid whether made of  
 c 5—F gold

24 & 25 c. 99 s. 1. Interpretation of terms—current gold and silver coin copper coin &c.



gold silver copper bronze or mixed metal and the expression "counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin" shall include any of the Queen's current coin which shall have been gilt silvered washed coloured or cased over or in any manner altered so as to resemble or be apparently intended to resemble or pass for any of the Queen's current coin of a higher denomination. 5

Where the counterfeit coin shall be incomplete.  
Ib. s. 30.

276. Every offence of unlawfully making or counterfeiting any coin or buying selling receiving paying tendering uttering or putting off or offering to buy sell receive pay utter or put off any counterfeit coin against any provision of this Act shall be deemed to be complete although such coin may not be in a fit state to be uttered or the counterfeiting thereof shall not be finished or perfected. 10

Ib. s. 2.

(2.)—*Counterfeiting or uttering &c. Gold or Silver Coin.*

Counterfeiting the gold or silver coin.  
Ib. s. 2.

277. Whosoever shall unlawfully make or counterfeit any coin resembling or apparently intended to resemble any of the Queen's gold or silver coin shall be liable to penal servitude for the term of *fourteen years*. 15

Ib. s. 2.

Colouring coin or metal to make it pass for gold or silver coin.  
Ib. s. 3.

278. Whosoever shall fraudulently gild or silver any coin whatsoever resembling or apparently intended to resemble any of the Queen's gold or silver coin or shall gild or silver any piece of silver or copper or coarse gold or coarse silver or any metal or mixture of metals respectively being of a fit size and figure to be coined with intent that the same shall be coined into counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin or shall gild any of the Queen's silver coin or file or in any manner alter such coin with intent to make the same pass for any of the Queen's gold coin or shall gild or silver any of the Queen's copper coin or file or in any manner alter such coin with intent to make the same resemble or pass for any of the Queen's gold or silver coin shall be liable to penal servitude for the term of *fourteen years*. 20 25 30

Ib. s. 3.

Or altering genuine coin to make it pass for a higher coin.

What to be deemed gilding or silvering.

279. Whosoever shall with any wash or material capable of producing the colour or appearance of gold or of silver or by any other means whatsoever wash case over or colour any coin or any such piece of silver or copper or coarse gold or silver or metal or mixture of metals as aforesaid shall be deemed to have gilded or silvered the same within the meaning of the last preceding section. 35

Impairing the gold or silver coin with intent &c.  
Ib. s. 4.

280. Whosoever shall impair diminish or lighten any of the Queen's gold or silver coin with intent that the coin so dealt with may nevertheless pass for the Queen's gold or silver coin shall be liable to penal servitude for the term of *ten years* and not less than *three years* And whosoever shall deface any of the Queen's gold silver or copper coin by stamping thereon any name or word whether such coin shall or shall not be thereby diminished or lightened shall be liable to imprisonment for any term not exceeding *two years*. 40 45

Ib. s. 4.

Defacing by stamping words thereon.  
Ib. s. 16.

Unlawful possession of filings of gold or silver coin.  
Ib. s. 5.

281. Whosoever shall unlawfully have in his possession any filings or clippings or any gold or silver bullion or any gold or silver in dust solution or otherwise which shall have been obtained by impairing diminishing or lightening any of the Queen's gold or silver coin knowing the same to have been so obtained shall be liable to penal servitude for the term of *five years*. 50

Buying or selling &c. counterfeit gold or silver coin.  
Ib. s. 6.

282. Whosoever without lawful authority or excuse shall buy sell receive pay or put off or offer to buy sell receive pay or put off any counterfeit coin resembling or apparently intended to resemble any of the Queen's gold or silver coin at a lower rate or value than the same imports or was apparently intended to import or would pass for if genuine shall be liable to penal servitude for *life* or for the term of *ten years*. 55

Ib. s. 5.

Ibid.



- Ib. s. 6. 283. Whosoever shall offer utter or put off any counterfeit coin Uttering counterfeit  
resembling or apparently intended to resemble any of the Queen's gold gold or silver coin.  
or silver coin knowing the same to be counterfeit shall be liable to Ib. s. 9.
- Ibid. 5 offender shall at the time of such offering uttering or putting off have Ib. s. 10.  
in his possession besides the coin so offered uttered or put off any other  
piece of counterfeit coin resembling or apparently intended to resemble  
any of the Queen's gold or silver coin or shall either on the same  
day or within the space of *ten days* then next ensuing offer utter  
10 or put off any other counterfeit coin resembling or apparently intended  
to resemble any of the Queen's gold or silver coin knowing the same to  
be counterfeit shall be liable to penal servitude for the term of  
*seven years*.
- Ib. s. 7. 284. Whosoever shall have in his possession *three* or more pieces Having *three* pieces  
15 of counterfeit coin resembling or apparently intended to resemble any of counterfeit gold  
of the Queen's gold or silver coin knowing the same to be counterfeit or silver coin in  
with intent to utter or put off the same or any of them shall be liable possession.  
to penal servitude for any term not exceeding *three years* And who- Ib. ss. 11 and 12.  
soever having been convicted of any offence in this Act mentioned
- Ib. ss. 6-7. 20 relating to the coin shall afterwards commit any such offence shall be  
liable to penal servitude for the term of *ten years*.
285. Whosoever shall with intent to defraud offer utter or put Uttering foreign coin  
off as or for the Queen's gold or silver coin any coin or medal or piece medals &c. as current  
of metal or mixed metals resembling or apparently intended to resemble coin.  
25 the current coin for which the same is so offered uttered or put off Ib. s. 13.  
but not being such current coin shall be liable to imprisonment for any  
term not exceeding *three years*.

## (3.)—Counterfeiting or uttering &amp;c. the Copper Coin.

- Ib. s. 10. 286. Whosoever shall unlawfully make or counterfeit any coin Counterfeiting &c.  
30 resembling or apparently intended to resemble any of the Queen's copper coin.  
copper coin and whosoever without lawful authority or excuse shall Ib. s. 14.  
knowingly make or mend or begin or proceed to make or mend or buy  
or sell or have in his possession any instrument tool or engine  
intended to be used in counterfeiting any of the Queen's copper coin
- 35 or shall buy sell receive pay or put off or offer to buy sell receive pay  
or put off any counterfeit coin resembling or apparently intended to  
resemble any of the Queen's copper coin at or for a lower rate or value  
than the same imports or was apparently intended to import or would  
pass for if genuine shall be liable to penal servitude for the term of  
40 *five years*.
287. Whosoever shall offer utter or put off any counterfeit coin Uttering counterfeit  
resembling or apparently intended to resemble any of the Queen's copper coin.  
copper coin knowing the same to be counterfeit or shall have in his Ib. s. 15.  
possession *three* or more pieces of counterfeit coin resembling or appa-  
45 rently intended to resemble any of the Queen's copper coin knowing  
the same to be counterfeit with intent to utter or put off the same or  
any of them shall be liable to imprisonment for any term not exceeding  
*three years*.

## (4.)—Counterfeiting or uttering &amp;c. Foreign Coin.

- 37 Geo. III. c. 12 s. 2. 50 288. Whosoever shall unlawfully make or counterfeit any kind Counterfeiting  
of coin not being the Queen's gold or silver coin but resembling or foreign gold or  
apparently intended to resemble gold or silver coin of some foreign silver coin.  
prince or country shall be liable to penal servitude for the term of *seven* Ib. s. 18.  
*years*.



Uttering such counterfeit coin.  
Ib. s. 20.

289. Whosoever shall offer utter or put off any such counterfeit coin as last aforesaid knowing the same to be counterfeit shall be liable to imprisonment for any term not exceeding *twelve months*. And whosoever shall commit the like offence after *two* previous convictions for any such offence shall be liable to penal servitude for the term *5* of *ten years* and not less than *five years*.

Ib. s. 4.

Counterfeiting foreign coin other than gold and silver coin.  
Ib. s. 22.

290. Whosoever shall unlawfully make or counterfeit any kind of coin not being the Queen's current coin but resembling or apparently intended to resemble coin of any foreign prince or country made of copper or any metal or mixed metals of less value than the silver *10* coin of such foreign prince or country shall be liable for the first offence to imprisonment for any term not exceeding *one year* and for the second offence to penal servitude for the term of *five years*.

43 Geo. III c. 139 s. 3.

(5.)—*Importing or exporting Counterfeit Coin.*

Importing &c. counterfeit coin British or foreign.  
Ib. s. 7 8.

291. Whosoever with intent to defraud shall import or bring *15* into this Colony or receive into his possession or export or put on board any vessel for the purpose of being exported from this Colony any counterfeit coin resembling or apparently intended to resemble any of the Queen's current coin or any counterfeit coin resembling or apparently intended to resemble the gold or silver coin of any foreign *20* prince or country shall be liable to penal servitude for the term of *seven years*.

Ib. s. 3.

(6.)—*Making or having &c. Coining Tools.*

Making or having coining tools &c.  
Ib. s. 24.

292. Whosoever without lawful authority or excuse shall knowingly make or mend or begin to make or mend or buy or sell or have *25* in his possession any such engine machine tool instrument or thing as is hereinafter mentioned that is to say any puncheon counter puncheon matrix stamp die pattern or mould in or upon which there is impressed or which will impress or shall be intended to impress either wholly or in part the figure stamp or apparent resemblance of both or either of the *30* sides of any of the Queen's gold or silver coin or of any foreign coin or any part thereof respectively or any edger edging or other tool collar instrument machine or engine intended for marking coin round the edges with letters grainings or other marks or figures apparently resembling those on the edges of any such coin as aforesaid knowing the same to be *35* so intended or any press for coinage or cutting engine for cutting by force of a screw or other contrivance round blanks out of gold silver or other metal or mixture of metals or any other machine of any kind knowing such press to be a press for coinage or such engine or machine to be used or intended for the counterfeiting of any such coin shall be *40* liable to penal servitude for the term of *fourteen years*.

9 Vic. No. 1 s. 9.

Conveying tools or moneys out of the Mint.  
Ib. s. 25.

293. Whosoever without lawful authority or excuse shall knowingly convey out of Her Majesty's Mint in Sydney any puncheon counter puncheon matrix stamp die pattern mould edger edging or other tool collar instrument press machine or engine or any useful part thereof *45* respectively there used or kept for use for the purposes of coining or any coin bullion metal or mixture of metals shall be liable to penal servitude for the term of *fourteen years*.

(7.)—*Cutting suspected Coin.*

Coin suspected to be counterfeit may be cut by any person to whom tendered.  
Ib. s. 26.

294. Where any coin shall be offered as the Queen's gold or *50* silver coin to any person who shall suspect the same to be diminished otherwise than by reasonable wear or to be counterfeit such person may cut break bend or deface such coin and if it shall have been diminished otherwise than by reasonable wear or shall be counterfeit the person who offered the same shall bear the loss thereof but if the same shall *55* be

Ib. s. 11.



be of due weight and shall be lawful coin the person cutting breaking bending or defacing the same shall receive the same at the rate it was coined for and if any dispute shall arise whether the coin be diminished in manner aforesaid or counterfeit the matter shall be heard and finally determined in a summary manner by two Justices who are hereby empowered to examine upon oath as well the parties as any other person in order to the decision of such dispute And all receivers duly appointed of every branch of Her Majesty's revenue are hereby required to cut break or deface every piece of counterfeit or unlawfully diminished gold or silver coin offered to them in payment of any part of such revenue.

