

SOUTH AUSTRALIA

CRIMINAL LAW CONSOLIDATION ACT, 1935

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 January 1985.

The Commissioner of Statute Revision is authorised by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law; they are designed to bring the form and language of the Act into conformity with contemporary standards of good drafting (so far as that object can be achieved without risk of semantic change).

A report has been prepared containing a comprehensive list of the textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

Criminal Law Consolidation Act, 1935

SUMMARY OF PROVISIONS

PART I

PRELIMINARY

Section	
1.	Short title
2.	Commencement of Act
5.	Interpretation
5a.	Abolition of capital punishment

PART II

TREASON FELONY

6.	Repeal
7.	Treason felonies
8.	Time within which prosecution shall be commenced and warrant issued
9.	In informations more than one overt act may be charged
10.	Nothing herein to affect 25 Ed. 3, c. 2.
10a.	Penalty for treason

PART III

OFFENCES AGAINST THE PERSON

Homicide

11.	Murder
12.	Conspiring or soliciting to commit murder
13.	Manslaughter
13a.	Criminal liability in relation to suicide
14.	Causing death by negligent driving
14a.	Alternative verdict on charge of manslaughter, etc.
15.	Excusable homicide
16.	Petit treason
17.	Murder when death happens outside the State

Letters Threatening to Murder

19.	Sending letters threatening to murder
-----	---------------------------------------

Acts Causing or Intended to Cause Danger to Life or Bodily Harm

20.	Impeding a person endeavouring to save himself from shipwreck
21.	Wounding, etc., with intent to do grievous bodily harm
23.	Malicious wounding, etc.
24.	Verdict of unlawful wounding when felony charged
25.	Choking or stupefying to commit indictable offence
26.	Maliciously administering poison, etc., so as to endanger life, or inflict grievous bodily harm
27.	Maliciously administering poison, etc., with intent to injure, aggrieve or annoy any other person
28.	Verdict for misdemeanour where felony charged
29.	Not providing food, etc., for wives, children, etc., so that life endangered
30.	Exposing children so that life endangered
31.	Causing bodily injury by explosives
32.	Using explosives, etc., with intent to do grievous bodily harm
33.	Placing gunpowder near a building, ship, etc., with intent to do bodily injury
34.	Setting spring guns, etc., with intent to inflict grievous bodily harm
35.	Throwing stones, etc., at railway trains
36.	Acts done with intent to endanger persons on railway
37.	Doing or omitting anything to endanger passengers on railway
38.	Injuring persons by dangerous or negligent riding or driving
38a.	Alternative verdict on charge under s. 38

Assaults

39.	Common assault
40.	Assaults occasioning harm
41.	Obstructing or assaulting clergyman in discharge of his duties
42.	Assaulting a magistrate preserving wreck

- 43. Assaults in the course of resisting arrest, etc.
- 44. Forcibly hindering seaman
- 46. Summary proceedings for assault
- 47. Power to commit for trial

Rape, Defilement and Abduction

- 48. Rape
- 49. Unlawful sexual intercourse
- 56. Indecent assault
- 57. Consent no defence in certain cases
- 57a. Power to take plea without evidence
- 58. Acts of gross indecency
- 58a. Offence if person for prurient purposes incites or procures commission by child of indecent act, etc.
- 59. Abduction of male or female person
- 63. Procuring persons to be prostitutes
- 64. Procuring sexual intercourse
- 65. Householder, etc., not to permit unlawful sexual intercourse on premises

Unnatural Offences

- 68a. Abolition of crime of sodomy
- 69. Offences with animals
- 72. Incest

Procedure in Sexual Offences

- 73. Offences involving sexual intercourse
- 74. Power to clear the court
- 75. Power on information for rape, etc., to convict for indecent assault or common assault
- 76. Corroborative evidence in certain cases
- 76a. Limitation of time for laying information
- 77. Indeterminate sentence where offender suffers from venereal disease
- 77a. Detention of persons incapable of controlling sexual instincts

Bigamy

- 78. Bigamy
- 79. Defences in cases of bigamy

Abduction of Children

- 80. Abduction of child under 16 years

Attempts to Procure Abortion

- 81. Attempts to procure abortion
- 82. Procuring drugs, etc., to cause abortion
- 82a. Medical termination of pregnancy

Concealment of Birth

- 83. Concealment of birth

PART IV

MALICIOUS DAMAGE TO PROPERTY

Damage by Fire to Buildings and Goods

- 84. Arson
- 85. Setting fire to other buildings
- 86. Setting fire to goods in any building
- 88. Setting fire to crops of corn, etc
- 90. Placing inflammable material for the purpose of causing a fire
- 91. Setting fire to a coal mine, or timbering of any mine

Damage by Explosives to Buildings, etc.

- 93. Damaging buildings with explosives
- 94. Attempting to destroy buildings with explosives

Criminal Law Consolidation Act, 1935

Damage to Property by Rioters

95. Damage to property by rioters

Damage to Buildings by Tenants

96. Damage to building by tenants

Damage to Manufactures, Machinery, etc.

97. Destroying goods in process of manufacture, machinery, etc.
 98. Destroying machinery
 99. Destroying granaries, etc., or taking grain therefrom

Damage to Trees, Shrubs and Vegetables

100. Destroying or damaging trees, shrubs, etc., over \$2 in value
 101. Damaging trees, etc.
 102. Destroying fences, etc.

Damage to Mines

103. Flooding mines, etc.
 104. Damaging mining machinery

Damage to Sea and River Banks, etc.

105. Destroying sea banks, walls, dams, wharves, etc.
 106. Damage to, or removal of, etc., sea wall, etc.

Damage to Ponds, etc.

107. Damage to the dam, etc., of any fishery, etc., or poisoning fish.
 108. Poisoning water in rivers, etc.

Damage to Bridges, etc.

109. Damage to bridges, etc.

Damage to Railways, Electric Cables, etc.

110. Placing wood, etc., on railway with intent to obstruct or overthrow any engine, etc.
 111. Obstructing engines or carriages on railways
 112. Damage to electrical cables

Damage to Works of Art

113. Destroying or damaging works of art

Injuries to Cattle, etc.

114. Killing or injuring cattle
 115. Poisoning cattle
 116. Killing, etc., other animals
 117. Saving of rights under Impounding Act, 1920

Damage to Ships

118. Setting fire to ships, etc.
 120. Placing gunpowder near a vessel with intent to damage it
 121. Damaging ships otherwise than by fire
 122. Exhibiting false signals, etc.
 123. Removing or concealing buoys and other sea marks
 124. Destroying wrecks or any articles belonging thereto

Sending Letters Threatening to Burn or Destroy

125. Sending letters threatening to burn or destroy houses, etc.

Damage Not Before Provided For

126. Malicious damage not before provided for
 127. Summary proceedings for other malicious damage

Supplementary Provisions

- 128. Malice against owner of property unnecessary
- 129. Provisions of this Act shall apply to persons in possession of the property injured

PART V

LARCENY AND SIMILAR OFFENCES

- 130. Interpretation
- 131. Simple larceny
- 132. Larceny by bailee
- 133. Joinder of counts for larceny
- 134. Larceny after a previous conviction for felony
- 135. Larceny after a previous conviction for misdemeanour

Larceny of Cattle and Other Animals

- 136. Stealing cattle
- 137. Killing animals with intent to steal the carcase
- 138. Stealing deer, etc., in enclosed land
- 139. Stealing dogs
- 140. Taking reward to restore stolen animals
- 141. Killing pigeons
- 142. Stealing birds and animals not the subject of larceny at common law
- 143. Stealing or dredging for oysters in oyster fisheries

Larceny of Written Instruments

- 144. Stealing bonds, bills, notes, etc.
- 145. Stealing deeds, wills, etc.
- 146. Stealing court records

Larceny of Things Attached To, or Growing On, Land

- 147. Glass, wood, metal, etc., fixed to houses and land
- 148. Trees, etc., in pleasure grounds
- 149. Other trees
- 150. Fences, gates, etc.
- 151. Plants, etc., in gardens, etc.

Larceny from Mines or Mineral Lands

- 152. Ore, metal, etc.
- 152a. Precious stones
- 153. Fraudulently removing ore, etc., from mines
- 153a. Interpretation

Larceny of Electricity

- 154. Stealing electricity

Larceny from the Person and Other Like Offences

- 155. Robbery and stealing from the person
- 157. Power to convict of lesser offence
- 158. Robbery with violence
- 159. Letters demanding money by menaces
- 160. Demanding money, etc., with menaces or by force and with intent to steal
- 161. Letter threatening to accuse of a crime, with intent to extort
- 162. Accusing or threatening to accuse with intent to extort money
- 163. Threatening to accuse with a view to extort money
- 164. Threatening to publish a libel with intent to extort
- 165. Obtaining execution of documents by force
- 166. Interpretation

Sacrilege, Burglary, Housebreaking, etc.

- 167. Sacrilege
- 168. Burglary
- 169. Entering a dwelling house in the night with intent to commit a felony
- 170. Breaking and entering buildings and committing a felony

171. Housebreaking, etc., with intent to commit a felony
 172. Being found by night, armed, or in possession of housebreaking implements
 173. Larceny in dwelling houses

Larceny of Goods in Process of Manufacture

174. Stealing goods in process of manufacture

Larceny from Ships and Wharves, etc.

175. Stealing from ships, docks, etc.

Larceny and Embezzlement by Clerks, Servants and Persons in the Public Service

176. Larceny and embezzlement by clerks and servants
 177. Larceny and embezzlement in the Public Service
 178. Falsification of accounts, etc.
 179. General deficiency
 180. Information for embezzlement
 181. Verdict of larceny where embezzlement charged, and *vice versa*
 182. Larceny by partners

Larceny by Tenants and Lodgers

183. Larceny by tenants and lodgers

Frauds by Trustees, Agents, Bankers or Factors

184. Fraudulent misappropriation
 185. Fraudulent sales under powers of attorney
 186. Factors obtaining advances on the property of their principals
 187. Trustees fraudulently disposing of property
 188. Promoters of companies making untrue statements
 189. Directors of companies fraudulently appropriating property
 190. Directors, etc., keeping fraudulent accounts
 191. Directors, etc., wilfully destroying books, etc.
 192. Directors, etc., publishing fraudulent statements
 193. Protection to persons disclosing offences in civil proceedings
 194. Civil remedies not affected

False Pretences

195. False pretences

Receiving

196. Receiving where principal guilty of felony
 197. Receiving where principal guilty of misdemeanour
 197a. Receiving goods stolen outside the State
 198. Conviction of receivers in absence of principal
 199. Receiving where principal punishable summarily
 200. Previous convictions may be proved in receiving charges

Restitution and Recovery of Stolen Property

201. Restitution of stolen property
 202. Corruptly taking reward for recovery of stolen property
 203. Advertising a reward for the return of stolen property, etc.

False Impersonation, etc.

204. Impersonation in order to obtain property
 205. Impersonating the owner of stock

Piracy

206. Piracy
 207. Assaults with intent to commit, or in furtherance of, piracy
 208. Robbery or other act of hostility at sea under colour of a foreign commission
 209. Piracy by master or seaman of ship
 210. Forcibly boarding a ship and throwing goods overboard
 211. Trading with pirates

PART VI

FORGERY

- 212. Interpretation
- 213. The Public Seal
- 214. Deeds, wills, bills of exchange, etc.
- 215. Transfers of stock, etc.
- 216. Attestation to power of attorney for transfer of stock

Making and Engraving Plates for Bank Notes

- 217. Making moulds for bank paper, etc.
- 218. Engraving plates for making bank notes

Forging Bank Notes

- 219. Forging bank notes
- 220. Receiving forged bank notes
- 221. Drawing bill without lawful authority
- 222. Crossings on cheques
- 223. Debentures

Forging Official and Legal Documents

- 224. Original documents of courts of record
- 225. Orders of justices
- 226. Copies of certificates of record and using forged process
- 227. False copies of record
- 228. False certificates of previous convictions
- 229. Certificates of judgment
- 230. Forging official documents and tendering same in evidence
- 231. Impounding of forged documents
- 232. Documents relating to registration of deeds

Miscellaneous Matters

- 233. Falsely acknowledging recognizances, etc.
- 234. Demanding property upon forged instruments
- 235. Forgeries not already specified
- 236. Search warrants for implements of forgery

PART VII

OFFENCES OF A PUBLIC NATURE

Offences against Public Justice

- 237. Compounding penal actions
- 238. Rescuing murderers
- 239. Perjury and subornation
- 240. Exacting fees from prisoners
- 241. Gaoler exacting fees from prisoners
- 242. Unlawfully administering oaths

Forcible Entry

- 243. Forcible entry

Riots

- 244. Rioters remaining after proclamation
- 245. Riotously preventing loading of ships

Defamatory Libels

- 246. Publishing defamatory libel knowing it to be false
- 247. Defamatory libel
- 248. Plea of justification
- 249. Publishing parliamentary reports
- 250. Evidence of publication
- 251. Verdict
- 252. Costs in prosecutions for libel

Trafficking in Public Offices

253. Trafficking in public offices

Nuisance by Fireworks

254. Nuisance by fireworks

Offences against Morality, Public Health, etc.

