

Act No. 40, 1900.

CRIMES.

An Act to consolidate the Statutes relating to  
Criminal Law. [31st October, 1900.]

**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:—

PART I.

PRELIMINARY AND INTERPRETATION.

*Preliminary.*

Short title and  
contents of Act.

1. This Act may be cited as the "Crimes Act, 1900," and is divided into Parts, as follows:—

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2. (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed, except as to offences committed and things done or commenced before the passing of this Act, which shall be dealt with and continued, and in respect of which every right and liability shall remain as if this Act had not been passed.

(2) All persons appointed under any Act, or section of an Act, hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All proclamations, regulations, forms of indictments, records, informations, depositions, convictions, warrants, recognisances, and proceedings, and all orders or directions prescribing the form or kind of instrument to be used in the whipping of offenders, or the manner of its use, made, prescribed, or given under the authority of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made, prescribed, or given under the authority of this Act.

Application of  
certain Parts of Act.  
46 Vic. No. 17, s. 2.

3. The sections mentioned in the Second Schedule hereto, so far as their provisions can be applied, shall be in force with respect to all offences, whether at Common Law or by Statute, whensoever committed and in whatsoever Court tried.

*Interpretation.*

Interpretation.

4. In this Act, unless the context or subject-matter otherwise indicates or requires:—

Banker.

*Ibid.* s. 3 (f).

“*Banker*” includes every director or manager of any banking company, whether incorporated or not, or of any branch thereof, and every person carrying on the business of a banker.

Cattle.

*Ibid.* s. 3 (j).

55 Vic. No. 5, s. 35.

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

Counsel.

46 Vic. No. 17, s. 3.

(o).

“*Counsel*” includes attorneys.

“*Court*”

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- “*Court*” and “*Judge*” respectively shall be equally taken to mean the Court in which or the Judge before whom the trial or proceeding is had in respect of which either word is used. Court.  
46 Vic. No. 17, s. 3.  
(a).
- “*Document of title to goods*” includes every bill of lading, India warrant, dock warrant, warehouse-keeper’s certificate, warrant, or order for the delivery or transfer of any goods or valuable thing, and every bought and sold note or document used in the ordinary course of business as proof of the possession or control of goods, or purporting to authorise by indorsement or delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to. Document of title to goods.  
*Ibid.* s. 3 (d).
- “*Document of title to land*” includes every deed, certificate of title, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or part of the title, to any real estate or to any interest in or out of real estate. Document of title to land.  
*Ibid.* s. 3 (e).
- “*Dwelling-house*” includes any building within the same curtilage as a dwelling-house and occupied therewith, between which and such dwelling-house there is a communication either immediate or by means of a covered passage leading from the one to the other, and such building shall be deemed part of such dwelling-house; but does not include any other building although within the same curtilage as a dwelling-house and occupied therewith. Dwelling-house.  
*Ibid.* s. 105.
- “*Governor*” means, except in respect of the exercise of the pardoning power, the Governor with the advice of the Executive Council. Governor.  
*Ibid.* s. 3 (h).
- “*Indictment*” includes any information presented or filed as provided by law for the prosecution of offences. Indictment.  
*Ibid.* s. 3 (a).
- “*Judge*”—see “*Court*.” Judge.  
*Ibid.* s. 3 (a).
- “*Justice*” means a Justice of the Peace. Justice.  
*Ibid.* s. 3 (a).
- “*Money*” includes all coined money, whether current within New South Wales or not, and all bank note or instruments ordinarily so called, if current as such, and payable to the bearer. Money.  
*Ibid.* s. 3 (b).
- “*Night*” means the period of time commencing at nine of the clock in the evening of each day and concluding at six of the clock in the morning of the next succeeding day. Night.  
*Ibid.* s. 3 (k).
- “*Person, Master, and Employer*” severally include any society, company, or corporation. Person, master, employer.  
*Ibid.* s. 3 (l).
- “*Place of Divine worship*” includes any building or structure ordinarily used for Divine worship. Place of Divine worship.  
*Ibid.* s. 101.
- “*Property*” includes every description of real and personal property; money, valuable securities, debts, and legacies; and all  
*Ibid.* s. 3 (c).



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all deeds and instruments relating to, or evidencing the title or right to any property, or giving a right to recover or receive any money or goods; and includes not only property originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and everything acquired by such conversion or exchange, whether immediately or otherwise.

46 Vic. No. 17, s. 3.  
(l).

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

Railway.  
*Ibid.* s. 3 (n).  
Telegraph.  
*Ibid.* s. 3 (n).  
Trustee.  
*Ibid.* s. 3 (g).

“*Railway*” includes tramways.

“*Telegraph*” includes telephones.

“*Trustee*” means a trustee on some express trust howsoever created, and includes the heir or personal representative of such trustee, and every other person upon whom the duty of such trustee shall have devolved, and also any official manager, assignee, liquidator, or other like officer, acting under any Act relating to joint stock companies or to bankruptcy or insolvency.

Valuable security.  
*Ibid.* s. 3 (b).

“*Valuable security*” includes every order or other security whatsoever entitling or evidencing the title of any person to any share or interest in any public stock or fund, whether of any part of the British dominions or of any Foreign State, or in any fund of any body corporate, company, or society, whether within or without the British dominions, or to any deposit in any bank; and every debenture, deed, bond, bill, note, cheque, warrant, order, or security whatsoever for money, or for payment of money, whether current in any part of the British dominions or in any Foreign State, and every document of title to land or goods, as herein defined.

Vessel.  
*Ibid.* s. 3 (l).

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

Maliciously.  
*Ibid.* s. 7.

5. “*Maliciously*”: Every act done of malice, whether against an individual or any corporate body or number of individuals, or done without malice but with indifference to human life or suffering, or with intent to injure some person or persons, or corporate body, in property or otherwise, and in any such case without lawful cause or excuse, or done recklessly or wantonly, shall be taken to have been done maliciously, within the meaning of this Act, and of every indictment and charge where malice is by law an ingredient in the crime.

Month.  
*Ibid.* s. 6.

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

“*Month*” means a calendar month.

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

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

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

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

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

## PART II.

## OFFENCES AGAINST THE SOVEREIGN.

*Treason-Felony.*

11. The provisions of the Act of the Parliament of Great Britain, thirty-sixth George the Third, chapter seven, made perpetual by the Act of the Parliament of Great Britain and Ireland fifty-seventh George the Third, chapter six, and all the provisions of the last-mentioned Act in relation thereto, save such of the same respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim, or wounding, imprisonment, or restraint of the person of the heirs and successors

"Possession" when criminal.  
46 Vic. No. 17, s. 456.

"Public place," &c.  
*Ibid.* s. 467.

What offences felonies.  
*Ibid.* s. 4.

What offences misdemeanours.  
*Ibid.* s. 5.

Provisions of 36 Geo. III, c. 7, and 57 Geo. III, c. 6, repealed except as to offences against the person of the Sovereign.  
31 Vic. No. 25, s. 1.

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successors of His said Majesty King George the Third, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them, shall be and the same are hereby repealed.

Compassing, &c.,  
deposition of the  
Sovereign :—over-  
awing Parliament,  
&c.

31 Vic. No. 25, s. 2.

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

Time within which  
prosecution shall be  
commenced and  
warrant issued.

*Ibid.* s. 3.

**13.** (1) No person shall be prosecuted for any felony by virtue of this Part of this Act in respect of such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open and advised speaking only, unless—

- (a) information of such compassings, imaginations, inventions, devices, and intentions, and of the words by which the same were expressed, uttered, or declared is given upon oath to one or more Justice or Justices within six days after such words were spoken, and
- (b) a warrant, for the apprehension of the person by whom such words were spoken, is issued within ten days next after such information was given as aforesaid.

(2) No person shall be convicted of any such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open or advised speaking as aforesaid, except upon his own confession in open Court, or unless the words so spoken are proved by two credible witnesses.

In informations more  
than one overt act  
may be charged.

*Ibid.* s. 4.

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

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

Information for such felonies valid though the facts may amount to treason. 31 Vic. No. 25, s. 6.

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

Nothing herein to affect 25 Ed. 3, c. 2. *Ibid.* s. 5.

## PART III.

## OFFENCES AGAINST THE PERSON.

*Homicide.*

**17.** Every offence which before the passing of the Act ninth George the Fourth, chapter thirty-one, would have amounted to petit treason shall be deemed to be murder only, and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with and punished as principals or accessories in murder.

Petit treason. 46 Vic. No. 17, s. 15.

**18.** (1) (a) Murder shall be taken to have been committed where the act of the accused, or thing by him omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him, of an act obviously dangerous to life, or of a crime punishable by death or penal servitude for life.

Murder defined. *Ibid.* s. 9.

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

Manslaughter defined. *Ibid.* s. 9.

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

Provisoes. *Ibid.* s. 14.

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

**19.** Whosoever commits the crime of murder shall be liable to suffer death.

Murder—punishment. *Ibid.* s. 9.

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

Child murder—when child deemed born alive. *Ibid.* s. 11.

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Child murder by  
mother.  
Verdict of contri-  
buting to death, &c.  
46 Vic. No. 17, s. 58.

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

Trial for child  
murder—verdict of  
concealment of birth.  
*Ibid.* s. 57.

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

On trials for murder  
as to provocation.  
*Ibid.* s. 370.

**23.** (1) Where, on the trial of a person for murder, it appears that the act causing death was induced by the use of grossly insulting language, or gestures, on the part of the deceased, the jury may consider the provocation offered, as in the case of provocation by a blow.

Trial for murder—  
verdict of  
manslaughter.  
*Ibid.* s. 370.

(2) Where, on any such trial, it appears that the act or omission causing death does not amount to murder, but does amount to manslaughter, the jury may acquit the accused of murder, and find him guilty of manslaughter, and he shall be liable to punishment accordingly:

Provided always that in no case shall the crime be reduced from murder to manslaughter, by reason of provocation, unless the jury find:—

- (a) That such provocation was not intentionally caused by any word or act on the part of the accused;
- (b) That it was reasonably calculated to deprive an ordinary person of the power of self-control, and did in fact deprive the accused of such power, and
- (c) That the act causing death was done suddenly, in the heat of passion caused by such provocation, without intent to take life.

Manslaughter—  
punishment.  
*Ibid.* s. 13.

**24.** Whosoever commits the crime of manslaughter shall be liable to penal servitude for life, or for any term not less than three years, or to imprisonment for any term not exceeding three years:

Discharging jury in  
certain cases.

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

Trial where the death  
or cause of death  
occurs out of New  
South Wales.  
*Ibid.* s. 10.

**25.** Where, in any case of homicide, the cause of death happened on the sea, or elsewhere without New South Wales, but the death was within New South Wales, or the cause of death happened within New South Wales, but the death was on the sea or elsewhere without New South Wales, the offence may be dealt with, in all respects, as if the same had been wholly committed within New South Wales.

*Conspiracy*

*Crimes.*

*Conspiracy to murder.*

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

Conspiring to  
 commit murder.  
 46 Vic. No. 17, s. 12.

*Attempts to murder.*

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

Acts done to the  
 person with intent  
 to murder.  
*Ibid.* s. 16.

**28.** Whosoever—  
 sets fire to any vessel, or any chattel therein, or any part of her tackle apparel or furniture, or  
 casts away or destroys any vessel, or  
 by the explosion of gunpowder, or other explosive substance, destroys or damages any building, or  
 places, or throws, any matter or thing upon or across a railway, or removes or displaces any sleeper or other thing belonging to a railway,  
 with intent in any such case to commit murder,  
 shall be liable to suffer death.

Acts done to pro-  
 perty with the like  
 intent.  
*Ibid.* s. 17.

**29.** Whosoever—  
 attempts to administer to, or cause to be taken by, any person any poison, or other destructive thing, or  
 shoots at, or in any manner attempts to discharge any kind of loaded arms at any person, or  
 attempts to drown, suffocate, or strangle any person,  
 with intent in any such case to commit murder,  
 shall, whether any bodily injury is effected or not, be liable to penal servitude for life.

Certain other  
 attempts to murder.  
*Ibid.* s. 18.

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

Attempts to murder  
 by other means.  
*Ibid.* s. 19.

*Letters threatening to murder.*

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

Letters threatening  
 murder.  
*Ibid.* s. 20.

*Crimes.**Acts causing danger to life or bodily harm.*

Impeding endeavours to escape shipwreck.  
46 Vic. No. 17, s. 21.

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

Wounding, &c., with intent to do bodily harm or resist arrest.  
*Ibid.* s. 22.

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

Feloniously wounding—verdict of minor offence.  
*Ibid.* s. 372.

**34.** Where, on the trial of a person for an offence under the last preceding section, the jury are satisfied that the accused is guilty of the wounding, or inflicting grievous bodily harm, mentioned in the indictment, but are not satisfied that he is guilty of the intent charged therein, they may acquit him of such intent and find him guilty of an offence under the next following section, and he shall be liable to punishment accordingly.

Maliciously wounding or inflicting grievous bodily harm.  
*Ibid.* s. 24.

**35.** Whosoever maliciously by any means wounds or inflicts grievous bodily harm upon any person shall be liable to penal servitude for five years.

Definition, &c., of "Loaded arms."  
*Ibid.* s. 23.

**36.** For the purposes of the three last preceding sections:—  
"Loaded arms" means any gun pistol or other arms, loaded in the barrel or chamber with gunpowder or other explosive substance, and with ball shot slug or other destructive material, although the attempt to discharge the same may fail from want of proper priming, or from any other cause, and every gun pistol or other arms, unlawfully presented at any person, shall be deemed to be loaded unless the contrary is shown.

"Grievous bodily harm."  
*Ibid.* s. 24.

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

Attempts to choke, &c. (garotting).  
*Ibid.* s. 25.

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

**38.**

*Crimes.*

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

Using chloroform, &c., to commit an offence.  
46 Vic. No. 17, s. 26.

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

Using poison, &c., so as to endanger life.  
*Ibid.* s. 27.

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

On trial for poisoning - verdict of minor offence.  
*Ibid.* s. 373.

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

Administering poison, &c., with intent to injure or annoy.  
*Ibid.* s. 28.

**42.** Whosoever, during or after the delivery of a child, maliciously inflicts on such child, whether then wholly born or not, any grievous bodily harm, shall be liable to penal servitude for fourteen years.

Injures to child at time of birth.  
*Ibid.* s. 58.

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

Exposing or abandoning child under two.  
*Ibid.* s. 30.

**44.** Whosoever—  
being legally liable to provide any wife, child, ward, apprentice, or servant or any insane person with necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or  
maliciously does, or causes to be done, any bodily harm to any wife, child, ward, apprentice or servant, or to any insane person  
so that, in any such case, his or her life is endangered, or his or her health becomes or is or is likely to be seriously injured,  
shall be liable to penal servitude for five years.

Not providing wife, child, or servant with food, &c.  
*Ibid.* s. 29.

**45.** Whosoever, being legally liable to maintain his wife or child, wilfully and without lawful excuse deserts such wife, or any such child, and remains absent from his home for the space of thirty days, leaving such wife or child without the means of support, shall be liable to imprisonment for three years.

Wife or child desertion.  
*Ibid.* s. 29.

**46.** Whosoever maliciously by the explosion of gunpowder or other substance, or the use of any corrosive fluid, or destructive matter, shall be liable to imprisonment for three years.

Causing bodily injury by gunpowder, &c. burns,  
*Ibid.* s. 31.



*Crimes.*

burns, maims, disfigures, disables, or does grievous bodily harm to, any person, shall be liable to penal servitude for life.

Using, &c., explosive substance or corrosive fluid, &c.  
46 Vic. No. 17, s. 32.

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

Placing gunpowder near a building, &c.  
*Ibid.* s. 33.

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

Setting spring-guns, &c.  
*Ibid.* s. 34.

**49. Whosoever—**  
places or causes to be placed, any spring-gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm on any person, or continues any such engine so placed, or knowingly permits the same to continue so placed, with intent in any such case to inflict grievous bodily harm, shall be liable to imprisonment for four years:

Provided that nothing in this section shall extend to any gin, or trap, placed with the intention of destroying vermin, or to any spring-gun, man-trap, or other engine, placed in a dwelling-house for the protection thereof.

Placing wood, &c., on a railway.  
*Ibid.* ss. 35, 207.

**50. Whosoever—**  
maliciously puts, or throws, upon, or across a railway any wood, stone, or other thing, or maliciously takes up, removes, or displaces, any rail, sleeper, or other thing belonging to any railway, or maliciously turns, moves, or diverts, or neglects to turn, move, or divert, any point or other machinery belonging to any railway, or maliciously makes, shows, hides, or removes, any signal or light upon or near to any railway, or maliciously does, or causes to be done, or neglects to do, or cause to be done any other thing, with intent in any such case to injure, or endanger the safety of any person travelling, or being on such railway, or in any railway carriage, engine, tender, or truck shall be liable to penal servitude for life.

**51.**

*Crimes.*

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

Casting stone, &c., on a railway carriage.  
46 Vic. No. 17, s. 36.

52. Whosoever, by any unlawful or negligent act or omission, endangers, or causes to be endangered, the safety of any person conveyed, or being in or upon a railway, shall be liable to imprisonment for three years.

Endangering passengers on railway.  
*Ibid.* s. 37.

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

Injuries by furious driving, &c.  
*Ibid.* s. 38 and cf. 13 Vic. No. 5, s. 1.

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

Causing grievous bodily harm.  
*Ibid.* s. 37.

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

55. Whosoever knowingly has in his possession, or makes, or manufactures, any gunpowder, explosive substance, or dangerous or noxious thing, or any machine, engine, instrument, or thing,

Possessing, &c., gun powder, &c., with intent to injure the person.

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

*Ibid.* s. 62.

(b) for the purpose of enabling another person to injure, or otherwise commit an offence being felony against the person of any one,

shall be liable to penal servitude for five years.

*Assaults upon clergymen, officers, and others.*

56. Whosoever—  
by threats or force prevents, or endeavours to prevent, any clergyman, or other person duly authorised in that behalf, from officiating in a place of divine worship, or from the performance of his duty in the lawful burial of the dead in a burial-place, or strikes, or offers any violence to, any clergyman, or minister engaged in, or to the knowledge of the offender about to engage in, any of the duties aforesaid, or going to perform the same, shall be liable to imprisonment for two years.

Obstructing clergyman in discharge of his duties.  
*Ibid.* s. 50.

57. Whosoever wounds, strikes, or assaults, any person while in the execution of his duty concerning the preservation of a vessel in distress, or any vessel or effects, stranded, or cast on shore, or lying under water, with intent to obstruct him, or thereby in fact obstructing him, in the execution of such duty, shall be liable to penal servitude for seven years.

Assault on persons preserving wreck.  
*Ibid.* s. 51.

*Crimes.*

Assault with intent  
to commit felony or  
on certain officers.  
46 Vic. No. 17, s. 52.

**58.** Whosoever—  
assaults any person with intent to commit felony, or  
assaults, resist, or wilfully obstructs any officer while in the execu-  
tion of his duty, such officer being a Justice, constable, or other  
peace officer, custom-house officer, sheriff's officer, or bailiff, or  
any person acting in aid of such officer, or  
assaults any person, with intent to resist or prevent the lawful  
apprehension or detainer of any person for any offence,  
shall be liable to imprisonment for two years.

Assault occasioning  
actual bodily harm.  
*Ibid.* s. 53.

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

Assault by husband  
on wife.  
*Ibid.* s. 53.

**60.** Where any husband has been convicted of any assault within  
the last preceding section, or of any aggravated assault, specially so  
found by the jury, upon his wife, the Judge, if satisfied that her future  
safety is in peril, may add to the sentence a declaration that she shall no  
longer be bound to cohabit with her husband.

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

*Common assaults.*

Common assault  
prosecuted by  
indictment.  
*Ibid.* s. 53.

**61.** Whosoever assaults any person, although not occasioning  
actual bodily harm, shall be liable to imprisonment for two years, and  
if the person assaulted is a female, shall, in addition, be liable to be once  
privately whipped.

*Rape and similar offences.*

Carnal knowledge—  
proof.  
*Ibid.* s. 61.

**62.** "*Carnal knowledge*" shall, in every case under this Act,  
be deemed complete upon proof of penetration only.

Rape.  
*Ibid.* s. 59.

**63.** Whosoever commits the crime of rape shall be liable to  
suffer death.

The consent of the woman, if obtained by threats or terror, shall  
be no defence to a charge under this section.

Trial for rape—  
verdict of carnal  
knowledge.  
*Ibid.* s. 36.

**64.** Where on the trial of a person for rape, the jury are satisfied  
that the female was a girl under the age of fourteen years but above  
the age of ten years and that the accused had carnal knowledge of her  
but with her consent, they may acquit him of the rape charged and  
find him guilty of an offence under section seventy-one of this Act,  
and he shall be liable to punishment accordingly.

Attempt, &c., to  
commit rape.  
*Ibid.* s. 39.

**65.** Whosoever attempts to commit, or assaults any female with  
intent to commit, the crime of rape, shall be liable to penal servitude  
for fourteen years.

Procuring, &c., carnal  
knowledge by fraud.  
*Ibid.* s. 40.

**66.** Whosoever—  
by any false pretence, false representation, or other fraudulent  
means, or by the use of any intoxicating drug, induces, or procures,  
a woman to have illicit carnal connection with a man, or by any  
such means has such connection with a woman; or,

having

*Crimes.*

having by his language or conduct induced any woman to believe that he is her husband, when in fact he is not, has carnal knowledge of such woman with her consent while she is under such belief; shall be liable to penal servitude for fourteen years.

**67.** Whosoever carnally knows any girl under the age of ten years shall be liable to suffer death. Carnally knowing girl under 10. 46 Vic. No. 17, s. 41.

**68.** Whosoever attempts carnally to know any girl under the age of ten years, or assaults any such girl with intent carnally to know her, shall be liable to penal servitude for fourteen years. Attempting, or assaulting with intent, to carnally know girl under 10. Ibid. s. 41.

**69.** Where on the trial of a person for carnally knowing a girl under the age of ten years the jury are satisfied that she was of or above that age but under the age of fourteen years and that the accused had carnal knowledge of such girl, they may acquit him of the offence charged, and find him guilty of an offence under section seventy-one of this Act, and he shall be liable to punishment accordingly. Trial for carnal knowledge—girl in fact over 10. Ibid. s. 369.

**70.** Where on the trial of a person for carnally knowing a girl under the age of ten years the jury are satisfied that she was of or above that age but under the age of fourteen years and that the accused had not carnal knowledge of such girl, but was guilty of an offence under section seventy-two of this Act, they may acquit him of the offence charged and find him guilty of an offence under the said last mentioned section, and he shall be liable to punishment accordingly. Trial for carnal knowledge—verdict of assault with intent. 55 Vic. 5, s. 15.

**71.** Whosoever unlawfully and carnally knows any girl of or above the age of ten years, and under the age of fourteen years, shall be liable to penal servitude for ten years. Carnally knowing girl between 10 and 14. 46 Vic. No. 17, s. 42.

**72.** Whosoever attempts unlawfully and carnally to know any girl above the age of ten years, and under the age of fourteen years, or assaults any such girl with intent carnally to know her, shall be liable to penal servitude for five years. Attempting, or assaulting with intent, to carnally know girl between 10 and 14. Ibid. s. 42.

**73.** Whosoever, being a schoolmaster, or other teacher, or a father, unlawfully and carnally knows any girl of or above the age of ten years, and under the age of sixteen years, being his pupil or daughter, shall be liable to penal servitude for fourteen years. Teacher or father carnally knowing girl between 10 and 16. Ibid. s. 43.

**74.** Whosoever, being a schoolmaster, or teacher, or father, by any means, attempts unlawfully and carnally to know any girl of or above the age of ten years, and under the age of sixteen years, being his pupil or daughter, or

assaults any such girl with intent carnally to know her, shall be liable to penal servitude for seven years.

**75.** Nothing in the two last preceding sections shall prevent such schoolmaster, teacher, or father from being prosecuted under section seventy-one and seventy-two of this Act. Alternative charge. Ibid. s. 43.

**76.** The consent of the girl, pupil, or daughter shall be no defence to any charge under the nine last preceding sections. Consent no defence. Ibid. ss. 42, 43.

*Crimes.*

Indecent assault on  
girl under 14.  
46 Vic. No. 17, s. 44.

**77.** Whosoever indecently assaults any girl under the age of fourteen years, whether with or without her consent, shall be liable to penal servitude for five years.

Indecent assault on  
female of or above 14.  
*Ibid.* s. 44.

**78.** Whosoever indecently assaults any female of or above the age of fourteen years shall be liable to imprisonment for three years.

*Unnatural offences.*

Buggery and  
bestiality.  
*Ibid.* s. 59.

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

Attempt, &c, to  
commit buggery.  
*Ibid.* s. 60.

**80.** Whosoever attempts to commit the said abominable crime, or assaults any person with intent to commit the same, shall be liable to penal servitude for five years.

Indecent assault on  
male.  
*Ibid.* s. 60.

**81.** Whosoever commits an indecent assault upon a male person of whatever age, with or without the consent of such person, shall be liable to penal servitude for five years.

*Attempts to procure abortion.*

Administering drugs,  
&c., to herself by  
woman with child.  
*Ibid.* s. 55.

**82.** Whosoever, being a woman with child, unlawfully administers to herself any drug or noxious thing; or unlawfully uses any instrument or other means, with intent in any such case to procure her miscarriage, shall be liable to penal servitude for ten years.

Administering drugs,  
&c., to woman with  
intent.  
*Ibid.* s. 55.

**83.** Whosoever—  
unlawfully administers to, or causes to be taken by, any woman, whether with child or not, any drug or noxious thing; or unlawfully uses any instrument or other means, with intent in any such case to procure her miscarriage, shall be liable to penal servitude for ten years.

Procuring drugs, &c.  
*Ibid.* s. 56.

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

*Concealing birth of a child.*

Concealing the birth  
of a child.  
*Ibid.* s. 57.

**85.** Whosoever, when any woman has been delivered of a child, by any act after its death, wilfully conceals, or endeavours to conceal the birth of such child, whether it died before or at or after its birth, shall be liable to imprisonment for four years.

*Abduction.*

Abduction of woman  
against her will.  
*Ibid.* s. 45.

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

*Crimes.*

with intent to marry or carnally know her, or to cause her to be married, or carnally known, by any person, shall be liable to penal servitude for fourteen years.

**87.** Whosoever fraudulently allures, takes away, or detains any female under the age of twenty-one years, out of the possession and against the will of any person having the lawful charge of her, with intent to marry or carnally know her, or cause her to be married to or carnally known by any person, shall be liable to penal servitude for seven years.

The like against the will of parent, &c.  
46 Vic. No. 17, s. 46.

**88.** No offender under either of the two last preceding sections shall be capable of taking any estate or interest in any property in right of any such female, and if any marriage has taken place, the property of the wife shall be settled in such manner as the Supreme Court, at the suit of the Attorney-General, may appoint.

In such cases property of woman to remain hers.  
*Ibid.* s. 46.