*Offences punishable by Justices.*

295. Whosoever shall offer utter or put off any of the Queen's current coin defaced by stamping thereon any name or word whether such coin shall or shall not be thereby diminished or lightened shall on conviction thereof before two Justices be liable to pay any sum not exceeding *forty shillings* Provided that it shall not be lawful to proceed for any such penalty without the consent of Her Majesty's Attorney General.

296. Whosoever without lawful authority or excuse shall have in his possession more than five pieces of counterfeit coin resembling or apparently intended to resemble any foreign gold or silver coin or any such copper or other coin as in the *two hundred and ninety-fourth section* of this Act is mentioned shall on conviction before two Justices forfeit all such counterfeit coin which shall be destroyed by order of such Justices and shall for every such offence pay any sum not exceeding *forty shillings* for every such piece of coin found in his possession.

PART VI.—PERJURY AND SUBORNATION OF PERJURY.

297. Whosoever shall commit wilful and corrupt perjury shall be liable to penal servitude for the term of *seven years* And whosoever shall commit such perjury with intent to procure the conviction or acquittal of any person for or of any offence punishable with death or by penal servitude shall be liable to penal servitude for the term of *fourteen years*.

298. Whosoever before any person authorized to administer an oath or to receive or take any solemn declaration or affirmation shall on oath or in any such declaration or affirmation wilfully and corruptly make any false statement knowing the same to be false shall (where such offence does not amount to perjury or is not punishable as perjury) be liable to penal servitude for the term of *five years*.

299. Where on the trial of any person for perjury it shall appear that he was guilty of false swearing or making a false declaration or affirmation within the meaning of this Act before a person duly authorized in that behalf but that such offence did not amount to perjury it shall be lawful for the jury to acquit the offender of perjury and find him guilty under the last preceding section and thereupon he shall be liable to be punished accordingly.

300. Where on any such trial it shall appear that any affidavit deposition examination or solemn declaration is wrongly intituled or otherwise informal or defective or that the jurat to any such affidavit deposition

Uttering defaced coin.  
Ib. s. 17.

Having above five pieces of counterfeit foreign coin in possession.  
Ib. s. 23.

Punishment of perjury.

False swearing.

Cases of false swearing &c. not amounting to perjury.

Certain technical defects provided for

Law Ref. Com.  
Acts Shortening Act  
s. 13.

Law Ref. Com.

Law Ref. Com.

Law Ref. Com.



deposition or examination is informal or defective or that 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 only of such omission defect or informality but every such affidavit deposition examination or declaration may be given in evidence 5 and used for all purposes of the trial notwithstanding.

The like as to certain statutory declarations.

301. The provisions of this Act shall extend to every declaration made or purporting or intended to have been made under any Act directing or authorizing the making of a solemn declaration before any public or other functionary in lieu of an oath or otherwise although 10 such declaration may not be in the form prescribed by such Act.

Law Ref. Com.

Subornation of perjury &c.

302. Whosoever shall procure or cause any person to make any false statement on oath or in any declaration or affirmation if the making of such statement amounts in law to perjury or is by any Act punishable as perjury shall be guilty of subornation of perjury and be 15 liable to be punished as if such offender had himself been convicted of perjury. And if the making of such statement is punishable under the *three hundred and second section* of this Act the person procuring or causing the same to be made shall be liable to the same punishment as the person making the statement.

19 Vic. No. 34 s. 34.

False statements respecting Births Marriages &c.

303. Whosoever shall wilfully make 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 passed or hereafter to be passed in that behalf shall be liable 20 to penal servitude for the term of *seven years*.

Law Ref. Com.

False declarations in fraud of the Revenue.

304. Where any declaration or statement is or shall hereafter be by law required to be made upon or in respect of the importation or exportation of any goods or articles of or respecting the value thereof or the contents or value of any cask case or package containing such goods or articles whosoever shall with intent 30 to defraud the Queen or to diminish Her Majesty's Revenue make or cause or knowingly permit to be made to any Collector or other Officer of Customs any such declaration or statement which is false in any material particular shall be liable to imprisonment for any term not exceeding *three years* and to pay a fine if the Court shall see fit not 35 exceeding *one hundred pounds* in addition to such imprisonment.

Law Ref. Com.

Saving of other specific punishments &c.

305. Nothing in the last preceding *eight* sections shall prevent or affect any other punishment or any forfeiture which is or shall be provided under any Act now or hereafter to be passed but the provisions of this Act shall apply to every false oath declaration or 40 affirmation declared by any Act to be perjury or thereby made punishable as perjury.

Restraining prosecutions in certain cases.

306. Where any oath or affirmation is taken or made in any suit proceeding or matter pending in the Supreme Court or any District or Circuit Court or before any Judge of any such Court or 45 the Chief Commissioner of Insolvent Estates no prosecution in respect of such oath or affirmation shall be instituted without the leave of such Court or Judge or Commissioner and where any oath or affirmation shall have been taken or made before any District Commissioner of Insolvent Estates or Justices or Justice no prosecution in respect 50 thereof shall be instituted without the leave of such District Commissioner or Justices or Justice or of a Judge or of Her Majesty's Attorney General.

Law Ref. Com.

Directing prosecution for perjury.

307. In respect of any oath or affirmation taken or made by any person as in the last preceding section mentioned it shall be lawful 55 for the Judge or Chief or District Commissioner or Justices or Justice before whom the same was so taken or made if there shall appear reasonable cause for so doing to direct such person to be prosecuted



prosecuted for perjury and thereupon to require him to enter into a recognizance with one or more surety or sureties to take his trial for that offence at the next or nearest practicable sitting of the Supreme Court or District or Circuit Court And such Judge or Commissioner 5 or Justices or Justice may also require any persons then present to enter into recognizances to prosecute and give evidence respectively against the accused person and may commit any person in default of his entering into any such recognizance and every Chairman of General Sessions shall be deemed a District Court Judge within the meaning 10 of this and the preceding section.

## PART VII.—ABETTORS AND ACCESSORIES.

Reference to existing enactments.

Reference to Imperial Act.

13 Vic. No. 7 s. 1.

308. Every principal in the second degree in any felony whether the same be a felony at common law or by this or any other statute (now existing or hereafter to be passed) and whether a capital felony 15 or not shall be liable to the same punishment as the principal in the first degree is or shall be subject to.

Principals in the second degree how punished.

7 Geo. IV. c. 64 s. 9.

309. Every accessory before the fact to any such felony may be indicted convicted and sentenced either before or after the trial of the principal felon or together with such felon or be indicted convicted 20 and sentenced as a principal in the felony and shall be liable in either case to the same punishment as the principal felon is or shall be subject to whether the principal felon shall have been attainted convicted tried or indicted or not or shall or shall not be amenable to justice.

Accessories before the fact how tried and punished. 24 &amp; 25 Vic. c. 94 s. 1.

13 Vic. No. 7 s. 2.

310. Every accessory after the fact to any such felony may be 25 indicted convicted and sentenced as such accessory either before or together with or after the trial of the principal felon whether such felon shall have been previously tried or indicted or not or shall or shall not be amenable to justice.

The like as to accessories after the fact. Ib. s. 3.

9 Geo. IV. c. 31 s. 2.

311. Every accessory after the fact to murder or to the crime 30 of robbery with arms or in company with one or more other person or persons shall be liable to penal servitude for *life*.

Accessory after the fact to murder or bushranging.

9 Geo. IV. c. 31 s. 31.  
Law Ref. Com.

312. 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 the term of *five* 35 years.

Punishment of other accessories after the fact. Ib. s. 4.

7 and 8 Geo. IV. c. 30 s. 26 *ad finem*.

313. Whosoever shall abet counsel or procure the commission of any misdemeanor whether the same be a misdemeanor at common law or by any such statute as aforesaid may be indicted convicted and punished as a principal offender And where any offence is by this 40 Act punishable on summary conviction whosoever shall abet counsel or procure the commission of such offence shall on conviction before two Justices be liable to the same forfeiture and punishment as the principal offender is or shall be subject to.

Abettors in misdemeanors. Ib. s. 8.

7 and 8 Geo. IV. c. 30 s. 31.

And in offences punishable summarily.

## PART VIII.—



## PART VIII.—PLEADING PROCEDURE AND EVIDENCE.

(1.)—*Discharge without Prosecution.*

Discharge of persons  
under committal in  
certain cases.  
Vic. No. 5 s. 1.

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

(2.)—*Indictment. Form Venue Amendments &c.*

What defects shall  
not vitiate an indict-  
ment.  
16 Vic. No. 18 s. 24.

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

Venue in indictment.

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

Law Ref. Com.

Formal objections to  
be taken before jury  
are sworn.  
Ib. s. 25.

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

Judgment on  
demurrer.

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

Law Ref. Com.

As to traversing  
indictment.  
16 Vic. No. 18 s. 26.

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



320. Whenever on the trial of any indictment any variance shall appear between any statement name or description therein and the evidence offered in proof thereof in or it shall appear that some words required by law to be inserted in such indictment have been omitted therefrom or that words which ought to have been omitted have been inserted in such indictment it shall be lawful for the Court if it consider such variance omission or insertion not to be material and that the accused will not be prejudiced in his defence on the merits by the proposed amendment to order such indictment to be amended according to the proof not only in that part of the indictment where such variance omission or insertion occurs but in every other part which it may become necessary to amend on such terms as to postponing the trial to be had before the same or another jury or otherwise as such Court shall think reasonable.

Court may amend certain variances and either proceed with or postpone the trial.  
Ib. s. 1.

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

Proceedings in either case.  
Ib.—*ad finem*.

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

Verdict and judgment valid after amendment.  
Ib. s. 2.

323. In every case not being capital it shall be lawful to insert counts in the same indictment against the same person for any number of distinct offences of the same kind not exceeding *three* committed against the same party and to proceed therein for all or any of them Provided that no more than *six months* shall have elapsed between the first and the last of such offences And in every indictment for an offence against the person not being capital where such offence includes an assault a count may be added for such assault.

Separate offences in one indictment.

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

Property of partners how laid.  
7 Geo. IV. c. 64 s. 14.

325. In an indictment for murder or manslaughter it shall not be necessary to set forth the manner in which or the means by which the death alleged was caused but it shall be sufficient in an indictment for murder to charge that the accused did feloniously wilfully and of malice murder the deceased and in an indictment for manslaughter to charge that the accused did feloniously slay the deceased and it shall be sufficient in any indictment against an accessory to murder or

Murder or manslaughter.  
16 Vic. No. 18 s. 4.  
24 & 25 Vic. c. 100 s. 6.



manslaughter to charge the principal in the manner hereinbefore specified and then to charge the accused as an accessory in the manner heretofore accustomed.

Indecent assaults.

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

Law Ref. Com.

Indictment for a subsequent offence.  
7 & 8 Geo. IV. c. 28 s. 11.  
24 & 25 Vic. c. 96 s. 116.

327. In every indictment for an offence committed after a previous conviction for any offence whether indictable or punishable on summary conviction it shall be sufficient after charging the subsequent offence to state that the accused was at a certain time and place or at certain times and places convicted of an indictable offence or an offence punishable on summary conviction (as the case may be) without particularly describing such previous offence.

Stealing and receiving.  
13 Vic. No. 7 s. 3.

328. In every indictment containing a charge of feloniously stealing property it shall be lawful to add a count or several counts against the same person for feloniously receiving the same or any part thereof knowing the same to have been stolen and the prosecutor shall not be put to his election as to such charges or any of them.

Separate receivers and accessories.  
16 Vic. No. 18 s. 15.

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

Allegation as to money or securities stolen &c.  
9 Vic. No. 2 ss. 3 & 4

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

Stealing by tenants.

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

Stealing &c. deeds.  
Ib. s. 28.