255. Lewdness
256. Offences in respect of infectious diseases

Offences against Religion, etc.

257. Interrupting religious worship
258. Molesting preachers
259. Pretending to witchcraft

Conspiracy and Protection of Property

260. Conspiracy in relation to industrial disputes
261. Breach of contract by railway and other employees
262. Breach of contract by servant involving probable injury to persons or property
263. Neglect by master to provide food, clothing, etc., for servant
264. Penalty for intimidation or annoyance by violence or otherwise
265. Offences triable summarily
266. Interpretation

PART VIII

ACCESSARIES

267. Accessories before the fact
268. Accessories after the fact
269. Abettors in misdemeanours

PART IX

MISCELLANEOUS AND PROCEDURE

Punishment for Certain Common Law Misdemeanours

270. Punishment for certain offences

Attempts

- 270a. Attempts
270ab. Attempted manslaughter

Assaults with Intent to Commit Felonies or Indictable Misdemeanours

- 270b. Assaults with intent

Apprehension of Offenders

271. Persons committing offences may be arrested by any person
272. Persons loitering at night and suspected of any felony, etc., may be apprehended
273. Judge's warrant for arrest of person charged

Informations

274. Interpretation
275. Informations may be presented in the name of the Attorney-General
276. Attorney-General may decline to prosecute
277. General provisions as to informations
278. Joinder of charges
279. Joint trial of accessaries
280. Coin and bank notes may be described simply as money
281. Objections to informations, amendments and postponement of trial

Change of Forum

- 281a. Change of forum

Saving and Transitional Provisions

282. Saving provisions
283. Rules of court

Pleas and Proceedings on Trial

284. Plea of not guilty and refusal to plead
285. Form of plea of *autrefois convict* or *autrefois acquit*
285a. Certain questions of law may be determined before jury empanelled
285b. Conviction on plea of guilty of offence other than that charged
285c. Notice of certain evidence to be given
286. Inspection and copies of depositions
287. Prisoner's property may be made available for his defence
288. Defence by counsel and addresses
289. Postponement of trial
290. Verdict for attempt where full offence charged
291. Conviction of persons tried for misdemeanour if felony proved

Insanity

292. Verdict of not guilty on ground of insanity
293. Insanity affecting capacity to plead
293a. Release on licence

Verdicts

294. Defects cured by verdict
295. Forfeiture abolished

Costs, Witness Fees, and Compensations

297. Fees and compensation
298. Persons convicted may be condemned in costs
299. Compensation to persons injured

Firearms and Offensive Weapons

- 299a. Orders as to firearms and offensive weapons

Fines and Forfeited Recognizances

300. Interpretation
300a. Powers in relation to fines and forfeited recognizances
300b. Default in payment of instalments
300c. Imprisonment under order of Court when no time allowed for payment
300d. Recovery and payment of fines and forfeitures
300e. Issue of writs
300f. Term of imprisonment may run from termination of a sentence
300g. Reduction of imprisonment on part payment of a fine or forfeiture
300h. Proof of orders and defaults

Sentence

309. Abolition of the pillory
310. Sentences of imprisonment may be made cumulative
311. Power to exempt from hard labour
313. Fines and sureties
313a. Persistent offenders
314. Previous convictions for felony

Police Supervision of Certain Offenders and Harboursing Thieves

315. Interpretation
316. Persons twice guilty of felony to be subject to police supervision
317. Harboursing thieves
318. Authority to search for stolen property

Habitual Criminals

319. Judge may declare convicted person an habitual criminal
320. Proof of previous conviction

321. Habitual criminal to be detained during pleasure
 323. Release on licence of habitual criminals
 328. Regulations under Prisons Act, 1936

Abolition of Presumption of Marital Coercion

- 328a. Abolition of presumption of marital coercion
 329. Provision as to persons convicted of treason or a felony

PART XI

CASES STATED AND APPEALS

348. Interpretation
 348a. Delegation of certain powers by the Attorney-General
 349. Court to decide according to opinion of majority

Cases Stated

350. Questions of law may be reserved
 351. Case to be stated by trial judge and powers of Full Court
 351a. Restriction on reporting proceedings relating to reservation of question of law on trial of acquitted person

Right of Appeal and Determination of Appeals

352. Right of appeal in criminal cases
 353. Determination of appeals in ordinary cases
 354. Powers of Court in special cases
 355. Revesting and restitution of property on conviction
 356. Jurisdiction of Full Court

Procedure

357. Time for appealing
 358. Judge's notes and report to be furnished on appeal
 359. Supplemental powers of Court
 360. Legal assistance to appellant
 361. Right of appellant to be present
 362. Attorney-General to be represented
 363. Costs of appeal
 364. Admission of appellant to bail and custody when attending Court
 365. Duties of registrar with respect to notices of appeal, etc.
 366. Notes of evidence on trial
 367. Powers which may be exercised by a judge of the Court
 368. Rules of court

References on Petitions for Mercy

369. References by Chief Secretary

SCHEDULES



CRIMINAL LAW CONSOLIDATION ACT, 1935

being

Criminal Law Consolidation Act, 1935, No. 2252 of 1935 [Assented to 21 December 1935]¹

as amended by

Criminal Law Consolidation Act Amendment Act, 1940, No. 54 of 1940 [Assented to 5 December 1940];
Criminal Law Consolidation Act Amendment Act, 1952, No. 27 of 1952 [Assented to 27 November 1952];
Coroners Act Amendment Act, 1952, No. 53 of 1952 [Assented to 4 December 1952];
Criminal Law Consolidation Act Amendment Act, 1956, No. 54 of 1956 [Assented to 29 November 1956];
Statute Law Revision Act, 1957, No. 42 of 1957 [Assented to 14 November 1957];
Maintenance Act Amendment Act, 1965, No. 54 of 1965 [Assented to 23 December 1965];
Criminal Law Consolidation Act Amendment Act, 1966, No. 7 of 1966 [Assented to 24 February 1966];
Criminal Law Consolidation Act Amendment Act (No. 2), 1969, No. 71 of 1969 [Assented to 11 December 1969]²;
Criminal Law Consolidation Act Amendment Act (No. 3), 1969, No. 88 of 1969 [Assented to 11 December 1969]³;
Criminal Law Consolidation Act Amendment Act, 1969, No. 109 of 1969 [Assented to 8 January 1970];
Age of Majority (Reduction) Act, 1971, No. 15 of 1971 [Assented to 8 April 1971]⁴;
Fisheries Act, 1971, No. 29 of 1971 [Assented to 22 April 1971]⁵;
Corporal Punishment Abolition Act, 1971, No. 58 of 1971 [Assented to 14 October 1971]⁶;
Criminal Law Consolidation Act Amendment Act, 1971, No. 96 of 1971 [Assented to 3 December 1971];
Local and District Criminal Courts Act Amendment Act, 1972, No. 54 of 1972 [Assented to 27 April 1972]⁷;
Criminal Law Consolidation Act Amendment Act, 1972, No. 74 of 1972 [Assented to 21 September 1972]⁸;
Criminal Law Consolidation Act Amendment Act, 1972, No. 94 of 1972 [Assented to 9 November 1972];
Criminal Law Consolidation Act Amendment Act (No. 3), 1972, No. 102 of 1972 [Assented to 16 November 1972]⁹;
Criminal Law Consolidation Act Amendment Act (No. 5), 1972, No. 109 of 1972 [Assented to 23 November 1972]¹⁰;
Criminal Law Consolidation Act Amendment Act (No. 6), 1972, No. 122 of 1972 [Assented to 30 November 1972]¹¹;
Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6 December 1973];
Criminal Law Consolidation Act Amendment Act, 1974, No. 13 of 1974 [Assented to 4 April 1974];
Criminal Law (Sexual Offences) Amendment Act, 1975, No. 66 of 1975 [Assented to 2 October 1975];
Statute Law Revision Act (No. 3), 1975, No. 88 of 1975 [Assented to 20 November 1975];
Criminal Law Consolidation Act Amendment Act, 1976, No. 83 of 1976 [Assented to 9 December 1976];
Statutes Amendment (Capital Punishment Abolition) Act, 1976, No. 115 of 1976 [Assented to 23 December 1976];
Criminal Law Consolidation Act Amendment Act, 1978, No. 14 of 1978 [Assented to 16 March 1978]¹²;
Criminal Law (Prohibition of Child Pornography) Act, 1978, No. 92 of 1978 [Assented to 7 December 1978];
Criminal Law Consolidation Act Amendment Act, 1980, No. 67 of 1980 [Assented to 13 November 1980]¹³;
Criminal Law Consolidation Act Amendment Act, 1981, No. 107 of 1981 [Assented to 23 December 1981]¹⁴;
Criminal Law Consolidation Act Amendment Act (No. 2), 1981, No. 108 of 1981 [Assented to 23 December 1981];
Statutes Amendment (Jurisdiction of Courts) Act, 1981, No. 109 of 1981 [Assented to 23 December 1981]¹⁵;

¹ Came into operation 2 January 1936: *Gaz.* 2 January 1936, p. 1.

² Came into operation 27 January 1966: *Gaz.* 27 January 1966, p. 145.

³ Came into operation 31 August 1970: *Gaz.* 20 August 1970, p. 701.

⁴ Came into operation 17 September 1970: *Gaz.* 17 September 1970, p. 1198.

⁵ Came into operation 15 April, 1971: *Gaz.* 15 April 1971, p. 1598.

⁶ Came into operation 1 December 1971: *Gaz.* 30 November 1971, p. 2261.

⁷ Came into operation 18 November 1971: *Gaz.* 18 November 1971, p. 2070.

⁸ Came into operation 9 November 1972: *Gaz.* 9 November 1972, p. 2252.

⁹ Came into operation 2 November 1972: *Gaz.* 2 November 1972, p. 2132.

¹⁰ Came into operation 1 February 1973: *Gaz.* 1 February 1973, p. 377.

¹¹ Came into operation 15 February 1973: *Gaz.* 15 February 1973, p. 497.

¹² Came into operation 15 February 1973: *Gaz.* 15 February 1973, p. 496.

¹³ Came into operation 1 July 1979: *Gaz.* 14 June 1979, p. 1824.

¹⁴ Came into operation 11 December 1980: *Gaz.* 11 December 1980, p. 2119.

¹⁵ Came into operation 11 February 1982: *Gaz.* 11 February 1982, p. 361.

¹⁶ Came into operation 1 February 1982: *Gaz.* 28 January 1982, p. 209.

Criminal Law Consolidation Act Amendment Act, 1983, No. 45 of 1983 [Assented to 16 June 1983];
 Criminal Law Consolidation Act Amendment Act (No. 2), 1983, No. 51 of 1983 [Assented to 16 June 1983];
 Criminal Law Consolidation Act Amendment Act (No. 3), 1983, No. 84 of 1983 [Assented to 1 December 1983];
 Statutes Amendment (Criminal Law Consolidation and Police Offences) Act, 1983, No. 114 of 1983 [Assented to 22 December 1983];
 Criminal Law Consolidation Act Amendment Act, 1984, No. 49 of 1984 [Assented to 24 May 1984];
 Statute Law Revision Act, 1984, No. 30 of 1984 [Assented to 24 May 1984];
 Statutes Amendment (Oaths and Affirmations) Act, 1984, No. 56 of 1984 [Assented to 24 May 1984];
 Criminal Law Consolidation Act Amendment Act (No. 2), 1984, No. 78 of 1984 [Assented to 15 November 1984];
 Evidence Act Amendment Act (No. 3), 1984, No. 90 of 1984 [Assented to 29 November 1984].

Long title amended by 71, 1969, s. 3.

An Act to consolidate certain Acts relating to the Criminal Law; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title.
38, 1876, s. 1.

1. This Act may be cited as the "Criminal Law Consolidation Act, 1935".

Commencement of Act.