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

Forcible abduction of a woman.  
*Ibid.* s. 47.

**90.** Whosoever unlawfully takes, or causes to be taken, any unmarried girl under the age of sixteen years, out of the possession and against the will of any person having the lawful charge of her, shall be liable to imprisonment for three years.

Abduction of girl under 16.  
*Ibid.* s. 48.

**91.** Whosoever—  
by force or fraud, leads or takes away, entices away, or detains, any child under the age of twelve years, with intent to deprive any person having the lawful charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, or receives or harbours any such child, knowing such child to have been so led, taken, enticed away, or detained,  
shall be liable to penal servitude for ten years:

Taking child with intent to steal, &c.  
*Ibid.* s. 49.

Provided that this section shall not extend to any person who shall, in good faith, have claimed a right to the possession of such child.

*Bigamy.*

**92.** Whosoever, being married, marries another person during the life of the former husband or wife, shall be liable to penal servitude for seven years:

Bigamy.  
*Ibid.* s. 54.

Provided that no person shall be convicted under this section whose husband or wife has at the time of such second marriage been continually absent from such person for the space of seven years, or, if domiciled in New South Wales at the time of the first marriage, has been continually absent from New South Wales for the space of five years then last past, and was, on reasonable grounds, believed by the accused at the time of the second marriage not to be living, of which facts the proof shall lie on the accused.

Proviso in cases of absence.  
*Ibid.*

**93.**

*Crimes.*

Participator in  
bigamy.

46 Vic. No. 17, s. 54.

**93.** Whosoever, whether married or unmarried, marries the husband or wife of any person not continually so absent, as in the proviso to the last preceding section mentioned, knowing him or her to be married, and the former wife or husband to be alive, shall be liable to penal servitude for five years.

## PART IV.

## OFFENCES RELATING TO PROPERTY.

CHAPTER I.—*Stealing and like offences.*

## ROBBERY.

Robbery or stealing  
from the person.

*Ibid.* s. 90.

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

Same with striking.

*Ibid.* s. 91.

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

Same with wounding.

*Ibid.* s. 91.

**96.** Whosoever commits any offence under the last preceding  
section, and thereby wounds any person, shall be liable to penal servitude  
for life.

Robbery, &c., or  
stopping a mail  
being armed or in  
company.

*Ibid.* s. 92.

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

Robbery with arms,  
&c., and wounding.

*Ibid.* s. 93.

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

## EXTORTION, &amp;c., BY MENACE OR THREAT.

Demanding money  
with intent to steal.

*Ibid.* s. 94.

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

**100.**

*Crimes.*

**100.** Whosoever sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing demanding any property of any person, with menaces or any threat, and without reasonable cause, shall be liable to penal servitude for ten years. Letter demanding money, &c., with menaces. 46 Vic. No. 17, s. 95.

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

**102.** Whosoever, in any manner, by words or otherwise, accuses, or threatens to accuse, either the person to whom such accusation or threat is made, or some other person of any such crime or offence, with intent in any such case to extort or gain property from any person, shall be liable to penal servitude for ten years. Accusing or threatening to accuse of crime to extort money, &c. Ibid. s. 97.

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

**104.** For the purposes of the three last preceding sections the term "*infamous crime*" shall include the crimes of rape, and buggery, or bestiality, with mankind, or an animal, and every assault with intent to commit, or attempt to commit, any such crime, and every solicitation, promise, or threat, offered, or made, to any person whereby to induce him to commit, or permit, any such crime. Term "infamous crime" defined. Ibid. s. 99.

**105.** It shall be immaterial whether any such menace or threat, as aforesaid, is of violence, or injury, or of an accusation to be caused, or made, by the offender, or by any other person, or whether the accusation, if made, shall purport to be that of the offender, or some other person. Menace may be of violence or accusation, &c. Ibid. s. 100.

SACRILEGE, BURGLARY AND HOUSEBREAKING.

**106.** Whosoever—  
breaks and enters any place of Divine worship and commits any felony therein, or,  
being in any place of Divine worship, commits any felony therein and breaks out of the same,  
shall be liable to penal servitude for fourteen years. Breaking and entering place of Divine worship and committing felony. Ibid. s. 101.

**107.** Whosoever breaks and enters any place of Divine worship, with intent to commit felony therein, shall be liable to penal servitude for seven years. The like with intent to commit felony. Ibid. s. 108.

**108.**



*Crimes.***Burglary.**

46 Vic. No. 17, s. 102.

Entering with  
intent, or stealing,  
&c., in dwelling-  
house and breaking  
out.

*Ibid.* s. 102.

**108.** Whosoever commits the crime of burglary shall be liable to penal servitude for fourteen years.

**109.** Whosoever—

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

Breaking, entering,  
and assaulting with  
intent to murder, &c.

*Ibid.* s. 103.

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

Entering dwelling-  
house in the night.

*Ibid.* s. 104.

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

Breaking, &c., into  
any house, &c., and  
committing felony.

*Ibid.* ss. 106, 107.**112.** Whosoever—

breaks and enters any dwelling-house, or any building within the curtilage of any dwelling-house and occupied therewith but not being part thereof, or any school-house, shop, warehouse, or counting-house, and commits any felony therein, or,  
being in any dwelling-house, or any such building, as aforesaid, or any school-house, shop, warehouse, or counting-house, commits any felony therein and breaks out of the same,  
shall be liable to penal servitude for ten years.

Breaking, &c., into  
any house, &c., with  
intent to commit  
felony.

*Ibid.* s. 108.

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

Being found at night  
with intent to  
commit felony.

*Ibid.* s. 109.

**114.** Whosoever is found at night under any of the following circumstances, that is to say:—

being armed with any weapon, or instrument, with intent to enter a building and to commit felony therein, or  
having in his possession, without lawful excuse, any implement of housebreaking, or  
having his face blackened, or otherwise disguised, with intent to commit felony, or  
entering, or being in any building with intent to commit felony therein,

shall be liable to penal servitude for five years.

The like after a  
previous conviction.

*Ibid.* s. 110.

**115.** Whosoever, having been convicted of any felony or misdemeanour, afterwards commits any offence mentioned in the last preceding section, shall be liable to penal servitude for seven years.

**116.**

*Crimes.*

## LARCENY.

*Declaratory.*

**116.** Every larceny, whatever the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny was before the passing of the Act seventh and eighth George the Fourth, chapter twenty-nine.

All larcenies to be of same nature.  
46 Vic. No. 17, s. 70.

*Simple larceny and general provisions.*

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

Punishment for simple larceny.  
*Ibid.* s. 72.

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

Intent to return property no defence.  
*Ibid.* s. 368.

**119.** Where, on the trial of a person for larceny, it appears that the property alleged in any court to have been stolen at one time, was taken at different times, the prosecutor shall not be required to elect upon which taking he will proceed, unless the Judge so orders:

Verdict where several takings proved.  
*Ibid.* s. 364.

Provided always that evidence shall not, in any case, be given of more than three takings, nor of any taking which occurred more than six months in point of time from any other of such takings.

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

Trial for larceny—verdict of embezzlement, &c.  
*Ibid.* s. 366.

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

Verdict of "larceny or receiving."  
*Ibid.* s. 363.

*Crimes.*

Verdict where persons indicted for joint larceny or receiving.

46 Vic. No. 17, s. 365.

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

Verdict of misdemeanour.

*Ibid.* s. 371.

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

Verdict of offence punishable summarily.

*Ibid.* s. 371.

**124.** Where, on the trial of a person for larceny, it appears that he took the property in question under circumstances constituting an offence punishable summarily under this Act, the jury may return a verdict accordingly, and thereupon he shall be liable to be punished as if he had been convicted of such offence before a court of summary jurisdiction.

*Larceny by bailees.*

Larceny by bailee.

*Ibid.* s. 71.

**125.** Whosoever, being a bailee of any property, fraudulently takes, or converts, the same, or any part thereof, or any property into or for which it has been converted, or exchanged, to his own use, or the use of any person other than the owner thereof, although he does not break bulk, or otherwise determine the ailment, shall be deemed to be guilty of larceny, and may be convicted thereof upon an indictment for simple larceny.

The accused shall be taken to be a bailee within the meaning of this section, although he may not have contracted to restore, or deliver, the specific property received by him, or may only have contracted to restore, or deliver, the property specifically.

*Of animals.*

Stealing cattle, or killing with intent to steal.

*Ibid.* s. 73.

**126.** Whosoever—  
steals any cattle, or  
wilfully kills any cattle with intent to steal the carcass, or skin, or other part, of the cattle so killed,  
shall be liable to penal servitude for ten years.

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

*Ibid.* s. 74.

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

Trial for stealing cattle—verdict of stealing skins.

*Ibid.* s. 367.

**128.** Where, on the trial of a person for stealing cattle, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of stealing the carcass, or skin, or part, of such cattle, or of killing the  
the

*Crimes.*

the said cattle within section one hundred and twenty-six of this Act, they may acquit him of the offence charged and find him guilty of such last-mentioned stealing, or killing, and he shall be liable to punishment accordingly.

**129.** Where, on the trial of a person for the offence of killing cattle within the meaning of section one hundred and twenty-six of this Act, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of stealing such cattle, they may acquit him of the offence charged, and find him guilty of such stealing, and he shall be liable to punishment accordingly. Trial for killing cattle—verdict of stealing. 46 Vic. No. 17, s. 367.

**130.** Where, on the trial of a person for stealing cattle, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of an offence within the next following section, they may acquit him of the offence charged, and find him guilty of an offence under the said last mentioned section, and he shall be liable to punishment accordingly. Trial for stealing cattle—verdict of misdemeanour. Ibid. s. 375.

**131.** Whosoever—  
takes and works, or otherwise uses, or takes for the purpose of working or using, any cattle the property of another person without the consent of the owner, or person in lawful possession thereof, or takes any such cattle for the purpose of secreting the same, or obtaining a reward for the restoration or pretended finding thereof, or for any other fraudulent purpose, or fraudulently brands, or ear-marks, or defaces, or alters, the brands or ear-marks of any cattle the property of another person, shall be liable to imprisonment for three years. Unlawfully using, &c., another person's cattle. Ibid. ss. 155, 156. 55 Vic. No. 5, s. 14.

**132.** Whosoever, having been summarily convicted under this or any former Act, of any such offence as is hereinafter in this section mentioned, afterwards,  
steals any dog, or has unlawfully in his possession any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen, shall be liable to imprisonment for one year. Stealing dogs. 46 Vic. No. 17, ss. 75, 457.

**133.** Whosoever corruptly takes any money or reward, directly or indirectly, under pretence, or upon account, of aiding any person to recover any dog which has been stolen, or which is in the possession of any person other than its owner, shall be liable to imprisonment for one year. Taking money to restore dogs. Ibid. s. 76.

*Of written instruments.*

**134.** Whosoever steals, embezzles, or for any fraudulent purpose destroys, cancels, obliterates, or conceals, the whole or any part of any valuable security, shall be liable, as if he had stolen a chattel, to be punished as for simple larceny. Stealing, destroying, &c., valuable security. Ibid. s. 77, and 7 Vic. No. 16, s. 28.

**135.** Whosoever steals, or, for any fraudulent purpose, destroys, cancels, obliterates, or conceals, the whole or any part of any will, codicil, Stealing, destroying, &c., wills or codicils, 46 Vic. No. 17, s. 78.

or

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or other testamentary instrument, either during the life of the testator or after his death, or whether the same relates to real or personal estate, or to both, shall be liable to penal servitude for seven years.

Proviso to the two last preceding sections.  
46 Vic. No. 17, s. 79.

**136.** No person shall be convicted under either of the two last preceding sections in respect of any act done by him, if, before being charged with the offence, he first disclosed such act on oath, under compulsory process, in a proceeding instituted in good faith by a party aggrieved, or under compulsory examination in some matter in bankruptcy, or insolvency.

Civil remedies not affected by conviction.  
*Ibid.* s. 79.

**137.** (1) Nothing in the said two sections, nor any proceeding, conviction, or judgment thereupon, shall affect any remedy at law, or in equity, which any party aggrieved would have had if this Act had not been passed.

Evidence of conviction inadmissible.  
*Ibid.* s. 79.

(2) No evidence of the conviction of any person under either of the said sections shall be admissible in any action or suit against him.

Stealing, destroying, &c., records, &c., of any court or public office.  
*Ibid.* s. 80.

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

*Of things attached to or growing on land.*

Stealing, &c., metal, glass, wood, &c., fixed to house or land.  
*Ibid.* s. 81.

**139.** Whosoever steals, or rips, cuts, severs, or breaks with intent to steal, any glass, or woodwork, belonging to any building, or any metal, or any utensil, or fixture, whether made of metal or other material, or of both respectively, fixed in, or to, any building, or anything made of metal, fixed in any land being private property, or used as a fence to any dwelling-house, garden, or area, or being in any square, or street, or in, or on, any place dedicated to public use or ornament, or in any burial-ground, shall be liable to be punished as for simple larceny.

Stealing, &c., trees, &c., in pleasure-grounds.  
*Ibid.* s. 82.

**140.** Whosoever—  
steals, or destroys or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood, growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground belonging to any dwelling-house, where the value of the article stolen, or the amount of injury done, exceeds twenty shillings, or

The like elsewhere.

steals, or destroys or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood respectively

*Crimes.*

respectively growing elsewhere than in any situation before-mentioned, where the value of the article stolen, or the amount of injury done, exceeds five pounds, shall be liable to be punished as for simple larceny.

**141.** Whosoever, having been twice summarily convicted, under this or any former Act, of any such offence as is hereinafter in this section mentioned, afterwards steals, or destroys or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood, if the value thereof, or the amount of injury done, exceeds five shillings, shall be liable to be punished as for simple larceny.

Stealing, &c., trees, &c., of value of 5s. Third offence. 46 Vic. No. 17, ss. 83 and 457.

**142.** Whosoever, having been twice summarily convicted under this or any former Act, of any such offence as is hereinafter in this section mentioned, afterwards steals, or destroys or damages with intent to steal, any dead wood lying on land in the occupation of another person, if such wood exceeds in value five shillings, shall be liable to be punished as for simple larceny.

Stealing dead wood. Third offence. *Ibid.* ss. 84, 457.

**143.** Whosoever, having been twice summarily convicted under this or any former Act, of any such offence as is hereinafter in this section mentioned, afterwards steals, or destroys or damages with intent to steal, any plant, root, fruit, or vegetable production, growing in any garden, orchard, pleasure-ground, nursery-ground, hot-house, greenhouse, or conservatory, shall be liable to be punished as for simple larceny.

Stealing fruit or vegetable in a garden, &c. Third offence. *Ibid.* ss. 85, 457.

*From mines.*

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

Stealing ore or metal coal, &c. *Ibid.* s. 86.

**145.** Whosoever, being employed in or about any mine, or claim, or any land comprised in any lease, or promise of lease, for mining purposes by or on behalf of the Crown, takes, removes, or conceals, any gold, or the ore of any metal, or any metal or mineral of commercial value, found, or being in such mine, claim, or land, with intent to defraud any mining company, or partnership, or any proprietor of, or adventurer in, such mine, claim, or land, or any workman or miner employed therein shall be liable to imprisonment for three years.

Miners removing ore with intent to defraud. *Ibid.* s. 87.

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

Concealing royalty. *Ibid.* s. 88.

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

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conceals,

*Crimes.*

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

Fraud on partners  
in mines, &c.  
46 Vic. No. 17, s. 89.

**147.** Whosoever, with intent to defraud his co-partner, or co-adventurer, in any claim, or land comprised in any lease, or promise of lease, for mining purposes by or on behalf of the Crown, or in any share or interest therein, secretly keeps back, or conceals, any gold, or any other metal or mineral of commercial value, found in, or upon, or taken from, such claim or land, shall be liable to be punished as for simple larceny.

*In dwelling-house.*

Stealing to value of  
£5.  
*Ibid.* s. 111.

**148.** Whosoever steals in a dwelling-house any property, to the value in the whole of five pounds or more, shall be liable to penal servitude for seven years.

The same with  
menaces.  
*Ibid.* s. 111.

**149.** Whosoever steals any property in a dwelling-house, and uses thereafter any menace or threat to any person therein, shall be liable to penal servitude for fourteen years.

*Of goods in process of manufacture, tools, &c.*

Stealing goods in  
process of manu-  
facture.  
*Ibid.* s. 112.

**150.** Whosoever steals, 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 a term not exceeding three years.

Selling, &c., materials  
to be manufactured.  
*Ibid.* s. 113.

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

*From ships or wharfs.*

Stealing from ship  
in port or on  
wharfs, &c.  
*Ibid.* s. 115.

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

Stealing from ship  
in distress or  
wrecked:  
*Ibid.* s. 116.

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

*By*

*Crimes.**By tenants or lodgers.*

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

Tenants &c, stealing articles let to hire.  
46 Vic. No. 17,  
s. 125.

## EMBEZZLEMENT OR LARCENY.

*By clerks and servants.*

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

Definition of clerk or servant.  
*Ibid.* s. 119.

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

Larceny by clerks or servants.  
*Ibid.* s. 117.

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

Embezzlement by clerks or servants.  
*Ibid.* s. 118.

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

Destruction, falsification of accounts, &c., by clerk or servant.  
*Ibid.* s. 140.

*By persons employed in the Public Service.*

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

Larceny by persons in Public Service.  
*Ibid.* s. 121.



*Crimes.*

Embezzlement, &c.,  
by persons in the  
Public Service.  
46 Vic. No. 17, s. 122.

**160.** Whosoever, being employed in the Public Service, fraudulently embezzles any property, or any part thereof, so intrusted to him, or taken into his possession, or being in his custody, or under his control, or fraudulently secretes, removes, or in any manner fraudulently applies, or disposes of, the same, or any part thereof, shall be deemed to have stolen the same, and shall be liable to penal servitude for ten years.

*General deficiency.*

Proof of general  
deficiency in  
accounts.  
*Ibid.* s. 120.  
55 Vic. No. 5, s. 12.

**161.** On the prosecution of a person for larceny, or embezzlement as a clerk, or servant, or as a person employed in the Public Service, where the charge is in respect of money, it shall not be necessary to prove the larceny, or embezzlement, by the accused of any specific sum of money, if there is proof of a general deficiency on the examination of the books of account, or entries kept, or made by him, or otherwise, and the jury are satisfied that he stole, or fraudulently embezzled the deficient money, or any part thereof.

*By joint owners.*

Larceny, &c., by  
joint owners.  
46 Vic. No. 17, s. 124.

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

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

*Alternative verdict.*

Trial for embezzlement—verdict of  
larceny.  
*Ibid.* s. 366.

**163.** Where, on the trial of any person for embezzlement, or the fraudulent application, or disposition, of property as a clerk, or servant, or person employed in the Public Service, it appears that he obtained the property in such manner as to amount in law to larceny, the jury may acquit him of the offence charged, and find him guilty of simple larceny, or of larceny as such clerk, servant, or person, as the case may be, and he shall be liable to punishment accordingly.

## FRAUDS BY FACTORS AND OTHER AGENTS.

Terms “agent,”  
“intrusted,” and  
“misappropriate.”  
*Ibid.* s. 129.

**164.** For the purposes of the seven next following sections—  
“*intrusted*” means intrusted, either solely, or jointly, with any other person—  
“*agent*” includes bankers, merchants, attorneys, factors, brokers, and every other person acting in the capacity of an agent so intrusted—  
“*misappropriate*”

*Crimes.*

“ *misappropriate* ” means appropriate in any manner, whether by sale, pledge, or otherwise, to the agent’s own use or benefit, or the use or benefit of some one other than the person, by, or for whom, he was so intrusted.

**165.** Whosoever having been intrusted as an agent with any money, or security for the payment of money, with a direction in writing to apply, pay, or deliver, such money, or security, or any part thereof, respectively, or the proceeds, or any part of the proceeds, of such security for any purpose, or to any person specified in such direction, misappropriates in any manner such money, security, or proceeds, or any part thereof, respectively, in violation of good faith, and contrary to the terms of such direction, shall be liable to penal servitude for ten years.

Agent misappropriating money, &c., intrusted to him.  
46 No. No. 17, ss. 126, 138.

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

The like as to goods, &c., intrusted to him.  
*Ibid.* ss. 127, 138.

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

Not to affect trustees or mortgagees nor to restrain agents from receiving money on valuable securities, &c.  
*Ibid.* s. 128.

**168.** Whosoever, being an agent intrusted with property for safe custody, fraudulently sells, negotiates, transfers, pledges, or in any manner misappropriates, the same, or any part thereof, shall be guilty of a misdemeanour.

Fraudulent sale of property by agent.  
*Ibid.* s. 130.

**169.** Whosoever, being intrusted with any power of attorney for the sale, or transfer, of property, fraudulently sells, transfers, or otherwise misappropriates the same, or any part thereof, shall be liable to penal servitude for ten years.

The same by person under power of attorney.  
*Ibid.* ss. 130, 138.

**170.** Whosoever, being an agent intrusted with property for the purpose of sale, or otherwise disposing of the same, otherwise than for the use of his principal, and in violation of good faith, transfers, consigns, pledges, or delivers the same, or any part thereof,

Agent obtaining advances on property of his principal.  
*Ibid.* ss. 131, 133

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thereof, as security for money, or other valuable thing, borrowed, or received, or to be borrowed, or received, by such agent, or, otherwise than for the use of his principal, and in violation of good faith, obtains any advance of money, or other valuable thing, upon any undertaking by him to transfer, consign, pledge, or deliver such property, or any part thereof, or assists in the making of any such transfer, consignment, pledge, or delivery, or in the obtaining of any such advance, knowing the same in any such case to be in violation of good faith, shall be liable to penal servitude for ten years:

(cf. 30 Vic. No. 13, s. 6)

Prov'iso.

Provided that nothing in this section shall extend to any transfer, consignment, pledge, or delivery, made, or agreed to be made, as security for no greater sum than the amount, if any, then due to such agent, and of any current bill, or bills, drawn by, or on account of, his principal and accepted by such agent.

What to be deemed intrusting with goods, &c.  
46 Vic. No. 17, s. 132.  
(cf. 30 Vic. No. 13, s. 6).

**171.** For the purposes of the last preceding section—

- (1) every agent intrusted with the possession of a document of title to property, whether derived immediately from the owner of the property, or obtained by such agent by reason of his having possession of such property, or of some other document of title thereto, shall be deemed to have been intrusted with the property indicated by such document;
- (2) every transfer, pledge, or delivery, of any such document shall be deemed a transfer, pledge, or delivery, of the property indicated by the same;
- (3) Where any such document, or the property thereby indicated, is held by any person on the behalf, or subject to the control, of any such agent, the same shall be taken to be in the possession of such agent;
- (4) every agent in possession of property, or of any such document of title, shall be taken to have been intrusted therewith by the owner, unless the contrary is shown.

Trustees fraudulently disposing of property.  
*Ibid.* ss. 133, 138.

**172.** Whosoever, being a trustee of property for the use or benefit, wholly or partially, of some other person, or for any public or charitable purpose,

converts, or appropriates, the same, or any part thereof, for the use or benefit of himself, or some other person, or for any other than such public or charitable purpose, or, otherwise disposes of, or destroys such property, or any part thereof, in violation in any such case of good faith, and with intent to defraud, shall be liable to penal servitude for ten years:

No prosecution without leave of a Judge, &c.

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

*Crimes.*

- 173.** Whosoever, being a director, officer, or member, of any body corporate, or public company, fraudulently takes, or applies, for his own use or benefit, or any use or purpose other than the use or purpose of such body corporate, or company, or fraudulently destroys any of the property of such body corporate, or company, shall be liable to penal servitude for ten years. Directors, &c., fraudulently appropriating, &c., property. 46 Vic. No. 17, ss. 131, 133.
- 174.** Whosoever, being a director or officer of any body corporate, or public company, receives, or possesses himself, of any of the property of such body corporate, or company, otherwise than in payment of a just debt, and, with intent to defraud, omits to make, or direct to be made, a true and sufficient entry thereof in the books, or accounts, of such body corporate, or company, shall be liable to penal servitude for ten years. Director, &c., omitting certain entries. *Ibid.* ss. 135, 133.
- 175.** Whosoever, being a director, officer, or member, of any body corporate, or public company, destroys, alters, mutilates, or falsifies, any book, entry, paper-writing, or valuable security, belonging to such body corporate, or company, or makes, or concurs in making, any false entry, or omits, or concurs in omitting, any material particular in any book of account, or other document, with intent in any such case to defraud, shall be liable to penal servitude for ten years. Director, &c., wilfully destroying, &c., books of company, &c. *Ibid.* ss. 136, 138.
- 176.** Whosoever, being a director, or officer, of any body corporate, or public company, makes, circulates, or publishes, or concurs in making, circulating, or publishing, any written statement, or account, which he knows to be false in any material particular, with intent to deceive, or defraud, any member, shareholder, or creditor, of such body corporate, or company, or with intent to induce any person to become a shareholder, or partner therein, or to intrust, or advance, any property to such body corporate, or company, or to enter into any security for the benefit thereof, shall be liable to penal servitude for ten years. Director or officer publishing fraudulent statements. *Ibid.* ss. 137, 138.
- 177.** No person shall be convicted of any offence under any of the twelve last preceding sections in respect of any act or omission by him, if, before being charged with the offence, he first disclosed such act or omission, on oath, under compulsory process, in a proceeding instituted by a party aggrieved, or under compulsory examination in some matter in bankruptcy, or insolvency. Proviso to ss. 165 to 176 incl. *Ibid.* s. 139.
- 178.** (1) Nothing in the said twelve sections shall relieve any person from making a full discovery, by answer to interrogatories in equity, or from answering any question in a civil proceeding. No relief from compulsory disclosures. *Ibid.* s. 139.
- (2) No evidence of the conviction of any person, under any of the said sections, shall be admissible in any suit against him. (cf. 30 Vic. No. 13, s. 6.)

(3)

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*Crimes.*


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Civil remedies, &c.,  
not affected by con-  
viction.  
46 Vic. No. 17, s. 139.

(3) Nothing in the said sections, nor any proceeding or conviction under them, shall affect any remedy which any party would have had if this Act had not been passed, nor shall affect any agreement entered into, or security given, by a trustee, having for its object the restoration, or repayment, of any trust property misappropriated.

FALSE PRETENCES.

False pretences.  
*Ibid.* s. 141.

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

Causing payment,  
&c., by false  
pretence.  
*Ibid.* s. 142.

**180.** Where the accused, by any false pretence, or partly by a false pretence and partly by a wilfully false promise, causes, or procures, any money to be paid, or any property to be delivered, to himself, or any other person for the use or benefit, or on account of himself, or any other person, with intent to defraud, he shall be deemed to have obtained the same within the meaning of the last preceding section.

False pretence of  
title.  
*Ibid.* s. 143.

**181.** Where the accused falsely, and with intent to defraud, represents that he has a title, or right, to certain property, or to convey, or dispose of, certain property, knowing such representation to be false, and thereby obtains any property, he shall be deemed to have obtained the same within the meaning of section one hundred and seventy-nine.