In certain cases not necessary to lay property in any person.  
7 & 8 Geo. IV c. 29 s. 22.  
Ib. s. 21.  
Ib. s. 44.

332. It shall not be necessary in an indictment or any proceeding before Justices in respect of any of the following matters to allege that the instrument document building chattel or other matter or thing in respect of which the offence was committed is the property of any person that is to say stealing or destroying or injuring any



any testamentary instrument or any document of any Court or any thing fixed or growing in any square or street or place dedicated to public use or ornament or any offence committed in or respecting a place of Divine Worship or respecting property in any public library or building or respecting any matter or thing mentioned in any of the sections enumerated in the Third Schedule to this Act.

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

General averment  
of intent to defraud  
or injure.  
16 Vic. No. 18 s. 8.

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

Description of written  
instruments.

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

Description in  
indictment for engra-  
ving &c.  
1b. s. 6.

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

Sale &c. of counter-  
feit coin.  
24 and 25 Vic. c. 99  
s. 6.

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

Indictments for  
Perjury.

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

Indictments for  
conspiracy.

substantially

Special provisions.



substantially different are charged in the same indictment the prosecutor may if the Court shall think fit be put to his election as to the one on which he will proceed.

(3.)—*Arraignment Plea Trial &c.*

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

339. If any person being arraigned on an indictment shall 5  
plead thereto "not guilty" he shall by such plea without further  
form be deemed to have put himself upon the country for trial and  
the Court shall in the usual manner order a jury for his trial  
accordingly. And if any person being so arraigned shall stand mute  
of malice or will not answer directly to the indictment the Court may 10  
order a plea of "not guilty" to be entered on behalf of such person  
and the plea so entered shall have the same effect as if he had actually  
pleaded the same.

Pleas of attainder  
and pleas dilatory &c.

340. No plea setting forth an attainder shall be pleaded in bar  
of an indictment unless the attainder be for the same offence as that 15  
charged in the indictment. And no indictment shall be abated by  
reason of any dilatory plea of misnomer or want of addition or of a  
wrong addition of the accused but the Court shall forthwith cause the  
indictment to be amended according to the truth and shall call upon  
such accused to plead thereto and shall proceed as if no such plea had 20  
been pleaded.

Plea of *autrefois*  
*convict* &c.  
16 Vict. No. 18 s. 27.

341. In any plea of *autrefois convict* or of *autrefois acquit* it shall  
be sufficient for the accused to allege that he has been lawfully con-  
victed or acquitted as the case may be of the offence charged in the  
indictment without specifying the time or place of such previous con- 25  
viction or acquittal.

Practice on trials.

342. In every case whether of felony or misdemeanor the  
accused shall enter the dock unless the presiding Judge shall otherwise  
order. Provided that every defendant in a case of libel or of assault  
simply may remain on the floor of the Court as at present. 30

Law Ref. Com.

Challenge to jurors.  
7 & 8 Geo. IV c. 28  
s. 3.

343. The same right of challenge to jurors shall exist in cases  
of misdemeanor as in cases of felony. But no person shall except for  
cause shown be allowed in either case more than *eight* or if the offence  
charged be capital *twelve* challenges and the Crown shall in each  
case have the same but no greater right. And every peremptory 35  
challenge beyond the number so allowed shall be void and the trial  
shall proceed as if no such challenge had been made.

Law Ref. Com.

Enlarging jury  
panel.

344. Every Court sitting for the trial of prisoners shall have  
power on motion for that purpose made on behalf of either the Crown  
or any prisoner to order the Sheriff or his Deputy to summon instant 40  
and return to the Court an enlarged jury panel not exceeding *twenty-*  
*four* jurors in addition to those already in attendance and every  
person liable to serve as a juror and residing within *twenty* miles  
of the place of trial being so summoned and having no lawful excuse  
shall be bound to attend and be liable to be proceeded against for non- 45  
attendance as if he had been summoned under a precept in the  
ordinary course. And the jurors attending in pursuance of such order  
shall with the jurors previously summoned form one panel and be  
called chosen and sworn accordingly.

Law Ref. Com.

Affirmation by jurors  
in certain cases.  
30 and 31 Vic. c. 35  
s. 8.

345. Whenever any juror shall state in open Court that accord- 50  
ing to his religious belief the taking of an oath is unlawful and  
that he therefore on conscientious grounds objects to be sworn  
it shall be lawful for the Court to permit him to make a solemn  
declaration instead of taking an oath. And it shall not be necessary  
to allege in any record or proceeding that a particular juror made any 55  
such declaration but it shall be sufficient in all cases to state that  
the jurors solemnly declared or were sworn.

346.



Law Ref. Com.

346. In all cases whether of felony or misdemeanor it shall be lawful for the Court to allow the jury at their own expense such reasonable refreshment after retiring to consider their verdict as the Court shall think fit to order and where the jury shall have been in 5 deliberation more than *twenty-four* hours if it be found after examination on oath of one or more of them that the jury are not likely to agree it shall be lawful for the Court in its discretion to discharge them.

Refreshment to and discharge of juries.

347. It shall not be necessary in any case for the jury on the 10 trial of any person indicted for treason or felony to inquire concerning his lands or goods nor whether he fled for such treason or felony.

Jury shall not inquire of lands &amp;c. 7 &amp; 8 Geo. IV c. 28 s. 5

348. Every accused person shall in all Courts be admitted to make full answer and defence by counsel or by attorney in Courts where attorneys practise as counsel and in every case may reserve 15 his address until the close of the evidence for the prosecution and in the latter case all evidence in reply for the Crown shall be given before such address. And in all proceedings before Justices the accused shall be admitted to make full answer and defence and to have all witnesses examined and cross-examined by counsel or attorney.

Prisoner may be defended by counsel &amp;c. 4 Vic. No. 27 s. 1.

20

## (4.)—Evidence.

Law Ref. Com.

349. If any person called as a witness in any case shall on conscientious grounds object to take an oath or be reasonably objected to as incompetent to take an oath or shall by reason of his tender age or want of religious knowledge appear to be incompetent to take an 25 oath he may if the presiding Judge or Justice thinks fit make the following promise and declaration instead of being sworn—"I solemnly promise and declare that the evidence about to be given by me in this case shall be the truth the whole truth and nothing but the truth" And any person who having made such promise and declaration shall wilfully and corruptly give false evidence shall be deemed 30 guilty of perjury.

Affirmation by witnesses. 32 &amp; 33 Vic. c. 68 s. 4.

Law Ref. Com.

350. Whenever it shall by the representation of any credible person in a summary way on oath or in case of urgency without oath be made to appear to any Justice that a person able to give material 35 information respecting an indictable offence is dangerously ill whereby his evidence will probably be lost if not forthwith taken it shall be lawful for such Justice to take the deposition of the person so in danger touching the said offence in like manner as if a prosecution for the same were then pending before the Justice and to transmit such 40 deposition to the Attorney General. And if afterwards on the trial of any person for the offence to which the deposition relates (or for the murder of the deponent in case of his death or alleged death by reason of such offence) it be proved to the satisfaction of the Judge that the witness is dead or probably will never be able to attend the 45 trial his deposition may be read in evidence for or against the accused although not taken in the presence or hearing either of the party prosecuting or of such accused person.

Depositions by persons dangerously ill. 30 and 31 Vic. c. 35 s. 6.

Law Ref. Com.

351. Provided always that every such deposition shall be in the form or substantially in the form contained in the Fourth Schedule 50 hereto and shall be subscribed by the Justice taking the same of which fact and that such deposition was lawfully taken by him the deposition itself if purporting to be signed by such Justice shall be sufficient proof. Provided also that a copy of such deposition shall be delivered to the person thereby charged with any offence or whom 55 the same shall affect criminally as soon after the taking thereof as may

Proviso as to cross-examination &amp;c. Ib. and s. 7.



may be reasonably practicable and that as soon (having reference to the deponent's state of health) as shall be reasonably practicable the person so charged or affected shall have full opportunity afforded him if he shall think fit of cross-examining the deponent. And for the purpose of such cross-examination it shall be lawful for any Judge 5 of the Supreme Court or District Judge or any Police Magistrate by any order or orders in writing to cause any person so in custody to be conveyed to any place mentioned in any such order and afterwards to be returned to that custody.

Witnesses for  
prisoner.  
30 and 31 Vic. c. 35  
s. 3.

352. After all the evidence on the part of the prosecution in 10 Law Ref. Com.  
any case pending before a Justice has been heard such Justice shall inquire of the accused whether he desires to call any witness on his behalf and if that question be answered in the affirmative the Justice shall proceed to take the deposition of every such witness and if notwithstanding the evidence so taken such Justice shall commit the 15 accused or hold him to bail he shall transmit every such deposition with the other evidence to the Attorney General. And every such witness (not being to character merely) whose evidence shall in the opinion of such Justice be material shall be bound by recognizance equally with the witnesses for the Crown to give evidence at the trial 20 and every witness attending in obedience to any such recognizance shall be entitled to his expenses the same as if he were a witness for the Crown.

Admissions by  
accused.

353. Where any person shall on his trial be defended by 25 Law Ref. Com.  
counsel and shall by him be so advised he may lawfully make any admission as to matters of fact and may by the like advice and by leave of the Judge consent to the reception in evidence of any affidavit or of any notes of the evidence given at any former trial of such person.

Witnesses to  
character.

354. Every person called on behalf of an accused person as a 30 Law Ref. Com.  
witness to his character shall be permitted to give evidence not only as to the general repute if any of the accused but as to the witness's own knowledge of his habits disposition and conduct. And the like where a person is examined respecting the character of any witness. But no witness shall be allowed to state that he would not believe another 35 on his oath.

Evidence in  
mitigation or to  
character.

355. On every trial whether for felony or misdemeanor it shall be 40 Law Ref. Com.  
lawful for the Court in its discretion in a view to the mitigation eventually of punishment to receive evidence of matters in extenuation of the offence. And where evidence of the character of the accused is given such evidence shall in all cases be received and dealt with as evidence on the question of his guilt.

As to cross-  
examination of  
witnesses.

356. A witness may by leave of the Judge be cross-examined 45 Law Ref. Com.  
or contradicted in any case by the party calling him although it may not have been shown that such witness is adverse within the meaning of the enactment in that behalf. And any witness may be cross-examined as to evidence given or supposed to have been given by him before any Justice without putting in the deposition of such witness unless the Judge shall otherwise order.

Proof of lawful  
authority &c.

357. Wherever by any section of this Act the doing of any 50 Law Ref. Com.  
particular act or the having any specified article or thing in possession without lawful authority or excuse is made or expressed to be an offence the proof of such authority or excuse shall lie on the accused.

Depositions on one  
charge may be read  
on trial of any other.

358. Depositions taken on the preliminary or other investigation 55  
of any charge of felony or misdemeanor may be read as evidence on the trial of the accused for any other offence although of a higher or different nature if they would be admissible on his trial for the offence in respect of which they were so taken and such depositions may be proved in the same manner as if the accused were on trial for that offence.

Victorian Act 27 Vic.  
No. 233 s. 384.



Law Ref. Com.

359. In any case where it shall be necessary to prove the state of an account in the books of a Banking Corporation or Company or that any person had not an account or any funds to his credit in the books of such Corporation or Company it shall not be necessary to produce any such book but evidence of the state of such account or that no such account or funds existed may be given by any officer or clerk of the Corporation or Company who shall have examined such books. Provided that where any such account or funds shall have existed at any time within two years before the trial a copy of the person's account shall be produced by such officer or clerk.

Dispensing with production of banking books.

Law Ref. Com.

360. On the prosecution of any person for bigamy the wife or husband of the first marriage shall be competent but not compellable to give evidence against the accused provided that no such marriage shall be proved by the evidence of such witness alone.