2. This Act shall come into force on a day to be fixed by proclamation⁴.

S. 3 amended by 7, 1966, s. 3; 71, 1969, s. 4; 189, 1969, s. 2; 94, 1972, s. 2; 102, 1972, s. 3; 66, 1975, s. 3; 83, 1976, s. 2; 115, 1976, s. 3; 107, 1981, s. 3; 49, 1984, s. 2.

* * * * *

S. 4 amended by 29, 1971, s. 4 (1) (Schd.); repealed by 50, 1984, s. 3 (1) (1st Sched.).

* * * * *

Interpretation.

5. In this Act—

Def. of "carnal knowledge" inserted by 66, 1975, s. 4; repealed by 83, 1976, s. 3 (a).

* * * * *

"cattle" means horse, mare, gelding, colt, filly, mule, ass, bull, cow, ox, heifer, calf, ram, ewe, sheep, lamb, camel, llama, alpaca, goat or pig;

Def. inserted by 66, 1975, s. 4.

"common prostitute" includes any male person who prostitutes his body for fee or reward:

¹ Came into operation 22 December 1983: *Gaz.* 22 December 1983, p. 1718.

² Came into operation (except Scheds. 1, 3, 4 and 5) 1 November 1984: *Gaz.* 1 November 1984, p. 1398; Scheds. 1, 3 and 5 came into operation 1 January 1985: *Gaz.* 13 December 1984, p. 1811; Sched. 4 suspended.

³ Came into operation 1 July 1984: *Gaz.* 28 June 1984, p. 1897.

N.B. The amendments effected to this Act by the South Australian Health Commission Act, 1976, had not been brought into operation at the date of, and have not been included in, this reprint.

⁴ Came into operation 2 January 1936: *Gaz.* 2 January 1936, p. 1.

⁵ S. 3 omitted pursuant to the Acts Republication Act, 1967, s. 7 (2): see Summary of Provisions.

“dwelling house” does not include a building, although within the curtilage of a dwelling house and occupied with the dwelling house, unless there is a communication between the building and dwelling house, either immediate or by means of a covered and enclosed passage leading from the one to the other: 38, 1876, s. 173.
Def. amended by 50, 1984, s. 3 (1) (1st Sched.).

“liable to be imprisoned for life” means liable to be imprisoned for life or any lesser term:

“night” means the interval between nine o’clock in the evening and six o’clock in the morning of the next day: 38, 1876, s. 173.

“the Parole Board” means the Parole Board of South Australia: Def. inserted by 88, 1969, s. 3; amended by 50, 1984, s. 3 (1) (1st Sched.).

“place of divine worship” means any church, chapel, meeting house or other place of divine worship:

“property” includes goods, chattels, money, valuable securities and every other matter or thing, whether real or personal, on or in respect of which any offence may be committed:

* * * * * Def. of “rape” inserted by 66, 1975, s. 4; repealed by 83, 1976, s. 3 (b).

“sexual intercourse” includes—

(a) the introduction of the penis of one person into the anus of another;

and

(b) the introduction of the penis of one person into the mouth of another. Def. inserted by 83, 1976, s. 3 (b).

* * * * * Subser. (2) repealed by 50, 1984, s. 3 (1) (1st Sched.).

5a. (1) Notwithstanding any provision of any Act or law, no sentence of death shall be—

(a) imposed on, or recorded against, any person;

or

(b) carried into execution on any person. Abolition of capital punishment.
S. 5a inserted by 115, 1976, s. 4.

(2) Where any person is liable to sentence of death under any Act or law, the court before which that person is convicted shall, instead of sentencing him to death, sentence him to be imprisoned for life.

(3) Any sentence of death that was imposed or recorded before the commencement of the Statutes Amendment (Capital Punishment Abolition) Act, 1976, shall (whether or not that sentence has been commuted to a sentence of imprisonment for life) be deemed to be a sentence of imprisonment for life imposed by a court of competent jurisdiction.

(4) Any direction or order made by the Governor on, or in relation to, the commutation of a sentence of death to a sentence of imprisonment for life shall be deemed to be a direction or order given or made by a court of competent jurisdiction.

PART II

TREASON FELONY

Repeal.

2, 1868, s. 1.
S. 6 amended by
50, 1984, s. 3 (1)
(1st Sched.).

6. The Acts 36 George III C. 7¹ and 57 George III C. 6¹ of the Imperial Parliament, except those provisions which relate to the compassing, imagining, inventing, devising or intending of the death or destruction, or any bodily harm tending to the death or destruction, maiming or wounding, imprisonment or restraint, of the person of Her Majesty, and the expressing, uttering or declaring of such compassings, imaginations, inventions, devices or intentions, are repealed.

Treason felonies.

2, 1868, s. 2.
S. 7 amended by
50, 1984, s. 3 (1)
(1st Sched.).

7. Any person who compasses, imagines, invents, devises or intends—

(a) to deprive or depose Her Majesty 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;

(b) to levy war against Her Majesty within any part of the United Kingdom or any other of Her Majesty's dominions in order—

(i) by force or constraint, to compel Her to change Her measures or counsels;

or

(ii) to put any force or constraint on, or to intimidate or overawe, both Houses or either House of the Parliament of the United Kingdom or the Parliament of this State;

or

(c) to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of Her Majesty's dominions or countries under the obeisance of Her Majesty,

and expresses, utters or declares such compassings, imaginations, inventions, devices or intentions by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, shall be guilty of felony and liable to be imprisoned for life or for a term of not less than six months.

Time within which prosecution shall be commenced and warrant issued.

2, 1868, s. 3.

Subsec. (1)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

8. (1) No person shall be prosecuted under section 7 in respect of any compassings, imaginations, inventions, devices or intentions which are expressed, uttered or declared by open and advised speaking only, unless—

(a) information of the compassings, imaginations, inventions, devices or intentions and of the words by which they were expressed, uttered or declared is given on oath to a justice within six days after the words were spoken;

and

(b) a warrant for the apprehension of the person by whom the words were spoken is issued within ten days after that information was given.

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

¹ See Appendix.

9. (1) It shall be lawful in any information under section 7 to charge against the offender any number of the matters, acts or deeds by which the compassings, imaginations, inventions, devices or intentions were expressed, uttered or declared.

In informations more than one overt act may be charged.
2. 1868, s. 4.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) If the facts or matters alleged in an information under section 7 amount in law to treason, the information shall not for that reason be deemed void, erroneous or defective and, if the facts or matters proved on the trial of any person so informed against amount in law to treason, the accused person shall not for that reason be entitled to be acquitted of the felony charged, but no person tried for that felony shall be afterwards prosecuted for treason on the same facts.

2. 1868, s. 6.
Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

10. The provisions of this Part shall not 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"¹.

Nothing herein to affect 25 Ed. III, c. 2.
2. 1868, s. 5.
S. 10 amended by 50, 1984, s. 3 (1) (1st Sched.).

10a. Any person who is convicted of treason shall be imprisoned for life.

Penalty for treason.
S. 10a inserted by 115, 1976, s. 5.

PART III

OFFENCES AGAINST THE PERSON

Homicide

11. Any person who commits murder shall be guilty of felony and shall be imprisoned for life.

Murder.
38. 1876, s. 5.
S. 11 amended by 115, 1976, s. 6.

12. Any person who—

(a) conspires, confederates and agrees with any other person to murder any person, whether he is a subject of Her Majesty or not and whether he is within the Queen's dominions or not;

Conspiring or soliciting to commit murder.
38. 1876, s. 13.

(b) solicits, encourages, persuades or endeavours to persuade, or proposes to, any person to murder any other person, whether he is a subject of Her Majesty or not and whether he is within the Queen's dominions or not,

shall be guilty of felony and liable to be imprisoned for life.

13. Any person who is convicted of manslaughter shall be liable to be imprisoned for life or to pay such fine as the court awards or to both such imprisonment and fine.

Manslaughter.
38. 1876, s. 16.

13a. (1) It is not an offence to commit or attempt to commit suicide.

Criminal liability in relation to suicide.
S. 13a inserted by 45, 1983, s. 2.

(2) Notwithstanding the provisions of subsection (1), a person who finds another committing or about to commit an act which he believes on reasonable grounds would, if committed or completed, result in suicide is justified in using reasonable force to prevent the commission or completion of the act.

(3) If on the trial of a person for the murder of another the jury is satisfied that the accused killed the other, or was a party to the other being killed by a third person, but is further satisfied that the acts or omissions

¹ See Appendix.

alleged against the accused were done or made in pursuance of a suicide pact with the person killed, then, subject to subsection (11), the jury shall not find the accused guilty of murder but may bring in a verdict of manslaughter.

(4) The killing of another or an attempt to kill another in pursuance of a suicide pact shall, for the purposes of determining the criminal liability of a person who was a party to the killing or attempt but not a party to the suicide pact, be regarded as murder or attempted murder, as the case may require.

(5) A person who aids, abets or counsels the suicide of another, or an attempt by another to commit suicide, shall be guilty of an indictable offence.

(6) The penalty for an offence against subsection (5) shall be—

(a) subject to paragraph (b)—

(i) where suicide was committed—imprisonment for a term not exceeding fourteen years;

(ii) where suicide was attempted—imprisonment for a term not exceeding eight years;

(b) where the convicted person committed the offence in pursuance of a suicide pact and—

(i) suicide was committed—imprisonment for a term not exceeding five years;

(ii) suicide was attempted—imprisonment for a term not exceeding two years.

(7) A person who, by fraud, duress or undue influence, procures the suicide of another or an attempt by another to commit suicide shall (whether or not he was a party to a suicide pact with the other person) be guilty of murder or attempted murder, as the case may require.

(8) If on the trial of a person for murder or attempted murder the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that he is guilty of an offence against subsection (5), the jury may bring in a verdict that he is guilty of an offence against that subsection.

(9) In any criminal proceedings in which it is material to establish the existence of a suicide pact and whether an act was done, or an omission made, in pursuance of the pact, the onus of proving the existence of the pact and that the act was done, or the omission made, in pursuance of the pact shall lie on the accused.

(10) For the purposes of this section—

(a) “suicide pact” means an agreement between two or more persons having for its object the death of all of them whether or not each is to take his own life;

and

(b) nothing done or omitted to be done by a person who enters into a suicide pact shall be treated as done or omitted to be done in pursuance of the pact unless it is done or omitted to be done while he has the settled intention of dying in pursuance of the pact.

(11) Where a person induced another to enter into a suicide pact by means of fraud, duress or undue influence, the person is not entitled in

relation to an offence against the other to any mitigation of criminal liability or penalty under this section based on the existence of the pact.

14. (1) Any person who—

(a) drives a motor vehicle in a culpably negligent manner, or recklessly, or at a speed or in a manner which is dangerous to the public;

and

(b) by such negligence, recklessness or other conduct, causes the death of any person,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Causing death by negligent driving. 1804, 1927, ss. 2-5. Subsec. (1) amended by 51, 1983, s. 2.

(2) Subsection (1) creates a single offence and no objection shall be taken to an information for that offence alleging that the defendant drove a motor vehicle "in a culpably negligent manner, or recklessly, or at a speed or in a manner which was dangerous to the public" on the ground of duplicity or uncertainty.

(3) In this section—

"motor vehicle" includes any motor car, motor carriage, automobile, motor cycle or other vehicle or carriage driven or propelled, or ordinarily capable of being driven or propelled, either partly or wholly, by volatile spirit, steam or electricity or by means other than animal power, but does not include any vehicle run on a railway or tramway.

Subsec. (3) amended by 50, 1984, s. 3 (1) (1st Sched.).

(4) This section does not take away the liability of any person to be prosecuted for, or found guilty of, murder or manslaughter, or affect the punishment which may be imposed for manslaughter; but no person who has been convicted or acquitted of an offence under this section shall afterwards be prosecuted for manslaughter on the same or substantially the same facts, nor shall any person who has been convicted or acquitted of manslaughter be afterwards prosecuted for an offence under this section on the same or substantially the same facts.

(5) A charge of murder or manslaughter shall not be joined in the same information with a charge of an offence under this section.

* * * * *

Subsec. (6) repealed by 53, 1952, s. 14.

14a. (1) If on the trial of a person for manslaughter, or for an offence against section 14, the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that he is guilty of the offence constituted by section 45 of the Road Traffic Act, 1961, of driving a vehicle without due care or attention or without reasonable consideration for other persons using the road, or that he is guilty of the offence constituted by section 46 of the Road Traffic Act, 1961, of driving a vehicle recklessly, or at a speed or in a manner which is dangerous to the public, the jury may bring in a verdict that he is guilty of the offence as to which it is so satisfied.