Accused may be  
convicted on a charge of  
false pretences though  
property obtained partly  
by a false promise.  
55 Vic. No. 5, s. 13.

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

Trial for false  
pretences, &c.—  
verdict of larceny.  
46 Vic. No. 17, s. 366.

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

Fraudulent  
personation.  
*Ibid.* s. 144.

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

Nothing in this section shall prevent any person so personating, or pretending, from being proceeded against in respect of such act, or pretence, under any other enactment or at Common Law.

Including persons by  
fraud to execute  
instruments.  
*Ibid.* s. 145.

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

**186.**

*Crimes.*

CORRUPT REWARDS.

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

Taking reward for helping to recover stolen property.  
46 Vic. No. 17, s. 146.

RECEIVERS.

**187.** For the purposes of the two next following sections—  
“*Stealing*” includes the taking, extorting, obtaining, embezzling, or otherwise disposing of the property in question.

Term “stealing” in two following sections.  
*Ibid.* s. 147.

**188.** Whosoever receives any property, the stealing whereof amounts to felony, knowing the same to have been stolen, shall be guilty of felony, and may be indicted, either as an accessory after the fact, or for a substantive felony, and in the latter case whether the principal felon has been previously tried or not, or is amenable to justice or not, and in either case shall be liable to penal servitude for ten years.

Receiving where principal guilty of felony.  
*Ibid.* s. 147.

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

Receiving where principal guilty of misdemeanour.  
*Ibid.* s. 148.

**190.** Whosoever—

receives any animal, feloniously killed, with intent to steal the carcass, or skin, or other part thereof, knowing the same to have been so killed, or

Receiving cattle feloniously killed, or carcass, &c.  
*Ibid.* s. 149.

receives any part of an animal so killed, or of an animal feloniously stolen, knowing it to have been so killed or so stolen, shall be guilty of felony, and may be indicted and punished as if the animal had been stolen, and the accused had feloniously received the same.

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

Uncertainty as to sex or age not to entitle to acquittal.  
*Ibid.* s. 149.

**192.** Whosoever receives any goods, article, or material or any tools, or apparatus for manufacturing, or working up, the same, knowing the same to have been purloined, embezzled, or secreted, within the meaning of section one hundred and fifty-one of this Act, or that the person offering the same is fraudulently disposing thereof, shall be liable to imprisonment for four years.

Receiving material or tools intrusted for manufacture.  
*Ibid.* s. 114.

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

Verdict where several persons are indicted for jointly receiving.  
*Ibid.* s. 365.

CHAPTER

CHAPTER II.—*Malicious injuries to property.**Declaratory and general.*

Ownership and possession of property injured.  
43 Vic. No. 17, s. 228.

**194.** (1) Every act of malicious injury to property punishable under this Act shall be an offence so punishable, whether the property belonged to a private person, or to Her Majesty, or was otherwise of a public nature.

(2) Every act of malicious injury done to property by any person, with intent to injure or defraud another, shall be an offence within this Act, although the offender was, at the time of its commission, in lawful possession of such property.

Actual malice.  
*Ibid.* s. 229.

**195.** On the trial of a person for any such act, it shall not be necessary to prove the existence of malice, either against the owner of the property, or against any other person:

Provided that:

Certain acts not malicious.

No act shall be deemed malicious which was done by the accused under a reasonable supposition that he had a right to do such act.

*Injuries to buildings, &c., by fire.*

Setting fire to dwelling knowing person therein.  
*Ibid.* s. 177.

**196.** Whosoever maliciously sets fire to any dwelling-house, knowing any person to be then in such dwelling-house, shall be liable to suffer death.

Setting fire to dwelling a person being therein or to a church  
*Ibid.* s. 177.

**197.** Whosoever maliciously sets fire to any dwelling-house, any person being then in such dwelling-house, or to any place of Divine worship, shall be liable to penal servitude for life.

Setting fire to certain other buildings.  
*Ibid.* s. 178.

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

Setting fire to railway station or public building.  
*Ibid.* s. 179.

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

Setting fire to other buildings.  
*Ibid.* s. 180.

**200.** Whosoever maliciously sets fire to any building not herein-before mentioned shall be liable to penal servitude for ten years.

Setting fire to things in or adjacent to buildings.  
*Ibid.* s. 181.

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

Attempt to set fire to buildings.  
*Ibid.* s. 182.

**202.** Whosoever maliciously attempts to set fire to any such building, or matter, or thing, as aforesaid, shall be liable to penal servitude for five years.

*Crimes.**Injuries to buildings by explosive substances.*

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

Destroying or  
damaging a house  
with gunpowder.  
46 Vic. No. 17, s.  
183.

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

Attempting to  
destroy building with  
gunpowder.  
*Ibid.* s. 184.

*Injuries to buildings by rioters.*

**205.** Whosoever is one of any persons riotously and tumultuously assembled together, to the disturbance of the public peace, who unlawfully and with force demolish, pull down, or destroy, or begin, or attempt, to demolish, pull down, or destroy, any such place, or building, or erection, as is mentioned in sections one hundred and ninety-six to one hundred and ninety-nine inclusive of this Act, or any machinery, whether fixed or movable, prepared for employment, or employed, in any manufacture, or any steam-engine, or other engine, for sinking, working, ventilating, or draining, any mine, or any shaft, or erection, used in conducting the business of any mine, or any bridge, waggon-way, tramway, trunk, or shoot, for conveying minerals from any mine, shall be liable to penal servitude for ten years.

Rioters demolishing  
buildings or  
machinery.  
*Ibid.* s. 185.

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

Riotous demolition  
—alternative verdict.  
*Ibid.* s. 376.

**207.** Whosoever is one of any persons riotously and tumultuously assembled together, to the disturbance of the public peace, who unlawfully and with force injure or damage any such place, or building, or erection, as is mentioned in sections one hundred and ninety-six to one hundred and ninety-nine inclusive, or in section two hundred and five, shall be liable to penal servitude for seven years.

Rioters injuring  
building, &c.  
*Ibid.* s. 185.

*Injuries to buildings by tenants.*

**208.** Whosoever, being possessed of any building, or part of any building, held for any period, or at will, or held over after the termination of any tenancy,

Tenants maliciously  
injuring houses.  
*Ibid.* s. 187.

maliciously



*Crimes.*

maliciously pulls down, or demolishes, or begins, or attempts, to pull down, or demolish, the same, or any part thereof, or, maliciously pulls down, or severs from the freehold, any fixture belonging to such building, shall be liable to imprisonment for three years.

*Injuries to manufactures, machinery, &c.*

Injuring machinery or goods in process of manufacture.  
45 Vic. No. 17, s. 183.

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

Injuring agricultural and other machines.  
*Ibid.* s. 189.

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

*Injuries to corn, hay-stacks, trees, &c.*

Setting fire to crops.  
*Ibid.* s. 190.

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

Setting fire to stacks, &c  
*Ibid.* s. 191.

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

Setting fire to fences.  
*Ibid.* s. 192.

**213.** Whosoever maliciously sets fire to any fence, or to any timber cut, laid down, or prepared, for the purpose of fencing, shall be liable to penal servitude for ten years.

Attempts to set fire to such things.  
*Ibid.* s. 192.

**214.** Whosoever maliciously attempts to set fire to any matter, article, or thing, in the three last preceding sections mentioned, shall be liable to penal servitude for seven years.

**215.**

*Crimes.*

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

Destroying hopbinds, vines, &c.  
46 Vic. No. 17, s. 193.

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

Injuring trees, shrubs, &c., in pleasure-ground, &c.  
*Ibid.* s. 194.

**217.** Whosoever maliciously destroys, or damages, any tree, sapling, shrub, or plant, or any underwood growing elsewhere than in any place mentioned in the last preceding section, if the amount of injury done exceeds five pounds, shall be liable to penal servitude for five years.

The like to value of over £5 elsewhere.  
*Ibid.* s. 195.

**218.** Whosoever, having been twice summarily convicted under this or any former Act of any such offence as is hereinafter in this section mentioned, afterwards maliciously destroys, or damages, any tree, sapling, shrub, or plant, or any underwood, if the injury done exceeds one shilling, shall be liable to imprisonment for two years.

Injuring trees, &c., after two summary convictions.  
*Ibid.* ss. 196, 457.

**219.** Whosoever, having been summarily convicted under this or any former Act of any such offence as is hereinafter in this section mentioned, afterwards maliciously destroys, or damages, any plant, root, fruit, or vegetable produce, growing in any garden, orchard, nursery-ground, hothouse, greenhouse, or conservatory, shall be liable to penal servitude for five years.

Destroying plant, &c., in a garden after one summary conviction.  
*Ibid.* ss. 197, 457.

**220.** Whosoever—  
maliciously drives any cattle into, or upon, any enclosed land then under cultivation, or  
maliciously pulls, or breaks down, or removes, cuts, or severs, any fence, wall, dyke, or palisade, or  
maliciously opens, or leaves open, any gate, or slip-rail,  
with intent in any such case to allow cattle to stray in or upon such enclosed land,  
shall be liable to imprisonment for four years.

Driving cattle, &c., on to cultivated land.  
*Ibid.* s. 198.

*Injuries to mines.*

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

Setting fire to coal-mine.  
*Ibid.* s. 199.

**222.** Whosoever maliciously attempts to set fire to any such mine, or well, as in the last preceding section mentioned, shall be liable to penal servitude for fourteen years.

Attempt to fire coal-mine.  
*Ibid.* s. 199.

**223.** Whosoever—  
maliciously causes any water to be conveyed, or run, into any mine, or into any subterraneous passage communicating therewith, or  
maliciously

Conveying water into mine, shaft, &c.  
*Ibid.* s. 200.

*Crimes.*

maliciously pulls down, fills up, or obstructs, or damages, with intent to destroy, obstruct, or render useless, any airway, waterway, drain, pit, level, or shaft, of or belonging to any mine, with intent in any such case to destroy, or damage, such mine, or to hinder, or delay, the working thereof, shall be liable to penal servitude for seven years.

Damaging engines, staiths, waggon-ways.  
46 Vic. No. 17, s. 201.

**224.** Whosoever—

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

*Injuries to sea or river banks, &c.*

Destroying sea or river bank or wall.  
*Ibid.* s. 202.

**225.** Whosoever—

maliciously breaks down, cuts down, or otherwise destroys or damages, any sea-bank, or sea-wall, or the bank, dam, or wall, of or belonging to, any river, creek, canal, drain, reservoir, pool, or marsh, whereby any land or building is, or probably may be, overflowed, or damaged, or maliciously throws, breaks, or cuts down, levels, undermines, or otherwise destroys, or damages, any water-course, aqueduct, pipe, dam, embankment, cutting, or reservoir, connected with any work for the supply or conservation of water, or any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, 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.

**226.** Whosoever—

maliciously cuts off, draws up, or removes, any materials, fixed in, or placed on, the ground, and used for securing any sea-bank, or sea-wall, or the bank, dam, or wall, of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or maliciously opens, or draws up, any floodgate, or sluice, or does any other inquiry to any navigable river or canal with intent to obstruct,

Removing piles, or obstructing navigation of river.  
*Ibid.* s. 203.

or

*Crimes.*

or prevent, the carrying on, completion, or maintaining, the navigation thereof,  
shall be liable to penal servitude for seven years.

*Injuries to ponds, reservoirs, &c.*

**227.** Whosoever—  
maliciously cuts through, breaks down, or destroys, the dam, floodgate, or sluice, of any fish-pond, or of any water being private property, with intent thereby to take, or destroy, any fish in such pond or water, or so as to cause the loss, or destruction, of any such fish, or maliciously puts any lime, or other noxious material, in any such pond of water, with intent thereby to destroy any fish then, or that may thereafter be, therein, or  
maliciously cuts through, breaks down, or destroys, the dam, or floodgate, of any mill-pond, reservoir, or pool,  
shall be liable to imprisonment for four years.

Breaking down dams,  
&c., poisoning fish.  
46 Vic. No 17, s. 234.

*Injuries to bridges, viaducts, and toll-bars.*

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

Injury to a public  
bridge, &c.  
*Ibid.* s. 205.

**229.** Whosoever maliciously throws down, levels, or otherwise destroys, in the whole, or in part, any turnpike-gate, or toll-bar, or any wall, chain, rail, post, bar, or other fence, belonging to any turnpike-gate, or toll-bar, erected to prevent passengers passing by without paying toll, or any house, building, or weighing-engine, erected for the better collection, ascertainment, or security, of any such toll, shall be liable to imprisonment for one year.

Destroying turnpike-  
gate, &c.  
*Ibid.* s. 206.

*Injuries to railway carriages and telegraphs.*

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

Certain acts, &c., on  
railway, with intent  
to obstruct, &c.  
*Ibid.* s. 207.

**231.**

*Crimes.*

Obstructing railways  
—verdict of  
misdemeanour.  
46 Vic. No. 17,  
s. 377.

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

Obstructing engines  
or carriages on  
railways.  
*Ibid.* s. 209.

**232.** Whosoever, by any unlawful act, or wilful omission, or neglect, obstructs, or causes to be obstructed, the passing, or working, of any engine, or carriage, on any railway, or aids, or assists, in any such offence, shall be liable to imprisonment for three years.

Injuring telegraph  
posts, &c.  
*Ibid.* s. 208.

**233.** Whosoever—  
maliciously destroys, breaks, removes, or in any manner damages, any telegraph post, or wire, or any part thereof, or any insulator attached to any such post, or,  
by any unlawful act, wilfully obstructs the passing of any message along any such wire,  
shall be liable to imprisonment for three years.

Attempt.  
*Ibid.* s. 208.

**234.** Whosoever maliciously attempts to commit any offence in the last preceding section mentioned, shall be liable to imprisonment for one year.

*Injuries to vessels.*

Setting fire to vessels,  
any person being  
therein.  
*Ibid.* s. 212.

**235.** Whosoever maliciously sets fire to, or casts away, or by any means destroys, any vessel which is afloat, any person being then in such vessel, shall be liable to suffer death.

Setting fire to vessels.  
*Ibid.* s. 212.

**236.** Whosoever—  
maliciously sets fire to, or casts away, or in anywise destroys, any vessel, whether complete or unfinished, or  
maliciously, and with intent to destroy such vessel, sets fire to the tackle, apparel, or furniture, of such vessel, or any goods therein,  
shall be liable to penal servitude for life.

Setting fire to vessels  
—attempt.  
*Ibid.* s. 212.

**237.** Whosoever maliciously attempts to set fire to, or cast away, or destroy, any such vessel, shall be liable to penal servitude for fourteen years.

Placing gunpowder  
near a ship with  
intent to damage it.  
*Ibid.* s. 213.

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

Damaging ship  
otherwise than by  
fire.  
*Ibid.* s. 214.

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

Exhibiting false  
signals, &c.  
*Ibid.* s. 215.

**240.** Whosoever maliciously masks, alters, or removes, any light or signal, or exhibits a false light or signal, with intent to bring any vessel or boat into danger, shall be liable to suffer death. **241.**

*Crimes.*

**241.** Whosoever maliciously does anything with intent to cause the loss, or destruction of, or serious injury to, any vessel or boat, for which offence no punishment is hereinbefore provided, shall be liable to penal servitude for life. Doing any act with intent to cause loss of vessel, &c. 46 Vic. No. 17, s. 215.

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

**243.** Whosoever maliciously destroys any part of any vessel in distress, or wrecked, stranded, or cast on shore, or any goods, or article of any kind, belonging to such ship, or vessel, shall be liable to penal servitude for fourteen years. Destroying wrecks, &c. Ibid. s. 217.

*Injuries to books, works of art, &c., in museums, &c.*

**244.** Whosoever maliciously destroys, or damages, any book, manuscript, picture, print, statue, bust, or vase, monument, or other memorial, painted glass, ornament, or ornamental work, or other article or thing, kept, or deposited, for the purposes of art, science, or literature, or as an object of curiosity, in any building belonging to the Queen, or in any museum, gallery, cabinet, library, school of arts, or other repository, habitually, or from time to time, open for the admission of the public, whether gratuitously, or by the payment of money, or in any place of Divine worship, or in any building belonging to the council, or body corporate, of any municipal institution, or to any university, or college, or in any street, burial-ground, or public garden, or ground, or any statue, or monument, exposed to public view, or any ornament, railing, or fence, belonging to, or surrounding, the same, or any post office receiving box, or pillar, or any drinking fountain, or any erection, place, or object of public or scientific interest, shall be liable to penal servitude for five years, or to imprisonment for three years. Injuring works of art in museums or other public places, &c. Ibid. s. 210.

*Injuries to cattle.*

**245.** Whosoever maliciously kills, maims, or wounds, any cattle other than pigs or goats, shall be liable to penal servitude for ten years: Killing or maiming cattle other than pigs or goats. Ibid. s. 211.

Provided that—

Where, on the trial of a person for an offence under this section, it appears that he was the occupier of any enclosed land under cultivation, or a person acting by the order of such occupier, and that the cattle when killed, maimed, or wounded, were trespassing on such land, he shall be liable only to imprisonment for one year, or to a fine of twenty pounds. Occupier of enclosed land killing, &c., such cattle. Ibid. s. 211.

*Crimes.*

Cruelly wounding or  
torturing cattle.  
46 Vic. No. 17, s. 221.

**246.** Whosoever maliciously and cruelly wounds, or tortures, any cattle, whether his own or not, shall be liable to imprisonment for one year or to a fine of one hundred pounds:

Provided that—

- (1) nothing in this section shall prevent the summary conviction of the offender, under any Act passed to prevent cruelty to animals:
- (2) after any such conviction, or after acquittal on the merits, he shall not be liable to prosecution under this Act for the same cause.

*Injuries over five pounds not otherwise provided for.*

Other injuries  
over £5.  
*Ibid.* s. 219.

**247.** Whosoever maliciously injures, to an amount exceeding five pounds, any real or personal property whatsoever, either of a public or private nature for which act no punishment is hereinbefore provided, shall be liable to imprisonment for two years, and where such offence is committed in the night, shall be liable to penal servitude for five years.

*Letters threatening to burn or destroy property.*

Letters threatening  
to destroy property.  
*Ibid.* s. 218.

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

*Making or having gunpowder, &c., with intent to commit offences against property.*

Making or having  
gunpowder, &c., to  
commit malicious  
injury.  
*Ibid.* s. 220.

**249.** Whosoever makes, or knowingly has in his possession, any gunpowder, or other explosive substance, or any dangerous, or noxious thing, or any machine, engine, instrument, or thing, with intent thereby, or by means thereof, to commit, or for the purpose of enabling some other person to commit, any malicious injury within the meaning of this Act, shall be liable to imprisonment for three years.

*Crimes.*

## PART V.

## FORGERY.

*Declaratory and general.*

**250.** For the purposes of this Act:

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

Forging defined.  
46 Vic. No. 17,  
s. 230.

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

Uttering defined.  
*Ibid.* ss. 231, 232.

**251.** The uttering of any forged instrument, document, signature, matter, or thing, or of any instrument, document, or matter with a forged attestation or signature of a witness thereto, whether in any such case the same was made, or purports to have been made, in or out of New South Wales, shall, wherever the forging of the same is punishable under this Act, be an offence of the same degree, and punishable in the same manner as such forgery.

Uttering to be  
offence of same  
degree and subject to  
same punishment as  
forging.  
*Ibid.* ss. 231, 232,  
233.

*Forgeries not specially provided for.*

**252.** Whosoever forges, or utters, any instrument, or matter, the forging or uttering of which is not herein otherwise punishable, shall be liable to imprisonment for two years.

Forgeries not  
specially provided  
for.  
*Ibid.* s. 268.

*Forgery, &c., of public seals or official signatures.*

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

Royal or public  
seals.  
*Ibid.* s. 234.

**254.** Whosoever forges, or utters, the signature of the Governor, or of any of Her Majesty’s Principal or Under Secretaries of State, or of any Minister of the Crown, or Under Secretary in New South Wales,

Signature of  
Governor, Minister  
of the Crown, &c.  
*Ibid.* s. 235.



*Crimes.*

or of the Surveyor-General, Deputy Surveyor-General, Auditor-General, Chief Commissioner of Crown Lands, or Collector of Customs, to any grant, commission, warrant, order, or other official instrument or document, shall be liable to penal servitude for ten years.

*Forgery of Acts, Proclamations, &c.*

Acts,  
proclamations, &c.  
13 Vic. No. 16, s. 5.

**255.** Whosoever—  
prints any copy of any Act, or of any proclamation or commission issued by the Governor, which copy falsely purports to have been printed by the Government Printer, or tenders in evidence any such copy knowing the same was not printed by the Government Printer, shall be liable to penal servitude for fourteen years.

*Forgery, &c., of transfers of stock, &c.*

Transfer of certain  
stock, or power of  
attorney relating  
thereto.  
46 Vic. No. 17,  
s. 238.

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

Personating owner  
of stock or property.  
*Ibid.* s. 237.

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

Falsifying books of  
public funds.  
*Ibid.* s. 238.

**258.** Whosoever—  
wilfully makes any false entry in, or alters any word or figure in, any book of account, in which the accounts of the owners of any share, or interest of or in any stock, annuities, or other public funds are entered, or wilfully falsifies any of the accounts of any such owner in any such book, or  
wilfully

*Crimes.*

wilfully makes any transfer of any share, or interest of or in any such stock, annuity, or public fund, or any such capital stock as aforesaid, or of or in the capital stock of any such body corporate, company, or society, as aforesaid, in the name of any person not being the true owner of such share or interest, with intent in any such case to defraud, shall be liable to penal servitude for fourteen years.

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

Public Servant making false dividend warrants, &c.  
46 Vic. No. 17, s. 239.

*Forgery of India bonds, Exchequer bills, &c.*

**260.** Whosoever forges, or utters, any East India bond, or any bond, debenture, or security made under the authority of any Act relating to the East Indies, or any indorsement on, or assignment of, any such bond, debenture, or security, or any Exchequer bill, bond, or debenture, or any indorsement on, or assignment of, any such bill, bond, or debenture, or any Treasury bill, or debenture of the Government of New South Wales, or receipt, or certificate for interest accruing thereon, shall be liable to penal servitude for fourteen years.

East India bonds, Exchequer bills, or debentures, &c.  
*Ibid.* s. 240.

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

Making paper like that issued for exchequer bills, &c.  
*Ibid.* s. 241.

*Ibid.* s. 243.

**262.** Whosoever—  
without lawful authority makes any paper in the substance of which appear any words, letters, figures, marks, lines, threads, or other devices, peculiar to, and appearing in, the substance of any paper provided or used for any such bills, bonds, or debentures, as in the last section mentioned, or any part of such words, letters, or other matter and intended to imitate the same, or knowingly

Making plates, &c. like those used for exchequer bills, &c.  
*Ibid.* s. 242.

*Crimes.*

knowingly has in his possession any paper in the substance whereof appear any such words, letters, or other matter, or any parts of such words, letters, or matter and intended to imitate the same, or without lawful authority causes any such words, letters, or other matter, as aforesaid, or any part thereof, and intended to imitate the same, to appear in the substance of any paper, or without lawful authority takes any impression of any such plate, die, or seal, as in the said section mentioned, or without lawful authority causes any such act as aforesaid to be done, or assists in the doing thereof, shall be liable to penal servitude for seven years.

46 Vic. No. 17,  
s. 243.

Having paper, &c.,  
to be used for  
Exchequer bills, &c.  
*Ibid.* s. 244.

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

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

Forging stamps  
or possessing false  
dies, &c.  
*Ibid.* s. 245.

**264.** Whosoever—  
forges, or utters, any stamp authorised to be issued under the authority of any Act now or hereafter passed, or without lawful authority or excuse, makes, uses, or knowingly has in his possession, the whole or any part of any forged die, plate, or instrument, resembling or apparently intended to resemble, wholly or in part, any die, plate, or instrument provided or used under the direction of the Government of New South Wales, or of any other Colony, for denoting stamp duty, or any material having thereon, wholly or in part, the impression of any such forged die, plate, or instrument, or any impression, resembling or apparently intended to resemble, wholly or in part, the impression of any such die, plate, or instrument, or fraudulently uses, fixes, or places, with or upon any material, any stamp removed from any other material, or fraudulently cuts, or gets, from any material, any word, figure, or other matter, with intent to use any stamp then upon such material for any instrument or thing, in respect whereof any stamp duty is payable, or knowingly uses, utters, sells, or exposes for sale, or without authority or excuse has in his possession, any stamped material from which any such matter has been fraudulently cut or obtained, shall be liable to penal servitude for ten years.

Affixing stamps,  
&c., &c.

*Forgery,*

Crimes.

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

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

Forging a bank note, &c.  
 46 Vic. No. 17, s. 246.

Purchasing or receiving same.  
*Ibid.*

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

Engraving or having any plate, &c., for making bank notes or paper.  
*Ibid.* s. 247.

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

Engraving, &c., any part of a bank note, &c.  
*Ibid.* s. 248.

*Crimes.*

Instruments in blank.

46 Vic. No. 17, s. 249.

Having moulds for paper with the name of any banker.

*Ibid.* s. 250.

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

**269.** Whosoever, for any unlawful purpose, or without lawful authority or excuse, makes, or uses, any frame, mould, or instrument for the manufacture of paper, with the name or firm of any company or person carrying on the business of banking in New South Wales or elsewhere appearing visible in the substance of the paper, or knowingly has in his possession any such frame mould or instrument, or makes, uses, sells, exposes for sale, utters, or disposes of, or knowingly has in his possession, any paper, in the substance of which the name or firm of any such company or person appears visible, or by any art or contrivance causes the name or firm of any such company or person to appear visible in the substance of the paper upon which the same is written or printed, shall be liable to penal servitude for fourteen years.

Engraving plates for foreign bills or notes.

*Ibid.* s. 251.

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

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

Forging wills.

*Ibid.* s. 252.

Forging deeds.

*Ibid.* s. 252.

Forging bills, notes or orders, receipts for goods, &c.

*Ibid.* s. 253.

**271.** Whosoever forges, or utters, any will, testament, codicil, or testamentary instrument, shall be liable to penal servitude for life.

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

**273.** Whosoever forges, or utters, any bill of exchange, or any acceptance, indorsement, or assignment thereof, or any promissory-note for the payment of money, or any indorsement, or assignment thereof,

or

*Crimes.*

or any undertaking, warrant, order, authority, or request, for the payment of money, or the delivery or transfer of any chattel, note, bill, or security, or for procuring, or giving credit, or any acquittance, or receipt for money, or goods, or for any note, bill, or other security, or any indorsement on, or assignment of, any such undertaking, warrant, order, authority, request, receipt, or other instrument, shall be liable to penal servitude for ten years.

**274.** Whosoever—

draws, makes, signs, accepts, or indorses, any bill of exchange or promissory-note, or any such undertaking, warrant, order, authority, or request, as aforesaid, by procuration or otherwise, for or in the name or on the account of any other person, without lawful authority or excuse, or

offers, utters, disposes of, or puts off, any such instrument so drawn, made, signed, accepted, or indorsed, knowing the same to have been so drawn, made, signed, accepted, or indorsed,

with intent in any such case to defraud,

shall be liable to penal servitude for ten years.