Cases of bigamy.

Ibid.

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

Cases of forged stamps.  
14 Vic. No. 1 s. 3.

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

Proof of coin being counterfeit.  
9 Vic. No. 1 s. 14.

Law Ref. Com.

363. No admission or statement tendered in evidence on any trial against an accused person shall be received which has been induced by any untrue representation made or threat or promise held out to him where the same has been made or held out by the prosecutor or some person in authority and every admission or statement made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

Confessions obtained by undue means.  
22 Vic. No. 7 s. 11.Law Ref. Com.  
And see 22 Vic. No. 7 ss. 7 and 8.

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

Proof of judicial proceedings or any previous conviction &c.  
7 & 8 Geo. IV. 28. c. s. 11 24 & 25 Vic. c. 96 s. 116.

Presumption as to appeal.

Law Ref. Com.

365. During the sitting of any Circuit Court the Judge's Associate or other officer there acting as Clerk of Assize shall in respect of all proceedings at such sitting be deemed the officer having legally the custody of the records of such Court but at all other times they shall be taken to belong to and shall be kept in the Supreme Court and the Prothonotary shall have their legal custody.

Records of Circuit Courts.



Disputed writings  
and attesting wit-  
nesses.

366. Where any writing or signature is in dispute the same may be compared with any other writing or signature proved to the satisfaction of the Judge to be genuine and such writings together with the evidence of witnesses respecting the same shall be evidence of the genuineness or otherwise of the disputed writing or signature And any instrument to the validity of which an attestation is not requisite may be proved by admission or otherwise although there may be an attesting witness thereto. 5

Law Ref. Com.

Dying declarations.

367. Every declaration by a person since deceased shall be admissible in evidence (in any case where a dying declaration is now admissible) if the declarant shall have been at the time aware of his danger and shall on the whole have believed that he would shortly die although he may have entertained some degree of hope And no such declaration if otherwise admissible as a dying declaration shall be excluded because of its having been on oath or of its purporting so to be And no criminating statement by an accused person offered in evidence against him where the same shall appear to have been made voluntarily and before any charge of felony or misdemeanor made against such person shall be rejected because of such statement having been on oath. 10 15 20

Law Ref. Com.

Statements by  
accused persons.

(5.)—*Verdict generally.*

On trial for misde-  
meanor facts proved  
amounting to felony.  
Ib. s. 12.

368. If on the trial of any person for a misdemeanor it shall appear that the facts in evidence amount in law to felony he may notwithstanding be found guilty of and sentenced for such misdemeanor and shall in that case not be liable to be prosecuted for felony on the same facts Provided always that the Court may discharge the jury from giving any verdict upon such trial and direct the person to be indicted for felony And where a person shall have been tried for felony in any case where under this Act he may be acquitted thereof but be found guilty of some other offence such person shall not be liable to prosecution on the same facts for any such other offence. 25 30

And conversely  
where facts show  
some other offence.

Law Ref. Com.

Election in verdict  
as to larceny or  
receiving.

369. If on the trial of any 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 it shall appear that he either stole or feloniously received the property specified but the jury are unable to say which of those offences was committed by him such person shall not by reason thereof be entitled to acquittal but the jury may find those facts specially and thereupon the offender shall be liable to be sentenced as if he had been convicted of the larceny Provided that no greater punishment shall be awarded than could be awarded for the felonious receiving only. 35 40

Law Ref. Com.

Where one taking is  
charged and several  
takings are proved.  
16 Vic. No. 18 s. 17.

370. If on the trial of any person for larceny it shall appear 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 shall so order Provided always that evidence shall not in any case be given of more than *three* takings nor of any taking which shall have occurred more than *six months* in point of time from any other of such takings. 45 50

Law Ref. Com.

Persons indicted  
for jointly receiving.  
Ib. s. 14.

371. If on the trial of two or more persons for jointly receiving property it be proved that one or more separately received such property or part or parts thereof the jury may convict such of the said persons as shall be proved to have so received the same And on an indictment containing counts against two or more persons both for feloniously stealing and receiving property it shall be lawful for the jury to find all or any of such persons guilty either of stealing or receiving the property 55



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

372. If on the trial of any person for embezzlement or the  
 5 fraudulent application or disposition of property as a clerk or servant  
 or person employed in the public service or for obtaining property by  
 any false pretence or wilfully false promise it be proved that he obtained  
 the property in question in such manner as to amount in law to larceny  
 he shall not by reason thereof be entitled to acquittal but the jury  
 10 may say that such person is not guilty of the offence charged and may  
 find him guilty of simple larceny or of larceny as such clerk servant  
 or person as the case may be and such offender shall be liable to be  
 punished accordingly And if on the trial of any person for larceny it  
 be proved that he took the property in such manner as to amount in  
 15 law to one of the said other offences he shall not by reason thereof be  
 entitled to acquittal but the jury may say that such person is not guilty  
 of larceny and may find him guilty of such other offence and such  
 person shall be liable to be punished accordingly.

Embezzlement or  
false pretences &c.  
verdict of larceny  
And conversely.  
24 & 25 Vic. c. 96  
s. 72.

Law Ref. Com.

373. Where on the trial of any person for the offence of killing  
 20 an animal within the meaning of the *seventy-third* section of this Act  
 it shall appear that he is not guilty thereof but is guilty of stealing  
 such animal the jury may find the accused guilty of such last-  
 mentioned offence and he shall be liable to be punished accordingly  
 And where on the trial of any person for stealing cattle it shall appear  
 25 that he is not guilty thereof but is guilty of stealing the carcass or  
 skin or part of such cattle or of killing the said cattle within the said  
*seventy-third* section the jury may find the accused guilty of such  
 last-mentioned stealing or killing and he shall be liable to be punished  
 accordingly.

On trial for killing  
cattle. Verdict of  
stealing and con-  
versely.

### 30 (6.)—Verdict finding a Minor Offence.

374. If on the trial of any person for larceny it shall appear  
 that he is not guilty thereof but that he is guilty of taking appro-  
 priating or retaining the property in question under circumstances  
 amounting to a misdemeanor the jury may acquit him of the larceny  
 35 and find him guilty of such misdemeanor and the offender shall be  
 liable to be punished accordingly And if on the trial of any person for  
 larceny it shall appear that he took the property in question under  
 such circumstances as would constitute an offence punishable by  
 Justices under the *one hundred and eightieth* section of this Act the  
 40 jury may return a verdict accordingly and thereupon he shall be  
 punished as if he had been dealt with summarily under that section.

On trial for larceny  
verdict of misde-  
meanor—or of

Law Ref. Com.

taking master's corn  
&c.  
26 & 27 Vic. c. 103.

375. If on the trial of any person for any offence except murder  
 or manslaughter where the indictment alleges that the accused wounded  
 any person the jury be satisfied that the accused is guilty of such  
 45 wounding but they are not satisfied that he is guilty of the intent  
 charged in such indictment the jury may acquit the accused of such  
 intent and find him guilty of maliciously wounding and such offender  
 shall be liable to be punished accordingly.

On trial for  
feloniously wounding  
verdict of misde-  
meanor.  
16 Vict. No. 17 s. 5.

376. If on the trial of any person for any offence mentioned in  
 50 the *twenty-second* section of this Act the jury be not satisfied that the  
 accused is guilty of such offence but they are satisfied that he is guilty  
 of an offence within the *twenty-third* section the jury may acquit  
 the accused of the offence charged and find him guilty under the last-  
 mentioned section and he shall be liable to be punished accordingly.

On trial for poisoning  
verdict of misde-  
meanor.  
25 Vict. No. 12 s. 3.

377. If on the trial of any person whether for felony or mis-  
 55 demeanor the jury be not satisfied that he is guilty thereof but they  
 are satisfied that he is guilty of an attempt to commit or an assault  
 with

On trial for any  
felony or misde-  
meanor verdict of  
attempt &c.  
11 Vict. No. 30 s. 2.



with intent to commit the same the jury may acquit the accused of the offence charged in the indictment and may find him guilty of such attempt or assault and such offender shall be liable to be punished accordingly.

Cattle-stealing—  
verdict of misde-  
meanor.

378. If on the trial of any person for stealing cattle the jury be not satisfied that he is guilty of the offence charged but they are satisfied that he is guilty of the offence of unlawfully taking using or working such cattle within the *one hundred and sixtieth* section of this Act the jury may acquit the accused of the offence charged and find him guilty under the said section and he shall be liable to be punished accordingly. 5 Law Ref. Com.

Riotous demolition  
—verdict of misde-  
meanor.  
24 and 25 Vic. c. 97  
s. 12.

379. If on the trial of any person for any of the offences enumerated in the *one hundred and ninety-third* section of this Act the jury be not satisfied that the accused is guilty thereof but they are satisfied that he is guilty of an offence within the *one hundred and ninety-fourth* section the jury may acquit him of the offence charged and find him guilty under the last mentioned section and he shall be liable to be punished accordingly. 15

Obstructing railways  
verdict of misde-  
meanor.

380. If upon the trial of any person for any of the offences relating to the obstruction of railways enumerated in the *two hundred and seventeenth* section of this Act the jury be not satisfied that the accused is guilty thereof but they are satisfied that he is guilty of an offence within the *two hundred and eighteenth* section the jury may acquit him of the offence charged and find him guilty under the last mentioned section and he shall be liable to be punished accordingly. 20

Charging jury as to  
minor offence.

381. No verdict or judgment thereon shall be impeached or affected by reason only of the jury not having been instructed that the accused might by this Act be found guilty of a less offence than the one charged against him. 25 Law Ref. Com.

## PART IX.—PROCEEDINGS AFTER VERDICT.

30

### (1.)—General Provisions.

What not sufficient  
to stay or reverse  
judgment.  
7 Geo. IV c. 64 s. 21.

382. No judgment after verdict upon any indictment shall be stayed or reversed for want of a similitur nor by reason that the jury process has been awarded to a wrong officer nor for any misnomer or misdescription of the officer returning such process or of any of the jurors nor because any person has served upon the jury who has not been returned as a juror and where the offence charged has been created by statute or subjected to a greater degree of punishment by any statute the indictment shall after verdict be sufficient if it shall have described the offence in the words of the statute. 35

Certain felonies only  
capital.

383. No person shall suffer death unless it be for some offence punishable by death at the commencement of this Act or by this Act or hereafter made so punishable and whosoever shall be convicted of any offence not punishable with death shall be punished in the manner prescribed by the statute or statutes relating thereto and where no punishment is specially provided shall be liable to penal servitude for the term of *five years*. 40

Meaning and effect  
of penal servitude  
sentences.

384. Penal servitude for the purposes of this Act shall be taken to mean hard labour on the roads or other public works of the Colony either in or out of chains according to the sentence passed on the offender Provided that the Governor may cause the whole or any part of such servitude to be endured and the sentence in all other respects 50

Law Ref. Com.



respects to be carried out within the walls of any gaol And all the laws now in force respecting sentences to hard labour on the roads or other public works and pardons on condition of such hard labour shall apply to every sentence of penal servitude passed on any offender and to all offenders hereafter capitally convicted who may be pardoned on condition of penal servitude.

Law Ref. Com.

385. A new trial may be granted in any case of misdemeanor (for any cause for which a new trial may now be granted) in respect of all or some or one only of the defendants where two or more are included in the same indictment although all may not be present or be parties to the motion or have been tried And a new trial may be granted by the Supreme Court in any case of misdemeanor although the indictment may have been preferred and the trial had in a Circuit Court and sentence have been already passed there on the defendant or defendants or some or one of them.

New trials in misdemeanors.