Alternative verdict on charge of manslaughter, etc. S. 14a inserted by 27, 1952, s. 3; amended by 71, 1969, s. 5; substituted by 51, 1983, s. 3.

(2) A person found guilty of an offence against the Road Traffic Act, 1961, pursuant to subsection (1) shall be dealt with by the court in the manner prescribed by that Act¹.

Excusable homicide.
38, 1876, s. 18.
S. 15 amended by 27, 1952, s. 4.

15. Except as provided in section 14, no punishment shall be incurred by any person who kills another by misfortune or in his own defence, or in any other manner without felony.

Petit treason.
38, 1876, s. 19.
S. 16 amended by 50, 1984, s. 3 (1) (1st Sched.).

16. Every offence which, before the commencement of the Act 9 George IV C. 31 of the Imperial Parliament, would have amounted to petit treason shall be deemed to be murder only, and no greater offence, and shall be punishable accordingly.

Murder when death happens outside the State.
38, 1876, s. 20.

17. If any person within the State feloniously strikes, poisons or otherwise hurts another and that other person as a result dies at sea or outside the State, the guilty person may be tried and punished in the State, whether for murder or manslaughter or as accessory to murder or manslaughter, in the same manner as if the offence had been wholly committed within the State.

Heading repealed by 107, 1981, s. 4.

* * * * *

S. 18 amended by 58, 1971, s. 6; repealed by 107, 1981, s. 4.

* * * * *

Letters Threatening to Murder

Sending letters threatening to murder.
38, 1876, s. 26.
1670, 1925, s. 13.
S. 19 amended by 50, 1984, s. 3 (1) (1st Sched.).

19. Any person who maliciously sends, delivers or utters or, directly or indirectly, causes to be received, knowing its contents, any letter or writing threatening to kill or murder any person shall be guilty of felony and liable to be imprisoned for a term not exceeding ten years.

Acts Causing or Intended to Cause Danger to Life or Bodily Harm

Impeding a person endeavouring to save himself from shipwreck.
38, 1876, s. 27.
1670, 1925, s. 13.

20. Any person who unlawfully and maliciously—

- (a) prevents or impedes any person, being on board, or having quitted, any ship or vessel in distress, or wrecked, stranded or cast on shore, in his endeavour to save his life;
- (b) prevents or impedes any person in his endeavour to save the life of any person on board, or having quitted, any such ship or vessel,

shall be guilty of felony and liable to be imprisoned for life.

Wounding, etc., with intent to do grievous bodily harm.
38, 1876, s. 28.
1670, 1925, s. 13.
S. 21 amended by 50, 1984, s. 3 (1) (1st Sched.).

21. Any person who unlawfully and maliciously, by any means—

- (a) wounds any person;
- (b) causes any grievous bodily harm to any person;
- (c) shoots at any person;

¹ The penalty prescribed for an offence against s. 45 of the Road Traffic Act, 1961, is a fine of not more than \$1 000: see Road Traffic Act, 1961, s. 164a. The penalty prescribed for an offence against s. 46 of the Road Traffic Act, 1961, is—

- (a) for a first offence—a fine of not less than \$300 and not more than \$600;
- (b) for a subsequent offence—a fine of not less than \$300 and not more than \$600 or imprisonment for not more than 3 months—

and includes mandatory disqualification from holding or obtaining a driver's licence: see s. 46 (3); an offence is treated as a first offence unless the defendant has been convicted of a previous offence committed within the period of 5 years immediately preceding the date of the commission of the offence for which a penalty is to be fixed: see s. 46 (4).

(d) attempts to discharge loaded arms of any kind at any person, with intent to—

Para. (d) substituted by 50, 1984, s. 3 (1) (1st Sched.).

(e) maim, disfigure, disable, or do other grievous bodily harm to, any person;

(f) resist, or prevent the lawful apprehension or detainer of, any person,

shall be guilty of felony and liable to be imprisoned for life.

* * * * *

S. 22 repealed by 50, 1984, s. 3 (1) (1st Sched.).

23. Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm on any other person, either with or without a weapon or instrument, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding five years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding eight years.

Malicious wounding, etc. 38, 1876, s. 30. S. 23 amended by 107, 1981, s. 5.

24. If on the trial of any person for any felony, except murder or manslaughter, the information alleges that the accused person wounded any person and the jury is satisfied that the accused person is guilty of the wounding charged in the information but is not satisfied that he is guilty of the felony so charged, the jury may acquit him of the felony and find him guilty of unlawful wounding and thereupon he shall be liable to be imprisoned for a term not exceeding five years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding eight years.

Verdict of unlawful wounding when felony charged. 38, 1876, s. 31. S. 24 amended by 51, 1983, s. 4.

25. Any person who, with intent to enable himself or any other person to commit any indictable offence or to assist any other person in committing any indictable offence—

Choking or stupefying to commit indictable offence. 38, 1876, ss. 32 and 33. 1670, 1925, s. 13. S. 25 amended by 58, 1971, s. 6.

(a) by any means attempts to choke, suffocate or strangle any other person;

(b) by any means calculated to choke, suffocate or strangle attempts to render any other person insensible, unconscious or incapable of resistance;

(c) applies or administers, or attempts to apply or administer, to any person, or causes to be taken by any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing,

shall be guilty of felony and liable to imprisonment for life.

26. Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing so as thereby—

Maliciously administering poison, etc., so as to endanger life, or inflict grievous bodily harm. 38, 1876, s. 34. 1670, 1925, s. 13.

(a) to endanger the life of that other person;

or

(b) to inflict upon that other person any grievous bodily harm,

shall be guilty of felony and liable to be imprisoned for a term not exceeding ten years.

Maliciously administering poison, etc., with intent to injure, aggrieve or annoy any other person.
38, 1876, s. 35.

27. Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy that other person shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Verdict for misdemeanour where felony charged.
38, 1876, s. 36.
S. 28 amended by 50, 1984, s. 3 (1) (1st Sched.).

28. If on the trial of any person for any felony referred to in section 26 the jury is not satisfied that the accused is guilty of that felony but is satisfied that he is guilty of the misdemeanour referred to in section 27, the jury may acquit the accused of that felony and find him guilty of that misdemeanour and thereupon he shall be liable to be punished in the same manner as if convicted on an information for that misdemeanour.

Not providing food, etc., for wives, children, etc., so that life endangered.
38, 1876, s. 37.
S. 29 amended by 50, 1984, s. 3 (1) (1st Sched.).

29. Any person who, being legally liable to provide for any person, as a wife, child, ward, person who is suffering from a mental illness or intellectual handicap, apprentice, servant, infant or otherwise, necessary food, clothing or lodging—

(a) wilfully and without lawful excuse refuses or neglects to provide such food, clothing or lodging;

or

(b) unlawfully and maliciously does, or causes to be done, any bodily harm to any such person so that the life of that person is endangered or the health of that person is, or is likely to be, permanently injured,

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Exposing children so that life endangered.
38, 1876, s. 38.

30. Any person who unlawfully abandons or exposes any child under the age of two years so that the life of the child is endangered or the health of the child is, or is likely to be, permanently injured shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Causing bodily injury by explosives.
38, 1876, s. 39.

31. Any person who unlawfully or maliciously, by the explosion of gunpowder or other explosive substance, burns, maims, disfigures, disables, or does any grievous bodily harm to, any person shall be guilty of felony and liable to be imprisoned for a term not exceeding three years.

Using explosives, etc., with intent to do grievous bodily harm.
38, 1876, s. 40.
1670, 1925, s. 13.

32. Any person who, with intent to burn, maim, disfigure, disable, or do grievous bodily harm to, any person, unlawfully and maliciously—

(a) causes any gunpowder or other explosive substance to explode;

(b) sends or delivers any explosive substance or any other dangerous or noxious thing to any person, or causes any such substance or thing to be taken or received by any person;

(c) puts or lays any corrosive fluid or any destructive or explosive substance at any place, or throws or applies any such fluid or substance at, on or to any person,

shall, whether any bodily injury is caused or not, be guilty of felony and liable to be imprisoned for life.

Placing gunpowder near a building, ship, etc., with intent to do bodily injury.
38, 1876, s. 41.
1670, 1925, s. 13.

33. Any person who unlawfully and maliciously places or throws in, into, upon, against or near any building, ship or vessel any gunpowder or other explosive substance with intent to do bodily injury to any person shall,

whether or not any explosion takes place and whether or not any bodily injury is caused, be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

34. (1) Any person who sets or places, or causes to be set or placed, any spring gun, mantrap or other engine calculated to destroy human life or inflict grievous bodily harm, with intent that it may destroy or inflict grievous bodily harm on a trespasser or other person coming into contact with it, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Setting spring guns, etc., with intent to inflict grievous bodily harm.
38, 1876, s. 42.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) Any person who knowingly and wilfully permits any such spring gun, mantrap or other engine which has been set or placed by some other person in any place then being in, or afterwards coming into, the possession or occupation of the first mentioned person to continue to be so set or placed shall be deemed to have set and placed the gun, trap or engine with the intent referred to in subsection (1).

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

(3) Nothing in this section makes it illegal to set or place any gin or trap such as has been or is usually set or placed with the intention of destroying vermin, nor to set or place, or cause to be set or placed or to be continued set or placed, from sunset to sunrise any spring gun, mantrap or other engine which is set or placed in a dwelling house for its protection.

35. (1) Any person who unlawfully and maliciously throws, or causes to fall or strike, at, against, into or upon any railway vehicle any wood, stone or other thing with intent to injure or endanger the safety of any person in or on that railway vehicle or any other railway vehicle forming part of the same train shall be guilty of felony and liable to be imprisoned for life.

Throwing stones, etc., at railway trains.
38, 1876, s. 43.

(2) In this section—

“railway vehicle” means any engine, tender, carriage or truck used on a railway.

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

36. Any person who, with intent to endanger the safety of any person travelling or being on any railway, unlawfully and maliciously—

Acts done with intent to endanger persons on railway.

(a) puts or throws upon or across the railway any wood, stone or other matter or thing;

38, 1876, s. 44, 1670, 1925, s. 13.

(b) takes up, removes or displaces any rail, sleeper or other matter or thing belonging to the railway;

(c) turns, moves or diverts any points or other machinery belonging to the railway;

(d) makes, shows, hides or removes any signal or light on or near any railway;

or

(e) does, or causes to be done, any other matter or thing,

shall be guilty of felony and liable to be imprisoned for life.

37. Any person who, by any unlawful act or by any wilful omission or neglect, endangers, or causes to be endangered, the safety of any person conveyed or being in or on a railway shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Doing or omitting anything to endanger passengers on railway.
38, 1876, s. 45.

Injuring persons by dangerous or negligent riding or driving.
S. 38 substituted by 54, 1940, s. 3.
Subsec. (1) amended by 51, 1983, s. 5.

38. (1) Any person who—

(a) drives or rides any vehicle or any animal in a culpably negligent manner, or recklessly, or at a speed or in a manner which is dangerous to the public;

and

(b) by such negligence, recklessness or other conduct, causes bodily harm to any person,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

(2) Subsection (1) creates a single offence and no objection shall be taken to an information for that offence alleging that the defendant drove a vehicle “in a culpably negligent manner, or recklessly, or at a speed or in a manner which was dangerous to the public” on the ground of duplicity or uncertainty.

(3) In this section—

“motor vehicle” includes any motor car, motor carriage, automobile, motor cycle or other vehicle or carriage driven or propelled, or ordinarily capable of being driven or propelled, either partly or wholly, by volatile spirit, steam or electricity or by means other than animal power, but does not include any vehicle run on a railway or tramway:

“vehicle” includes any motor vehicle, any vehicle propelled by animal power and any bicycle, tricycle and other like vehicle propelled by human power.

Def. amended by 50, 1984, s. 3 (1) (1st Sched.).

Alternative verdict on charge under s. 38.
S. 38a inserted by 27, 1982, s. 5; amended by 71, 1969, s. 6; substituted by 51, 1983, s. 6.

38a. (1) If on the trial of a person for an offence against section 38 the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that he is guilty of the offence constituted by section 45 of the Road Traffic Act, 1961, of driving a vehicle without due care or attention or without reasonable consideration for other persons using the road or that he is guilty of the offence constituted by section 46 of the Road Traffic Act, 1961, of driving a vehicle recklessly, or at a speed or in a manner which is dangerous to the public, the jury may bring in a verdict that he is guilty of the offence as to which it is so satisfied.