Signing bill, note, &c., by procuration, without authority.  
46 Vic. No. 17, s. 254.

**275.** Whosoever, when any cheque or draft on any banker is crossed with the name of a banker, or with two transverse lines with the words “bank,” or the words “and company,” or any abbreviation thereof respectively, or with the word “credit,” followed by the name of any individual or firm,

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

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

with intent in any such case to defraud,

shall be liable to penal servitude for ten years.

Obliterating crossings on cheques.  
*Ibid.* s. 255.

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

Forging debentures.  
*Ibid.* s. 256.

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

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

Forging instruments, &c., made by Judges, &c., or signature thereto.  
*Ibid.* s. 261.

**278.** Whosoever—

forges the signature of any Judge of the Supreme Court purporting to be attached or appended to any decree, order, certificate, or other official, or judicial document, or

tenders

Forging signature of Supreme Court Judge to decree, &c., or tendering same in evidence with forged signature.  
13 Vic. No. 16, s. 5.

*Crimes.*

tenders in evidence any such decree, order, certificate, or document, as aforesaid, with a false or counterfeit signature of any such Judge thereto, knowing the same to be false or counterfeit, shall be liable to penal servitude for fourteen years.

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

Term "Court" in five next sections.  
46 Vic. No. 17, s. 257.

**279.** For the purposes of the five next following sections:—  
"Court" includes the Court of Vice-Admiralty, and every District Court, Court of Quarter Sessions, and Court of Petty Sessions.

Forging records, &c., of any Court.  
*Ibid.* s. 257.

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

Forging seal or stamp on records, &c.  
*Ibid.* s. 258.

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

Forging copy or certificate of record, &c.  
*Ibid.* s. 258.

**282.** Whosoever—  
forges, or utters, any copy or certificate of any such record, entry, minute, process, instrument, or document, or  
utters any such copy or certificate having thereon any forged signature, or,  
not being an officer or clerk of or in the Court, signs or certifies any such copy or certificate as such officer or clerk,  
shall be liable to penal servitude for seven years.

Serving, &c., forged process.  
*Ibid.* s. 258.

**283.** Whosoever—  
serves, or enforces, any forged process of any Court, knowing the same to be forged, or  
delivers, or causes to be delivered, to any person, any parchment or paper, falsely purporting to be any such process, or a copy thereof, or to be a decree or order of any Court, or a copy thereof, knowing the same to be false, or  
acts, or professes to act, under any such false process, knowing the same to be false,  
shall be liable to penal servitude for seven years.

*Forgery, &c., of instruments of evidence.*

Forging document, &c., used as evidence.  
*Ibid.* s. 257.

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

Forgery of signature to copies admissible in evidence of decrees, &c.  
13 Vic. No. 16, s. 5.

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

tenders

*Crimes.*

tenders in evidence any such copy with a false or counterfeit signature thereto, knowing the same to be false, shall be liable to penal servitude for fourteen years.

Tendering same so forged.  
13 Vic. No. 16, s. 5.

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

Forgery of signature to certificate admissible in evidence of facts relating to trials, &c.  
16 Vic. No. 14, s. 10, and 22 Vic. No. 7, ss. 7, 10.

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

fraudulently alters any such certificate after it has been signed, or gives or tenders in evidence, any such forged, or altered, certificate or paper, knowing the same to be forged or fraudulently altered, or signs, issues, gives or tenders in evidence, any such certificate or paper, knowing the same to be false in any particular, shall be liable to imprisonment for five years.

Tendering forged certificate.  
16 Vic. No. 14, s. 10.  
22 Vic. No. 7, s. 10.  
Signing or tendering false certificate.  
*Ibid.*

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

Clerk of Court or other officer wilfully certifying false copy of record of conviction, &c., or of public document.  
16 Vic. No. 14, s. 10.

**288.** Whosoever—

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

Forgery of seal, &c., on such copy, &c., or on examined copy of any document inspected by order of Judge.  
*Ibid.* s. 11.

tenders in evidence any such certified copy or extract, or any such examined copy or extract, with a false or counterfeit, seal, stamp or signature thereto, knowing the same to be false or counterfeit, shall be liable to penal servitude for seven years.

Tendering same so forged.

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

Forgery of seal, &c., on public documents, &c., and copies admissible in evidence.  
13 Vic. No. 16, s. 5.

forges



*Crimes.*

- forges the seal, stamp, or signature, appended to any such certificate, or document, or proceeding, or to any such certified copy, as aforesaid, or  
 tenders in evidence any such certificate, or document, or proceeding, or any such certified copy, as aforesaid, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit,  
 shall be liable to penal servitude for fourteen years.
- 290.** Whosoever, where any copy of any proclamation, treaty, or other Act of State of Great Britain, or of any British Colony, or of any Foreign State, or any judgment, decree, order, or other judicial proceeding of any Court of Justice in Great Britain, or any British Colony, or in any Foreign State, or any affidavits, pleadings, or other legal documents, filed or deposited in any such Court, is admissible in evidence when such copy is an examined copy, or is authenticated by purporting to be sealed, or signed, as directed by the Act under which the same is so admissible,  
 forges the seal, or signature, of any such copy, or  
 tenders in evidence any such copy with a false and counterfeit seal or signature thereto, knowing the same to be false or counterfeit,  
 shall be liable to penal servitude for seven years.
- 291.** Whosoever, where a certificate of the birth, marriage, or death, of any person in any part of the British dominions other than New South Wales, is admissible in evidence when purporting to be issued by the officer authorised by the law in that behalf of such part of the said dominions,  
 forges, or utters, any such certificate, or  
 tenders, or causes to be tendered, in evidence any such certificate, knowing the same to be forged,  
 shall be liable to penal servitude for fourteen years.
- 292.** Whosoever forges, or utters, any instrument, whether written or printed, or partly written and partly printed, which is made evidence by any Act or Imperial Act, the forging, or uttering, of which is not herein otherwise punishable, shall be liable to penal servitude for seven years.
- Forgery of instruments, &c., under Registration of Deeds Acts.*
- 293.** Whosoever—  
 forges, or utters, any instrument, document, entry, or writing, made or issued, or purporting so to be, under the provisions of any Act passed or to be passed for or relating to the Registry of Deeds or other instruments, or  
 forges the seal of, or belonging to, any office for the Registry of Deeds or other instruments, or any stamp or impression of any such seal, or  
 forges, or utters, any signature, purporting to be the signature of any person to any such instrument, document, or writing,  
 shall be liable to penal servitude for ten years.
- 294.**
- Tendering same so forged.  
 13 Vic. No. 16, s. 5.
- Forging signature or seal on copy admissible in evidence of treaty, &c., of a State or proceeding of a Court outside New South Wales.  
 16 Vic. No. 14, s. 11.
- Tendering same so forged.
- Forging, &c., certificate issued by officer outside New South Wales.  
 65 Vic. No. 5, s. 9.
- Forging instruments made evidence by statute.  
 46 Vic. No. 17, s. 259.
- Forgery of deeds, &c., made, &c., under Registration Acts.  
*Ibid.* s. 260 and  
 7 Vic. No. 16, s. 28.
- of seal, &c.
- of signature.

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*Falsely acknowledging recognizances, &c.*

**294.** Whosoever, without lawful authority or excuse, confesses judgment in any Court, or signs any cognovit, or acknowledges any recognizance, deed, or instrument, in the name of another person before any Court or person lawfully authorised in that behalf, shall be liable to penal servitude for seven years.

Acknowledging recognizances, &c., in the name of another.

46 Vic. No. 17, s. 262.

*Forgery, &c., of matters relating to marriage.*

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

Forging marriage certificates, &c.

*Ibid.* s. 263.

*Falsifying entries of births, deaths, &c.*

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

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

*Ibid.* ss. 264, 265.

**297.** Whosoever—  
 wilfully inserts, in any copy of any register required by law to be transmitted to a registrar, any false entry or matter relating to any birth, marriage, or burial, or forges, or utters, any copy of any such register, or

Making false entries in copies sent to registrar.

*Ibid.* s. 275.

55 Vic. No. 5, s. 28.

wilfully

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wilfully signs, or verifies, any copy of any such register, which copy is false in any part, knowing the same to be false, or forges, or unlawfully destroys, defaces, or injures, or for any fraudulent purpose takes from its place of deposit, or conceals, any such register or copy, or causes, or knowingly permits, the doing of any such act as aforesaid, shall be liable to penal servitude for fourteen years.

*Obtaining or demanding property on forged instruments.*

Demanding property on forged instruments.

46 Vic. No. 17, s. 266.

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

*Forging or fraudulent use of trade-marks.*

Forging or fraudulently using trade-marks, &c.

*Ibid.* s. 267.

**299.** Whosoever—  
forges any trade-mark, or label, ordinarily and lawfully used by the maker or vendor of any article of merchandize, or, with intent to defraud or to enable any other person to defraud, affixes, stamps, or places, to, or upon, any article, or case, vessel, or cover, containing the same, any such forged trade-mark or label, or sells, or disposes of, or offers to sell, or dispose of, any article having thereon, or affixed thereto, or to, or upon, such case, vessel, or cover, any such forged trade-mark, or label, knowing the same to be forged, or, with the like intent, affixes, stamps, or places, to, or upon, any article, or any such case, vessel, or cover, any trade-mark, or label, resembling or apparently intended to resemble, and intended to be mistaken for, any trade-mark, or label, ordinarily and lawfully used by any such maker, or vendor, as aforesaid, shall be liable to imprisonment for three years, and to a fine of one hundred pounds, in addition to, or without, such imprisonment.

## PART VI.

## OFFENCES RELATING TO THE COINAGE.

*Interpretation and general clauses.*

Interpretation of terms.

*Ibid.* s. 269.

**300.** For the purposes of this Act:—  
The expression "*the Queen's gold or silver coins*" includes any gold or silver coin, coined in any of Her Majesty's Mints, or lawfully

*Crimes.*

lawfully current, by virtue of any Act, or Imperial Act, or proclamation, or otherwise, in any part of Her Majesty's Dominions:

The expression "*the Queen's copper coin*" includes any copper coin, or coin of bronze, or mixed metal, so coined, or lawfully current, as aforesaid:

The expression "*The Queen's current coin*" includes any coin so coined, or lawfully current, as aforesaid, whether made of gold, silver, copper, bronze, or mixed metal:

The expression "*counterfeit coin, resembling or apparently intended to resemble, any of the Queen's gold or silver coin*" includes any of the Queen's current coin, gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble, or be apparently intended to resemble, or pass for, any of the Queen's current coin of a higher denomination.

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

Immaterial whether counterfeit coin in finished state.

46 Vic. No. 17, s. 270.

**302.** Whosoever, having been convicted under this or any former Act of any offence relating to the coin mentioned in this Act, afterwards commits any such offence, shall, except where otherwise herein specifically enacted, be liable to penal servitude for ten years.

Punishment on second conviction.

*Ibid.* ss. 278, 457.

*Counterfeiting, uttering, or impairing the Queen's gold or silver coin.*

**303.** Whosoever unlawfully makes, or counterfeits, any coin resembling, or apparently intended to resemble, any of the Queen's gold or silver coin, shall be liable to penal servitude for fourteen years.

Counterfeiting gold or silver coin.

*Ibid.* s. 271.

**304.** Whosoever—

fraudulently gilds, or silvers, any coin resembling, or apparently intended to resemble, any of the Queen's gold or silver coin, or gilds, or silvers, any piece of silver, or copper, or coarse gold, or coarse silver, or any metal, or mixture of metals, respectively, being of a fit size and figure to be coined, with intent that the same shall be coined into counterfeit coin, resembling, or apparently intended to resemble, any of the Queen's gold or silver coin, or

Gilding, &c., coin or metal.

*Ibid.* s. 272.

gilds any of the Queen's silver coin, or files, or in any manner alters, such coin, with intent to make the same pass for any of the Queen's gold coin, or

gilds, or silvers, any of the Queen's copper coin, or files, or in any manner alters, such coin, with intent to make the same resemble,

or pass for, any of the Queen's gold or silver coin, shall be liable to penal servitude for fourteen years.

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What to be deemed  
gilding or silvering.  
46 Vic. No. 17, s. 273.

**305.** For the purposes of the last preceding section the terms—  
“*Gild*,” and “*silver*,” include the washing, casing over, or colouring, of any coin, or any such piece of silver, or copper, or coarse gold, or silver, or metal, or mixture of metals, as therein mentioned, with any wash, or material, capable of producing the colour, or appearance, of gold, or of silver, or by any other means whatsoever.

Impairing gold or  
silver coin.  
*Ibid.* s. 274.

**306.** Whosoever impairs, diminishes, or lightens, any of the Queen's gold or silver coin, with intent that the coin so dealt with may nevertheless pass for the Queen's gold or silver coin, shall be liable to penal servitude for seven years.

Possession of filings  
obtained by impairing,  
&c.  
*Ibid.* s. 275.

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

Defacing gold or  
silver coin.  
*Ibid.* s. 274.

**308.** Whosoever defaces any of the Queen's gold, silver, or copper coin, by stamping thereon any name or word, whether such coin is thereby diminished, or lightened, or not, shall be liable to imprisonment for two years.

Buying or selling  
counterfeit gold or  
silver coin.  
*Ibid.* s. 276.

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

Uttering counterfeit  
gold or silver coin.  
*Ibid.* s. 277.

**310.** Whosoever offers, or utters, any counterfeit coin resembling, or apparently intended to resemble, any of the Queen's gold or silver coin, knowing the same to be counterfeit, shall be liable to imprisonment for three years.

Same, having at  
time other  
counterfeit coins  
in possession.  
*Ibid.* s. 277.

**311.** Whosoever offers, or utters, any counterfeit coin resembling, or apparently intended to resemble, any of the Queen's gold or silver coin, knowing the same to be counterfeit, and at the time of such offering, or uttering, has in his possession, besides the coin offered or uttered, any other counterfeit coin, shall be liable to penal servitude for seven years.

Same, and uttering  
other such coin on  
same day or within  
ten days.  
*Ibid.* s. 277.

**312.** Whosoever offers, or utters, any counterfeit coin resembling, or apparently intended to resemble, any of the Queen's gold or silver coin, knowing the same to be counterfeit, and on the same day, or within ten days next ensuing, offers, or utters, any other such counterfeit coin, knowing the same to be counterfeit, shall be liable to penal servitude for seven years.

Possessing three  
pieces of counterfeit  
coin.  
*Ibid.* s. 278.

**313.** Whosoever has in his possession three, or more, pieces of counterfeit coin resembling, or apparently intended to resemble, any of the Queen's gold or silver coin, knowing the same to be counterfeit, with intent to utter, or put off, the same or any of them, shall be liable to penal servitude for five years.

**314.**

*Crimes.*

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

Uttering metal, &c., as current coin.  
46 Vic. No. 17, s. 279.

*Counterfeiting or uttering the Queen's copper coin.*

**315.** Whosoever unlawfully makes, or counterfeits, any coin resembling, or apparently intended to resemble, any of the Queen's copper coin, shall be liable to penal servitude for five years.

Counterfeiting copper coin.  
*Ibid.* s. 280.

**316.** Whosoever, without lawful authority or excuse, knowingly makes, or mends, or begins, or proceeds, to make, or mend, or buys, or sells, or has in his possession, any instrument, tool, or engine, intended to be used in counterfeiting any of the Queen's copper coin, or buys, sells, receives, pays, or puts off, or offers to buy, sell, receive, pay, or put off, any counterfeit coin resembling, or apparently intended to resemble, any of the Queen's copper coin at, or for, a lower rate or value than the same imports, or is apparently intended to import, or would pass for if genuine, shall be liable to penal servitude for five years.

Possessing, &c., instrument, &c., for making such coin; or selling such coin.  
*Ibid.* s. 280.

**317.** Whosoever— offers, utters, or puts off, any counterfeit coin resembling, or apparently intended to resemble, any of the Queen's copper coin, knowing the same to be counterfeit, or has in his possession three, or more, pieces of counterfeit coin resembling, or apparently intended to resemble, any of the Queen's copper coin, knowing the same to be counterfeit, with intent to utter, or put off, the same or any of them, shall be liable to imprisonment for three years.

Uttering counterfeit copper coin.  
*Ibid.* s. 281.

*Counterfeiting or uttering foreign coin.*

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

Counterfeiting foreign gold or silver coin.  
*Ibid.* s. 282.

**319.** Whosoever offers, utters, or puts off, any such counterfeit coin as in the last preceding section mentioned, knowing the same to be counterfeit, shall be liable to imprisonment for a term not exceeding twelve months.

Uttering such coin.  
*Ibid.* s. 283.

**320.** Whosoever, having been twice convicted under this or any former Act of any such offence as is mentioned in the last preceding section, afterwards commits any offence in the said section mentioned, shall be liable to penal servitude for ten years.

Uttering such coin after two previous convictions.  
*Ibid.* ss 283, 457.

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Counterfeiting  
foreign coin other  
than gold or silver.  
46 Vic. No. 17, s. 234.

**321.** Whosoever unlawfully makes, or counterfeits, any kind of coin not being the Queen's current coin, but resembling, or apparently intended to resemble, coin of any foreign prince or country, made of copper, or any metal, or mixed metals, of less value than the silver coin of such foreign prince or country, shall be liable to imprisonment for one year.

The same.—Second  
offence.  
*Ibid.* ss. 284, 457.

**322.** Whosoever, having been convicted under this or any former Act of any such offence as is mentioned in the last preceding section, afterwards commits any offence in the said section mentioned shall be liable to penal servitude for five years.

*Importing or exporting counterfeit coin.*

Importing, &c.,  
counterfeit coin.  
*Ibid.* s. 285.

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

*Making or having, &c., tools for coining.*

Making or having  
coining tools, &c.  
*Ibid.* s. 286.

**324.** Whosoever, without lawful authority or excuse, knowingly makes, or mends, or begins to make, or mend, or buys, or sells, or has in his possession, any such engine, machine, tool, instrument, or thing, as is hereinafter mentioned, that is to say—

any puncheon, counter-puncheon, matrix, stamp, die, pattern, or mould, in or upon which there is impressed, or which will impress, or is intended to impress, either wholly, or in part, the figure, stamp, or apparent resemblance of both or either of the sides of any of the Queen's gold or silver coin, or of any foreign coin, or any part thereof, respectively,

or any edger, edging, or other tool, collar, instrument, machine, or engine, intended for marking coin round the edges with letters, grainings, or other marks, or figures, apparently resembling those on the edges of any such coin, as aforesaid, knowing the same to be so intended,

or any press for coinage, or engine for cutting, by force of a screw or other contrivance, round blanks out of gold, silver, or other metal, or mixture of metals, or any other machine of any kind, knowing such press to be a press for coinage, or such engine, or machine to be used or intended for the counterfeiting of any such coin,

shall be liable to penal servitude for fourteen years.

Conveying tools or  
metal out of the mint.  
*Ibid.* s. 287.

**325.** Whosoever, without lawful authority or excuse, knowingly conveys out of Her Majesty's Mint in Sydney, any puncheon, counter-puncheon, matrix, stamp, die, pattern, mould, edger, edging, or other tool

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tool, collar, instrument, press, machine, or engine, or any part thereof, respectively, there used, or kept for use, for coining purposes, or any coin, bullion, metal, or mixture of metals, shall be liable to penal servitude for fourteen years.

*Provisions for cutting suspected coin.*

**326.** (1) Where any coin is offered as the Queen's gold or silver coin to any person who suspects the same to be diminished otherwise than by reasonable wear, or to be counterfeit, such person may cut, break, bend, or deface, such coin, and if it has been diminished otherwise than by reasonable wear, or is counterfeit, the person who offered the same shall bear the loss thereof, but if the same is of due weight and lawful coin, the person cutting, breaking, bending, or defacing, the same shall receive the same at the rate it was coined for.

(2) If any dispute arises whether the coin is diminished in manner aforesaid, or counterfeit, the matter shall be determined in a summary manner by two Justices, who may examine upon oath, as well the parties, as any other person, in order to the decision of such dispute.

(3) 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.

Coin suspected to be counterfeit—how to be dealt with.  
46 Vic. No. 17, s. 288.

## PART VII.

## PERJURY AND LIKE OFFENCES.

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

Perjury.

*Ibid.* s. 291.

**328.** Whosoever commits perjury with intent to procure the conviction, or acquittal, of any person for, or of, any offence punishable with death, or by penal servitude, shall be liable to penal servitude for fourteen years.

Same with intent to procure conviction, &c.

*Ibid.* s. 291.

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

Conviction for false swearing on indictment for perjury.

*Ibid.* s. 292.

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

False swearing not being perjury.

*Ibid.* s. 292.

**331.** Where, on the trial of a person for perjury, or for wilfully making a false statement on oath not amounting to perjury, it appears that the accused has made two statements on oath, of which one is

Contradictory statements on oath.

*Ibid.* s. 293.

irreconcilably



*Crimes.*

irreconcilably in conflict with the other, and the jury are of opinion that one of such statements was wilfully false, but they cannot say which of them was so, they may specially so find and that the accused is guilty of perjury, or of wilful false swearing as the case may be, and he shall be liable to punishment accordingly.

Certain technical defects provided for.  
46 Vic. No. 17, s. 294.

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

False evidence by child not on oath.  
55 Vic. No. 5, s. 7.

**333.** Whosoever, being a child of tender years admitted to give evidence, though not on oath, under the provisions of this Act, gives any false evidence shall be guilty of a misdemeanour:

Provided that no prosecution shall be instituted under, or by virtue of, this section without the leave of the Court, or Justices, before whom such evidence was given.

Subornation of perjury, &c.  
46 Vic. No. 17, s. 296.

**334.** Whosoever procures, or causes, any person to make, any false statement on oath, the making of which amounts in law to perjury, or is by any Act punishable as perjury, shall be guilty of subornation of perjury, and be liable to be punished as if he had himself been convicted of perjury.

Attempting to suborn, &c.  
*Ibid.* s. 296.

**335.** Whosoever persuades, or induces, or endeavours to persuade or induce, any person to make a false statement on oath in a judicial proceeding, before a Court, or Justice, or Coroner, shall be liable to penal servitude for five years.

Tampering with witness.  
*Ibid.* s. 296.

**336.** Whosoever, without lawful cause, persuades, or induces, or endeavours to persuade, or induce, any person to abstain from giving evidence, or attending as a witness, in a judicial proceeding, before a Court, or Justice, or Coroner, such person being bound by recognizance or subpoena so to attend, shall be liable to imprisonment for three years.

False statements respecting births, marriages, &c.  
*Ibid.* s. 297.

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

False declarations in fraud of the revenue.  
*Ibid.* s. 298.

**338.** Whosoever, where any declaration, or statement, which is or shall be by law required to be made in respect of the importation, or exportation, of certain goods, as to the value thereof, or the contents, or value of any cask, case, or package containing such goods, with intent

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to defraud the Queen, or to diminish Her Majesty's revenue, knowingly makes, or causes, or permits to be made, to any Collector, or other officer of Customs, any such declaration, or statement, which is false in any material particular, shall be liable to imprisonment for three years, and in addition to a fine not exceeding one hundred pounds.

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

False statement in solemn declaration.  
16 Vic. No. 1, s. 13.

**340.** Where any statement on oath has been made by any person in any suit, proceeding, or matter, pending in the Supreme Court, or any Circuit, or District Court, or before any Judge of any such Court, or any Chairman of Quarter Sessions, the Judge, or Chairman before whom the same was so made, may, if reasonable cause appears for so doing, direct such person to be prosecuted for perjury in respect thereof, and may thereupon require him forthwith to enter into a recognizance, with one or more surety or sureties, to take his trial for that offence at the next, or nearest practicable, sitting of the Supreme, or Circuit Court, or Court of Quarter Sessions, and may also require any persons then present to enter into recognizances to prosecute, and give evidence, respectively, against the accused, and may commit any person in default of his entering into any such recognizance.

Directing prosecution for perjury.  
46 Vic. No. 17, s. 301, and  
55 Vic. No. 5, ss. 29, 30.

**341.** (1) No prosecution in respect of any such statement on oath, as in the last preceding section mentioned, shall be instituted without such direction as in the said section provided, or without the leave of the Court, or Judge, or Chairman therein mentioned.

For restraining vexatious prosecutions.  
46 Vic. No. 17, s. 300.  
55 Vic. No. 5, ss. 29 & 30.

(2) No prosecution in respect of any statement on oath made before any Registrar, or District Registrar in Bankruptcy, or Justice, or Justices, shall be instituted without the leave of a Judge of the Supreme Court, a Judge of a District Court, or a Chairman of Quarter Sessions.

**342.** The provisions of this Act shall apply to every false oath, declaration, or affirmation, declared by any Act to be perjury, or thereby made punishable as perjury,

Application of Act.  
46 Vic. No. 17, ss. 295, 299.

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

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

Saving of other punishments.  
*Ibid.* s. 299.

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## PART VIII.

## CONSPIRACY TO ACCUSE OF CRIME.

Conspiracy to accuse  
of crime felony.  
46 Vic. No. 17, s. 458.

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

## PART IX.

## ABETTERS AND ACCESSORIES.

Principals in the  
second degree—how  
tried and punished.  
*Ibid.* s. 302.

**345.** Every principal in the second degree in any felony, whether the same is a felony at Common Law, or by this or any other statute, now existing or hereafter to be passed, and whether a capital felony or not, shall be liable to the same punishment as the principal in the first degree.

Accessories before  
the fact—how tried  
and punished.  
*Ibid.* s. 303.

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

Accessories after the  
fact—how tried.  
*Ibid.* s. 304.

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

Punishment of  
accessories after the  
fact to treason.  
31 Vic. No. 25, s. 7.

**348.** Every accessory after the fact to any felony under Part II of this Act, relating to treason felony, shall be liable to imprisonment for two years.

Punishment of  
accessories after the  
fact to murder, &c.  
46 Vic. No. 17, s. 305.

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

Punishment of  
accessories after the  
fact to other felonies,  
&c.  
*Ibid.* s. 305.

**350.** Every accessory after the fact to any other felony, except where otherwise specifically enacted, whether a felony at Common Law or by Statute, shall be liable to penal servitude for five years.

Abettors in  
misdemeanours—  
how tried and  
punished.

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

*Ibid.* s. 306.

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PART X.

APPREHENSION OF OFFENDERS, SEARCH WARRANTS AND DISCHARGE OF PERSONS IN CUSTODY.

*Apprehension of offenders.*

**352.** (1) Any constable or other person may without warrant apprehend, Person in act of committing or having committed offence. 46 Vic. No. 17, s. 429.

(a) any person in the act of committing, or immediately after having committed, an offence punishable, whether by indictment, or on summary conviction, under any Act,

(b) any person who has committed a felony for which he has not been tried,

and take him, and any property found upon him, before a Justice to be dealt with according to law.