Law Ref. Com.

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

Sentences by Courts-martial under Imperial Acts.

Law Ref. Com.

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

Power to defer sentence.

Or to send offender to a reformatory school. 30 Vic. No. 4 sec. 4.

Law Ref. Com.

388. Whenever after a prisoner's conviction or sentence any question shall arise as to his guilt or any mitigating circumstance in the case or any portion of the evidence therein it shall be lawful for any Justice by the direction of the Governor or of the Judge before whom such prisoner was tried to summon and examine on oath all persons who may be thought likely to give material information on the matter suggested and to transmit every deposition taken thereupon to the Governor or Judge for his information And 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 the same manner as perjury Provided that every deposition so taken shall be stated in the commencement to be taken under this section and in reference to what case and in pursuance of whose direction mentioning the date thereof.

Inquiries subsequent to a prisoner's conviction.

General clause Crim Consolidation Acts of 1861.

389. Whenever imprisonment under this or any other Act is awarded it shall be lawful for the Court wheresoever sitting to direct that the offender whether male or female be imprisoned or be imprisoned and kept to hard labor in any gaol in New South Wales And such Court may in the sentence direct that the offender be kept in solitary confinement for any portion or portions of the term not exceeding one month at one time and not exceeding three months within

Imprisonment sentences hard labour.

Solitary confinement.



Finding sureties.

within any year and also if it think fit require him to enter into a recognizance with or without sureties for keeping the peace and being of good behaviour. Provided that no person shall be imprisoned under this section more than *one year* for not finding sureties.

## (2.)—Alternative Punishments.

5

Providing for minimum terms of penal servitude.

390. Where by any section of this Act an offender is made liable to penal servitude for life or any other fixed term and to no shorter period the Judge may nevertheless in his discretion having regard to any extenuating circumstances in the case pass a sentence to penal servitude of less duration as follows. That is to say—instead of such 10  
servitude for life a term of years not less than *seven*—instead of servitude for fourteen years a term of not less than *five* years—instead of servitude for ten years a term of not less than *four* years—and instead of servitude for seven years or five years a term of not less than *three* years.

Law Ref. Com.

Alternative of imprisonment in certain cases.

391. Where by any such section the term of penal servitude 15  
provided is *ten years* or *seven* or *five years* respectively the Judge may instead thereof pass in any case a sentence of imprisonment with or without hard labour as follows (that is to say) instead of such servitude for ten years imprisonment for *four* years or any less term not being less than *two years*—instead of servitude for *seven years* imprison- 20  
ment for *three* years or any less term not being less than *one year*—and instead of servitude for *five years* imprisonment for *three years* or any less term.

Law Ref. Com.

Penal servitude not exceeding a certain term.

392. No term of penal servitude less than *three years* shall in any case be awarded. But where by any section of this Act penal 25  
servitude is prescribed and the duration thereof not exceeding a specified term is in the discretion of the Court the Judge may instead of sentencing the offender to penal servitude pass a sentence on him of imprisonment for any term not exceeding *four years*.

Law Ref. Com.

## (3.)—Capital Sentences.

30

Recording sentence of death.

393. In every case where under this Act an offender is liable to the punishment of death it shall be lawful for the Judge to abstain from passing sentence of death and to cause such sentence to be recorded only and every sentence so recorded shall have the same effect in law as if it had been pronounced in open Court. Provided that the 35  
Judge shall in every such case state upon the record his reason for so doing.

Law Ref. Com.

Carrying sentence into execution.

394. Every sentence of death may be carried into execution on a day to be appointed for that purpose by the Governor in Council and all other proceedings in respect thereof shall be had and taken in the 40  
manner now by law provided. And it shall not be necessary in any case for the disposal of the body to form part of the sentence but the body of every person executed shall in all cases be buried within the precincts of the prison unless the Governor in Council shall otherwise order.

Law Ref. Com.

Sentences deferred.

1 Ed. VI c. 7 s. 5.

395. Where any person shall have been convicted of any offence punishable with death or otherwise and sentence shall have been deferred the Court before which he was tried or the Supreme Court may pronounce judgment against such person at any time afterwards.

45

Vict. Act sec. 290.

Sentence where carried into effect.

396. Every sentence of death when executed shall take place 50  
within the walls or enclosed yard of such gaol as the Governor in Council shall direct by the Sheriff of the Colony or of the district within which such gaol is situated or by some deputy duly appointed by him.

397.



397. Such Sheriff or deputy together with the gaoler and such officers of the gaol as he may require including the medical officer shall be present within the gaol at every such execution. And any Justice Minister of Religion and Officer of Police who may desire so to do may also attend with such military guard and adult spectators as the said Sheriff or deputy may think fit to admit.

Sheriff officers of gaol &c. to witness execution.

398. Each of the persons aforesaid present at any such execution shall remain within the walls or enclosed yard of the gaol until the execution shall have been completed and until the medical officer shall have signed a certificate in the form set forth in the Fifth Schedule. And the said Sheriff or deputy and gaoler and officers of the gaol and such other persons present as may think fit shall before their departure subscribe a declaration according to the form set forth in the same Schedule.

Medical officer to sign certificate.

399. The body of the person executed shall not be buried or removed from the gaol within *eight hours* next after such execution. And every person who shall within that time produce to the gaoler an order from any Justice requiring him to admit the bearer to view the body shall be admitted by such gaoler accordingly.

Body not to be buried within *eight hours*.

400. Every such certificate and declaration as aforesaid shall be forthwith transmitted by the Sheriff or his deputy to the Prothonotary of the Supreme Court and be kept in his office as a record of the Court and shall be by him published in the *Government Gazette*. And any person who shall subscribe any certificate or declaration as aforesaid knowing the same to contain any false statement or who shall bury or remove from such gaol within *eight hours* any such body as aforesaid shall be liable to penal servitude for the term of *seven years*.

Certificate and declaration to be recorded.

Penalty for false declaration &c.

#### (4.)—Whipping or Irons.

401. When any person being a male under the age of *sixteen years* shall have been convicted of an indictable offence under this Act it shall be lawful for the Court to sentence such offender instead of or in addition to any other punishment authorized by this Act to be *once twice or thrice* privately whipped. Provided that the number of strokes on each occasion and the time or times and place of such whippings shall be specified by the Court in the sentence and that no more than *twenty-five* strokes (or under the next following section *fifty* strokes) shall be awarded at any one of such times.

Whipping juvenile offenders.

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

Whipping for adults.

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

Gaol surgeon may remit whipping in certain cases.

404. It shall be lawful for the Inspector of Prisons with the approval of the Governor in Council to prescribe the form and kind of instrument to be used in the several gaols of this Colony in the whipping of

Kind of instrument to be used.



of offenders under the age of *sixteen years* and of or above that age respectively under the aforesaid provisions and to direct the manner of its use in each case And no other kind of instrument shall after any such direction be used in the carrying out of the sentence on any such offender.

Irons in what cases.  
11 Vic. No. 34 ss.  
1 & 2.

405. Whenever any person shall have been convicted under this Act of a felony attended with violence to the person or committed by the offender when armed with any offensive weapon or instrument or by means of any threat or by putting in fear the Court may direct that the offender be kept in irons for any portion not exceeding the 10 first *three years* of his term of punishment.

5

(5.)—*Cumulative Sentences.*

Sentence on a  
second conviction.

406. In every case where after the conviction of any person of an offence punishable by penal servitude or imprisonment it is made to appear to the Judge that such person has been previously 15 convicted of an indictable offence and sentenced to punishment for the same it shall be lawful for the Judge to pass sentence on the offender for a term not exceeding *seven years* penal servitude or *three years* imprisonment in addition to the term of servitude or imprisonment provided for the offence of which he has lastly been convicted And 20 where the previous sentence shall appear to be unexpired the Judge may direct that the last sentence shall commence at a future day within or at the expiration of the period of such unexpired sentence to be then named by the Judge.

Law Ref. Com.

Proof of previous  
conviction.

407. Any such previous conviction or sentence may be proved 25 by certificate under the *three hundred and sixty-eighth* section of this Act or other evidence (together with evidence of the identity of the offender) to the satisfaction of the Judge Provided that where the offender shall have been convicted of an offence punishable by penal servitude or imprisonment and shall in the same Court and during the 30 same sittings be convicted a second time or oftener of an offence similarly punishable judicial notice may be taken of the previous conviction or convictions and sentence or sentences.

Law Ref. Com.

Second conviction at  
same sittings.

Previous sentences  
to be noted in  
cumulative sentence.

408. Whenever a cumulative or additional term of sentence shall be passed under either of the *two* last preceding sections the fact 35 of the previous conviction and sentence or convictions and sentences specifying the date or dates thereof respectively and of the term or terms of sentence shall be entered on the minutes and record of the sentence so passed.

Law Ref. Com.

Sentences on two or  
more counts.

409. Where any person is convicted in any case on the same 40 indictment of two or more offences similarly punishable sentence may be passed on the second and third counts respectively if the Judge shall think fit for a term to commence at a future day within or at the expiration of the term of sentence passed on the preceding or last preceding count.

45

(6.)—*Commutation or Mitigation of Sentences.*

Commutation of  
capital sentence.

410. It shall be lawful for the Governor in all cases in which he shall be authorized on behalf of Her Majesty so to do to extend mercy to any offender under sentence of death on condition of such offender being kept in penal servitude or imprisoned with or without 50 hard labor for life or for any less term and also in his discretion to direct that the offender be kept to hard labor in irons for any time not exceeding the first *three years* of the term of such servitude or imprisonment and such extension of mercy shall be signified to the Judge before whom such offender was convicted who shall thereupon 55 make an order that the offender be dealt with according to the terms

Law Ref. Com.



terms of such extension which order shall have the effect of a valid sentence passed by the Court before which such offender was convicted and shall be entered on the records of the Court accordingly.

Law Ref. Com.

411. It shall be lawful for the Governor to grant to any person under sentence of penal servitude or of imprisonment with or without hard labor who shall have served in any such case not less than *two years* of his sentence a remission of the remainder of the term of such sentence on condition that he shall not remain in or come within the Colony during the residue of the said term And the Governor with the advice of the Executive Council may make such regulations as he shall think fit for the mitigation or remission conditional or otherwise of any sentence of penal servitude or imprisonment as an incentive to or reward for good conduct whilst the offender shall be serving under such sentence and to mitigate or remit the term of punishment accordingly.

Pardon on condition of exile.  
11 Vic. No. 34 sec. 4.

Regulation for remission of sentences.

Law Ref. Com.

412. It shall be lawful for the Governor to grant at any time to any offender under sentence of imprisonment with or without hard labor a remission of any portion of such sentence on such condition as to the offender giving security by recognizance for his good behaviour or otherwise as to His Excellency shall seem meet and to grant to any offender under sentence of penal servitude a written license to be at large in such district as shall be specified therein but not elsewhere during the unexpired portion of his sentence subject to such conditions to be indorsed on the license as His Excellency shall prescribe And while such offender shall continue to reside in the district specified and to perform the conditions so prescribed his sentence shall be suspended Provided that nothing in this Act shall be construed to prevent the Governor from granting in any case an unconditional pardon.

Tickets-of-leave and other mitigations of sentence.

Law Ref. Com.

413. Every such license may be revoked by the Governor at discretion and on such revocation or on breach of any condition subject to which such license was granted to be proved in a summary way before two Justices the sentence or such portion thereof as may then be unexpired shall immediately revive and the offender may by warrant under the hand and seal of any Justice be committed to any common gaol there to undergo the remainder of such sentence or to remain until thence removed in execution of such sentence or otherwise discharged by due course of law.

Revocation or cancellation of ticket.