(2) A person found guilty of an offence against the Road Traffic Act, 1961, pursuant to subsection (1) shall be dealt with by the court in the manner prescribed by that Act¹.

Assaults

Common assault.
38, 1876, s. 48.
S. 39 amended by 107, 1981, s. 6.

39. Any person convicted of common assault shall be liable to be imprisoned for a term not exceeding three years.

¹ The penalty prescribed for an offence against s. 45 of the Road Traffic Act, 1961, is a fine of not more than \$1 000: see Road Traffic Act, 1961, s. 164a. The penalty prescribed for an offence against s. 46 of the Road Traffic Act, 1961, is—

(a) for a first offence—a fine of not less than \$300 and not more than \$600;

(b) for a subsequent offence—a fine of not less than \$300 and not more than \$600 or imprisonment for not more than 3 months—

and includes mandatory disqualification from holding or obtaining a driver's licence: see s. 46 (3); an offence is treated as a first offence unless the defendant has been convicted of a previous offence committed within the period of 5 years immediately preceding the date of the commission of the offence for which a penalty is to be fixed: see s. 46 (4).

40. Any person convicted of assault occasioning actual bodily harm shall be liable to be imprisoned for a term not exceeding five years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding eight years.

Assaults occasioning harm.
38, 1876, s. 47.
S. 40 amended by 107, 1981, s. 7.

41. Any person who—

(a) by threats or force, obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any cemetery or other burial place;

Obstructing or assaulting clergyman in discharge of his duties.
38, 1876, s. 49.

(b) strikes, or offers any violence to, or, on any civil process or under the pretence of executing any civil process, arrests, any clergyman or other minister who is engaging or, to the knowledge of the offender, about to engage, in any of the rites or duties referred to in paragraph (a) or, to the knowledge of the offender, is going to perform, or is returning from the performance of, those rites or duties,

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

42. Any person who assaults and strikes, or wounds, any magistrate, officer, or other person whomsoever lawfully authorized, in, or on account of, the exercise of his duty in, or concerning, the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded, cast on shore or lying under water, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Assaulting a magistrate preserving wreck.
38, 1876, s. 50.

43. Any person who—

* * * * *

Assaults in the course of resisting arrest, etc.
38, 1876, s. 51.
S. 43 amended by 107, 1981, s. 8 (b).

Para. (a) repealed by 107, 1981, s. 8 (a).

(b) assaults, resists or wilfully obstructs any police officer in the due execution of his duty or any person acting in aid of such an officer;

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

(c) assaults any person with intent to resist or prevent the lawful apprehension or detention of himself, or of any other person, for any offence,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding five years.

44. Any person who—

(a) unlawfully and with force hinders or prevents any seaman from working at or exercising his lawful trade, business or occupation;

Forcibly hindering seaman.
38, 1876, s. 52.

(b) beats, or uses any violence against, any seaman with intent to hinder or prevent him from working at or exercising his lawful trade, business or occupation,

shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding six months.

S. 45 repealed by 50, 1984, s. 3 (1) (1st Sched.).

* * * * *

Summary proceedings for assault. S. 46 substituted by 27, 1952, s. 6.

46. (1) A complaint for assault or battery laid by, or on behalf of, the party aggrieved may be heard and determined summarily.

(2) In any such summary proceedings the court may punish the defendant by a fine not exceeding two hundred dollars or imprisonment for a term not exceeding six months.

(3) Where the complaint is laid by the person aggrieved by the assault or battery, the court may, on the application of that person, in addition to imposing such penalty (if any) as the court thinks proper, order the offender to pay to the applicant such sum by way of compensation for the injury or loss suffered by him from the assault or battery as the court thinks just.

(4) If at the conclusion of the hearing of the complaint the court is of opinion that it has not sufficient evidence to enable it to determine the liability for, or the amount of, the compensation or that, for any other reason, it is not expedient to determine the question of compensation in those proceedings, it may decline to consider the application for compensation and, in such a case, the application for compensation under this section shall not be a bar to any other proceedings for compensation.

Power to commit for trial. 38, 1876, ss. 58 and 59. Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

47. (1) If it appears to the magistrate or justices hearing any complaint for assault or battery that the offence is of such an aggravated nature that it cannot, in his or their opinion, be sufficiently punished under section 46, the magistrate or justices may either commit the person charged for trial or proceed to deal with the case as a minor indictable offence pursuant to the provisions of Division II of Part V of the Justices Act, 1921, and thereupon shall have power to award any punishment authorized by that Act.

(2) The magistrate or justices shall not have power to deal with the offence, either summarily or as a minor indictable offence, if it appears that the assault or battery complained of was accompanied by any attempt to commit a felony.

Subsec. (3) amended by 50, 1984, s. 3 (1) (1st Sched.).

(3) Nothing in this section or section 46 authorizes any justices to hear and determine any case of assault or battery in which any question arises as to the title to any lands, tenements or hereditaments or any interests therein or accruing therefrom or as to any bankruptcy or any execution under the process of any court of justice.

Rape, Defilement and Abduction

Heading amended by 66, 1975, s. 5.

Rape. 38, 1876, s. 60. 1670, 1925, s. 13.

48. A person who has sexual intercourse with another person without the consent of that other person—

S. 48 amended by 58, 1971, s. 6; 66, 1975, s. 6; substituted by 83, 1976, s. 4.

(a) knowing that that other person does not consent to sexual intercourse with him;

or

(b) being recklessly indifferent as to whether that other person consents to sexual intercourse with him,

shall be guilty of the felony of rape and liable to be imprisoned for life.

Subsec. (2) repealed by 107, 1981, s. 9.

* * * * *

49. (1) A person who has sexual intercourse with any person under the age of twelve years shall be guilty of a felony and liable to be imprisoned for life.

Unlawful sexual intercourse.
S. 49 amended by 66, 1975, s. 7; substituted by 83, 1976, s. 4.

* * * * *

Subsec. (2) repeated by 107, 1981, s. 10 (a).

(3) A person who has sexual intercourse with a person of or above the age of twelve years and under the age of seventeen years shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Subsec. (3) amended by 107, 1981, s. 10 (b).

(4) It shall be a defence to a charge under subsection (3) to prove that—

(a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of sixteen years; and

Para. (a) amended by 107, 1981, s. 10 (c).

(b) the accused—

Para. (b) amended by 107, 1981, s. 10 (c).

(i) was, on the date on which the offence is alleged to have been committed, under the age of seventeen years;

or

(ii) believed on reasonable grounds that the person with whom he is alleged to have had sexual intercourse was of or above the age of seventeen years.

(5) A person who, being the guardian, schoolmaster, schoolmistress or teacher of a person under the age of eighteen years, has sexual intercourse with that person shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Subsec. (5) amended by 107, 1981, s. 10 (d).

(6) A person who has sexual intercourse with another person knowing that other person to be so mentally deficient as not to understand the nature or consequences of the act shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Subsec. (6) amended by 107, 1981, s. 10 (e).

(7) Consent to sexual intercourse is not a defence to a charge of an offence under this section.

(8) This section does not apply to sexual intercourse between persons who are married to each other.

* * * * *

S. 50 amended by 54, 1940, s. 4; 66, 1975, s. 8; repealed by 83, 1976, s. 4.

* * * * *

S. 51 amended by 54, 1940, s. 4; 66, 1975, s. 9; repealed by 83, 1976, s. 4.

* * * * *

S. 52 amended by 54, 1940, s. 4; 66, 1975, s. 10; repealed by 83, 1976, s. 4.

* * * * *

S. 52a inserted by 54, 1940, s. 5; repealed by 58, 1971, s. 7.

* * * * *

S. 53 amended by 66, 1975, s. 11; repealed by 83, 1976, s. 4.

* * * * *

S. 54 amended by 27, 1952, s. 7; 66, 1975, s. 12; repealed by 83, 1976, s. 4.

S. 55 amended by 27, 1952, s. 8; 66, 1975, s. 13; repealed by 83, 1976, s. 4.

* * * * *

Indecent assault. 38, 1876, s. 66, 1303, 1917, s. 3, 1670, 1925, s. 4. S. 56 amended by 58, 1971, s. 6; 66, 1975, s. 14; substituted by 107, 1981, s. 11.

56. A person who indecently assaults another shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding eight years or, where the victim was at the time of the commission of the offence under the age of twelve years, for a term not exceeding ten years.

Consent no defence in certain cases. 358, 1885, s. 9, 730, 1899, s. 3, 1303, 1917, s. 3. Subsec. (1) amended by 66, 1975, s. 15 (a)-(c).

57. (1) No person under the age of eighteen years shall be deemed capable of consenting to any indecent assault committed by any person who is his or her guardian, teacher, schoolmaster or schoolmistress.

Subsec. (2) amended by 66, 1975, s. 15 (d).

(2) Subject to subsection (3), no person under the age of seventeen years shall be deemed capable of consenting to any indecent assault.

Subsec. (3) amended by 66, 1975, s. 15 (e), (f).

(3) Where the person is between the age of sixteen and seventeen years, his or her consent shall be a defence to a charge of indecent assault if the accused proves that at the time of the indecent assault—

Para. (a) amended by 66, 1975, s. 15 (g).

(a) he or she was under the age of seventeen years;

or

Para. (b) amended by 66, 1975, s. 15 (g).

(b) he or she believed on reasonable grounds that the person was of or above the age of seventeen years.

Power to take plea without evidence. S. 57a inserted by 27, 1952, s. 9; amended by 66, 1975, s. 16; substituted by 83, 1976, s. 5.

57a. (1) When a person is charged with sexual intercourse with, or an indecent assault upon, a person under the age of seventeen years, the justice sitting to conduct the preliminary examination of the witnesses may, without taking any evidence, accept a plea of guilty and commit the defendant to gaol, or admit him to bail, to appear for sentence.

(2) The justice shall take written notes of any facts stated by the prosecutor as the basis of the charge and of any statement made by the defendant in contradiction or explanation of the facts stated by the prosecutor and shall forward those notes to the Attorney-General together with any proofs of witnesses tendered by the prosecutor to the justice.

(3) The Attorney-General shall cause the notes and proofs of witnesses to be delivered to the proper officer of the court at which the defendant is to appear for sentence before or at the opening of the court on the first sitting thereof or at such other time as the judge who is to preside in the court may order.

(4) This section does not restrict or take away any right of the defendant to withdraw a plea of guilty and substitute a plea of not guilty.

S. 57b inserted by 27, 1952, s. 9; amended by 42, 1957, s. 3 (2nd Sched.); 66, 1975, s. 17; repealed by 83, 1976, s. 6.

* * * * *

Acts of gross indecency. 1670, 1925, s. 14.

58. (1) Any person who, in public or in private—

Subsec. (1) amended by 66, 1975, s. 18 (a); 92, 1978, s. 2 (a).

- (a) commits any act of gross indecency with, or in the presence of, any person under the age of sixteen years;
- (b) incites or procures the commission by any such person of any act of gross indecency with the accused, or in the presence of the accused, or with any other person in the presence of the accused;
- (c) is otherwise a party to the commission of any act of gross indecency by or with, or in the presence of, any such person, or by or with any other person in the presence of any such person, or by any such person with any other person in the presence of the accused,

Para. (a) amended by 66, 1975, s. 18 (b).

Para. (b) amended by 66, 1975, s. 18 (b); 107, 1981, s. 12.

Para. (c) amended by 66, 1975, s. 18 (b).

shall be guilty of a misdemeanour and liable for a first offence to be imprisoned for a term not exceeding three years and for any subsequent offence to be imprisoned for a term not exceeding five years.

(2) It is no defence to a charge under this section that the act of indecency was committed with the consent of the person concerned.

Subsec. (2) amended by 66, 1975, s. 18 (b).

* * * * *

Subsecs. (3)-(6) inserted by 92, 1978, s. 2 (b); repealed by 114, 1983, s. 3.

58a. (1) A person who with a view to gratifying prurient interest (whether of that person or some other person)—

Offence if person for prurient purposes incites or procures commission by child of indecent act, etc. S. 58a inserted by 84, 1983, s. 2.

- (a) incites or procures the commission by a child of an indecent act;
- or
- (b) causes or induces a child to expose any part of his or her body,

shall be guilty of an indictable offence and liable for a first offence to be imprisoned for a term not exceeding two years and for any subsequent offence to be imprisoned for a term not exceeding three years.

(2) Subsection (1) applies whether events referred to in the subsection occur in public or in private or with or without the consent of the child.

(3) In this section—

“child” means a person under the age of sixteen years.