(2) Any constable may without warrant apprehend,

(a) any person whom he, with reasonable cause, suspects of having committed any such crime, Person suspected of having committed or of being about to commit offence. Ibid. ss. 429, 433.

(b) any person lying, or loitering, in any highway, yard, or other place during the night, whom he, with reasonable cause, suspects of being about to commit any felony,

and take him, and any property found upon him, before a Justice to be dealt with according to law.

(3) Any constable may, although the warrant is not at the time in his possession, apprehend any person for whose apprehension for a misdemeanour, or an offence punishable as a misdemeanour, a warrant has been issued, and take him, and any property found upon him, before a Justice to be dealt with according to law. Misdemeanant for whose arrest warrant has been issued. 55 Vic. No. 5, s. 33.

**353.** Every person to whom any property is offered to be sold, or pawned, or delivered, and who has reasonable cause to suspect that an offence has been committed with respect to such property, may, and if in his power is required, to apprehend and forthwith take before a Justice the person offering the same, together with such property, to be dealt with according to law. Persons offering stolen property. 46 Vic. No. 17, s. 432.

*Search warrants.*

**354.** Where any credible person, on oath before a Justice, shows reasonable cause to suspect that any person has unlawfully in his possession, or on his premises, any property with respect to which an offence punishable by indictment has been or is reasonably believed to have been committed, such Justice may grant a warrant to search for the same, which warrant may be executed as in the case of a warrant to search for stolen goods. Search warrant for property where indictable offence in respect thereof committed. Ibid. 17, s. 429.

**355.** Where any credible person, on oath before a Justice, shows reasonable cause to suspect that a person named, or described, has **unlawfully** Search warrant for explosive substances, &c. Ibid. s. 430.

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unlawfully in his possession, or on his premises, any of the things following, that is to say—

- (a) any machine, or implement, or gunpowder, or other explosive, dangerous or noxious substance or thing, suspected to be made, or kept, for the purpose of committing felony;
- (b) any frame, mould, implement, or material, the making, or knowingly having of which without lawful authority or excuse, is by this Act made punishable;
- (c) any forged security, or instrument, or stamp, machinery, frame, mould, or other thing, used or intended to be used in the forging of any instrument or stamp;
- (d) any counterfeit coin, or instrument, tool, or engine, intended for counterfeiting coin,

such Justice may grant a warrant to search for the same.

Proceedings on finding property, &c., under warrant.  
46 Vic. No. 17, s. 431.

**356.** (1) Every warrant, granted under either of the two last preceding sections, shall authorise the searching for the property, or things, mentioned in those sections, and in the warrant issued in pursuance thereof.

The person finding any such property or thing, under any such warrant shall carry the same before a Justice who shall, if necessary, cause the same to be secured for the purposes of evidence.

After it has been produced in evidence, or when it is not required as evidence, such property or thing shall be disposed of as the Court or any two Justices shall direct.

(2) No such warrant, whether any property or thing be so found or not, shall authorise the apprehension of any person.

Search warrant for skin, &c.  
*Ibid.* s. 158.

**357.** Where any credible person, on oath before a Justice, states that he believes, and if such Justice sees cause to believe, that any skin or carcass of any stolen cattle, or of any cattle reasonably suspected to have been stolen, or any part of any such skin or carcass, is on the premises of any person, such Justice may grant a warrant, authorising 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:

Provided that nothing herein shall prevent any constable who finds any such skin or carcass, or part of any such skin or carcass, reasonably suspected to have been part of any stolen cattle, from seizing and retaining the same without a warrant.

*Discharge of persons in custody.*

When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General.  
46 Vic. No. 17, s. 307.  
55 Vic. No. 5, s. 22.

**358.** (1) The Attorney-General may, in respect of any person under committal for trial, and in all cases in which any person is remanded to prison, and in which he may in his discretion think fit not further to proceed, transmit at any time a certificate to the Judges of the

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the Supreme Court, any one of whom may thereupon by warrant direct the gaoler in whose custody the prisoner, or person under remand, may be to discharge him from custody in respect of the offence mentioned in such warrant, and, if such gaoler neglects so to do, he shall be liable to a fine of fifty pounds, to be recovered by action of debt in the name of the Attorney-General.

(2) In the case of a person under committal for trial, the certificate shall be in the Form No. 1 in the Third Schedule to this Act, and the warrant in the Form No. 2 in the said Schedule. Forms where person is committed for trial.

(3) In the case of a person under remand, the certificate shall be in Form No. 3, and the warrant in Form No. 4 in the said Schedule. Forms where person is under remand.

PART XI.

PROCEDURE, EVIDENCE, VERDICT, &c.

*As to indictment—form, venue, amendments, &c.*

**359.** In all indictments and informations, and all criminal pleadings and proceedings, the word "Statute," and the word "Act," used to indicate an enactment shall each include an Imperial Act as well as an Act. Meaning of "Statute" and "Act" in indictments, &c. 22 Vic. No. 12, s. 7.

**360.** No indictment shall be held bad or insufficient for want of an averment of any matter unnecessary to be proved, or necessarily implied, nor for the omission of the words "as appears by the record," or "with force and arms," or "against the peace," nor for the insertion or omission of the words "against the form of the statute," nor for designating any person by a name of office, or other descriptive appellation, instead of his proper name, nor for omitting to state the time at which the offence was committed, nor for stating the time wrongly, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or a day that never happened, nor for want of a proper or perfect venue, or a proper or formal conclusion, nor for the omission or improper insertion of the word "feloniously," nor for want of or imperfection in any addition of the accused, nor for want of any statement of the value or price of any matter or thing, or the amount of damage, or injury, in any case where such value, or price, or amount, is not of the essence of the offence. What defects shall not vitiate an indictment. 46 Vic. No. 17, s. 308.

**361.** (1) 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: Venue in indictment. Ibid. s. 309.

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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.

(2) Every such district or place shall be deemed to be in New South Wales, and within the jurisdiction of the Court, unless the contrary is shown.

Formal objections  
when to be taken.  
43 Vic. No. 17, s. 310.

**362.** 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 to indict-  
ment.  
*Ibid.* s. 311.

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

Traversing indict-  
ment.  
*Ibid.* s. 312.

**364.** No traverse shall in any case be allowed, or trial postponed, or time to plead to the indictment given, unless the Court shall so order:

Provided that where the Judge is of opinion that the accused ought to be allowed time, either to prepare for his defence, or otherwise, such Judge shall postpone the trial upon such terms as to him seems meet, and may respite the recognizances of the prosecutor and witnesses accordingly.

Court may amend  
variances in indict-  
ment.  
*Ibid.* s. 313.

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

Proceedings after  
amendment.  
*Ibid.* s. 314.

**366.** After any such amendment the trial, whenever proceeded with, shall proceed 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.

Verdict and  
judgment valid  
after amendment.  
*Ibid.* s. 315.

**367.** Every verdict, and judgment, given after the making of any amendment under this Act, shall be of the same force and effect, as if the indictment had originally been in the words, and form, in which it is after such amendment.

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**368.** If it is necessary at any time to draw up a formal record, in any case where an amendment has been made, such record may be drawn up in the words and form of the amended indictment, without noticing the fact of amendment.

Form of record after amendment.  
46 Vic. No. 17, s. 315.

**369.** In all cases where the trial is postponed the Court may respite the recognizance of the prosecutor and witnesses, and of the accused and his sureties, if any, requiring them severally to appear and prosecute, or be tried, or give evidence, at the time and place to which the trial is so postponed.

Respite recognizances on postponement.  
*Ibid.* s. 314.

**370.** In every case not capital counts may be inserted in the same indictment, against the same person, for any number of distinct offences of the same kind, not exceeding three, committed against the same person:

Separate offences when can be joined.  
*Ibid.* s. 316.

Provided that no more than six months have elapsed between the first and last of such offences.

**371.** In every case of felony, at Common Law or by Statute, any number of accessories thereto, whether before or after the fact, may be charged with substantive felonies in the same indictment, and be tried together, although the principal felon is not included in such indictment, or is not in custody or amenable to justice.

Accessories may be charged together in one indictment.  
*Ibid.* s. 322.

**372.** In an indictment for an offence committed after a previous conviction for an offence, whether indictable or punishable on summary conviction, it shall be sufficient, after charging the subsequent offence, to state that the accused was theretofore at a certain time and place convicted of an indictable offence, or an offence punishable on summary conviction, as the case may be, without particularly describing such previous offence.

Indictment charging previous offence also.  
*Ibid.* s. 320.

**373.** Whenever, in any indictment, it is necessary to mention, for any purpose, any partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to describe them by naming one of such persons, and referring to the rest as "another," or "others," as the case may be.

Description of partners, &c.  
*Ibid.* s. 317.

This provision shall extend to all joint stock companies, executors, administrators, and trustees.

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

Description of written instruments.  
*Ibid.* s. 327.

**375.** (1) In every case where it is necessary to allege an intent to defraud, or injure, it shall be sufficient to allege that the accused did the act with such intent, without alleging an intent to defraud, or injure, any particular person.

General averment of intent to defraud or injure.  
*Ibid.* s. 326.



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(2) 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.

Form of indictment for murder or manslaughter.  
46 Vic. No. 17, s. 319.

**376.** In an indictment for murder, or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death alleged was caused, but it shall be sufficient in an indictment for murder to charge that the accused did feloniously and maliciously murder the deceased, and in an indictment for manslaughter to charge that the accused did feloniously slay the deceased.

Averment of value of instrument causing death not necessary.  
13 Vic. No. 18, s. 3.

**377.** In an indictment for murder, or manslaughter, it shall not be necessary to allege the value of any instrument which caused the death charged, or to allege that it was of no value.

Form of indictment against accessories to murder.  
46 Vic. No. 17, s. 318.

**378.** In an indictment against an accessory to murder, or manslaughter, it shall be sufficient to charge the felony of the principal in the manner hereinbefore specified, and then to charge the accused as an accessory in the manner heretofore accustomed.

Rape, &c.—Count for indecent assault.  
*Ibid.* s. 319.

**379.** In an indictment for rape, or an unnatural crime, or an attempt to commit the same, a count may be added for an indecent assault.

Addition of count for assault.  
*Ibid.* s. 316.

**380.** In an indictment for an offence against the person, not being capital, where such offence includes an assault, a count may be added for such assault.

Indecent assault.  
*Ibid.* s. 319.

**381.** In an 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.

Where not necessary to lay property in any person.  
*Ibid.* s. 325.

**382.** In an indictment in respect of any of the matters mentioned in the Fourth Schedule of this Act, it shall not be necessary to allege that the instrument, document, building, chattel, or other matter, or thing, in respect of which the offence was committed, is the property of any person.

Property of partners or joint owners.  
*Ibid.* s. 317.

**383.** In an indictment wherein it is necessary to state the ownership of property belonging to more than one person, whether as partners in trade, joint-tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to allege such property to belong to the person so named, and another, or others, as the case may be.

This provision shall extend to all joint stock companies, executors, administrators, and trustees.

Stealing and receiving in one indictment.  
*Ibid.* s. 321.

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

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**385.** 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, may be charged with substantive felonies in the same indictment, and be tried together, although the principal felon is not included in such indictment, or is not in custody or amenable to justice.

Separate receivers may be charged in one indictment.  
46 Vic. No. 17, s. 322.

**386.** In an 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 partly by a false pretence and partly by a wilfully false promise, it shall be sufficient to describe the property as a certain amount of money, or as a certain valuable security, without specifying any particular kind of money or security, which description shall be sustained by proof of the taking, receiving, embezzling, appropriating, disposal, or obtaining, of any money or valuable security, although some part of the value thereof was agreed to be, or was in fact, returned, and although, as it respects money, the particular kind of money is not proved, or provable.

Allegations in indictment as to money or securities stolen.  
*Ibid.* s. 323

**387.** In every case of stealing any chattel let to be used in, or with, any house, or lodging, an indictment in the common form as for larceny, and in every case of stealing any fixture so let as aforesaid, an indictment in the same form as if the offender were not a tenant, or lodger, shall be sufficient, and in either case the property may be laid in the owner, or the person letting to hire.

Indictment for stealing by tenants.  
*Ibid.* s. 324.

**388.** In an indictment for stealing, embezzling, 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.

Indictment for stealing deeds.  
*Ibid.* s. 324.  
(and c.f. s. 134 of this Act).

**389.** In an indictment for larceny, or embezzlement, as a public servant, the property may be described as the property of Her Majesty, from whom it shall be deemed to have been stolen.

Indictment for larceny by public servant, property to be laid in the Queen.  
*Ibid.* s. 123.

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

Description in indictment for engraving, &c.  
*Ibid.* s. 328.

**391.** In an indictment, under this Act, respecting the unlawful buying, or selling, of counterfeit coin, it shall not be necessary to allege at what rate, or for what price, the same was bought, sold, received, or paid, or put off, or offered so to be.

Indictment for sale, &c., of counterfeit coin.  
*Ibid.* s. 329.

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Indictments for  
perjury.  
45 Vic. No. 17, s. 330.

**392.** In an 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.

Indictments for  
conspiracy.  
*Ibid.* s. 331.

**393.** In an indictment for conspiracy it shall not be necessary to state any overt act, and each defendant in any case of conspiracy, whether two or more defendants are included in the same indictment or not, may be charged separately, in any count, as having conspired with divers persons, of whom it shall be sufficient to name one only, or as having conspired with one other named person only, and may be convicted on such count upon proof of his having unlawfully conspired for the purpose therein alleged with any one such person:

Provided always, that no more than three counts against the same defendant shall be inserted in any such indictment, and that the Court may, in any case before plea pleaded, order such particulars to be given, as to such Court shall seem meet, and that where conspiracies substantially different are charged in the same indictment, the prosecutor may be put to his election as to the one on which he will proceed.

*Arraignment, plea, and trial.*

Arraignment, &c., on  
charge of previous  
conviction.  
*Ibid.* s. 320.

**394.** (1) No person shall be arraigned, in respect of any previous conviction charged in any indictment, unless he is convicted of the subsequent offence charged therein.

(2) Upon such conviction he shall forthwith be arraigned, and the jury shall be charged as to such previous conviction, or convictions, and the trial shall proceed in respect thereof.

Plea of "not  
guilty."  
*Ibid.* s. 332.

**395.** If any person arraigned on an indictment pleads thereto "not guilty," he shall, without further form, be deemed to have put himself upon the country for trial, and the Court shall, in the usual manner, order a jury for his trial accordingly.

Refusal to plead.  
*Ibid.* s. 332.

**396.** If any person being so arraigned stands mute, or will not answer directly to the indictment, the Court may order a plea of "not guilty" to be entered on behalf of such person, and the plea so entered shall have the same effect as if he had actually pleaded the same.

Pleas of attainder.  
*Ibid.* s. 333.

**397.** No plea setting forth an attainder shall be pleaded in bar of an indictment, unless the attainder is for the same offence as that charged in the indictment.

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**398.** No indictment shall be abated by reason of any dilatory plea of misnomer, or want of addition, or of a wrong addition, of the accused, but the Court shall forthwith cause the indictment to be amended according to the truth, and shall call upon such accused to plead thereto, and shall proceed as if no such plea had been pleaded.

Dilatory plea, &c.  
46 Vic. No. 17, s. 333.

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

Plea of autrefois  
convict, &c.  
*Ibid.* s. 334.

**400.** In every case, whether of felony or misdemeanour, the presiding Judge shall have power to order the accused to enter the dock, or usual place of arraignment, or to allow him to remain on the floor of the Court, and in either case to sit down, as such Judge shall see fit:

Practice as to enter-  
ing the dock.  
*Ibid.* s. 335.

Provided that every defendant in a case of libel, or of assault simply not being an indecent assault, may remain on the floor of the Court as at present.

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

Jury not to inquire  
of lands, &c.  
*Ibid.* s. 341.

**402.** Every accused person shall, in all Courts, be admitted to make full answer and defence by counsel, and in every case may reserve his address until the close of the evidence for the defence, and in the latter case, all evidence in reply for the Crown shall be given before such address.

Accused may be  
defended by counsel.  
*Ibid.* s. 342,  
and 24 Vic. No. 6,  
ss. 1 and 2.

**403.** Every accused person shall be entitled on his trial to inspect, without fee or reward, all depositions taken against him and returned into, or which shall be in, the Court before which he is under trial.

Right to inspect  
depositions on trial.  
46 Vic. No. 17, s. 460.

**404.** Every accused person on his trial may, if so advised by counsel, make any admissions as to matters of fact, whatever the crime charged, or give any consent which might lawfully be given in a civil case.

Admission by  
accused at trial.  
*Ibid.* s. 470.

**405.** Every accused person on his trial, whether defended by counsel or not, may make any statement at the close of the case for the prosecution, and before calling any witness in his defence, without being liable to examination thereupon by counsel for the Crown, or by the Court, and may thereafter, personally or by his counsel, address the jury.

Statement and  
address to jury  
by accused.  
*Ibid.* s. 470.

*Rules respecting evidence.*

**406.** Whenever by the representation of any credible person on oath, or in case of urgency without oath, it is made to appear to any Justice that a person, able to give material information respecting an indictable offence, is dangerously ill, whereby his evidence will probably be lost if not forthwith taken, such Justice may take the deposition of the person so in danger, touching such offence, in like manner as if a prosecution for the same were then pending before such Justice, and transmit

Depositions by  
persons dangerously  
ill—how to be taken  
and when admissible  
in evidence.  
*Ibid.* ss. 344, 345.

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transmit the same 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 is proved to the satisfaction of the Judge that the witness is dead, or unable from illness to attend the trial, his deposition may be read in evidence for or against the accused, although not taken in the presence or hearing either of the party prosecuting or of such accused person:

Provided always that:—

- (1) Every such deposition shall be in the form, or substantially in the form, contained in the Fifth Schedule hereto, and shall be subscribed by the Justice taking the same, of which fact, and that such deposition was duly taken by him under this section, the deposition itself, if purporting to be signed by such Justice, shall be sufficient proof.
- (2) A copy of every such deposition shall be delivered to every person whom the same may affect criminally, as soon after the taking thereof as shall be practicable.
- (3) If practicable, every such person shall, before being committed or placed on his trial, have full opportunity afforded him, if he thinks fit, for the cross-examination of any such deponent, for which purpose any Judge or Police Magistrate may, by any order or orders in writing, cause any person in custody to be conveyed to any place mentioned in any such order, and afterwards to be returned to that custody.

Competency of parties and accused persons and their husbands and wives to give evidence.

No. 11, 1898, ss. 5, 7 (and see 55 Vic. No. 5, s. 6.)

**407.** Every party to a civil proceeding, inquiry in which evidence is or may be given, or arbitration, and the husband or wife of such party, shall be competent to give evidence in such proceeding, inquiry, or arbitration.

Every accused person in a criminal proceeding, and the husband or wife of such person, shall be competent, but not compellable, to give evidence in such proceeding in every court;—

Provided that

- (1) No such person charged with an indictable offence shall be liable—
  - (a) to be called as a witness on behalf of the prosecution; or
  - (b) to be questioned on cross-examination as to his previous character or antecedents, without the leave of the Judge.
- (2) It shall not be lawful to comment at the trial of any person upon the fact that he has refrained from giving evidence on oath on his own behalf.

No comment on an accused not giving evidence.

No. 30, 1898, s. 1.

Declaration by persons since deceased.

No. 11, 1898, s. 40. (c.f. 46 Vic. No. 17, s. 361.)

**408.** (1) Every declaration, by a person since deceased, shall be admissible in evidence, in any case where a dying declaration is now admissible, if the declarant was at the time aware of his danger, and on the whole believed that he would shortly die, although he entertained some degree of hope. (2)

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(2) No such declaration, if otherwise admissible as a dying declaration, shall be excluded because of its having been, or purporting to be, on oath.

**409.** (1) A deposition purporting to be signed by the Justice by or before whom it purports to have been taken, may be read as evidence in the prosecution at the trial of the accused upon proof on oath that—

Depositions may be read as evidence for prosecution.  
11 & 12 Vic., c. 42, s. 17, as adopted by 14 Vic. No. 43.

- (a) the witness who made the deposition is dead, or so ill as not to be able to travel; and
- (b) the deposition was taken in the presence of accused; and,
- (c) the accused, or his counsel or attorney, had a full opportunity of cross-examining the witness.

Provided that no deposition shall be so read as evidence if it be proved that it was not in fact signed by the Justice purporting to sign it.

(2) The deposition of any witness called and examined before a Justice by and on behalf of the accused may, if the accused so require, be read as evidence in his defence at the trial whenever—

Depositions may be read as evidence for defence.  
14 Vic. No. 43, s. 16.  
17 Vic. No. 39, s. 13.

- (a) the witness is dead, or so ill as not to be able to travel; or,
- (b) the Justice who committed the accused or held him to bail has certified before the committal or holding to bail that the evidence of the witness is material, and that he is, in his belief, willing to attend the trial, but is unable to bear the expense of attendance.

Provided that no deposition may be so read upon the ground mentioned in paragraph (b) of this section if the witness has, in due time before the trial, been subpoenaed by the Crown.

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

Depositions on one charge may be read on trial of another.  
No. 11, 1898, s. 37.  
(cf. 46 Vic. No. 17, s. 352.)

**410.** (1) No confession, admission, or statement shall be received in evidence against an accused person if it has been induced—

Confessions, &c., when inadmissible.  
*Ibid.*, s. 38.  
(cf. 22 Vic. No. 7, s. 11 and 46 Vic. No. 17, s. 357.)

- (a) by any untrue representation made to him; or
- (b) by any threat or promise, held out to him by the prosecutor, or some person in authority.

(2) Every confession, 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.

(3) Provided that no confession, admission, or statement by the accused shall be rejected by reason of his having been told, by a person in authority, that whatever he should say might be given in evidence for or against him.

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Criminating statements admissible though on oath.  
*Ibid.* s. 39.  
(cf. 46 Vic. No. 17, s. 361.)

Evidence to character of accused.  
*Ibid.* s. 41.  
(cf. 46 Vic. No. 17, s. 348.)

Witnesses to character—what evidence admissible.  
*Ibid.* s. 41.  
(cf. 46 Vic. No. 17, s. 348.)

Evidence of previous conviction charged in an indictment.  
46 Vic. No. 17, s. 320.

Proof of banking account, &c.  
No. 11, 1898, s. 43.  
(cf. 46 Vic. No. 17, s. 353.)

Proof of by-laws, &c.  
*Ibid.* s. 27.  
(cf. 46 Vic. No. 17 s. 472.)

Proof of lawful authority or excuse.  
45 Vic. No. 17, s. 351.  
(cf. No. 11, 1898, s. 5 and s. 407 of this Act.)

On hearing of a charge for certain offences, evidence not on oath may be received in case of children of tender years, but such evidence must be corroborated.  
55 Vic. No. 5, s. 7.

**411.** No criminating statement by the accused, offered in evidence in any case, if the same was made voluntarily, and before any charge of felony or misdemeanour preferred against him, shall be rejected because of the statement having been on oath.

**412.** Evidence to the character of the accused shall, in all cases, be received and dealt with as evidence on the question of his guilt.

**413.** Every witness examined as to character, whether of the accused or of any other person, may give evidence not only as to the general repute of such person, but also as to the witness's own knowledge of his habits, disposition, and conduct.

But no witness shall be allowed to state that he would not believe another on his oath.

**414.** No evidence of any previous conviction, charged in an indictment, shall be offered, except in reply to evidence of character, unless the accused is convicted of the subsequent offence charged in such indictment.

**415.** In any case where it is necessary to prove—

(a) the state of an account in the books of a banking corporation, or company; or

(b) that any person had not an account, or any funds, to his credit in such books,

it shall not be necessary to produce any such book, but evidence of the state of such account, or that no such account or funds existed, may be given by any officer or clerk of the corporation or company who has examined such books.

**416.** In any case, where, by any Act, power to make by-laws or regulations is conferred upon any persons, or body, any printed paper purporting to be such by-laws or regulations, and to be printed by the Government Printer, shall be evidence—

(a) that by-laws or regulations, in the words printed in such paper, were duly made by such persons or body;

(b) that such by-laws or regulations if appearing by such paper to have been approved of or confirmed by the Governor, have been so approved or confirmed.

**417.** Wherever, by this Act, doing a particular act or having a specified article or thing in possession without lawful authority or excuse, is made or expressed to be an offence, the proof of such authority or excuse shall lie on the accused.

**418.** (1) On the hearing of any charge under section sixty-seven to eighty-one inclusive, of this Act, where any child of tender years who is tendered as a witness does not in the opinion of the Court or Justices understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if in the opinion of the Court, or Justices, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2)

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(2) No person shall be convicted of the offence charged, unless the testimony admitted by virtue of this section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused.

**419.** On the prosecution of a person for bigamy the first marriage shall not be proved by the evidence of the husband, or wife, of such marriage alone. Bigamy—Evidence of first marriage. No. 11, 1898, s. 31. (cf. 46 Vic. No. 17, s. 354)

**420.** On the trial of a person for feloniously receiving stolen property, evidence may be given Receivers. Evidence of guilty knowledge. 46 Vic. No. 17, s. 469.

(a) that he has been, within seven years previously, convicted of larceny, or the felonious receiving of stolen property, or of obtaining property by false pretences,

(b) 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

(1) the same facts have been given in evidence against the accused on his committal, or

(2) that ten days' notice, at the least, was given him before his trial of the intention to adduce such evidence.

**421.** On the trial of a person for an offence under 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 Commissioner 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. Cases of forged English stamps. *Ibid.* s. 355.

**422.** Where, on the trial of a person for an offence under this Act relating to the Queen's current coin, it is necessary to prove that any coin is counterfeit, it shall not be necessary to prove that fact by the evidence of an 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. *Ibid.* s. 356.

**423.** On any trial for perjury the person before whom the perjury is alleged to have been committed shall be presumed to have had authority to administer the oath, or take the declaration, or affirmation, unless the contrary is shown. On trial for perjury presumption of authority to administer oaths, &c. *Ibid.* s. 330.

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



*Crimes.**Verdict generally.*

Conviction for misdemeanour where facts amount to felony.

46 Vic. No. 17, s. 362.

**425.** Where, on the trial of a person for a misdemeanour, it appears that the facts in evidence amount in law to felony, he may notwithstanding be found guilty of and sentenced for, such misdemeanour, and in that case shall 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.

After trial for felony, where alternative verdict possible, no further prosecution.

*Ibid.* s. 362.

**426.** No person tried for felony, in any case where under this Act he may be acquitted thereof but be found guilty of some other offence, shall be liable to prosecution on the same facts for any such other offence.

On trial for any felony or misdemeanour—verdict of attempt.

*Ibid.* s. 374.

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

*Reserving questions of law.*

Reserving questions of law at trial.

*Ibid.* s. 422.

**428.** (1) Where any question of law arises on the trial of any person, or is submitted before sentence passed on him, the Court shall, on the application of his counsel then made, and may in its discretion without any application, reserve every such question for the consideration of the judges of the Supreme Court.

(2) Upon reserving any such question the Court shall either commit the person to prison, or take his recognizance, with one or more surety or sureties, to appear at such time and place as the Supreme Court may direct, and receive judgment, or, if judgment has been given, that he will render himself in execution.