Law Ref. Com.

414. It shall be lawful for any constable who shall find the holder of any such license out of the district specified therein or who shall reasonably suspect him of having broken any other condition of his license to arrest the person so offending or so suspected and bring him before some Justice to be dealt with according to law And the holder of any such license who shall be adjudged by two Justices to have wilfully and without lawful excuse broken any such condition shall be deemed guilty of a misdemeanor and may for that offence be by such Justices sentenced to an extension of his existing term of servitude for not less than *three* nor more than *six months*.

Arrest on breach of conditions.

Punishment.

Law Ref. Com.

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

Remissions of sentence where more than one.

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(7.)—*Restitution of Property Stolen &c.*

416. Where any person shall be convicted under this Act of stealing taking obtaining extorting embezzling or disposing of or appropriating retaining or knowingly receiving property the Court may order the

Prosecutor in certain cases to have restitution of his property.  
24 & 25 Vic. c. 96  
s. 100.



the restitution thereof in a summary manner to the owner or his representative And where the person indicted for any such offence is acquitted thereof it shall be lawful for the Court in its discretion on being satisfied that any property mentioned in the indictment has been stolen taken obtained extorted embezzled disposed of appropriated 5 retained or received contrary to the provisions of this Act to order in like manner the restitution of such property to the owner or his representative Provided that if it shall appear that any valuable security has been paid by some person liable to the payment thereof or being a negotiable instrument has been taken or received for a 10 valuable consideration without notice or cause to suspect that the same had been dishonestly come by the Court shall not order the restitution of such security or instrument.

Proviso.

(8.)—*Disposal of Insane persons.*

Person acquitted on ground of insanity. 7 Vic. No. 14 s. 4. 24 Vic. No. 19 s. 2. 23 & 24 Vic. c. 75 s. 2. Tasman. Act s. 20.

417. Where any person charged with felony or misdemeanor is 15 acquitted on the ground that he was insane at the time of committing the offence the Court shall order such person to be detained in custody in such place as to the Court may seem fit until the Governor's pleasure be known And it shall be lawful for the Governor by warrant under his hand to direct that such person be conveyed to and kept in some 20 hospital for insane persons during her Majesty's pleasure subject however to such classification as may be directed in that behalf And the like where any person committed for any offence shall on arraignment be found to be insane provided that his detention for any period in any such hospital shall not on recovery prevent or affect his 25 trial for such offence.

(9.)—*Forfeiture of Property by Conviction.*

Provision substituted for forfeiture in felonies.

418. No inquest conviction or judgment in respect of any felony committed after the passing of this Act shall cause any escheat or forfeiture of land or goods Provided always that upon the conviction 30 of any person for a felony so committed it shall be lawful for the Court to direct a sum not exceeding *two hundred pounds* to be paid out of the property of the offender to any aggrieved person by way of compensation for any injury or loss sustained through or by reason of such felony and a sum or sums not exceeding in the whole *one hundred* 35 *pounds* to be paid out of the same property to such officer or person or persons as the Court shall direct for the costs and expenses incurred in and about the prosecution or apprehension of the offender such sums to be assessed by the Court and specified in an order or orders thereupon made irrespectively of any sentence then or thereafter passed 40 upon the offender.

24 Vic. c. 23 (1870) & Law Ref. Com.

Enforcing such provision.

419. Every such order shall be entered in a book to be kept for that purpose in the office of the Prothonotary of the Supreme Court and after such entry shall be deemed to be of record and shall have the effect of a judgment of that Court at law and be enforceable by a writ 45 or writs of execution in like manner as any such judgment is ordinarily enforced And every conveyance or alienation of the offender's property or any part thereof executed or made by him or any person by his direction without valuable consideration after the commission of his offence and within twelve months before his conviction shall as 50 against every such writ be absolutely void.

Law Ref. Com.

Disabilities of felony. Ibid.

34 Vic. c. 23 (1870).

420. After the conviction of any such offender until he shall have endured the punishment to which he shall have been sentenced or the punishment if any substituted for the same or the unremitted portion of such punishment or shall have received a free pardon for 55 his offence he shall be incapable of holding or being elected or appointed

24 Vict. c. 23 s. 2 and Law Ref. Com.



Wife may in certain cases maintain actions.

appointed to any office or of exercising any electoral or municipal franchise or of alienating or charging any property or making any contract or without the written permission of the Attorney General of maintaining any action or suit at law or in equity And for the purposes of maintenance of herself and her children or of enforcing the payment of any wages earned by her or them or the recovery of any property to which she may be entitled or of damages for any personal injury the wife of every such offender while he shall remain under disability may maintain any suit or action and any property acquired by her since her husband's conviction may in any indictment be described as the property of the wife as if she were unmarried.

Effect of reversing the judgment in such cases.

421. Upon the avoidance or vacating of the conviction of any such person or the reversal of the judgment against him thereupon the provisions of the *three* last preceding sections shall with respect to such person cease and determine and every order if any 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. Law Ref. Com.

Power to place offender's property in trust.

422. It shall be lawful for the Supreme Court or any Judge thereof at any time within *six months* after any such conviction for felony on the application of the Crown or of any creditor of the offender to direct that such offender's estate shall be placed under sequestration in the hands of one of the Official Assignees of Insolvent Estates or in the hands of some other person to be appointed for that purpose by such Court or Judge And every such direction after entry thereof in the book to be kept in the Prothonotary's office as aforesaid shall have the effect of an adjudication under any Act then in force providing for the administration of insolvent or bankrupt estates and shall vest in such assignee or other person for the benefit of the creditors and family of the offender all his estate rights and credits then existing or to accrue during his disability And every person having any claim legal or equitable against the offender whether for damages in respect of any wrong or otherwise shall be deemed a creditor within the meaning of this section—and the matter of such claim shall be inquired into and determined and such damages be assessed in such manner as the Court or any such Judge may in each case direct. Same Statute s. 9 and Law Ref. Com

Who to be deemed creditors.

Provision for offender's family.

423. It shall be lawful for any such Judge or for the Chief Commissioner of Insolvent Estates or Officer having corresponding duties hereafter in bankruptcy to cause to be set apart from time to time out of such estate and credits such sums for the support of the offender's wife and children as such Judge or Commissioner or Officer shall think proper subject nevertheless to the payment of the creditors of the offender or such of them as shall prove or have proved their claims And upon the termination of such offender's disability by any means the Official Assignee or other person appointed as aforesaid shall restore to him all property and moneys if any in the estate then unappropriated or on the death of the offender if that shall first happen shall deliver and pay such property and moneys respectively to the person or persons who may then be entitled thereto. Ib. s. 24 and Law Ref. Com.

Restoration on disability ceasing.

And upon the termination of such offender's disability by any means the Official Assignee or other person appointed as aforesaid shall restore to him all property and moneys if any in the estate then unappropriated or on the death of the offender if that shall first happen shall deliver and pay such property and moneys respectively to the person or persons who may then be entitled thereto.

Questions of law may be reserved. 13 Vic. No. 8 s. 1.

(10.)—Reserving Questions of Law.

424. Where any question of law shall arise on the trial of any person the Court shall on the application of counsel during such trial and may in its discretion without any application reserve such question for the consideration of the Judges of the Supreme Court in case of the person's conviction And in every such case the Court shall either commit the person convicted to prison or take his recognizance with one or more surety or sureties as the Court may think fit conditioned



that he shall appear at such time and place as the Supreme Court may direct and receive judgment or (if judgment has been given) shall render himself in execution. And the like proceedings may be taken so far as they shall be applicable where any question of law shall arise upon or in respect of the arraignment of any person or as to the verdict 5 or the judgment given or to be given thereon.

Proceedings on case reserved.  
Ib. sec. 2.

425. The Judge by whom any such question of law was reserved shall thereupon state a case setting forth the question or questions reserved with the facts and circumstances out of which the same arose and shall forthwith sign and transmit such case to the Supreme Court 10 which shall have power to hear and finally determine the said question or questions and to affirm amend or reverse the judgment given if any or to avoid or arrest the same or direct that judgment shall be given and in what form or to order an entry to be made on the record that the party ought not to have been convicted or to make such other order 15 as justice may require.

Certificate of affirmation or reversal.  
Ib.

426. Every such determination and order shall be certified under the hand of the Prothonotary to the proper officer of the Court in which the conviction took place who shall enter the same on the record and a like certificate shall be transmitted to the sheriff or 20 gaoler which certificate shall be a sufficient warrant for the execution of the judgment if against the convicted person or for his discharge from imprisonment if the judgment has been reversed avoided or arrested. And such judgment shall be executed or the person be discharged or his recognizance if on bail be vacated accordingly. 25

Case may be sent back for amendment.  
Ib. sec. 4.

427. The Judges of the Supreme Court shall have power if they think fit to cause any case so reserved to be sent back for amendment and thereupon the same shall be amended and returned to the Court accordingly.

Argument and judgment.  
Ib. sec. 3.

428. Every decision of the Judges on any such reserved case 30 shall be delivered in open Court (after hearing counsel or the parties in case the Attorney General or the prosecutor or person convicted shall appear to argue the same) in like manner as the judgments of the Supreme Court in other cases are delivered.

#### (11.)—Writs of Error.

35

Law Ref. Com.

Writ of Error how obtained.

429. In every case where after a conviction in England for felony or misdemeanor a Writ of Error might on the fiat of the Attorney General be brought for the reversal of the judgment thereon the like writ may by rule for that purpose on motion by counsel for either the Crown or the prisoner and after cause shown be issued out of the 40 Supreme Court returnable therein for the reversal of the judgment on any conviction in that or any other Court. Provided that where there shall be error in such judgment or in the record in any part thereof but the same shall appear to the Judges to be amendable or where the sentence shall be bad in respect of some excess such judgment record or sentence shall be amended accordingly. 45



## PART X.—SUMMARY PROCEEDINGS.

(1).—*Convictions before Justices—General provision.*

Law Ref. Com.

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

Proceedings before Justices to be summary.

Justices Act of 1850 adopting 11 and 12 Vic. c. 43.

(2).—*Apprehension of Offender and Search Warrant.*

431. Any person in the act of committing or immediately after having committed an offence punishable whether by indictment or on summary conviction under this Act may be apprehended without a warrant by any person and taken together with any property found upon him before some Justice to be dealt with according to law And where any credible witness shall upon oath before a Justice show reasonable cause to suspect that any person has unlawfully in his possession or on his premises any property whatsoever with respect to which an offence punishable under this Act has been or is reasonably believed to have been committed the Justice may grant a warrant to search for such property which warrant may be executed as in the case of stolen goods.

Arrest of persons without warrant. 7 and 8 G. IV. c. 29 s. 63.

Search warrants. 16 Vict. No. 17 ss. 10 & 12.

432. A search warrant may be granted by any Justice upon the oath in like manner of any credible witness showing reasonable cause to suspect that any person has unlawfully in his possession or on his premises any machine or implement or gunpowder or other explosive dangerous or noxious substance or thing suspected to be made kepton carried for the purpose of committing felony or any frame mould tool or implement or paper plate wood stone or material the making or knowingly having of which without lawful authority or excuse is by this Act made punishable or any forged security instrument or stamp or machinery frame mould plate die seal paper or other thing used or intended to be used in the forging of any security instrument or stamp or any counterfeit coin resembling or apparently intended to resemble the Queen's current gold silver or copper coin or the coin of any foreign prince or country or any instrument tool or engine intended for the counterfeiting of any such coin.

Search warrant for certain explosive substances. Ib. s. 12.

Implements used in forging or for forged instruments 24 and 25 Vic. c. 98 s. 46. 14 Vic. No. 1 s. 2. Also for counterfeit coin &c. Ib. s. 12.