59. A person who takes away by force, or detains against his will, any other person—

Abduction of male or female person. 38, 1876, s. 68. S. 59 amended by 66, 1975, s. 19 (a)-(g); substituted by 83, 1976, s. 7.

- (a) with intent to marry, or to have sexual intercourse with, that other person;
- or
- (b) with intent to cause that other person to be married to, or to have sexual intercourse with, a third person,

shall be guilty of a felony and liable to be imprisoned for a term not exceeding fourteen years.

* * * * *

S. 60 amended by 66, 1975, s. 20; repealed by 83, 1976, s. 7.

* * * * *

S. 61 amended by 66, 1975, s. 21; repealed by 83, 1976, s. 7.

* * * * *

S. 62 amended by 58, 1971, s. 6; 66, 1975, s. 22; repealed by 83, 1976, s. 7.

Procuring persons to be prostitutes.
358, 1885, s. 2.
1303, 1917, s. 6.

63. Any person who—

Para. (a) amended by 54, 1940, s. 6 (a); 66, 1975, s. 23 (a); 107, 1981, s. 13.

(a) procures any person to become a common prostitute;

Para. (b) amended by 54, 1940, s. 6 (b); 66, 1975, s. 23 (a); (b); 107, 1981, s. 13.

(b) procures any person, not being a common prostitute, to leave the State or to leave his or her usual place of abode in the State and to become the inmate of a brothel for the purposes of prostitution either within or outside the State,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Procuring sexual intercourse.

64. Any person who—

358, 1885, s. 3.
1303, 1917, s. 6.

Para. (a) amended by 66, 1975, s. 24 (a); (b); 83, 1976, s. 8 (a); 107, 1981, s. 14 (a).

(a) by threats or intimidation, procures any person to have sexual intercourse;

Para. (b) amended by 66, 1975, s. 24 (a); (b); 83, 1976, s. 8 (b); 107, 1981, s. 14 (b); 50, 1984, s. 3 (1) (1st Sched.).

(b) by false pretences, false representations or other fraudulent means, procures any person, not being a common prostitute or a person of known immoral character, to have sexual intercourse,

Para. (c) amended by 15, 1971, s. 4 (1) (Sched. Part IX); 66, 1975, s. 24; repealed by 83, 1976, s. 8 (c).

* * * * *

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Householder, etc., not to permit unlawful sexual intercourse on premises.

65. Any person who, being the owner or occupier of any premises or having, or acting or assisting in, the management or control thereof, induces or knowingly suffers any person under the age of seventeen years to resort to, or be in, those premises for the purpose of having sexual intercourse shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

358, 1885, s. 6.
1303, 1917, s. 6.
S. 65 amended by 66, 1975, s. 25 (a)-(c); 83, 1976, s. 9.

S. 66 amended by 66, 1975, s. 26; repealed by 83, 1976, s. 10.

* * * * *

S. 67 amended by 66, 1975, s. 27; repealed by 83, 1976, s. 10.

* * * * *

S. 68 amended by 66, 1975, s. 28; repealed by 83, 1976, s. 10.

* * * * *

Unnatural Offences

Abolition of crime of sodomy.
S. 68a inserted by 94, 1972, s. 3; substituted by 66, 1975, s. 29.

68a. The law relating to unnatural offences shall be as prescribed by this Act and any such offence created under any other enactment or at common law is abolished.

Offences with animals.
S. 69 amended by 58, 1971, s. 6; substituted by 94, 1972, s. 4; 66, 1975, s. 30.

69. Any person who commits buggery with an animal shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding ten years.

Subsec. (2) repealed by 107, 1981, s. 15.

* * * * *

* * * * * S. 70 amended by 58, 1971, s. 8; repealed by 94, 1972, s. 4.

* * * * * S. 71 repealed by 94, 1972, s. 4.

72. Any persons who, being related, either as parent and child or as brother and sister, have sexual intercourse with each other shall be guilty of the felony of incest and liable to be imprisoned for a term not exceeding seven years.

Incest.
38, 1876, ss. 73 and 74.
S. 72 substituted by 83, 1976, s. 11.

Procedure in Sexual Offences

73. (1) For the purposes of this Act, sexual intercourse is sufficiently proved by proof of penetration.

Offences involving sexual intercourse.

(2) No person shall, by reason of his age, be presumed incapable of sexual intercourse.

38, 1876, s. 75.
S. 73 substituted by 83, 1976, s. 12.

(3) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to sexual intercourse with that other person.

(4) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.

(5) Notwithstanding the foregoing provisions of this section, a person shall not be convicted of rape or indecent assault on his spouse or an attempt to commit, or assault with intent to commit, rape or indecent assault on his spouse (except as an accessory) unless the alleged offence consisted of, was preceded or accompanied by, or was associated with—

- (a) assault occasioning actual bodily harm, or threat of such an assault, on the spouse;
 - (b) an act of gross indecency, or threat of such an act, against the spouse;
 - (c) an act calculated seriously and substantially to humiliate the spouse, or threat of such an act;
- or
- (d) threat of the commission of a criminal act against any person.

* * * * * S. 74 amended by 66, 1975, s. 31; repealed by 90, 1984, s. 9.

75. If on the trial of any information for any felony or misdemeanour under section 48 or 49, or for an attempt to commit a felony under section 48 or a felony or misdemeanour under section 49, the jury is satisfied that the accused is guilty of an indecent assault or of a common assault but is not satisfied that the accused is guilty of the felony or misdemeanour charged, the jury may acquit the accused of that felony or misdemeanour and find him guilty of an indecent assault or of a common assault, as the case may be, and thereupon the accused shall be liable to be punished in the same manner as if he had been convicted on an information for an indecent assault or for common assault, as the case may be.

Power on information for rape, etc., to convict for indecent assault or common assault.
1303, 1917, s. 5.
S. 75 amended by 66, 1975, s. 32; 83, 1976, s. 13; 51, 1983, s. 7.

Corroborative evidence in certain cases.
358, 1885, s. 14.
S. 76 amended by 83, 1976, s. 14.

Limitation of time for laying information.
S. 76a inserted by 27, 1952, s. 10.
Subsec. (1) amended by 83, 1976, s. 15 (a).

Subsec. (3) amended by 42, 1957, s. 3 (2nd Sched.); 66, 1975, s. 33; substituted by 83, 1976, s. 15 (b).

Indeterminate sentence where offender suffers from venereal disease.
S. 77 substituted by 54, 1940, s. 7.
Subsec. (1) amended by 54, 1956, s. 3 (a); 83, 1976, s. 16 (a).

Def. inserted by 54, 1956, s. 3 (b); amended by 71, 1969, s. 7; 50, 1984, s. 3 (1) (1st Sched.).

Subsec. (7) amended by 54, 1965, s. 150 (Sched.); 88, 1975, s. 3 (1) (2nd Sched.); substituted by 50, 1984, s. 3 (1) (1st Sched.).

Subsec. (8) inserted by 54, 1956, s. 3 (c); amended by 66, 1975, s. 34; substituted by 83, 1976, s. 16 (b).

76. No person shall be convicted of an offence under section 63 or 64 on the evidence of one witness only unless the evidence of the witness is corroborated in some material particular by evidence implicating the accused.

76a. (1) No information shall be laid for an offence to which this section applies more than three years after the commission of the offence.

(2) For the purpose of computing the time within which any such information may be laid, any time during which the defendant was out of the State shall not be counted.

(3) This section applies to an offence under section 48, 49, 56, 58, 59, 63, 64, 65, 69 or 72.

77. (1) In every case where there is reason to suspect that an offender guilty of an offence to which this section applies is suffering from a venereal disease, the court or judge sitting for the trial of that offence shall direct that two or more legally qualified medical practitioners, named by the court or judge, inquire whether the offender is so suffering.

(2) The medical practitioners shall conduct the enquiry by personal examination of the offender and shall give their report on oath to the court or judge.

(3) If the medical practitioners report that the offender is so suffering, the court or judge shall, as part of the sentence, declare that he is suffering from a venereal disease.

(4) Every offender so declared to be suffering from a venereal disease shall, at the expiration of the term of his imprisonment, unless the Governor is then satisfied on the report of two legally qualified medical practitioners that the offender is no longer suffering from venereal disease, be detained during Her Majesty's pleasure and, subject to the regulations, in some place of confinement set apart by the Governor, by proclamation, for that purpose.

(5) If the Governor, on a report by two or more legally qualified medical practitioners, is satisfied that any offender so detained is no longer suffering from any venereal disease, the Governor may, by his warrant, direct the release of the offender.

(6) In this section—

“court” means the Supreme Court, a District Criminal Court, the Children's Court or a court of summary jurisdiction constituted of a special magistrate:

“venereal disease” means syphilis or gonorrhoea.

(7) This section applies in relation to any offender, including an offender who is a child within the meaning of the Children's Protection and Young Offenders Act, 1979, and the period during which an offender is detained in a training centre pursuant to that Act shall be deemed to be a term of imprisonment for the purposes of this section.

(8) This section applies to—

(a) an offence under section 48, 49, 56, 58, 59, 63, 64, 65, 69, 72 or 255;

and

(b) an offence under section 23 of the Police Offences Act, 1953.

77a. (1) In any case where a person has been found guilty of an offence to which this Act applies, the court or judge sitting for the trial of that offence may, at its or his discretion, direct that two or more legally qualified medical practitioners, named by the court or judge, inquire as to the mental condition of the offender and in particular whether his mental condition is such that he is incapable of exercising proper control over his sexual instincts.

Detention of persons incapable of controlling sexual instincts. S. 77a inserted by 54, 1940, s. 7. Subsec. (1) amended by 54, 1956, s. 4 (a); 83, 1976, s. 17 (a).

(2) The medical practitioners shall conduct the inquiry by means of personal examination of the offender and by reference to the depositions and such other records relating to him as they think necessary and shall give their report on oath to the court or judge.

Subsec. (2) amended by 27, 1952, s. 11 (a).

For the purpose of conducting the examination and making their report, the medical practitioners may obtain the assistance of any psychologist, social worker, probation officer or other person whose assistance they think necessary.

(3) If the medical practitioners report to the court or judge that the offender is incapable of exercising proper control over his sexual instincts, the court or judge may, either in addition to, or instead of, imposing any other sentence, declare that the offender is so incapable and direct that he be detained in an institution during Her Majesty's pleasure; but the offender shall be entitled to call evidence in rebuttal of the report and no such order shall be made unless the court or judge considers the matters reported to be proved.

Every offender in respect of whom such a direction is given—

(a) shall be detained in such institution as the Governor directs and, until the Governor gives a direction, in any gaol;

(b) shall not be released unless—

(i) the Governor is satisfied, on the recommendation of the Parole Board, that he is fit to be at liberty and terminates his detention;

or

(ii) the Governor releases him on licence in pursuance of this section.

Para. (b) amended by 27, 1952, s. 11 (b); 88, 1969, s. 4 (a); substituted by 74, 1972, s. 3 (a).

(4) If the medical practitioners report to the court or judge that the offender is not incapable of exercising proper control over his sexual instincts but that—

Subsec. (4) amended by 27, 1952, s. 11 (c)-(e).

(a) his mental condition is subnormal to such a degree that he requires care, supervision and control in an institution, either in his own interests or for the protection of others;

or

(b) for any other reason it would be expedient for him to be detained in an institution,

and the court or judge, after considering the report and any evidence submitted in rebuttal thereof, is of the opinion that the offender requires such care, supervision and control, or that it is expedient that the offender be so detained, the court or judge may—

(c) direct that the offender be detained in an institution, either for such period as the court or judge directs or during Her Majesty's pleasure;

or

(d) pass sentence on the offender and in addition direct as mentioned in paragraph (c).

Every offender in respect of whom such a direction is given—

(e) shall be detained in such institution as the Governor directs and, until the Governor gives a direction, in any gaol;

(f) where the detention is ordered during Her Majesty's pleasure, shall not be released unless—

(i) the Governor is satisfied, on the recommendation of the Parole Board, that he is fit to be at liberty and terminates his detention;

or

(ii) the Governor releases him on licence in pursuance of this section.

(5) Where the court or judge orders detention during Her Majesty's pleasure in addition to imprisonment, the detention shall commence forthwith on the expiration of the term of the imprisonment.

(6) An offender detained under this section shall be examined at least once in every three months by the superintendent or deputy superintendent of Glenside Hospital¹ or by some other person appointed by the Governor to conduct examinations under this section. The person making an examination under this subsection shall forthwith furnish a report of the examination to the Director-General of Medical Services.