(3) The like proceedings may be taken, so far as they are applicable, where any question of law arises on the arraignment of any person, or as to the verdict, or judgment given, or to be given, thereon.

## PART XII.

## SENTENCES.

*Juvenile offenders.*

Court may release juvenile offenders on recognizances,

*Ibid.* s. 382.

**429.** Where any person, under the age of sixteen years, is convicted on an indictment under this Act—

The Court may abstain from passing any sentence upon him, on his entering into a recognizance, with sureties, that he will appear

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appear and receive sentence, if within three years required so to do, and will keep the peace, and be of good behaviour for that period; or

The Court may, instead of, or in addition to, any sentence, whether of penal servitude or imprisonment, direct that the offender shall be sent forthwith, or at the expiration of his sentence, to a reformatory school under the provisions of any Act relating to reformatory schools.

or sent to reformatory school. 46 Vic. No. 17, s. 382.

*Sentences of death.*

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

Sentence of death when to be pronounced. *Ibid.* s. 387.

When to be recorded only. *Ibid.*

(2) It shall not be necessary, in any case, that the disposal of the body shall form part of the sentence.

Disposal of body not part of sentence. *Ibid.* s. 386.

**431.** No person shall suffer death, unless for some offence punishable with death at the commencement of this Act, or some offence by this Act hereafter made so punishable.

Only certain felonies capital. *Ibid.* s. 379.

*Sentences of imprisonment—Hard labour—Solitary confinement—And sureties.*

**432.** Whenever a person is convicted of any offence as a misdemeanour at Common Law, the Court may sentence him to be kept to hard labour during the whole, or any part of the term of his imprisonment.

Common Law misdemeanours. *Ibid.* s. 458.

**433.** (1) Whenever imprisonment, under this or any other Act, is awarded, the Court, wheresoever sitting, may direct that the offender be imprisoned, or, if a male be imprisoned and kept to hard labour, or in the case of a female, to light labour, in any gaol in New South Wales.

55 Vic. No. 5, s. 16. Other imprisonment sentences. 46 Vic. No. 17, s. 398.

(2) The Court may, in the sentence, direct that the offender be kept in solitary confinement, for any portion or portions of the term, not exceeding one month at one time, and not exceeding three months within any year, and also may require him or her to enter into a recognizance, with or without sureties, for keeping the peace and being of good behaviour for a term not exceeding three years:

Solitary confinement.

Provided that no person shall be imprisoned, under this Act, more than one year for not finding sureties.

Sureties.

*Sentences of whipping or irons.*

**434.** Where a male person, under the age of sixteen years, is convicted on an indictment of an offence under this Act, the Court may instead of, or in addition to, any other punishment prescribed for such offence, sentence him to be once, twice, or thrice, privately whipped:

Juvenile offenders may be whipped. *Ibid.* s. 411, and 55 Vic. No. 5, s. 5.

Provided

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Provided that the number of strokes at each such whipping shall not exceed twenty-five, and shall be specified by the Court in the sentence.

The Court may specify in the sentence the time or times of such whippings, or may leave the same to be fixed by the Comptroller-General of Prisons as hereinafter provided.

Whipping adults in certain cases.  
*Ibid.* ss. 401, 402, and 46 Vic. No. 17.  
55 Vic. No. 5, s. 5.

**435.** Where a male person, of or above the age of sixteen years, is convicted of an offence under any section of this Act mentioned in the Sixth Schedule hereto, or, being at the time of the offence a prisoner in gaol, is convicted of a felonious assault upon, or of maliciously wounding, any person in such gaol, the Court may, in addition to any other punishment prescribed for such offence, sentence him to be once, twice, or thrice, privately whipped:

Provided that the number of strokes at each such whipping shall not exceed fifty, and shall be specified by the Court in the sentence.

The Court may specify in the sentence the time or times of such whippings, or may leave the same to be fixed by the Comptroller-General of Prisons as hereinafter provided.

Sentences to irons.  
46 Vic. No. 17, s. 40f.

**436.** Where a person is 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 he be kept in irons, for any portion, not exceeding the first three years, of his term of punishment.

*Order for payment of compensation.*

Compensation to person aggrieved by any felony.  
*Ibid.* s. 416.

**437.** Where a person is convicted of any felony the Court in which he was tried, or any Judge thereof, may, on such conviction or at any time thereafter, direct that a sum not exceeding five hundred pounds be paid out of the property of the offender to any aggrieved person, by way of compensation for injury, or loss, sustained through, or by reason of, such felony.

*Order for restitution of property stolen, &c.*

Restitution of property in certain cases.  
*Ibid.* s. 413.

**438.** (1) Where a person is convicted under this Act of stealing, embezzling, or receiving property, the Court may order the restitution thereof, in a summary manner, to the owner, or his representative.

(2) Where any person indicted for any such offence is acquitted, the Court in its discretion, on being satisfied that any property mentioned in the indictment has been stolen, embezzled, or received, contrary to this Act, may order in like manner the restitution of such property.

(3) Where any valuable security has been paid by some person liable to the payment thereof, or, being a negotiable instrument, has been taken for a valuable consideration, without notice, or cause to suspect, that the same had been dishonestly come by, the Court shall not order such restitution.

(4)

*Crimes.*

(4) This section shall equally apply to property in any manner taken, or otherwise acquired, received, retained, or disposed of, in violation of any provision of this Act.

Extended application of preceding subsections.  
46 Vic, No. 17, s. 414.

*Disposal of insane persons.*

**439.** Where a person, indicted for any offence, is acquitted on the ground that he was insane at the time of committing such offence, or is on arraignment found to be insane, he shall be dealt with in the manner in such case provided by the Lunacy Act or Acts in force for the time being.

Acquittals on ground of insanity.  
*Ibid.* s. 415.

*Sentences for statutory offences.*

**440.** Whosoever is convicted of an offence not punishable with death shall be punished in the manner prescribed by the statute relating thereto, and where no punishment is specially provided, shall be liable to penal servitude for five years.

Statutory offences.  
*Ibid.* s. 379.

*Deferred sentences.*

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

Judgment after sentence deferred.  
*Ibid.* s. 385.

*Reduction of sentence or fine below term or amount fixed.*

**442.** (1) Where by any section of this Act an offender is made liable to penal servitude for life, or any other fixed term, the Judge may nevertheless pass a sentence of penal servitude, or of imprisonment, of less duration as follows: that is to say—instead of penal servitude for life, penal servitude for any term of years not less than seven, or imprisonment for any term not exceeding seven years—instead of penal servitude for fourteen years, penal servitude for any term of years not less than five, or imprisonment for any term not exceeding five years—instead of penal servitude for ten years, penal servitude for any term of years not less than four, or imprisonment for any term not exceeding three years—and instead of penal servitude for seven or five years, penal servitude for any term of years not less than three, or imprisonment for any term not exceeding two years:

Provision for passing sentences of penal servitude or imprisonment of less duration than those fixed herein.  
55 Vic. No. 5, s. 4.

Provided that nothing in this subsection shall prevent the awarding of hard labour, or solitary confinement, or whipping, where at present by law authorised, or the directing of the offender to enter into recognizances to keep the peace and for good behaviour.

(2) Where by any section of this Act an offender is made liable to imprisonment for any fixed term, or to a fine of any fixed amount, the Judge may nevertheless pass a sentence of imprisonment of less duration, or inflict a fine of less amount.

*Crimes.**Additional and cumulative sentences.*

Additional sentences  
on second or third  
convictions.

43 Vic. No. 17,  
ss. 393, 457.

**443.** In every case where, on the conviction of a person of an offence punishable under this Act, it is made to appear to the Judge that the offender has been previously convicted of, and sentenced for, an indictable offence, under this or any former Act, such Judge may sentence him to a term of punishment, in addition to that prescribed for the offence of which he then stands convicted.

Such additional punishment shall be:—

Sentence during any  
unexpired sentence  
may be cumulative.

46 Vic No. 17, s. 394.

(1) Where the offence of which he then stands convicted is a felony—

(a) if he has been once previously so convicted and sentenced—penal servitude for ten years, or not less than two years;

(b) if he had been twice or oftener previously so convicted and sentenced—penal servitude for fourteen years, or not less than three years.

(2) Where the offence of which he then stands convicted is a misdemeanour—imprisonment for eighteen months, or not less than six months.

Proof of previous  
conviction.

*Ibid.* s. 395.

**444.** (1) Where a person is convicted of any offence, and at the time of passing sentence the term of any sentence previously passed on him, whether of penal servitude or imprisonment, is unexpired, the Judge may direct that the sentence for the offence of which such person then stands convicted shall commence at a future day to be named by the Judge, and to be within, or at the expiration of the period of such unexpired sentence.

(2) Where no such direction is given the sentences shall be concurrent.

Previous sentences  
to be noted in new  
sentence.

*Ibid.* s. 396.

**445.** Any such previous conviction and sentence may be proved by a certificate admissible in evidence under "The Evidence Act, 1898," or other evidence together with evidence of the identity of the offender to the satisfaction of the Judge:

Sentences on two or  
more counts may be  
cumulative.

*Ibid.* s. 397.

Provided that where an offender is convicted of an offence and sentenced for the same, and is in the same Court, and during the same sittings, convicted a second time or oftener, judicial notice may be taken of every such previous conviction and sentence.

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

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

*Crimes.*

PART XIII.

PROCEEDINGS AFTER SENTENCE.

(A) EXECUTION OF SENTENCE.

*Capital sentences.*

**448.** (1) Every sentence of death may be carried into effect on a day to be appointed for that purpose by the Governor. The execution shall take place within the walls, or enclosed yard, of such gaol as the Governor directs, and shall be carried into effect by the Sheriff, or some deputy appointed by him, and all other proceedings in respect thereof shall be taken in the manner now by law provided.

Carrying capital sentence into execution.  
46 Vic. No. 17, s. 386.

(2) The body of every person executed shall be buried within the walls or enclosed yard of the gaol until the sentence has been

**449.** (1) The Sheriff, or his deputy, together with the gaoler and such officers of the gaol as he requires, including the medical officer, shall be present within the gaol at every such execution.

Sheriff, officers of gaol, &c., to witness execution.  
*Ibid.* s. 388.

(2) Every Justice, minister of religion, and officer of police, desiring so to do, and such military guard, and adult spectators, as such sheriff, or deputy, thinks fit to admit, may also attend thereat.

**450.** (1) Every person present at any such execution shall remain within the walls or enclosed yard of the gaol until the sentence has been completed, and until the medical officer has signed a certificate in the form set forth in the Seventh Schedule to this Act.

Medical officer to sign certificate  
*Ibid.* s. 359.

(2) The said Sheriff, or deputy, and the gaoler and officers, shall before their departure subscribe a declaration, in the form also set forth in that Schedule.

Sheriff to make declaration.

(3) Every such certificate and declaration as aforesaid shall be forthwith transmitted, by the Sheriff or his deputy, to the Prothonotary of the Supreme Court, and be kept in his office as of record, and shall be by him published in the Gazette.

Certificate and declaration to be recorded.  
*Ibid.* s. 392.

**451.** (1) The body of the person executed shall not be buried, or removed from the gaol within eight hours next after such execution, nor until an inquest has been held as provided by the Coroners Act, 1898.

Body not to be buried within eight hours.  
*Ibid.* s. 390.

(2) Every person who, within that time, produces to the gaoler an order from a Judge, or Police Magistrate, requiring him to admit the bearer to view the body, shall be admitted by such gaoler accordingly.

**452.** Whosoever—  
subscribes any such certificate, or declaration, as in section four hundred and fifty mentioned, knowing it to contain any false statement, or  
buries, or removes from such gaol, within eight hours, the body of the person so executed,  
shall be liable to penal servitude for seven years.

Punishment for false certificate, &c., or burying or removing body.  
*Ibid.* s. 392.

*Penal*

*Crimes.**Penal servitude sentences.*

Meaning and effect of penal servitude sentences.  
46 Vic. No. 17, s. 399.

**453.** For the purposes of this Act penal servitude means,  
(1) in the case of male offenders:—hard labour on the roads or other public works of New South Wales, either in or out of irons, according to the sentence passed on the offender:

Provided that the Governor may cause the whole, or any part, of such servitude to be endured, and in the absence of any direction by him to the contrary, the servitude shall be endured, and the sentence in all other respects be carried out, within the walls of any gaol.

(2) in the case of females:—hard labour in some gaol, penitentiary, or reformatory, as the Governor shall from time to time, by general regulations, or in any case specially, direct.

Existing laws to be applicable.  
*Ibid.* s. 400.

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

*Whipping sentences.*

Kind of instrument and manner of use to be fixed by Comptroller-General.  
*Ibid.* s. 404.

**455.** (1) The Comptroller-General of Prisons, with the approval of the Governor, may prescribe the form and kind of instrument to be used in the whipping of offenders under the age of fourteen years, or of or above that age, and under the age of sixteen years, and of, or above, the last-mentioned age, and may direct the manner of its use in each case.

(2) No other kind of instrument or manner of using the same shall thereafter be used in the carrying out of the sentence on any offender.

Time of whipping.  
65 Vic. No. 5, s. 5.

(3) In the case of any sentence to a whipping, or whippings, under this Act, where the Court does not specify the time or times of such whipping, the same shall be fixed by the Comptroller-General of Prisons, under and in accordance with regulations in that behalf to be made by the Governor.

(4) In no case shall any whipping take place after the expiration of six months from the passing of the sentence.

Surgeon may remit whipping in certain cases.  
46 Vic. No. 17, s. 403.

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

*Enforcing*

*Crimes.**Enforcing payment of compensation.*

**457.** (1) In all cases where under section four hundred and thirty-seven of this Act any sum by way of compensation has been directed to be paid, every such direction shall be entered by the Prothonotary, in a book to be kept in his office, and, after such entry, shall be deemed to be of record, and shall have the effect of a judgment of the Supreme Court at law, and be enforceable by execution as any such judgment is ordinarily enforced.

Direction for compensation to be enforceable by execution, &c.  
46 Vic. No. 17, s. 417.

(2) Every alienation of the offender's property or any part thereof, executed, or made, by him or any person by his direction, after the commission of his offence and within twelve months before his conviction, shall, as against every such writ, be absolutely void:

Alienation void.

Provided that nothing in this section shall affect any alienation to a person, for valuable consideration, and without notice or knowledge of such offence.

*Sentences of Courts-martial.*

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

Sentences by Courts-martial under Imperial Acts.  
*Ibid.* s. 381.

## (B) COMMUTATION OR MITIGATION OF SENTENCES.

**459.** In all cases in which the Governor is authorised on behalf of Her Majesty to exercise the pardoning power, he may extend mercy to any offender under sentence of death, on condition that he be kept in penal servitude, or imprisoned with or without hard labour for life, or for any less term, and also, if the Governor thinks fit so to direct, that he be kept in irons, for any time not exceeding the first three years of such servitude or imprisonment.

Commutation of capital sentences.  
*Ibid.* s. 406.

In addition thereto, in cases of rape, or of carnal knowledge of a girl under ten years, the Governor may direct that the offender shall be once, twice, or thrice publicly or privately whipped, at such times and with so many strokes at each time, not more than fifty, as he thinks fit.

Cases of rape, &c.

**460.** Upon any such extension of mercy being signified to the Judge before whom the offender was convicted, such Judge shall make an order that the offender be dealt with according to the terms of such

On commutation Judge to make order accordingly.  
*Ibid.* s. 407.

extension,



*Crimes.*

extension, which order shall have the effect of a valid sentence passed by the Court before which the offender was convicted, and shall be entered on the records of the Court accordingly.

General regulations  
for remission of  
sentences.  
46 Vic. No. 17, s. 4-8.

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

Remission on  
recognizances.  
*Ibid.* s. 409.

**462.** The Governor may grant, at any time, to an offender under sentence, a remission of the whole or any portion of such sentence, on condition of his giving security by recognizance for his good behaviour, as to the Governor shall seem meet.

Tickets-of-leave.  
*Ibid.* s. 409.

**463.** The Governor may grant to any offender a written license to be at large, within limits specified in the license, but not elsewhere, during the unexpired portion of his sentence, subject to such conditions indorsed on the license as the Governor shall prescribe, and while such offender continues to reside within the limits specified, and to perform the conditions so prescribed, his sentence shall be suspended.

Revocation or can-  
cellation of ticket.  
*Ibid.* s. 410.

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

Arrest on breach of  
conditions.  
*Ibid.* s. 411.

(3) Where the holder of any such license is found out of the limits specified therein, or reasonably suspected of having broken any other condition of his license, any constable may arrest the person so offending, or so suspected, and bring him before some Justice to be dealt with summarily, under this or the last preceding subsection.

(4) If adjudged to have wilfully and without lawful excuse broken any such condition, the offender may be dealt with by such Justice under the said subsections.

Remissions where  
more than one  
sentence.  
*Ibid.* s. 412.

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

## (c) CONSEQUENCES, &amp;c., OF CONVICTION FOR FELONY.

Forfeiture in felonies  
abolished.  
*Ibid.* s. 416.

**465.** (1) No inquest, conviction, or judgment, in respect of any felony, shall cause any escheat or forfeiture of lands or goods.

(2)

*Crimes.*

(2) There shall be no forfeiture of any chattel which may have moved to, or caused, the death of any human being for or in respect of such death.

No forfeiture of chattel causing death.

13 Vic. No. 18, s. 1.

**466.** After the conviction of an offender for any felony, until he has endured the punishment to which he was sentenced, or the punishment, if any, substituted for the same, or the unremitted portion of such punishment, or has received a free pardon for his offence, he shall be incapable of holding, or being elected or appointed to any office, or of exercising any electoral or municipal franchise.

Disabilities of felony.

46 Vic. No. 17, s. 418.

**467.** (1) The wife of every such offender while under disability may, for the maintenance of herself and her children, or for enforcing the payment of wages earned by her or them, or the recovery of property to which she may be entitled, or of damages for any personal injury, maintain any suit or action.

Position of wife of felon.

*Ibid.* s. 418.

(2) Any property acquired by any such wife since her husband's conviction may, in an indictment, be described as her property as if she were unmarried.

**468.** Upon the avoidance or vacating of the conviction of any such person, or reversal of the judgment against him, the provisions of the two last preceding sections, and of sections four hundred and thirty-seven and four hundred and fifty-seven, of this Act shall, with respect to such person, determine, and every order made for the payment of money out of his property shall become of no effect, and he shall be restored to all that he may have lost thereby.

Effect of reversing judgment in such cases.

*Ibid.* s. 419.

**469.** (1) The Supreme Court, or any Judge thereof, at any time within six months after any conviction for felony, may, on the application of the Crown, or of any creditor of the offender, direct that such offender's estate shall be placed under sequestration in the hands of an official assignee of bankrupt estates, or in the hands of some other person appointed by such Court or Judge.

Sequestration of offender's property.

*Ibid.* s. 420.

(2) Every such direction shall be entered by the Prothonotary in the book to be kept by him in his office, and when so entered shall have the effect of a sequestration order under any Act then in force providing for the administration of bankrupt estates, and shall vest in such assignee or person, for the benefit of the creditors and family of the offender, all his estate rights and credits, then existing, or to accrue during his disability.

(3) Every person having any claim, legal or equitable, otherwise, shall be deemed a creditor within the meaning of this section, otherwise, shall be deemed a creditor within the meaning of this section, and the matter of such claim shall be inquired into and determined, and such damages be assessed, in such manner as the Court or a Judge may direct.

Who deemed creditors.

*Ibid.*

(4) The Judge in Bankruptcy may cause to be set apart from time to time, out of such estate and credits, such sums for the support of the offender's wife and children as such Judge thinks proper, subject nevertheless to the payment of the creditors of the offender, or such of them as have proved their claims.

Provision for offender's family.

*Ibid.* s. 421.

(5)

*Crimes.*

Ultimate restoration  
of property.

(5) On the termination of such offender's disability by any means, the official assignee, or other person appointed as aforesaid, shall restore to him all property, and moneys, if any, in the estate then unappropriated, or on the death of the offender, if that first happens, shall deliver and pay such property, and moneys, to the person, or persons, then entitled thereto.

## (D) APPEALS.

*Questions reserved.*

Proceedings when  
question reserved.  
46 Vic. No. 17, s. 423.

**470.** (1) The Judge by whom any question of law is reserved under the provisions of this Act shall, as soon as practicable, state a Case setting forth the same, with the facts and circumstances out of which such question arose, and shall transmit such Case to the Judges of the Supreme Court, who shall determine the question, and may affirm, amend, or reverse the judgment given, or avoid or arrest the same, or may order an entry to be made on the record that the person convicted ought not to have been convicted, or may make such other order as justice requires:

Stating and deciding  
case.  
*Ibid.*

Provided that no conviction, or judgment thereon, shall be reversed, arrested, or avoided, on any Case so stated, unless for some substantial wrong, or other miscarriage of justice.

Case may be sent  
back for amendment.  
*Ibid.* s. 425.

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

Argument and  
judgment on case.  
*Ibid.* s. 426.

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

Certificate of affirm-  
ance or reversal.  
*Ibid.* s. 424.

(4) Every such determination and order shall be certified, under the hand of the Prothonotary, to the proper officer of the Court in which the conviction took place, who shall enter the same on the record, and if the person convicted is in custody, a certificate shall be transmitted to the gaoler having such custody, which certificate shall be a sufficient warrant for the execution of the judgment, if against the convicted person, or for his discharge from imprisonment, if the judgment has been reversed, avoided, or arrested.

(5) Such judgment shall be executed, or the person forthwith discharged, or his recognizance, if on bail, be vacated accordingly.

*Writs of error.*

Writ of error how  
obtained.  
*Ibid.* s. 427.

**471.** (1) Wherever, after a conviction in England for felony or misdemeanour, a writ of error might on the fiat of the Attorney-General be brought for reversal of the judgment thereon, the like writ may, by rule

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rule or order for that purpose, on motion, or on application in chambers, on behalf of either the Crown or the prisoner, and after cause shown, be issued out of the Supreme Court, returnable therein, for reversal of the judgment, on any conviction in that or any other Court in New South Wales:

Provided that no judgment shall be reversed or avoided for any error, unless some substantial wrong appears to have been done, or some other miscarriage of justice occasioned, by reason of such error.

(2) Where any such error appears to the Judges to be amend- Amending record.  
able, the same shall be amended accordingly, and they may either thereupon make the necessary amendments, or may remit the record to the Court whence it came, that the same may be amended there.

(3) In either case all such orders may be made, and such writs issued, as to the Judges, or, where the record is so remitted, as to the Court below, may seem proper.

*General provisions as to informalities.*

**472.** (1) No judgment after verdict, in any case, shall be stayed What not sufficient to stay or reverse judgment. or reversed for want of a similiter, nor by reason that the jury process was awarded to a wrong officer, nor for any misnomer, or misdescription, 46 Vic. No. 17, s. 378. of the officer returning such process, or of any juror, nor because any person served upon the jury who was not returned as a juror.

(2) Nor shall any verdict be affected, because of the jury not having been instructed that the accused might, on the evidence, be convicted of a less offence than the one charged.

(3) Where the offence charged is created by statute, or subjected to a greater degree of punishment by any statute, the indictment shall after verdict be sufficient, if it described the offence in the words of the statute.

**473.** No judgment shall be reversed, or avoided, for any error in law in the sentence imposed, but it shall be competent for the Judges of the Supreme Court, in cases of any such error, either to pronounce such judgment and sentence as is authorised by law, or to remit the record to the Court whence it came, in order that such Court may pronounce such judgment and sentence as is authorised by law. Pronouncing proper judgment. 55 Vic. No. 5, s. 27.

*New trials.*

**474.** (1) A new trial may be granted in any case of misde- New trials in misdemeanours regulated. 46 Vic. No. 17, s. 380.  
meanour, for any cause for which a new trial may now be granted, in respect of all, or some, or one only, of the defendants where two or more are included in the same indictment, although all are not present, nor are parties to the motion, nor have been tried.

(2)

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(2) A new trial may be granted by the Supreme Court in any case of misdemeanour, although the indictment was preferred and the trial had in a Circuit Court, and sentence passed there on the defendant, or defendants, or some, or one, of them.

## (E) ENQUIRY SUBSEQUENT TO CONVICTION.

Governor or Judge may direct inquiry.  
46 Vic. No. 17, s. 383.

**475.** (1) Whenever, after the conviction of a prisoner, any doubt or question arises as to his guilt, or any mitigating circumstance in the case, or any portion of the evidence therein, the Governor, on the petition of the prisoner, or some person on his behalf, representing such doubt or question, or a Judge of the Supreme Court of his own motion, may direct any Justice to, and such Justice may, summon and examine on oath all persons likely to give material information on the matter suggested.

Attendance of witnesses, &c.  
*Ibid.* s. 384.

(2) The attendance of every person so summoned may be enforced, and his examination compelled, and any false statement wilfully made by him shall be punishable, in like manner as if he had been summoned by, or been duly sworn and examined before, the same Justice, in a case lawfully pending before him.

Cross-examination by person affected by evidence.  
*Ibid.* s. 333.

(3) Where on such inquiry the character of any person who was a witness on the trial is affected thereby, the Justice shall allow such person to be present, and to examine any witness produced before such Justice.

Form and disposal of deposition.  
*Ibid.* ss. 383, 384.

(4) Every deposition taken under this section shall be stated in the commencement to have been so taken, and in reference to what case, and in pursuance of whose direction, mentioning the date thereof, and shall be transmitted by the Justice, before whom the same was taken, as soon as shall be practicable, to the Governor if the inquiry was directed by him, or to the Judge directing the inquiry, and the matter shall thereafter be disposed of, as to the Governor, on the report of such Judge, or otherwise, shall appear to be just.

## PART XIV.

## OFFENCES PUNISHABLE BY JUSTICES AND PROCEDURE BEFORE JUSTICES GENERALLY.

CHAPTER I.—*Indictable offences punishable summarily only by consent of the accused.**Extent of jurisdiction.*

Extent of jurisdiction.  
55 Vic. No. 5, s. 18.

**476.** Where a person is charged before one, or more than one, Justice with an offence mentioned in the next following section, and the evidence for the prosecution is in the opinion of such Justice, or Justices

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Justices sufficient to put the accused on his trial, but it appears to him or them that the case may properly be disposed of summarily, the said Justice, or Justices, shall, if—

- (1) the accused consents to it being so disposed of, and does not desire to have the case determined by a jury; and
  - (2) the subject matter of the charge, or charges, that may be made in respect of any of the offences mentioned, or the value of the property involved, does not amount to twenty pounds,
- have jurisdiction to hear and determine the charge in a summary and pass sentence upon the person so charged.