433. Every warrant granted under either of the two last preceding sections shall authorize the searching for the property or things or any of them mentioned in those sections and in the warrant issued in pursuance thereof and it shall be lawful for the person finding any such property or thing under any such warrant to carry the same before some Justice who shall if necessary cause the same to be secured for the purpose of being produced in evidence against any person who may thereafter be prosecuted for any offence against this Act and after the same shall have been produced in evidence or when the same shall not be required to be produced in evidence such property or thing shall be disposed

Proceedings upon finding property &c. under search warrant



disposed of as the Court or any two Justices shall direct. But no such warrant (whether any such property or thing be so found or not) shall direct or authorize the apprehension of any person under the same.

Persons offering  
stolen property may  
be arrested.

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

Persons loitering at  
night and suspected  
of felony.

& 10 Vic. c. 25 s. 13.  
14 Vic. No. 16.

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

### (3.)—Enforcing Appearance—Adjudication—Committal &c. 15

Made of compelling  
the appearance of  
defendants.

436. Where any person shall by information in writing be charged before a Justice with any offence punishable on summary conviction under this Act such Justice may summon the person charged to appear at a time and place named in the summons and if he shall not appear accordingly then (upon proof by affidavit or otherwise of the service of the summons upon such person by delivering the same to him personally or by leaving the same at his usual place of abode) two Justices may either proceed to hear and determine the case *ex parte* or issue their warrant for apprehending such person and bringing him before themselves or some other Justices. Or if the information shall be by any credible person on oath the Justice before whom the charge is made may (if he shall so think fit) without any previous summons issue such warrant. And the Justices before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

Application of for-  
feitures and penalties  
16 Vic. No. 1 s. 15.

437. Every sum of money forfeited for the amount of any injury done shall be assessed by the convicting Justices and be paid to the party aggrieved except where he is unknown in which case such sum shall be applied in the same manner as a penalty and every sum imposed as a penalty by Justices whether in addition to such amount or otherwise shall be applied in the manner provided by the Acts Shortening Acts or any other enactment hereafter passed providing for the application of penalties where the statute imposing the same contains no directions for the disposal thereof. Provided that where several persons have joined in the commission of the same offence and shall on conviction be 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.

If a person sum-  
marily convicted  
shall not pay &c.  
the Justices may  
commit him.

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

439.



439. Whenever any person is committed as last aforesaid the commitment may be to any gaol and the statement in the warrant of the fact of non-payment shall be sufficient evidence of that fact nor shall any previous demand be necessary And whenever imprisonment is awarded for an offence punishable on summary conviction under this Act the Justices may in their discretion direct that the offender be imprisoned in any gaol with or without hard labor or may instead of imprisonment direct the offender to enter into a recognizance with one or more surety or sureties to keep the peace or be of good behaviour for a term not exceeding *six months* next after his conviction and may commit him until compliance with such direction.

Justices may in certain cases award hard labor.

440. Where any person under the age of *sixteen years* is summarily convicted before Justices of any offence against this Act other than the *one hundred and fifty-sixth* and *three* sections next following and it shall be a first conviction the Justices may if they think fit discharge the offender upon his making such satisfaction to the party aggrieved for damages and costs as shall be ascertained by such Justices.

Justices may discharge offender making amends. 24 & 25 Vict. c. 96 s. 108. *Ib. c. 97 s. 66.*

441. Where any person summarily convicted under this Act shall have paid the sum or sums adjudged to be paid together with costs under his conviction or have received a remission thereof from the Crown or have suffered the imprisonment provided for non-payment thereof or the imprisonment adjudged in the first instance or shall have been discharged from his conviction by the Justices as last aforesaid he shall not be liable to any other proceeding for the same cause.

Summary conviction &c. a bar to further proceedings. *Ib. c. 96 s. 109. Ib. c. 97 s. 67.*

#### (4.)—Appeals &c.

442. In all cases where the sum adjudged to be paid or the penalty imposed on any summary conviction exceeds *five pounds* or the imprisonment awarded exceeds *two months* the person convicted may appeal to the next Court of General Sessions appointed to be holden in the District where the cause of complaint shall have arisen or where the appointed day of sitting shall be within *ten days* next following then to the next Court but one after the conviction Provided that such person shall give to the prosecutor and also to the Clerk of the Bench a notice in writing of the appeal within *three days* after such conviction and shall either remain in custody until the Sessions or shall within *eight days* after the conviction enter into a recognizance with two sureties before one of the convicting Justices conditioned to appear at such Sessions and prosecute such appeal and abide the judgment of the Court thereupon and to pay such costs as shall be awarded or (where only money has been adjudged to be paid) shall at his option deposit with the Clerk the sum so adjudged together with the costs of the conviction and the sum of *ten pounds* on account of the costs of the appeal.

When appeal allowed.

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

Proceedings upon Appeal.



Convictions when  
appealed from to  
be sent to the  
Sessions.

444. For the purposes of such appeal when perfected by such notice and recognizance or deposit as aforesaid (or by such notice and the remaining of the appellant in custody) the convicting Justices shall transmit the conviction to the Court of Sessions appealed to there to be kept among the records of the Court and whenever there- 5  
after it shall be necessary to prove such conviction a certificate thereof to the effect mentioned in the *three hundred and sixty-eighth* section signed or purporting to be signed by the Clerk of the Peace or other person having the custody of the records of the Court shall be sufficient evidence to prove such conviction. 10

Law Ref. Com.

Where conviction  
is quashed.

445. Where any conviction is quashed on appeal the Clerk of the Peace or other proper officer shall forthwith indorse on the conviction a memorandum to that effect and whenever any certificate of such conviction is given a copy of such memorandum shall be added and shall be sufficient evidence that the conviction has been quashed in 15  
every case where such certificate would be sufficient evidence of such conviction.

(5.)—Formal matters—Jurisdiction &c.

As to proof of  
Jurisdiction &c.

446. Every district or place mentioned in any information deposition conviction summons warrant or order before or by any 20  
Justice shall be taken to be in this Colony if so alleged and within the jurisdiction of such Justice unless the contrary be shewn And no conviction or adjudication on appeal shall be removed by *certiorari* into the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein provided it be therein alleged that the 25  
party has been convicted and there be a valid conviction to sustain the same.

Law Ref. Com.

*Certiorari.*

PART XI.—MISCELLANEOUS ENACTMENTS.

For the protection  
of persons acting  
under this Act.

447. All actions against any person for anything done or reasonably supposed to have been done in pursuance of this Act shall 30  
be commenced within *six months* after the fact committed and notice in writing of such action and of the cause thereof shall be given to the defendant *one month* at least before the commencement of the action and in any such action the defendant may plead the general issue and give the special matter in evidence thereupon And no plaintiff shall 35  
recover in any such action if a tender of sufficient amends shall have been made before action brought or if a sufficient sum be paid into Court on behalf of the defendant after action brought And if a verdict shall pass for the defendant or the plaintiff become nonsuit or discontinue his action after issue joined or if upon demurrer or otherwise 40  
judgment be given against the plaintiff the defendant shall recover costs as between attorney and client.

No Court fees to be  
taken in criminal  
cases.

13 Vic. No. 7 s. 6.

448. It shall not be lawful to receive any Court fees for the issuing of process on behalf of any person charged with felony or misdemeanor in any Court or before any Justice nor to receive any fee 45  
from any such person for taking a recognizance of bail or issuing any writ or recording any appearance or plea to an indictment or discharging any recognizance.

Power of Courts  
to bring prisoners  
before them.

449. Every Court or Judge shall for the purposes of any trial or prosecution for felony or misdemeanor have power by order in 50  
writing directed to any gaoler in whose custody the person may be to cause any prisoner to be brought before such Court or Judge under  
secure

Law Ref. Com.



secure conduct in order to be tried or examined or to give evidence before such Court or Judge 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 any such gaol to cause any prisoner therein to be brought before it for any purpose without order in writing.

Law Ref. Com.

450. In every case where the Supreme Court shall grant a rule to show cause why a writ of *habeas corpus* should not issue it shall be lawful for such Court after the return of such rule and the appearance of the party called on to show cause or proof of the service on him of such rule to make all such orders as might be made after issue of the writ and the bringing up of the body. Provided that the Court may cause any such writ to issue after the return of the rule if such Court shall think fit.

Facilitating process in *habeas corpus* cases.

Law Ref. Com.

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

Proceedings thereupon.

Ibid.

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

Power of a Judge therein in vacation.

1 Wm. IV. c. 66 s. 28.

453. Whosoever shall have in his personal custody any matter the having of which in possession is by any Act expressed to be an offence or shall knowingly have any such matter in the custody or possession of any other person or knowingly have any such matter in any house building lodging or apartment or any field or other place open or enclosed whether belonging to or occupied by himself or not and whether such matter be so had for his own use or the use or benefit of another shall be deemed to have such matter in his possession within the meaning of such Act.

Meaning of term possession when criminal. Ib. s. 45.

Law Ref. Com.

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

Declaratory provision as to previous convictions.

Law Ref. Com.

455. Whenever any person is convicted of any one of the offences hereinafter mentioned as a misdemeanor at common law the Court may sentence the offender to be imprisoned for any term now warranted by law and also to be kept to hard labor during the whole or any part of such term that is to say—any cheat or fraud or conspiracy to cheat or defraud—any conspiracy to extort property or falsely to accuse any person of a crime or to obstruct prevent or defeat the course of justice—any escape or rescue from lawful custody on a criminal charge—any indecent exposure of the person or any act of selling or exposing for sale or to public view any obscene book print picture photograph or other indecent exhibition—any riot or the offence of keeping any brothel or common gambling-house.

Punishment of hard labor for certain common law misdemeanors. 16 Vic. No. 18 s. 28.

Law Ref. Com.

456. In every section of this Act and in every sentence passed by any Court or Judge or Justices or Justice under this or any other Act or at Common Law the word month shall be taken to mean a calendar month unless the contrary be expressed.

Definition of the word month.



Establishment and  
Jurisdiction of  
General and Petty  
Sessions.  
3 W. 4 No. 3 ss. 14  
& 17.

457. Every District Court and Court of Petty Sessions now existing and every other such Court or Court of General Sessions hereafter established shall have respectively the same jurisdiction Criminal and Civil as the several Courts of Quarter Sessions or General Sessions and Petty Sessions now possess respectively And it shall be lawful for the Governor by Proclamation issued with the advice of the Executive Council to establish such additional Courts of General Sessions of the Peace and Petty Sessions and to direct that they shall be holden severally at such places and for such districts as he shall thereby appoint and in like manner to abolish any such Court whether now existing or hereafter established.

Ibid.

Prosecutions for  
blasphemy.

458. 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 shall have been 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.

Law Ref. Com.

Right to inspect  
depositions on trial.  
4 Vic. No. 27 s. 4.

459. Every accused person shall be entitled on his trial to inspect without fee or reward all depositions or copies thereof which may have been taken against him and returned into or which shall be in the Court before which he is under trial.

Law Ref. Com.

Supreme Court  
Judges may prescribe  
forms of indictments  
&c.

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

Witnesses without  
just excuse neglect-  
ing to attend trial.

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

Mode of proceeding.

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

Recognizances  
before Justices to  
keep the peace &c.