(7) An offender detained in an institution pursuant to this section may be removed at any time to another institution by order of the Chief Secretary.

(7a) Where an offender has been detained in an institution pursuant to this section, the Governor may, on the recommendation of the Parole Board, release that person on licence.

(7b) The terms and conditions on which a person is released on licence under this section shall be determined by the Governor on the recommendation of the Parole Board.

(7c) Where—

(a) the period for which a person was released on licence under this section has expired;

or

(b) the Parole Board has reasonable cause to suspect that any such person has contravened, or failed to comply with, any term or condition on which he was released,

a person authorized by warrant signed by two members of the Parole Board may apprehend the person so released and return him to custody, or detain him for examination by the Parole Board, in accordance with the terms of the warrant.

(8) In this section—

“court” means the Supreme Court, a District Criminal Court, the Children's Court or a court of summary jurisdiction constituted of a special magistrate:

Para. (f) amended by 88, 1969, s. 4 (b); substituted by 74, 1972, s. 3 (b).

Subsec. (7a) inserted by 74, 1972, s. 3 (c).

Subsec. (7b) inserted by 74, 1972, s. 3 (c).

Subsec. (7c) inserted by 74, 1972, s. 3 (c).

Def. inserted by 54, 1956, s. 4 (b); amended by 71, 1969, s. 8; 50, 1984, s. 3 (1) (1st Sched.).

¹ The name “Glenside Hospital” substituted for the name “Mental Hospital, Parkside” pursuant to the Acts Republication Act, 1967, s. 7 (1): see *Gaz.* 6 July 1967, p. 2.

“institution” means—

- (a) a hospital for criminal mental defectives as defined in the Mental Health (Supplementary Provisions) Act, 1935; Para. (a) substituted by 50, 1984, s. 3 (1) (1st Sched.).
- (b) any gaol or labour prison;
- (c) any other institution proclaimed by the Governor for the purposes of this section;
- (d) in the case of an offender who is a child within the meaning of the Children’s Protection and Young Offenders Act, 1979, a training centre as defined in that Act or a hospital or institution referred to in paragraph (a) or (c). Para. (d) amended by 54, 1965, s. 150 (Sched.); 88, 1975, s. 3 (1) (2nd Sched.); substituted by 50, 1984, s. 3 (1) (1st Sched.).

(9) The offences to which this section applies are—

- (a) an offence under section 48, 49, 56, 58, 59, 63, 64, 65, 69, 72 or 255; Subsec. (9) inserted by 54, 1956, s. 4 (c).
Para. (a) amended by 66, 1975, s. 35; substituted by 83, 1976, s. 17 (b).
- (ab) an offence under section 23 of the Police Offences Act, 1953; Para. (ab) inserted by 83, 1976, s. 17 (b).
- and
- (b) any other offence where the evidence indicates that the offender may be incapable of exercising proper control over his sexual instincts.

Bigamy

78. Any person who, being married, goes through the form or ceremony of marriage with any other person during the life of his or her wife or husband shall be guilty of felony and liable to be imprisoned for a first offence for a term not exceeding four years and for any subsequent offence for a term not exceeding ten years. Bigamy. 38, 1876, s. 77, 1670, 1925, s. 6.

79. The provisions of section 78 do not extend to any person going through the form or ceremony of marriage as mentioned in that section— Defences in cases of bigamy. S. 79 amended by 50, 1984, s. 3 (1) (1st Sched.).

- (a) whose husband or wife has then been continuously absent from that person for the last seven years and has not been known by that person to be living within that time;

or

- (b) whose marriage has been dissolved or declared void by any court of competent jurisdiction.

Abduction of Children

80. (1) Any person who—

- (a) unlawfully, either by force or fraud, leads, takes, decoys or entices away, or detains, any child under the age of sixteen years; Heading substituted by 83, 1976, s. 18.
Abduction of child under 16 years. 38, 1876, s. 76.
Subsec. (1) amended by 83, 1976, s. 19 (a).
- (b) harbours or receives any such child, knowing him or her to have been, by force or fraud, led, taken, decoyed or enticed away, or detained,

with intent—

(c) to deprive any parent, guardian or other person, having the lawful care of the child, of the possession of the child;

or

(d) to steal any article on or about the person of the child,

Para. (d) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

Subsec. (1a) inserted by 83, 1976, s. 19 (b); amended by 50, 1984, s. 3 (1) (1st Sched.).

(1a) Any person who unlawfully takes, or causes to be taken, a child under the age of sixteen years out of the possession and against the will of the parent, guardian or other person having the lawful care of the child shall be guilty of a misdemeanour and liable to imprisonment for a term not exceeding two years.

Subsec. (2) amended by 83, 1976, s. 19 (c); 50, 1984, s. 3 (1) (1st Sched.).

(2) This section does not render liable to prosecution any person who, in the exercise of any *bona fide* claim to the right to possession of a child, whether as the mother or father of the child or otherwise, obtains possession of the child or takes the child out of the possession of any person having the lawful charge of the child.

Attempts to Procure Abortion

Attempts to procure abortion. 38, 1876, s. 78. 1670, 1925, s. 13.

81. (1) Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of felony and liable to be imprisoned for life.

(2) Any person who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of felony and liable to be imprisoned for life.

Procuring drugs, etc., to cause abortion. 38, 1876, s. 79.

82. Any person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that it is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Medical termination of pregnancy. S. 82a inserted by 109, 1969, s. 3.

82a. (1) Notwithstanding anything contained in section 81 or 82, but subject to this section, a person shall not be guilty of a felony or misdemeanour under either of those sections—

(a) if the pregnancy of a woman is terminated by a legally qualified medical practitioner in a case where he and one other legally qualified medical practitioner are of the opinion, formed in good faith after both have personally examined the woman—

(i) that the continuance of the pregnancy would involve greater risk to the life of the pregnant woman, or greater risk of injury to the physical or mental health of the pregnant woman, than if the pregnancy were terminated;

or

(ii) that there is a substantial risk that, if the pregnancy were not terminated and the child were born to the pregnant woman, the child would suffer from such physical or mental abnormalities as to be seriously handicapped, and where the treatment for the termination of the pregnancy is carried out in a hospital, or a hospital of a class, declared by regulation to be a prescribed hospital, or a hospital of a prescribed class, for the purposes of this section;

or

(b) if the pregnancy of a woman is terminated by a legally qualified medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life, or to prevent grave injury to the physical or mental health, of the pregnant woman.

(2) Subsection (1) (a) does not refer or apply to any woman who has not resided in South Australia for a period of at least two months before the termination of her pregnancy.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the physical or mental health of a pregnant woman as is mentioned in subsection (1) (a) (i), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) The Governor may make regulations—

(a) for requiring any such opinion as is referred to in subsection (1) to be certified by the legally qualified medical practitioners or practitioner concerned in such form and at or within such time as may be prescribed and for requiring the preservation and disposal of any such certificate made for the purposes of this Act;

(b) for requiring any legally qualified medical practitioner who terminates a pregnancy, and the superintendent or manager of the hospital in which the termination is carried out, to give notice of the termination and such other information relating to the termination as may be prescribed to the Director-General of Medical Services;

Para. (b) amended by 14, 1978, s. 3.

(c) for prohibiting the disclosure, except to such persons or for such purposes as may be prescribed, of notices or information given pursuant to the regulations;

(d) declaring a particular hospital or a class of hospitals to be a prescribed hospital or a prescribed class of hospitals for the purposes of this section;

and

(e) for providing for, and prescribing, any penalty, not exceeding two hundred dollars, for any contravention of, or failure to comply with, any regulations.

(5) Subject to subsection (6), no person is under a duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorized by this section to which he has a conscientious objection, but in any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

Subsec. (5) amended by 50, 1984, s. 3 (1) (1st Sched.).

(6) Nothing in subsection (5) affects any duty to participate in treatment which is necessary to save the life, or to prevent grave injury to the physical or mental health, of a pregnant woman.

(7) The provisions of subsection (1) do not apply to, or in relation to, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes such a child to die before it has an existence independent of its mother where it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(8) For the purposes of subsection (7), evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

Subsec. (9) amended by 50, 1984, s. 3 (1) (1st Sched.).

(9) For the purposes of sections 81 and 82, anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorized by this section.

(10) In this section and in sections 81 and 82—

“woman” means any female person of any age.

Concealment of Birth

Concealment of birth.
38, 1876, s. 80.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

83. (1) Any person who, by any secret disposition of the dead body of a child, whether the child died before, at or after its birth, endeavours to conceal the birth of the child shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

(2) If on the trial of any person for the murder of a child recently born the jury is not satisfied that the accused is guilty of murder or manslaughter but is satisfied that such accused is guilty of an offence against subsection (1), it shall be lawful for the jury to return a verdict of guilty of concealment of birth and thereupon the accused shall be liable to be punished in the same manner as if convicted on an information under subsection (1).

PART IV

MALICIOUS DAMAGE TO PROPERTY

Damage by Fire to Buildings and Goods

Arson.
38, 1876, ss. 81-85.
1670, 1925, s. 13.

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

Para. (c) amended by 50, 1984, s. 3 (1) (1st Sched.).

84. Any person who unlawfully and maliciously sets fire to—

(a) any place of divine worship;

(b) any dwelling house in which there is a person;

(c) any house, tent, stable, coach house, outhouse, warehouse, office, shop, mill, malt house, oast house, barn, granary, hovel, shed or fold, or to any farm building, or to any building or erection used in farming land or in carrying on any trade or manufacture or any branch thereof, whether it is in the possession of the offender or of any other person, with intent thereby to injure or defraud any person;

- (d) any station, engine house, warehouse or other building belonging or appertaining to any railway, port, dock or harbor, or to any canal or other navigation;
- (e) any jetty, wharf or landing place;
- (f) any building (other than those mentioned in paragraphs (a) to (e)) belonging to Her Majesty, or used by or for any department of the Government, or belonging to any corporation, district council or university, or devoted or dedicated to public use,

shall be guilty of felony and liable to be imprisoned for life.

85. Any person who unlawfully and maliciously sets fire to any building other than those referred to in section 84 shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Setting fire to other buildings. 38. 1876, s. 86. S. 85 amended by 50, 1984, s. 3 (1) (1st Sched.).

86. Any person who unlawfully and maliciously sets fire to any matter or thing, being in, against or under any building, under such circumstances that, if the building were thereby set fire to, the offence would amount to felony, shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Setting fire to goods in any building. 38. 1876, s. 87.

* * * * *

S. 87 repealed by 107, 1981, s. 16.

88. Any person who unlawfully and maliciously sets fire to—

- (a) any crop of hay, corn, grain, pulse or any cultivated vegetable produce, whether standing or cut down;
- (b) any part of any wood, coppice or plantation of trees;
- (c) any grass, stubble, scrub, heath, gorse, furze or fern;
- (d) any hedge or fence;
- (e) any stack of corn, grain, pulse, hay, straw or stubble, or of any cultivated vegetable produce, or of any furze, gorse, heath, fern, coals, charcoal, wood or bark,

Setting fire to crops of corn, etc. 38. 1876, ss. 96 and 97. 1670, 1925, s. 13.

Para. (c) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for life.

* * * * *

S. 89 amended by 58, 1971, s. 6; repealed by 107, 1981, s. 17.

90. Any person who unlawfully and maliciously, for the purpose of causing a fire and with intent to injure or damage any person or property, puts or places any match or other inflammable or combustible substance, matter or thing in such a position—

Placing inflammable material for the purpose of causing a fire. 2139, 1933, s. 24.

- (a) that it may be ignited, exploded or set on fire by the sun's rays being focused through glass or other substance, or by friction or other means;
- or
- (b) that a fire may be lighted,

shall, whether a fire is caused or not, be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Setting fire to a coal mine, or timbering of any mine.
38, 1876, s. 103.
S. 91 amended by 50, 1984, s. 3 (1) (1st Sched.).

91. Any person who unlawfully and maliciously sets fire to any mine of coal or other mineral fuel, or to the timbering of the shafts or underground workings of any mine, shall be guilty of felony and liable to be imprisoned for life.

S. 92 repealed by 107, 1981, s. 18.

* * * * *

Damage by Explosives to Buildings, etc.

Damaging buildings with explosives.
38, 1876, s. 89.
1670, 1925, s. 13.

93. Any person who unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or damages—

(a) the whole or any part of any dwelling house in which there is a person;

or

(b) the whole or any part of any building, so that the life of any person is endangered,

shall be guilty of felony and liable to be imprisoned for life.