*Offences and punishment.*

- 477.** The offences referred to in the last preceding section are:—
- |  |  |
|--|--|
| <p>(a) attempting to commit suicide;</p> <p>(b) committing simple larceny;</p> <p>(c) under section one hundred and twenty-five of this Act, being a bailee of any property, fraudulently taking or converting, the same, or any part thereof, or any property into, or for, which it has been converted or exchanged, to the use of such bailee, or the use of any person other than the owner thereof, although bulk shall not be broken, or the bailment otherwise determined by such bailee;</p> <p>(d) stealing any chattel, money, or valuable security, from the person of another;</p> <p>(e) under section one hundred and thirty-two of this Act, stealing any dog, or having unlawful possession of any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen, after having been previously summarily convicted of any such offence;</p> <p>(f) under section one hundred and thirty-three of this Act, corruptly taking any money, or reward, directly or indirectly, under pretence, or upon account, or aiding any person to recover any dog which has been stolen, or which is in the possession of any person other than its owner;</p> <p>(g) under section one hundred and thirty-nine of this Act, stealing, or ripping, cutting, severing, or breaking, with intent to steal, any glass or woodwork, belonging to any building, or any metal, or any utensil, or fixture, whether made of metal or other material, or of both, respectively, fixed in, or to, any building, or anything made of metal fixed in any land, being private property, or used as a fence to any dwelling-house, garden, or area, or being in any square, or street, or in or on any place dedicated to public use or ornament, or in any burial-ground;</p> | <p>List of offence<br/>within this<br/>jurisdiction.<br/>55 Vic. No. 5, s. 18.</p> |
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*Crimes.*

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- (h) under section one hundred and forty of this Act, stealing, or destroying or damaging with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood, respectively growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground belonging to any dwelling-house, where the value of the article stolen, or the amount of injury done, exceeds twenty shillings; or stealing, or destroying or damaging with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood, respectively growing elsewhere than in any situation before mentioned, where the value of the article stolen, or the amount of injury done, exceeds five pounds;
- (i) under section one hundred and fifty-two of this Act, stealing any property in any vessel, barge, or boat, while in any haven, or port, or upon any navigable river, or canal, or in any creek, or basin, belonging to, or communicating with, any such haven, port, river, or canal, or any property from any dock, wharf, or quay;
- (j) under section one hundred and fifty-six of this Act, being a clerk, or servant, stealing any property belonging to, or in the possession, or power, of the master, or employer, of such clerk, or servant, or any property into, or for which, it has been converted, or exchanged;
- (k) under section one hundred and fifty-seven of this Act, being a clerk, or servant, fraudulently embezzling, either the whole, or any part, of any property delivered to, or received, or taken into possession by, such clerk, or servant, for or in the name or on the account of his master, or employer;
- (l) under section one hundred and fifty-nine of this Act, being employed in the Public Service, stealing any property, or any part thereof, entrusted to such public servant, or taken into his possession, or being in his custody, or under his control, by virtue or colour of such employment;
- (m) under section one hundred and sixty of this Act, being employed in the Public Service, fraudulently embezzling any property, or any part thereof, entrusted to such public servant, or taken into his possession, or being in his custody, or under his control, by virtue or colour of such employment, or fraudulently secreting, removing, or in any manner fraudulently appropriating, or disposing of, the same;
- (n) under section one hundred and seventy-nine of this Act, by any false pretence, or partly by a false pretence and partly by a wilfully false promise, obtaining from any person any property, with intent to defraud;
- (o) attempting to commit any of the beforementioned offences.

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**478.** Where any person pleads guilty to, or is convicted under the provisions of this chapter of, an offence under the last preceding section, he shall be liable to imprisonment for six months, or to a fine of twenty pounds, or if he is in the opinion of the Justice, or Justices, under sixteen years of age, to imprisonment for three months, or to a fine of ten pounds.

Punishment in such cases.  
55 Vic. No. 5, s. 20.

*Procedure in such cases.*

**479.** Where a person is charged before one, or more than one, Justice with any offence mentioned in section four hundred and seventy-seven, and the case is in the opinion of such Justice, or Justices, one to which the provisions of section four hundred and seventy-six apply, such Justice, or Justices, shall, upon the close of the case for the prosecution, reduce the charge into writing and read it to the accused, and shall ask him whether he consents to it being disposed of summarily, and shall, at the same time, explain to him that he is not obliged then to plead, but is entitled to have the case determined by a jury in the ordinary course of law. If the accused so consents, such Justice, or Justices, shall then ask him whether he is guilty or not, and if the accused pleads guilty, the Justice, or Justices, shall pass sentence upon him, but if he says that he is not guilty, and has a defence, such Justice, or Justices, shall proceed to hear the same, and after hearing the whole case shall dismiss the case, or convict him of the charge.

Accused to have option of summary disposal of case or of trial by jury.  
*Ibid.* ss. 18 and 19.

**480.** In any such case, if the case is dismissed, the Justice, or Justices, shall, if requested, make out, and deliver to the person so charged, a certificate under his or their hands stating the fact of such dismissal.

Certificate of dismissal.  
*Ibid.* s. 20.

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

Summary conviction or dismissal a bar to indictment.  
*Ibid.* s. 21.

CHAPTER 2.—*Offences punishable summarily in certain cases by whipping.*

**482.** For the purposes of the nine next following sections

Definition.

“*boy*” means a male person apparently above ten and under fourteen years of age;

46 Vic. No. 17, ss. 446, 449.

“*youth*” means a male person apparently of, or above, fourteen and under eighteen years of age;

“*adult*” means a male person apparently of, or above, eighteen years of age.

**483.** Whosoever being a boy commits any of the offences following, that is to say—

Certain first offences by boys or youths.

(a) commits any wanton, or unprovoked, assault, or

*Ibid.* ss. 446, 447, 448.  
55 Vic. No. 5, s. 3.

(b)



*Crimes.*

- (b) in any public place, or in view thereof, exposes his person, or commits any other indecent act, or uses obscene or blasphemous language, or
- (c) in any public place, or in view thereof, writes, or marks, upon any building, pavement, wall, hoarding, fence, scaffolding, or any foot-way, or road-way, any obscene, or disgusting, word, or form, or sign, or
- (d) throws any missile, or throws, places, or deposits, any noxious, or filthy, matter, or fluid, so as to endanger the safety of, or with intent to injure or annoy any person, or so as to create a nuisance, or
- (e) in any public place, park, or reserve, or cemetery, or any public or private garden, or ornamental grounds, wantonly destroys, or damages, or attempts to destroy, or damage, any road, or pathway, tree, shrub, or plant, trellis-stand, flower-stand, railing, seat, fountain, or other structure, or
- (f) wantonly destroys, damages, or disfigures, or attempts to destroy, damage, or disfigure, any portion of a public building, statue, work of art, or pedestal, or structure, belonging thereto, or any tombstone, or monument, in any cemetery or church-yard, or
- (g) cruelly maims, wounds, or injures any animal,
- or, being a youth, commits any of such offences other than one indicated by the letter (b) or (c) or (f) or (g),

and it appears to be the first offence of such boy, or youth, shall on conviction before Stipendiary or Police Magistrate be liable to pay a fine of forty shillings, or to detention in custody in any lock-up, or police office, or building or yard attached thereto, or such other place as such magistrate directs, for a period of not less than six, nor more than ninety-six, hours after conviction, or may be discharged, after six hours detention, upon some approved person on his behalf entering into a recognizance in not less than twenty, nor more than forty, pounds for his good behaviour during the next six months.

Certain other first offences by youths.  
46 Vic. No. 17, ss. 446, 447, 448.

**484.** Whosoever, being a youth, commits any of the offences indicated in the last preceding section by the letter (b) or (c) or (f) or (g), and it appears to be his first offence, shall, on conviction before two or more Justices, one at least of whom shall be a Stipendiary or Police Magistrate, and either by the unanimous, or by a majority order of such Justices, be liable to pay the fine in the said section mentioned; or to be detained in the place, and for the period, in the said section mentioned and referred to, and to be there once privately whipped; or may be discharged, after six hours detention, upon a recognizance being entered into, as in the said section provided.

The like offences by boys or youths after previous conviction.  
*Ibid.* ss. 446, 447, 448.

**485.** Whosoever, being a boy or a youth who has been convicted under this or any former Act of any offence, afterwards commits any of the

the

*Crimes.*

the offences in section four hundred and eighty-three mentioned, shall, on conviction before two or more Justices, one at least of whom shall be a Stipendiary or Police Magistrate, and either by the unanimous, or by a majority order of such Justices, be liable to pay the fine in the said section mentioned, or to be detained in the place, and for the period, in the said section mentioned and referred to, and to be there once privately whipped.

**486.** Whosoever, being an adult, commits any of the offences in section four hundred and eighty-three mentioned, shall, on conviction before two or more Justices, one at least of whom shall be a Stipendiary or Police Magistrate, and either by the unanimous or by a majority order of such Justices, be liable to be detained in the place, and for the period, in the said section mentioned and referred to, and to be there once privately whipped.

The like offences by adults.  
46 Vic. No. 17, s. 449.

**487.** For boys the number of strokes inflicted shall not exceed eighteen, and for youths the number shall not be less than six nor more than twenty, and for adults the number shall not be less than ten nor more than thirty.

Number of strokes.  
*Ibid.* ss. 447, 449.

**488.** In every case the number of strokes to be inflicted, and the place of infliction, shall be specified by the Justices in the sentence.

Sentence to specify number of strokes, &c.  
*Ibid.* s. 447.

**489.** In every case where there has been no appeal from any conviction for any offence in this Chapter mentioned, the whipping, if ordered, shall be inflicted during the period of detention, and not less than six hours after such conviction.

Time of whipping—where no appeal.  
*Ibid.* ss. 447, 449.

**490.** (1) In every case where there has been an appeal from any such conviction, whether the appellant has been in custody for ninety-six hours after such conviction or not, if the conviction appealed from has been affirmed by the Court of Quarter Sessions such Court may—

Time of whipping—where appeal and conviction affirmed.  
52 Vic. No. 6, s. 3.

(a) if the appellant is before the Court at the making of such order, direct that any whipping, to which he has been sentenced by the convicting Justices, be carried out at any time within the thirty-six hours then next following:

If appellant before the Court.  
*Ibid.* s. 3 (1).

(b) if the appellant is not before the Court at the hearing of the appeal, without prejudice to any proceedings or remedies by the sureties, if any, of such appellant, and also without prejudice to any powers of the Crown, direct a warrant to be issued for the apprehension and bringing of such appellant before any Justice, who, when the appellant is so brought before him, shall by writing under his hand order the punishment adjudged to be carried out at any time and place he may direct, within the ninety-six hours next following the time the appellant is so brought before him.

If appellant not before the Court.  
*Ibid.* s. 3 (2).

(2)

*Crimes.*

Appellant may be detained for execution of sentence.  
52 Vic. No. 6, s. 3. (3.)

(2) For the purposes of giving effect to the provisions of the preceding subsection, the Court of Quarter Sessions or such Justice as therein mentioned may order the appellant to be detained in custody for such time as may, subject to the provisions of the said subsection, be necessary to permit of the punishment of whipping being carried out, as therein provided.

Kind of instrument and manner of use to be prescribed by Comptroller-General.  
46 Vic. No. 17, c. 401.

**491.** (1) The Comptroller-General of Prisons, with the approval of the Governor, may prescribe the form and kind of instrument to be used in the whipping of offenders, under the provisions of this Chapter, and may direct the manner of its use in each case.

(2) No other kind of instrument, or manner of using the same, shall thereafter be used in the carrying out of the sentence on any offender.

Surgeon may remit whipping in certain cases.  
*Ibid.* s. 403.

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

CHAPTER 3.—*Other offences punishable summarily.*

## (A) ASSAULTS.

Common assaults.  
*Ibid.* s. 65.

**493.** Whosoever unlawfully assaults any person shall, on conviction before two Justices, be liable to imprisonment for a term not exceeding three months, or to pay a fine, exclusive of costs if ordered, of ten pounds.

Aggravated assaults.  
*Ibid.* s. 65.

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

Assaults respecting the sale of grain.  
*Ibid.* s. 63.

**495.** Whosoever—  
beats, or uses any violence, or threat of violence to any person, with intent to deter, or hinder him, from buying, or disposing of, or to compel him to buy, or dispose of, any grain, flour, meal, malt, or vegetable produce, in any market or other place, or  
beats, or uses any such violence, or threat to any person having the charge of any such commodity, whilst on the way to, or from any place, with intent to stop the conveyance of the same,  
shall, on conviction before two Justices, be liable to imprisonment for six months, or to a fine of twenty pounds: Provided

*Crimes.*

Provided that:

No person punished under this section shall be punished for the same offence under any other law.

**496.** Whosoever—

unlawfully and with violence, or by any threat of violence, prevents any person from, or obstructs him in, working at or exercising his lawful trade or occupation, or beats, or uses any violence, or threat of violence to any such person, with intent to prevent or obstruct him, shall, on conviction before two Justices, be liable to imprisonment for six months, or to a fine of twenty pounds:

Assaults obstructing workmen.  
46 Vic. No. 17, s. 64

Provided that:

No person punished under this section shall be punished for the same offence under any other law.

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

Where jurisdiction excluded.  
*Ibid.* s. 63.

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

Certificate of dismissal.  
*Ibid.* s. 67.

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

Certificate or conviction a bar to other proceedings.  
*Ibid.* s. 68.

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

Exception from jurisdiction.  
*Ibid.* s. 69.

(B) LARCENY AND SIMILAR OFFENCES.

*Larceny and unlawful taking, &c., of animals.*

**501.** Whosoever—

takes and works, or otherwise uses, or takes for the purpose of working, or using, any cattle, the property of another person, without the consent of the owner or person in lawful possession thereof, or takes any such cattle for the purpose of secreting the same, or obtaining a reward for the restoration, or pretended finding thereof, or for any other fraudulent purpose, or

Unlawfully using, &c., another person's cattle.  
*Ibid.* s. 153.

fraudulently

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Fraudulently altering, &c., brands.  
46 Vic. No. 17, s. 155.

fraudulently brands, or ear-marks, or defaces, or alters, the brands, or ear-marks, of any cattle, the property of another person, shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of fifty pounds.

Possession of skin, &c., of stolen cattle.  
*Ibid.* ss. 157, 158.

**502.** Whosoever, in whose possession there has been found the skin or carcass of any stolen cattle, or of any cattle reasonably suspected to have been stolen, or any part of any such skin or carcass, may be summoned to appear before any two Justices to show in what manner he became possessed of the same, and if there is reasonable cause to believe that he has dishonestly come by the same, and if he fails to satisfy the Justices before whom the case is heard that he obtained the same without any knowledge or reasonable ground to suspect that the same was the skin or carcass, or part of the skin or carcass, of any stolen cattle, he shall be liable to imprisonment for six months, or to pay a fine of fifty pounds.

Stealing dogs.  
*Ibid.* s. 159.

**503.** Whosoever steals any dog shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay, above the value of the dog, a fine of twenty pounds.

Possessing stolen dog or skin.  
*Ibid.* s. 159.

**504.** Whosoever has unlawfully in his possession any stolen dog, or the skin of any such dog, knowing the dog to have been stolen, shall, on conviction before two Justices, be liable to pay a fine of twenty pounds.

Stealing animals, &c., ordinarily kept in confinement.  
*Ibid.* s. 160.

**505.** Whosoever—  
steals any animal or bird ordinarily kept in a state of confinement, or for any domestic purposes, but not being the subject of larceny at Common Law, or  
kills any such animal or bird with intent to steal the same, or any part thereof,  
shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay, above the value of the animal or bird, a fine of twenty pounds.

Stealing animal, &c., ordinarily kept in confinement.  
Second offence.  
*Ibid.* s. 160.

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

Possession of stolen animals, &c.  
*Ibid.* s. 161.

**507.** Whosoever in whose possession there has been found any such animal or bird as in section five hundred and five mentioned, or the skin thereof, respectively, which to his knowledge has been stolen, or the skin of a stolen animal or bird, shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay, above the value of such animal bird or skin, a fine of twenty pounds.

Possession of stolen animal, &c.  
Second offence.  
*Ibid.* s. 161.

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

**509.**

*Crimes.*

**509.** Any such animal or bird as is mentioned in section five hundred and five, or the skin thereof, which has been found in the possession of any person may be restored to the owner thereof by the order of any Justice. Restoration of such stolen animals, &c. 46 Vic. No. 17, s. 161.

**510.** Whosoever—  
 unlawfully and wilfully sets, or uses, any snare, or engine, for the purpose of taking or killing deer upon any inclosed land in the occupation of the owner of such deer, or  
 unlawfully and wilfully destroys any part of the fence of any land where deer are then kept  
 shall, on conviction before two Justices, be liable to pay a fine of twenty pounds. Setting engine for deer, &c. Ibid. s. 162.

**511.** Whosoever unlawfully and wilfully kills, wounds, or takes, any house-dove, or pigeon, under circumstances not amounting to larceny at Common Law, shall, on conviction before two Justices, be liable to pay, above the value of the bird, a fine of two pounds. Killing pigeons. Ibid. s. 163.

**512.** Whosoever unlawfully and wilfully takes, or destroys, any fish in any water being private property, shall, on conviction before two Justices, be liable to pay, above the value of the fish taken or destroyed, a fine of five pounds. Taking fish in waters on private property. Ibid. s. 164.

*Larceny of things attached to land.*

**513.** Whosoever steals, or destroys, or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood, the value of or the injury done to which exceeds a shilling, shall, on conviction before two Justices, be liable to pay, above the value of the property stolen, or intended to be stolen, or the amount of injury done, a fine of five pounds. Stealing shrubs, &c., of the value of 1s. Ibid. s. 165.

**514.** Whosoever, having been convicted under this or any former Act, of any such offence as is mentioned in the preceding section, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to pay the value of the property stolen, or intended to be stolen, or the amount of the injury done, in addition to a fine of twenty pounds. The like—second offence. Ibid. ss. 165, 457.

**515.** Whosoever steals, or cuts, breaks, or throws down with intent to steal, any part of any live or dead fence, or any material set up, or used, as a fence, or any stile, or gate, or any part thereof, respectively, shall, on conviction before two Justices, be liable to pay above the value of the property stolen, or the amount of injury done, a fine of ten pounds. Stealing, &c., live or dead fence, &c. Ibid. s. 166.

**516.** Whosoever, having been convicted, under this or any former Act, of any such offence as is mentioned in the last preceding section, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to pay the value of the property stolen, or intended to be stolen, or the amount of the injury done, in addition to a fine of twenty pounds. The like—second offence. Ibid. ss. 166, 457.

**517.**

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Unlawful possession  
of trees, fence, &c.  
46 Vic. No. 17, p. 167.

**517.** Whosoever, in whose possession the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof, being of or above the value of one shilling, has been found, on being taken or summoned before two Justices fails to satisfy them that he came lawfully by the same, shall on conviction, before such Justices, be liable to pay, above the value of the property found, a fine of five pounds.

Stealing dead wood.  
*Ibid.* s. 168.

**518.** Whosoever steals, or destroys, or damages with intent to steal, any dead wood, lying on land in the occupation of another person, such wood being of the value of or above one shilling, shall, on conviction, before two Justices, be liable to pay, above the value of the wood, a fine of five pounds.

The like—second  
offence.  
*Ibid.* ss. 168, 457.

**519.** Whosoever, having been convicted under this or any former Act, of any such offence as is mentioned in the last preceding section afterwards commits any offence in the said section mentioned shall, on conviction before two Justices, be liable to pay, above the value of the wood, a fine of ten pounds.

Stealing plants, &c.,  
in gardens.  
*Ibid.* s. 169.

**520.** Whosoever steals, or destroys, or damages with intent to steal, any plant, root, fruit, or vegetable produce, growing in any garden, orchard, pleasure-ground, nursery-ground, hothouse, green-house, or conservatory, shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay, above the value of the article stolen, or the amount of injury done, a fine of twenty pounds.

Stealing plants, &c.,  
not growing in  
gardens.  
*Ibid.* s. 170.

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

*Larceny of shipwrecked goods.*

Possession of ship-  
wrecked goods.  
*Ibid.* s. 171.

**522.** Whosoever in whose possession any article of the value of five shillings, belonging to a vessel in distress, or wrecked, stranded, or cast on shore, has been found, on being summoned before two Justices, fails to satisfy them that he came lawfully by the same, shall be liable to imprisonment for six months, or to pay, above the value of the article, a fine of twenty pounds:

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

Offering shipwrecked  
goods for sale.  
*Ibid.* s. 172.

**523.** Whosoever offers for sale any article unlawfully taken, or reasonably suspected to have been so taken, from any vessel in distress, or wrecked, stranded, or cast on shore, and who, on being summoned  
before

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before two Justices, fails to satisfy them that he came lawfully by such article, or received the same without knowing or having cause to suspect that it had been so taken as aforesaid, shall be liable to imprisonment for six months, or to pay, above the value of the article, a fine of twenty pounds.

And such article shall, by the order of such Justices, be delivered to or for the use of the owner upon payment of a reasonable reward, to be ascertained by them, to the person who seized the same.

**524.** Any person, to whom any article mentioned in the last preceding section is offered, or any officer of customs or police, may seize the same, and shall carry it to, or give notice of such seizure to, some Justice. Seizure of such goods. 46 Vic. No. 17, s. 172.

*Larceny from a public library, &c.*

**525.** Every collection of books, prints, manuscripts, or similar articles, kept in any school of arts, or mechanics' institute, or in any part thereof, kept for the purposes of reference, or exhibition, or of art, science, or literature, in any public library, or in any building belonging to the Queen, or to any university or college, or the council of any municipality, shall, on conviction before two Justices, be liable to imprisonment for one year, and to pay a fine equal to four times the value of the article stolen, or intended to have been stolen. Stealing or damaging books, &c., in public library, &c. Ibid. s. 174.

**526.** Every collection of books, prints, manuscripts, or similar articles, kept in any school of arts, or mechanics institute, or in any building, or room, occupied or habitually used by the members of any association, or municipality, as a reading-room, or library, shall be deemed a public library within the meaning of the last preceding section. Term "Public Library." Ibid. s. 174.

*Fraudulently appropriating or retaining property.*

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

*Offering rewards for stolen property.*

**528.** Whosoever—  
advertises a reward for the return of any property stolen, or lost, and uses words purporting that no questions will be asked, or  
makes use of words, in any advertisement, purporting that a reward will, without seizing or making any inquiry after the person procuring the same, be given for any such property, or

promises Advertising reward for return of stolen property. Ibid. s. 175.



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promises, or offers, in any advertisement to return any money advanced upon, or paid for, any such property, or publishes any such advertisement, shall, on conviction before two Justices, be liable to pay a fine of fifty pounds.

*Receivers.*

Receivers punishable summarily.  
46 Vic. No. 17, s. 176.

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

## (C) MALICIOUS INJURIES TO PROPERTY.

*Declaratory clauses.*

Ownership and possession of property injured.  
*Ibid.* s. 223.

**530.** (1) Every act of malicious injury to property punishable under the twelve sections next following shall be so punishable, whether the property belonged to a private person, or to Her Majesty, or was otherwise of a public nature.

(2) Every act of malicious injury done to property by any person, with intent to injure or defraud another, shall be an offence within the said sections, although the offender was at the time of its commission in lawful possession of such property.

Actual malice—certain acts not malicious.  
*Ibid.* s. 229.

**531.** In any prosecution before Justices in respect of any such act, it shall not be necessary to prove the existence of malice, either against the owner of the property, or against any other person:

Provided that:

No act shall be deemed malicious, which was done by the accused under a reasonable supposition that he had a right to do such act.

*Injuries to trees, shrubs, vegetable produce, fences, &c.*

Damaging trees, &c. to amount of one shilling.  
*Ibid.* s. 222.

**532.** Whosoever maliciously destroys, or damages, any tree, sapling, shrub, vine, or plant, or any underwood, wheresoever growing, if the amount of injury done exceeds one shilling, shall, on conviction before two Justices, be liable to pay, above the value of the property destroyed, or the damage done, a fine of five pounds.

The like—second offence.  
*Ibid.* ss. 222, 457.

**533.** Whosoever, having been convicted, under this or any former Act, of any such offence as is mentioned in the last preceding section, afterwards commit any offence in the said section mentioned, shall, on conviction before two Justices, be liable to pay, above the value of the property destroyed, or the damages done, a fine of twenty pounds.

**534.**

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**534.** Whosoever maliciously destroys, or damages, any plant, root, fruit, or vegetable produce, growing in any garden, orchard, nursery-ground, hothouse, greenhouse, or conservatory, or any ornamental tree, or shrub, growing in a public park, shall, on conviction before two Justices, be liable to pay the value of the property destroyed, or the amount of the damage done, in addition to a fine of twenty pounds.

Destroying fruit or vegetable produce in a garden.  
46 Vic. No 17, s. 223.

**535.** Whosoever maliciously destroys, or damages, any cultivated root, or plant, used for the food of man or beast, or for medicine, or for distilling, or dyeing, or for any manufacture, and growing in any enclosed land, not being a garden, orchard, or nursery-ground, shall, on conviction before two Justices, be liable to pay, above the value of the property destroyed or the damage done, a fine of one pound.

Destroying cultivated roots, &c., not in a garden.  
*Ibid.* s. 224.

**536.** Whosoever, having been convicted, under this or any former Act, of any such offence as is mentioned in the last preceding section, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to pay, above the value of the property destroyed, or the damage done, a fine of ten pounds.

The like—second offence.  
*Ibid.* ss. 224, 457.

**537.** Whosoever maliciously cuts, breaks, throws down, or in anywise destroys, any fence of any description, or any wall, stile, or gate, or any part thereof, respectively, shall, on conviction before two Justices, be liable to pay, above the value of the property destroyed or the damage done, a fine of five pounds.

Destroying any fence, wall, stile, or gate.  
*Ibid.* s. 225.

**538.** Whosoever, having been convicted, under this or any former Act, of any such offence as is mentioned in the last preceding section, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to pay, above the value of the property destroyed, or the damage done, a fine of twenty pounds.

The like—second offence.  
*Ibid.* ss. 225, 457.

*Injuries to certain animals.*

**539.** Whosoever maliciously kills, maims, or wounds, any dog, or bird, or any animal, or beast, other than cattle, being respectively the subject of larceny, or ordinarily kept in a state of confinement, or for any domestic purpose, shall, on conviction before two Justices, be liable to imprisonment for four months, or to pay, above the amount of injury done, a fine of twenty pounds.

Killing or maiming animals not being cattle.  
*Ibid.* s. 226.

**540.** Whosoever, having been convicted under this or any former Act of any such offence as is mentioned in the last preceding section, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to imprisonment for six months.

The like—second offence.  
*Ibid.* ss. 227, 457.

*Injuries*

*Crimes.**Injuries not otherwise provided for.*

Injuring property not  
previously provided  
for.  
46 Vic. No. 17, s. 227.

**541.** Whosoever maliciously damages any real or personal property whatsoever including any tree, sapling, shrub, plant, or under-wood for which no punishment is hereinbefore provided, shall, on conviction before two Justices, be liable to pay, above the value of the property injured or the damage done, a fine of five pounds.

The like—second  
offence.  
*Ibid.* ss. 227, 457.