463. It shall not be necessary on any complaint before a Justice of apprehended injury or violence to the person to require sureties for the peace from the party complained against where the Justice after examination of such party and of the complainant and their witnesses respectively if any as to the truth of the matter alleged shall be of opinion that such apprehension if entertained is unreasonable But where on the hearing of any such complaint or of an application to require

Law Ref. Com.



require from any person sureties for his good behaviour any defamatory or offensive words shall appear to have been spoken by the party complained against tending to a breach of the peace it shall be lawful for the Justice to require sureties to keep the peace or for good behaviour to be given by him. Provided that no recognizance in that behalf shall extend beyond the period of *six months* or be in any greater sum than *forty pounds*.

464. Where by any statute a person is made liable to punishment or to apprehension on being found (or who is or shall have been found) offending against such statute or committing an offence therein specified the provision shall extend to every person who shall shortly before apprehension have been so found. And where an act committed in any public place is by statute made punishable or a person there committing such act is made liable to apprehension the place of commission shall be deemed public for the purposes of the enactment if the same (although a vehicle or room only or a place ordinarily private) was at the time lawfully used for a public purpose or was open to the public on the payment of money or otherwise.

Meaning of term "found committing" and the term "public place."

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

Receivers evidence of guilty knowledge. Habitual Criminals Act of 1869 sec. 11.

466. Every act done of malice either against an individual or any corporate body or number of individuals or done without actual malice but cruelly or with criminal indifference to life or suffering or done recklessly or wantonly or with intent to injure any person or persons or corporate body in property or otherwise and in every such case without lawful cause or excuse shall be taken to have been done maliciously within the meaning of this Act in every part and section thereof.

What acts deemed to be malicious.

467. For the purposes of the three hundred and fifty-sixth section of this Act all provisions now in force as to summoning and enforcing the attendance of witnesses before Justices and taking recognizances to give evidence and giving copies of depositions to prisoners committed or held to bail and as to reading any such deposition in evidence in certain cases shall equally be in force with respect to witnesses for an accused person and depositions made by them as with respect to witnesses for the prosecution and their depositions.

Provisions subsidiary as to prisoner's witnesses—under sec. 356 30 and 31 Vic. s. 4.

468. The rule of the Common Law that penal Statutes are to be strictly construed shall not apply to this Act but the same shall be so construed as to give effect to the intention of the Legislature either as it is expressed in the Act or may be reasonably deduced therefrom having regard to its objects the fair import of the terms used and the evil sought to be remedied and so as to advance the remedy as far as reasonably may be.

Rule for construction of this Act.

Law Ref. Com.

Law Ref. Com.  
New York Crim.  
Code.



## SCHEDULES.

## FIRST SCHEDULE.

## REPEAL OF ACTS.

Reference to Act.	Subject of Act.	Extent of Repeal.
1 Edw. VI c. 7 .....	Actions &c. after the demise of the Crown	Section 7. 5
5 Eliz. c. 9 .....	Perjury .....	The whole.
9 & 10 Wm. III c. 32 .....	Blasphemy .....	The whole.
2 Geo. II c. 25 .....	Perjury .....	Section 2.
23 Geo. II c. 11 .....	Ibid .....	The whole.
37 Geo. III c. 126 .....	Coinage .....	The whole. 10
41 Geo. III c. 57 .....	Forgery .....	The whole.
43 Geo. III c. 139 .....	Ibid .....	The whole.
1 Geo. IV c. 4 .....	Negligent driving ..	The whole.
1 Geo. IV c. 92 .....	Forgery .....	The whole.
4 Geo. IV c. 48 .....	Capital Sentences ..	The whole. 15
4 Geo. IV c. 53 .....	Benefit of Clergy .....	The whole.
4 Geo. IV c. 54 .....	Ibid .....	The whole.
7 Geo. IV c. 64 .....	Administration of Criminal Justice.....	The whole except sections 4 5 and 6.
7 and 8 Geo. IV c. 18 .....	Prohibition of spring guns &c.....	The whole. 20
7 and 8 Geo. IV c. 28 .....	Administration of Criminal Justice.....	The whole.
7 and 8 Geo. IV c. 29 .....	Larceny .....	The whole.
7 and 8 Geo. IV c. 30 .....	Malicious Injuries .....	The whole.
9 Geo. IV No. 1 .....	Adoption of certain Acts .....	The whole.
9 Geo. IV c. 31 .....	Offences against the person .....	So much of section 25 22 as relates to punishment and all the other unrepealed sections except sections 8 & 32. 30
10 Geo. IV No. 7 .....	Quarter Sessions .....	The unrepealed portion.
3 Wm. IV No. 3 .....	Felons ..	The whole.
4 Wm. IV No. 4 .....	Adoption of certain Acts. (Forgery) .....	The whole.
4 Wm. IV No. 16.....	Quarter Sessions .....	The whole. 35
5 Wm. IV No. 17.....	Ibid .....	The whole.
6 and 7 Wm. IV c. 111 .....	Evidence of previous conviction .....	The whole.
8 Wm. IV No. 2 .....	Adoption of certain Acts .....	The whole.
2 Vic. No. 10 .....	Ibid .....	The whole except so much as adopts 1 40 Vic. c. 88.
2 Vic. No. 11 .....	Offenders Apprehension .....	The whole.
3 Vic. No. 10 .....	Quarter Sessions .....	The unrepealed portion.
3 Vic. No. 22 .....	Female Offenders—Punishment of .....	The whole. 45
4 Vic. No. 10 .....	Punishment .....	The whole.
4 Vic. No. 27 .....	Prisoners defence .....	The whole.
5 Vic. No. 3 .....	Female Offenders .....	The whole.
6 Vic. c. 7 .....	Tickets of Leave &c.....	The whole.
7 Vic. No. 5 .....	Discharge of persons under Committal.....	The whole. 50
7 Vic. No. 14 .....	Lunatics .....	Section 4.
9 Vic. No. 1 .....	Coinage ..	The whole.
9 Vic. No. 2 .....	Embezzlement .....	The whole.
9 Vic. No. 3 .....	Adoption of Acts. (Forgery.).....	The whole.
9 Vic. No. 11 .....	Adoption of Acts. (Punishments.).....	The whole. 55
9 Vic. No. 14 .....	Stealing dead wood .....	The whole.
11 Vic. No. 30 .....	Indecent assaults .....	The whole.
11 Vic. No. 34 .....	Punishments .....	The whole except sections 5 and 6. 60
11 Vic. No. 55 .....	Punishments. (Females.) .....	The whole.
13 Vic. No. 2 .....	Protection of works of art &c.....	The whole.



Reference to Act.	Subject of Act.	Extent of Repeal.
13 Vic. No. 5 .....	Negligent driving .....	So much as relates to punishment of the offence therein mentioned.
5		
13 Vic. No. 7 .....	Administration of Criminal Justice... ..	The whole.
13 Vic. No. 8 .....	Reservation of Points .....	The whole.
13 Vic. No. 22 .....	Embezzlement .....	The whole.
14 Vic. No. 1 .....	Forgery .....	The whole.
10 14 Vic. No. 2 .....	Juvenile Offenders .....	The whole.
14 Vic. No. 16 .....	Adoption of Acts .....	The whole.
15 Vic. No. 5 .....	Punishments .....	The whole.
16 Vic. No. 6 .....	Larceny .....	The whole.
16 Vic. No. 17 .....	Offences Prevention .....	The whole.
15 16 Vic. No. 18 .....	Administration of Criminal Justice .....	The whole.
16 Vic. No. 22 .....	Forgery .....	The whole.
16 Vic. No. 36 .....	Quarter Sessions .....	The unrepealed portion.
17 Vic. No. 3 .....	Cattle-stealing Prevention .....	The whole.
20 17 Vic. No. 9 .....	Partnership .....	Sec. 14.
17 Vic. No. 15 .....	Punishments .....	The whole.
17 Vic. No. 40 .....	Executions .....	The whole.
18 Vic. No. 7 .....	Felons .....	The whole.
18 Vic. No. 9 .....	Aggravated Assaults .....	The whole.
25 19 Vic. No. 24 .....	Police .....	Secs. 11 22 & 25.
19 Vic. No. 30 .....	Marriages .....	Sec. 20.
19 Vic. No. 34 .....	Registration of Births &c. ....	Secs. 34 & 35.
20 Vic. No. 41 .....	Electric Telegraphs .....	Secs. 10 & 11.
22 Vic. No. 2 .....	Punishments .....	The whole.
30 22 Vic. No. 9 .....	Larceny by Bailees &c. ....	The whole.
22 Vic. No. 16 .....	Frauds by Trustees .....	The whole.
22 Vic. No. 19 .....	Railways .....	Secs. 129 130 and 131 and so much of s. 132 as relates to punishment of offences mentioned in sec. 33 of this Act.
35		
40 25 Vic. No. 12 .....	Administration of Poison .....	The whole.
25 Vic. No. 13 .....	False Pretences .....	The whole.
26 Vic. No. 9 .....	Real Property .....	Secs. 152, 153
28 Vic. No. 9 .....	Trade Marks .....	So much of sec. 8 as relates to punishment of offences therein mentioned
45		



## SECOND SCHEDULE.

(Discharge of Prisoners.)

Sec. 318.

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 \_\_\_\_\_ 187 . 5

To their Honors the Judges of }  
the Supreme Court } L.M. Attorney General.

(Warrant thereupon.)

SUPREME COURT OF NEW SOUTH WALES.

Sec. 336.

Whereas A.B. is detained in your custody under the Warrant of R.W. Esquire 10  
Justice of the Peace upon a charge of (*as in Certificate*) and it has been certified to the  
Judges of this Court by Her Majesty's Attorney General that he declines to file any  
Information against the said A.B. for the said offence you are therefore hereby required  
forthwith to discharge the said A.B. from your custody under the said Warrant.  
Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 187 . 15

To the Sheriff and to the Keeper of }  
H.M.'s Gaol at } S.M.  
A Judge of the Supreme Court.

## THIRD SCHEDULE.

(As to allegation of property.)

Sec. 336.

Sections enumerated. The one hundred and seventy-eighth, one hundred and 20  
seventy-ninth, one hundred and eighty-first, one hundred and eighty-seventh, two hun-  
dred and twelfth, two hundred and thirteenth, two hundred and fifteenth, two hundred  
and sixteenth, two hundred and seventeenth, two hundred and nineteenth, two hundred  
and twentieth, two hundred and twenty-seventh, two hundred and twenty-eighth, two  
hundred and thirty-second. 25

## FOURTH SCHEDULE.

(Form of Deposition.)

Ss. 354 355.

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. 30  
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 \_\_\_\_\_ 187 .

And I hereby certify that I have taken this deposition under the provisions of the 35  
Criminal Law Consolidation and Amendment Act of 1873 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, the form will be varied accordingly.] 40

## FIFTH SCHEDULE.

(Certificate and Declaration at Executions.)

Sec. 402.

I W.S. being the Medical Officer of the Gaol at \_\_\_\_\_ hereby certify that  
I have this day witnessed the execution of C.D. lately sentenced to death in the  
[Supreme or Circuit] Court holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ last 45  
which said C.D. was in pursuance of such sentence hanged by the neck until his body  
was dead. And we the undersigned do hereby declare that we were this day present at  
the said execution and that the said C.D. was in pursuance of his sentence hanged by the  
neck until his body was dead.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 187 . 50

## SIXTH SCHEDULE.

(Where Whipping to be inflicted.)

Sec. 407.

Sections enumerated. The twentieth (garotting) thirty-first and thirty-second  
(obstructing or injuring railway) thirty-sixth and thirty-ninth (violence to females) forty-  
first and forty-second (indecent assaults) fifty-eighth and fifty-ninth (unnatural offences) 55  
ninety-fourth and ninety-fifth (robbery &c with arms) two hundred and seventeenth (certain  
acts with intent to injure railway carriages or telegraphs) two hundred and twentieth  
(injuries to works of art).