**542.** Whosoever, having been convicted under this or any former Act, of any such offence as is mentioned in the last preceding section, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to pay, above the value of the property injured, or the damage done, a fine of twenty pounds.

*Application of compensation.*

Application of  
compensation.  
*Ibid.* s. 227.

**543.** In the case of private property, the compensation for the damage or injury done shall be paid to the party aggrieved, and in the case of property of a public nature, or wherein any public right is concerned, shall be applied as the Justices think fit.

## (D) COINAGE OFFENCES.

Uttering defaced  
coin.  
*Ibid.* s. 239.

**544.** Whosoever offers, utters, or puts off, any of the Queen's current coin, defaced by stamping thereon any name, or word, whether such coin is thereby diminished, or lightened or not, shall, on conviction before two Justices, be liable to pay a fine of two pounds:

Provided that it shall not be lawful to proceed for any such fine without the consent of the Attorney-General.

Possessing above five  
pieces of counterfeit  
foreign coin.  
*Ibid.* s. 290.

**545.** Whosoever, without lawful authority or excuse, has in his possession more than five pieces of counterfeit coin, resembling, or apparently intended to resemble, any foreign coin, shall, on conviction before two Justices, be liable to pay a fine of two pounds for every such piece of coin found in his possession.

All such coin shall be forfeited, and destroyed, by order of such Justices.

## (E) ABETTORS.

Abetting or  
procuring.  
*Ibid.* s. 306.

**546.** Whosoever, where any offence is by this Act punishable on summary conviction, abets, counsels, or procures the commission of such offence, shall, on conviction before two Justices, be guilty in the same degree, and liable to the same forfeiture and punishment as the principal offender.

## (F) APPREHENDED VIOLENCE OR INJURY.

Apprehended  
violence or injury—  
recognizance to keep  
the peace.  
*Ibid.* s. 466.

**547.** (1) In every case of apprehended violence by any person to the person of another, or of his wife or child, or of apprehended injury to his property, any Justice may on the complaint of the person apprehending

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apprehending such violence or injury, issue a summons or warrant as in any case of apprehended violence to the person, where at present security is required to keep the peace—and any Justice may examine the complainant, and defendant, and their witnesses, as to the truth of the matter alleged, and, if it appears that the apprehension alleged is reasonable, but not otherwise, the Justice may require the defendant to enter into a recognizance to keep the peace, with or without sureties, as in any case of a like nature.

(2) If in any such case the defendant has spoken any offensive or defamatory words to or of the complainant, on an occasion when a breach of the peace might have been induced thereby, he may be required by the Justice to enter into a recognizance, with or without sureties, to be of good behaviour for a term not exceeding six months, and, in default of its being entered into forthwith, the defendant may be imprisoned for three months, unless such recognizance is sooner entered into.

Defamatory words—  
recognizance for good  
behaviour.

(3) The Justice, in every such case, may award costs to either complainant or defendant, to be recovered as costs in summary jurisdiction cases are recoverable.

Costs.

CHAPTER 4.—*Procedure, &c., before Justices.**Alternative methods of procedure.*

548. Where by this Act a person is made liable to imprisonment, or to pay a sum of money, on conviction before Justices, such person may be proceeded against and convicted in a summary way under this Act, so far as it is applicable, or under any Act in force for the time being regulating proceedings on summary convictions, and every provision contained in any such Act shall be applicable to such proceedings as if the same were incorporated in this Act.

Alternative methods  
of proceeding before  
justices.  
46 Vic. No. 17, s. 428.

*Enforcing appearance.*

549. The several provisions in any Act regulating summary proceedings before Justices, in force for the time being, respecting the issue of summonses and warrants, shall be applicable for the purpose of compelling the appearance of a person charged with an offence under this Act before any Justice, whether a Police or Stipendiary Magistrate or not, notwithstanding any power of apprehension, or arrest without warrant, given by this Act.

Offenders may be  
summoned under  
existing Acts.  
*Ibid.* s. 445.

*Certain averments.*

550. In any proceeding before Justices in respect of any of the matters mentioned in the Fourth Schedule to this Act, it shall not be necessary to allege that the instrument, document, building, chattel, or other matter or thing, in respect of which the offence was committed, is the property of any person.

Where not necessary  
to allege particular  
ownership.  
*Ibid.* s. 325.

*Crimes.*

General averment of intent to defraud or injure.  
*Ibid.* s. 326.

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

*Discharge of juvenile first offenders.*

Discharge of juvenile first offenders.  
46 Vic. No. 17, s. 438  
(55 Vic. No. 5, s. 3.)

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

*Reduction of sentence below fixed term.*

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

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

*Sentence to hard labour.*

Hard labour may be awarded.  
*Ibid.* s. 437.

**554.** Whenever imprisonment is awarded for an offence punishable on summary conviction under this Act, the Justices may, in their discretion, direct that the offender be imprisoned in any gaol, with or without hard labour.

*Penalties, &c.—Application.*

Application of forfeitures and penalties.  
*Ibid.* s. 435.

**555.** Every sum forfeited for the amount of any injury shall be assessed by the convincing Justices, and paid to the party aggrieved, except where he is unknown, in which case such sum shall be applied in the same manner as a penalty:

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

Provided that, where several persons have joined in the commission of the same offence, and on conviction are severally adjudged to forfeit a sum equivalent to the amount of the injury done, no greater sum shall be paid to the party aggrieved than such amount, and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by Justices is applied.

*Summary*

*Crimes.**Summary conviction, &c., a bar.*

**556.** Where any person, summarily convicted under this Act, pays the sum or sums adjudged to be paid, together with costs, or receives a remission thereof from the Crown, or suffers the imprisonment provided for non-payment thereof, or the imprisonment adjudged in the first instance, or is discharged from his conviction by the Justices under section five hundred and fifty-two of this Act, he shall not be liable to any other proceeding for the same cause.

Summary conviction a bar to further proceedings.  
46 Vic. No. 17, s. 439.

## PART XV.

## FIRST OFFENDERS.

**557.** For the purposes of the five next following sections unless the context otherwise indicates or requires—

Interpretation.  
57 Vic. No. 23, s. 2.

“*Court*” means the Supreme Court, Court of Quarter Sessions, or any Justice or Justices, by or before whom a person is convicted.

“*Minor offence*” means any offence punishable on summary conviction, before any Justice or Justices, with or without the consent of the accused person, or any offence of whatever nature, which, in the opinion of the Court, is one to which the provision of the said five sections should be applied.

“*Offender*” means a person convicted of a minor offence.

**558.** When a person, who has not been previously convicted of an indictable offence in New South Wales or elsewhere in so far as is known to the Court, is convicted of a minor offence, and is sentenced upon such conviction to penal servitude, or imprisonment, the following provisions shall have effect—

Suspension of punishment on first conviction.  
*Ibid.* s. 3.

- (1) The Court shall proceed to pass sentence upon the offender in the usual form.
- (2) The Court may, if it thinks fit, suspend the execution of the sentence, upon the offender entering into a recognizance, with or without sureties, in such amount as the Court directs, such recognizance being conditioned that the offender shall be of good behaviour, for a period from the date of the sentence, equal to the term of the sentence, or if the term of the sentence is less than twelve months, then for the period of twelve months, and shall not during the like period do, or omit to do, any act whereby the recognizances would become liable to be forfeited under the provisions hereinafter contained.

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- (3) When such recognizance is entered into, the offender may be removed to such gaol, or other place, as the Court may determine, and there forthwith submitted to the examination customary for securing future identification. Detention for this purpose shall not exceed the term of forty-eight hours, and the offender shall thereupon be discharged from custody.
- (4) The offender shall be liable to be arrested by any of the peace officers, and to be committed to prison under a warrant issued for that purpose by any Court or Justice, to perform his sentence, if during the period specified in the recognizance any of the conditions hereinafter specified happens with respect to him. Written notice shall, upon his discharge, be given to the offender, signed by the Clerk or other officer of the Court, specifying the conditions under which the offender will become liable to be so committed to prison.
- (5) When an offender is so committed to prison, the sentence shall begin to run from the date of such committal, but the term of the sentence shall not extend beyond the period specified in the recognizance, and at the expiration of that period the offender shall be entitled to be discharged.

Order for restitution  
or payment of com-  
pensation may be  
made by Court.  
57 Vic. No. 23, s. 4.

**559.** (1) If the offence of which a person is convicted has relation to property, or is an offence against the person, the Court may, if it thinks fit, upon suspending the execution of the sentence as hereinbefore provided, order the offender to make restitution of the property in respect of which the offence was committed, or to pay compensation for the injury done to such property, or compensation for the injury done to the person injured, as the case may be, and may assess the amount to be paid by the offender in any such case, and may direct when, and to whom, and in what instalments, the amount ordered to be paid shall be paid.

Security for  
performance of order.

(2) The Court may also, if it thinks fit, require the offender to give security for the performance of any such order, and may make the discharge of the offender from custody conditional upon such security being given.

Enforcement of  
order.

(3) Every such order may be enforced by any Justice in the same manner as orders made by Justices upon summary convictions.

Offender discharged  
to report himself.  
57 Vic. No. 23, s. 5.

**560.** Every offender, so discharged under the foregoing provisions, shall, at once at least in every three months during the period specified in the recognizance, report his address and occupation to the principal officer of police at the place in which he was convicted, or at such other place as the Inspector-General of Police may appoint.

Such report may be made either by the offender personally attending at the place aforesaid, or by post letter signed by him and addressed to the principal officer of police at that place, unless, in any case,

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case, the Colonial Secretary directs that the report shall be made by the offender personally, in which case it must be made in that mode only.

**561.** If during the period specified in the recognizance an offender so discharged

- (1) is proved to any Justice to have failed to report his address and occupation to the person at the times and in the manner prescribed by the last preceding section; or
- (2) is charged by an officer of police with getting his livelihood by dishonest means, and, being brought before any Justice, it appears to such Justice that there are reasonable grounds for believing that he is getting his livelihood by dishonest means; or
- (3) on being charged with an offence punishable on indictment, or summary conviction, and on being required by the Justice or Justices before whom he is charged to give his name and address, refuses to do so, or gives a false name, or a false address; or
- (4) is convicted of any offence against the Act of the Governor and Legislative Council of New South Wales, passed in the fifteenth year of Her Majesty's reign and numbered four, entitled "*An Act for the more effectual prevention of Vagrancy and for the punishment of idle and disorderly Persons Rogues and Vagabonds and Incurable Rogues in the Colony of New South Wales.*" or of any indictable offence, or of any offence punishable on summary conviction, and for which imprisonment for a period exceeding one month may be imposed,

then, and in any of such cases, the Justice or Justices before whom such proof is given, or before whom the offender is so charged, or convicted, may forfeit the recognizance and direct him to be committed to prison to perform his sentence as aforesaid or so much thereof as remains to be performed, under the provisions hereinbefore contained, and he shall be so committed accordingly, and the Justice or Justices may grant any necessary warrant for his committal.

**562.** If during the period specified in the recognizance none of the events aforesaid happen, the offender shall be discharged from the sentence, and the conviction, on which the sentence was imposed, shall not on any subsequent conviction against him be deemed to be a previous conviction for the purposes of any Act, under which a greater punishment may be inflicted upon a person who has been previously convicted.

Conditions under which offender may be arrested.  
57 Vic. No. 23, s. 6.

Otherwise to be discharged and conviction not to be deemed a previous conviction.  
57 Vic. No. 23, s. 6.



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## PART XVI.

## MISCELLANEOUS ENACTMENTS.

Protection of persons  
acting under this  
Act.

46 Vic. No. 17, s. 450.

**563.** (1) All actions against any person, for anything done, or reasonably supposed to have been done in pursuance of this Act, shall be commenced within six months after the fact committed, and notice in writing of any such action, and of the cause thereof, shall be given to the defendant one month at least before commencement of the action, and in any such action the defendant may plead the general issue, and give the special matter in evidence thereupon.

(2) No plaintiff shall recover in any such action, if a tender of sufficient amends was made before action brought, or if a sufficient sum is paid into Court, on behalf of the defendant, after action brought.

(3) If a verdict passes for the defendant, or the plaintiff becomes nonsuit, or discontinues his action after issue joined, or if upon demurrer, or otherwise, judgment is given against the plaintiff, the defendant shall recover costs as between attorney and client.

No court fees to be  
taken in criminal  
cases.

*Ibid.* s. 451.

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

Power of Courts to  
bring prisoners  
before them.

*Ibid.* s. 452.

**565.** Every Court or Judge, for the purposes of any trial or prosecution, shall have power, by order in writing directed to any gaoler, to cause any prisoner to be brought before such Court or Judge, under secure conduct, in order to be tried, or examined, or to give evidence, before such Court or Judge, or before any other Court, or any Justice, and immediately after such prisoner's trial, or examination, or his having so given evidence, to be returned to his former custody:

Provided that nothing in this section shall affect the power of a Court of Gaol Delivery, sitting for the delivery of a gaol, to cause any prisoner therein to be brought before it for any purpose, without order in writing.

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

46 Vic. No. 17, s. 454.  
(cf. No. XI, 1898,  
s. 13).

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

Supreme Court  
Judges may prescribe  
forms of indictments,  
&c.

*Ibid.* s. 461.

**567.** 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

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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.

**568.** (1) Every Court now existing, proclaimed, or known, as a Court of 'Sessions of the Peace,' or of 'General Sessions of the Peace,' or of 'General Sessions,' or of 'Quarter Sessions,' or of 'General Quarter Sessions,' or of 'General or Quarter Sessions,' or of 'General and Quarter Sessions,' shall after the passing of this Act be called a Court of Quarter Sessions.

Every Court of General Sessions, &c., to be called a Court of Quarter Sessions.

(2) Every such Court now existing shall be deemed to be a Court of Quarter Sessions established under the authority of this Act.

Existing Courts to be deemed established under this Act.

(3) Every such Court of Quarter Sessions, and every Court of Quarter Sessions hereafter established, shall have jurisdiction in respect of all crimes and misdemeanours not punishable with death, and generally shall have the same jurisdiction, and authority, civil and criminal, as each and every Court of 'Sessions of the Peace,' 'General Sessions of the Peace,' 'General Sessions,' 'Quarter Sessions,' 'General Quarter Sessions,' 'General or Quarter Sessions,' or 'General and Quarter Sessions,' now possesses in New South Wales.

Jurisdiction, &c., of Courts of Quarter Sessions  
22 Vic. No. 12, s. 10.  
22 Vic. No. 18, s. 25.  
46 Vic. No. 17, s. 459.

(4) All references in any Act to any such Court shall be deemed to be references to a Court of Quarter Sessions within the meaning of this Act.

References to Courts of General Sessions, &c., to be deemed to be references to Courts of Quarter Sessions.

**569.** The Governor may by proclamation—

- (1) Establish additional Courts of Quarter Sessions:
- (2) Abolish any Court of Quarter Sessions within the meaning of subsection one of section five hundred and sixty-eight of this Act now existing or any Court of Quarter Sessions hereafter established:
- (3) Appoint the times, and places, and districts, at, and for which, any Court of Quarter Sessions within the meaning of subsection one of section five hundred and sixty-eight of this Act now existing or any Court of Quarter Sessions hereafter established, shall be held.

Governor to establish abolish Courts of Quarter Sessions, fix times places and districts at and for which they shall be held.  
*Ibid.* s. 459.  
55 Vic. No. 5, s. 32.

**570.** (1) The Governor may, at any time, by commission appoint the Judge of any District Court to be the chairman of the Courts of Quarter Sessions to be holden within the limits of the district for which he has been appointed:

Appointment of chairman  
22 Vic. No. 18, s. 25.

Provided that where two or more persons have been appointed to act at the same time as Judges of the respective District Courts to be holden in the same district, the Governor may appoint them, or one of them, to be the chairmen, or chairman, of the Courts of Quarter Sessions to be holden within the limits of the districts for which they, or he, have, or has, been appointed, or of any one or more of such Courts.

or chairmen.  
30 Vic. No. 9, s. 2.

(2)

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Chairman to be sole Judge.  
22 Vic. No. 18, s. 25.

(2) Every such Chairman shall be the sole Judge at the trial of all civil or criminal issues in such Court, and at the hearing of any application, or the making of any order in reference thereto, and in all matters relating to any information filed therein, for any felony or misdemeanour:

Where two or more appointed one only to preside.  
30 Vic. No. 9, s. 4.

Provided that where two or more Chairmen have been appointed for the Courts of Quarter Sessions in one and the same district, only one of such Chairmen shall preside at any such trial, or proceeding, as aforesaid.

Governor may appoint Deputy Chairman.  
23 Vic. No. 1, s. 1.

(3) In the event of any such Chairman being prevented by illness, or other accident, from performing his duties as Chairman at any Court of Quarter Sessions, the Governor may appoint as a Deputy Chairman a person duly qualified to be a District Court Judge, and every person so appointed shall have the same power, authority, and jurisdiction as a Chairman of Quarter Sessions.

Chairmen in office to be deemed appointed under this Act.

(4) Every Chairman of any Court of Quarter Sessions within the meaning of subsection one of section five hundred and sixty-eight of this Act, appointed under any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed a Chairman of Quarter Sessions under this Act.

Adjournment of such Courts when chairman absent.  
55 Vic. No. 5, s. 31.

**571.** If the Chairman of any Court of Quarter Sessions is not present at the time appointed for holding such Court, any Justice may open and adjourn such Court, from time to time if necessary, until such time as, in his opinion, such Chairman may reasonably be expected to be present, and able to hold such Court.

Governor may appoint persons to prosecute at Quarter Sessions.  
4 Vic. No. 22, s. 10.

**572.** The Governor may appoint a person or persons by whom and in whose name all crimes, misdemeanours, and offences cognizable in the several Courts of Quarter Sessions may be prosecuted:

Provided that nothing herein contained shall be construed to limit or control any authority vested by law in the Attorney-General.

Provision for wife where husband convicted of aggravated assault.  
46 Vic. No. 17, s. 462.

**573.** In every case of aggravated assault by a husband on his wife, where a declaration is made under section sixty of this Act, to the effect therein mentioned, any Judge may at any time make an order or orders, which may be varied by any Judge from time to time, as to the legal custody of the children of the marriage, and also as to the payment by the husband to the wife, or some person for her use, after the expiration of his sentence, of a weekly or monthly sum for her support.

Every such last-mentioned order may be enforced in the same manner as any order under the "*Deserted Wives and Children's Act of 1840 as amended by the Act of 1858.*"

Prosecutions for blasphemy.  
*Ibid.* s. 463.

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

**575.**

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**575.** No servant who, contrary to the orders of his master, takes any food being his master's property for the purpose of its being given to any animal in the possession of his master, shall by reason thereof be guilty of an indictable offence, but shall be liable to be dealt with under any Act for the time being in force, regulating the duties and liabilities of masters and servants.

Misappropriation of corn, &c., by servants.  
46 Vic. No. 17, s. 173.

**576.** Every indecent exposure of the person which is punishable at Common Law or by Statute, if seen by two or more persons, shall be equally an offence and punishable if such exposure was, or could have been, seen by one person.

Indecent exposure of the person.  
*Ibid.* s. 468.

**577.** In any criminal proceeding, if it is made to appear to the Court—

Change of venue.  
4 Vic. No. 22, s. 15.

(a) that a fair or unprejudiced trial cannot otherwise be had, or

(b) that for any other reason it is expedient so to do,

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

SCHEDULES.

FIRST SCHEDULE.

*Repeal of Acts.*

Reference to Act.	Subject or Short Title.	Extent of repeal.
4 Vic. No. 22	Administration of Justice ...	So much of s. 10 as relates to appointment of Crown Prosecutor at Quarter Sessions, s. 12, and so much of s. 15 as relates to criminal proceedings.
7 Vic. No. 16	Deeds Registration ...	Section 28.
11 & 12 Vic., c. 42, adopted by 14 Vic. No. 43	Duties of Justices (Indictable Offences) Act.	Section 17.
13 Vic. No. 16	Law of Evidence ...	So much of s. 5 as is hitherto unrepealed.
13 Vic. No. 18	Deodands Abolition ...	Section 1 and 3.
14 Vic. No. 43	Imperial Acts Adoption and Application ...	Section 16.
16 Vic. No. 1	Acts Shortening Act ...	Section 13.
16 Vic. No. 14	Law of Evidence Amendment	Section 10 and so much of s. 11 as is hitherto unrepealed.

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## FIRST SCHEDULE—(continued).

Reference to Act.	Subject or Short Title.	Extent of repeal.
17 Vic. No. 39	"The Justices Act Amendment Act of 1853."	Section 13.
22 Vic. No. 7	Law of Evidence Further Amendment.	Section 10.
22 Vic. No. 12	Acts Shortening Act. ...	So much of section 7 as relates to criminal pleadings and proceedings, and section 10.
22 Vic. No. 18	"District Courts Act of 1885"	Section 25.
23 Vic. No. 1	Quarter Sessions Chairman ...	The whole.
24 Vic. No. 6	Common Law Procedure Act Extension.	Sections 1 and 2 so far as they relate to criminal trials.
30 Vic. No. 9	"District Courts Amendment Act of 1866."	All hitherto unrepealed, except so far as it relates to District Courts.
31 Vic. No. 25	"Treason Felony Act of 1868"	The whole.
46 Vic. No. 17	"Criminal Law Amendment Act."	All hitherto unrepealed, except s. 295, from the words "And every solemn declaration" to the end of the section; ss. 336 to 340 inclusive; the last clause of s. 342; s. 343; ss. 346, 347; so much of s. 359 as relates to the custody of records by the Prothonotary; s. 434; s. 436; ss. 440 to 444 inclusive; the last clause of s. 445; ss. 453, 454, 455; so much of s. 459 as relates to Courts of Petty Sessions; s. 471; and the Seventh Schedule.
2 Vic. No. 6	"Criminal Law Amendment Act of 1888."	The whole, except s. 2.
55 Vic. No. 5	"Criminal Law and Evidence Amendment Act of 1891."	All hitherto unrepealed, except ss. 17, 23, 24, 26, and 34, and so much of s. 35 as relates to 40 Vic. No. 14.
57 Vic. No. 23	"First Offenders Probation Act of 1894."	The whole.
No 11, 1898	"Evidence Act, 1898" ...	Sections 7, 27, 31, 37, 38, 39, 40, 41, and 48.
No. 12, 1898	"Evidence (Penalties) Act"	The whole.
No. 30, 1898	"Accused Persons Evidence Act of 1898."	The whole.

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SECOND SCHEDULE.

See s. 3.

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

Sections seven, eight, twenty-three, thirty-four, forty, seventy-six, seventy-seven, one hundred and eighteen to one hundred and twenty-four inclusive, one hundred and twenty-eight to one hundred and thirty inclusive, one hundred and sixty-three, one hundred and eighty-three, one hundred and ninety-three, two hundred and six, two hundred and thirty-one; Parts X to XIII inclusive, sections five hundred and forty-seven to five hundred and fifty-six inclusive, and Part XVI.

THIRD SCHEDULE.

See s. 358.

FORM No. 1.

*Discharge of persons committed for trial.*

Certificate of Attorney-General.

This is to certify that I decline to file any information against A.B., a prisoner now in the gaol at \_\_\_\_\_, under the warrant of R.W., Esquire, justice of the peace, upon a charge of [*stating same*].

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

To the Sheriff and to the keeper of }  
H.M.'s Gaol at \_\_\_\_\_ } \_\_\_\_\_ S.M.,  
A Judge of the Supreme Court.

FORM No. 2.

*Warrant thereupon.*

Supreme Court of New South Wales.

Whereas A.B. is detained in your custody under the warrant of R.W., Esquire, justice of the peace, upon a charge of [*as in certificate*], and it has been certified to the judges of this Court by Her Majesty's Attorney-General that he declines to file any information against the said A.B. for the said offence, you are therefore hereby required forthwith to discharge the said A.B. from your custody under the said warrant.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

To their Honors the Judges of }  
the Supreme Court. } \_\_\_\_\_ L.M.,  
Attorney-General.

FORM No. 3.

*Discharge of persons under remand.*

Certificate of Attorney-General.

This is to certify that I decline to proceed further upon an indictment filed against A.B., a prisoner now in the gaol at \_\_\_\_\_, under the order of His Honor \_\_\_\_\_, a Judge of the Supreme Court, or A.M., Esquire, Chairman of Quarter Sessions, upon a charge of [*stating same*].

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

To their Honors the Judges of }  
the Supreme Court. } \_\_\_\_\_ L.M.,  
Attorney-General.

FORM

*Crimes.*

FORM No. 4.

*Warrant thereupon.*

Supreme Court of New South Wales.

Whereas A.B. is detained in your custody under the order of His Honor \_\_\_\_\_, a Judge of the Supreme Court, or A.M., Esquire, Chairman of Quarter Sessions, 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 proceed further upon an indictment filed 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 order.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_  
 H.M.'s Gaol at \_\_\_\_\_ ) A Judge of the Supreme Court.  
 To the Sheriff and to the keeper of \_\_\_\_\_ } S.M.,

See ss. 382, 550.

## FOURTH SCHEDULE.

*As to allegation of property.*

- (1) Stealing or destroying or injuring any testamentary instrument, or any document of any Court, or anything fixed or growing in any square or street or place dedicated to public use or ornament.
- (2) Any offence committed in or respecting a place of Divine Worship or respecting property in any public library or building.
- (3) Any matter or thing mentioned in any of the following sections of this Act, viz.:— sections one hundred and ninety-nine, two hundred and nine, two hundred and twenty-eight, two hundred and twenty-nine, two hundred and thirty-three, two hundred and thirty-four, two hundred and forty-two, two hundred and forty-three, two hundred and forty-four, five hundred and thirty-five.

See s. 406.

## FIFTH SCHEDULE.

*Form of deposition.*

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

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

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

And I hereby certify that I have taken this deposition under the provisions of the Crimes Act, 1899—because it has been made to appear to me that the deponent is dangerously ill, and that his evidence, if not forthwith taken, would probably be lost.

[*Signature of Justice.*]

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

**SIXTH**

*Crimes.*

SIXTH SCHEDULE.

*See s. 435.*

*Where whipping to be inflicted.*

Sections enumerated.	Offences.
37 .. .. .	Garotting.
38 .. .. .	Using chloroform to commit indictable offences.
50 .. .. .	Placing wood, &c., on railway with intent.
51 .. .. .	Casting stone, &c., on railway carriage, &c.
64 .. .. .	Attempt to commit rape, &c.
65 .. .. .	Procuring or having carnal knowledge by fraud.
67 to 74 inclusive . . . . .	Carnal knowledge of young girls.
77 and 78 .. .. .	Indecent assaults.
79 .. .. .	Sodomy and bestiality.
80 and 81 .. .. .	Attempt to commit such crimes, &c.
98 .. .. .	Robbery with arms and wounding.
230 . . . . .	Injuries to railways, &c.
244 . . . . .	Injuries to works of art.
246 . . . . .	Maliciously and cruelly wounding cattle.

SEVENTH SCHEDULE.

*See s. 450.*

*Certificate and declaration at executions.*

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

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_.