Para. (a) amended by 50, 1984, s. 3 (1) (1st Sched.).

Attempting to destroy buildings with explosives.
38, 1876, s. 90.

94. Any person who unlawfully and maliciously places or throws in, into, upon, under, against or near any building any gunpowder or other explosive substance with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods or chattels, shall, whether or not any explosion takes place and whether or not any damage is caused, be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Damage to Property by Rioters

Heading amended by 50, 1984, s. 3 (1) (1st Sched.).

Damage to property by rioters.
38, 1876, ss. 91 and 92.
1670, 1925, s. 13.

95. (1) All 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 to demolish, pull down or destroy—

(a) any building or erection, whether public or private;

(b) any machinery, whether fixed or movable, prepared for, or employed in, any manufacture or in any branch thereof;

(c) any machinery used for sinking, working, ventilating or draining any mine;

(d) any bridge, tramway or other structure used for conveying minerals from any mine,

shall be guilty of felony and liable to be imprisoned for life.

(2) All persons assembled as mentioned in subsection (1) who unlawfully and with force injure or damage any of the things mentioned in subsection (1) shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

(3) If on the trial of any person for any felony mentioned in subsection (1) the jury is not satisfied that the accused is guilty of that felony but is satisfied that he is guilty of the misdemeanour mentioned in subsection (2), it shall be lawful for the jury to find him guilty of that misdemeanour and he may thereupon be punished accordingly.

Damage to Buildings by Tenants

96. Any person being possessed of any dwelling house or other building, or part of any dwelling house or other building, held for any term of years or other term, or at will, or held over after the termination of any tenancy, who unlawfully and maliciously—

Damage to buildings by tenants.
38. 1876. s. 93.

- (a) pulls down or demolishes, or begins to pull down or demolish, the dwelling house or building, or any part thereof;
- (b) pulls down or severs from the freehold any fixture, being fixed in or to the dwelling house, building or part thereof,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Damage to Manufactures, Machinery, etc.

97. Any person who—

- (a) unlawfully and maliciously cuts, breaks or destroys, or damages with intent to destroy or to render useless—

Destroying goods in process of manufacture, machinery, etc.
38. 1876. s. 94.

- (i) any goods or article of silk, wool, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material;
- (ii) any framework, knitted piece, stocking, hose or lace, being in the loom or frame or on any machine or engine or on the rack or tenters or in any stage, process or progress of manufacture;
- (iii) any warp or shute of silk, wool, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material;
- (iv) any loom, frame, machine, engine, rack, tackle, tool or implement, whether fixed or movable, prepared for, or employed in, carding, spinning, throwing, weaving, fulling, shearing or otherwise manufacturing or preparing any such goods or articles;

- (b) by force, enters into any house, shop, building or place with intent to commit any of the offences referred to in this section,

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for life.

98. Any person who unlawfully and maliciously cuts, breaks or destroys, or damages with intent to destroy or to render useless—

Destroying machinery.
38. 1876. s. 95.

- (a) any machine or engine, whether fixed or movable, used, or intended to be used, for sowing, reaping, mowing, threshing, ploughing or draining, wool pressing or wool washing, or for performing any other agricultural or pastoral operation;

or

- (b) any machine or engine, or any tool or implement, whether fixed or movable, prepared for, or employed in, any manufacture or industry (except in the manufacture of those articles referred to in section 97),

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

Destroying granaries, etc., or taking grain therefrom.
38, 1876, s. 311.

99. Any person who, with intent to prevent or hinder any corn, meal, flour, malt or grain from being lawfully carried or removed from any place—

- (a) wilfully and maliciously pulls or throws down or otherwise destroys any storehouse, granary or other place in which corn, meal, flour, malt or grain is then kept;
- (b) unlawfully enters any such storehouse, granary or other place and takes and carries away any corn, flour, meal, malt or grain therefrom, or throws abroad or spoils the same or any part thereof;
- (c) unlawfully enters on board any ship, barge, boat or vessel and wilfully and maliciously takes and carries away, casts or throws out therefrom, or otherwise spoils or damages, any corn, flour, meal, malt or grain therein,

shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Heading substituted by 50, 1984, s. 3 (1) (1st Sched.).

Destroying or damaging trees, shrubs, etc., over \$2 in value.
38, 1876, s. 99.
S. 100 amended by 58, 1971, s. 6.

Damage to Trees, Shrubs and Vegetables

100. Any person who unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling, shrub or hopbonds, or any underwood, growing in any park, plantation, pleasure grounds, garden, orchard or avenue or in any ground adjoining or belonging to any dwelling house (where the amount of the damage or injury exceeds two dollars) shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Damaging trees, etc.
38, 1876, ss. 100 and 101.

Subsec. (1) amended by 58, 1971, s. 9 (a).

101. (1) Any person who unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages—

- (a) the whole or any part of any tree, sapling, shrub or underwood wherever it may be growing (where the amount of the damage is less than two dollars);
- (b) any plant, root, fruit or vegetable growing in any garden, orchard, nursery ground, hothouse, greenhouse or conservatory or any cultivated root or plant used for the food of man or beast or for any other purpose and wherever it may be growing,

shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding six months or to pay the amount of the damage and a fine not exceeding ten dollars.

Subsec. (2) amended by 58, 1971, s. 9 (b).

(2) Any person who commits any offence against this section after having been previously convicted of any such offence shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Destroying fences, etc.
38, 1876, s. 102.

102. Any person who unlawfully and maliciously cuts, breaks, throws down or in any way destroys any fence of any description or any wall or gate, or any part thereof respectively, shall be guilty of an offence punishable summarily and liable for a first offence to pay the amount of the damage and a fine not exceeding ten dollars and for any subsequent offence to be imprisoned for a term not exceeding six months.

Damage to Mines

103. Any person who unlawfully and maliciously—

- (a) causes any water to be conveyed or run into any mine or into any subterranean passage communicating with it;
- (b) 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,

Flooding mines,
etc.
38, 1876, s. 105.

with intent to destroy or damage the mine or to hinder or delay the working thereof, shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

104. Any person who unlawfully and maliciously—

- (a) pulls down or destroys, or damages with intent to destroy or render useless, any steam engine or other engine for sinking, draining, ventilating or working, or for assisting in sinking, draining, ventilating or working, any mine, or any appliance or apparatus in connection with any such steam or other engine, or any staith, building or erection used in conducting the business of any mine, or any bridge, wagonway or trunk for conveying minerals from any mine, whether the engine, staith, building, erection, bridge, wagonway or trunk is completed or in an unfinished state;
- (b) stops, obstructs or hinders the working of any such steam or other engine, or of any such appliance or apparatus, with intent to destroy or damage any mine or to hinder, obstruct or delay the working thereof;
- (c) wholly or partially cuts through, severs, breaks or unfastens, or damages with intent to destroy or render useless, any rope, chain or tackle used in any mine, or on any inclined plane, railway or other way, or other work belonging or appertaining to, or connected with or employed in, any mine or the working or business thereof,

Damaging mining
machinery.
38, 1876, s. 106.

Para. (a) amended
by 50, 1984, s. 3
(1) (1st Sched.).

Para. (c) amended
by 50, 1984, s. 3
(1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

Damage to Sea and River Banks, etc.

105. Any person who unlawfully and maliciously—

- (a) breaks down or cuts down, or otherwise damages or destroys, any sea bank or sea wall, or the bank, dam or wall of, or belonging to, any river, canal, creek, drain, reservoir, pool or marsh, so that any land or building is, or is in danger of being, overflowed or damaged;
- (b) throws, breaks or cuts down, or levels, undermines or otherwise destroys, any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing path, drain, watercourse or other work belonging to any port, harbor, dock or reservoir on, or belonging to, any navigable river or canal,

Destroying sea
banks, walls,
dams, wharves,
etc.
38, 1876, s. 107.

shall be guilty of felony and liable to be imprisoned for life.

Damage to, or removal of, etc., sea wall, etc.
38, 1876, s. 108.

106. Any person who unlawfully and maliciously—

- (a) cuts off, draws up or removes any pile or other material fixed in the ground and used for securing any sea bank or sea wall, or the bank, dam or wall of any river, canal, creek, drain, aqueduct, marsh, reservoir, pool, port, harbor, dock, quay, wharf, jetty or lock;
- (b) opens or draws up any floodgate or sluice or does any other injury or mischief to any navigable river or canal with intent to obstruct or prevent the carrying on, completion or maintenance of the navigation thereof,

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

Damage to Ponds, etc.

Damage to the dam, etc., of any fishery, etc., or poisoning fish.
38, 1876, s. 109.

107. Any person who unlawfully and maliciously—

- (a) cuts through, breaks down or otherwise destroys the dam, floodgate or sluice of any fishpond, or of any water which is private property or in which there is any right of fishery, with intent to take or destroy any of the fish in the pond or water or so as to cause the loss or destruction of any of those fish;
- (b) puts any noxious material in any such pond or water with intent to destroy any of the fish that are in, or may be put in, that pond or water;
- (c) cuts through, breaks down or otherwise destroys the dam or floodgate of any millpond, reservoir, pool or other place used for storing water,

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding four years.

Poisoning water in rivers, etc.
38, 1876, s. 110.

108. Any person who unlawfully and maliciously puts, casts or throws any poison or other noxious material into any river, creek, lake, waterhole, well, reservoir, tank or other place used for storing water, with intent to injure any person or with intent to destroy any animal, shall (whether any injury is actually caused or not) be guilty of felony and liable to be imprisoned for life.

Damage to Bridges, etc.

Damage to bridges, etc.
38, 1876, s. 111.
S. 109 amended by 50, 1984, s. 3 (1) (1st Sched.).

109. Any person who unlawfully and maliciously pulls, throws down or destroys any public or private bridge (whether over any stream of water or not), or any viaduct or aqueduct, over or under which bridge, viaduct or aqueduct any highway, railway or canal passes, or does any injury with intent to render such a bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under it, or any part of it, dangerous or impassable, shall be guilty of felony and liable to be imprisoned for life.

Damage to Railways, Electric Cables, etc.

Placing wood, etc., on railway with intent to obstruct or overthrow any engine, etc.
38, 1876, s. 112.
S. 110 amended by 58, 1971, s. 6.

110. Any person who unlawfully and maliciously—

- (a) puts, places, casts or throws upon or across any railway any wood, stone or other matter or thing;

- (b) takes up, removes or displaces any rail, sleeper or other matter or thing belonging to any railway;
- (c) turns, moves or diverts any points or other machinery belonging to any railway;
- (d) makes, shows, hides or removes any signal or light on or near any railway;
- (e) does, or causes to be done, any other matter or thing,

with intent to obstruct, upset, overthrow, injure or destroy any engine, tender, carriage or truck using any railway, shall be guilty of felony and liable to be imprisoned for life.

111. Any person who, by any unlawful act or by any wilful omission or neglect, obstructs, or causes to be obstructed, any engine or carriage using any railway shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding four years.

Obstructing engines or carriages on railways.
38, 1876, s. 113.

112. Any person who unlawfully and maliciously cuts, breaks, throws down, destroys, injures or removes any cable, line, wire or other work with intent to cut off any supply of electricity shall be guilty of felony and liable to be imprisoned for a term not exceeding three years.

Damage to electrical cables.
2156, 1934, s. 889 (a).

Damage to Works of Art

113. Any person who unlawfully or maliciously destroys or damages—

- (a) any book, manuscript, work of art or thing kept for the purposes of art, science or literature or as an object of curiosity in any repository open at all times, or from time to time, for the admission of the public or to any considerable number of persons, whether by the permission of the proprietor or by the payment of money;
- (b) any picture, statue, monument or other memorial of the dead, or painted glass or other ornament or work of art, in any place of divine worship, public building, public place, churchyard or burial ground;
- (c) any statue or monument exposed to public view, or any ornament, railing or fence surrounding such a statue or monument,

Destroying or damaging works of art.
38, 1876, s. 116.
S. 113 amended by 58, 1971, s. 6.

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Injuries to Cattle, etc.

114. Any person who unlawfully and maliciously kills, maims, wounds or disfigures any cattle shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Killing or injuring cattle.
38, 1876, s. 117.

115. Any person who unlawfully and maliciously places poison in such a position as to be easily partaken of by any cattle shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Poisoning cattle.
38, 1876, s. 118.
S. 115 amended by 107, 1981, s. 19.

116. Any person who unlawfully and maliciously—

- (a) kills, maims, wounds or disfigures;

Killing, etc., other animals.
38, 1876, s. 119.
1670, 1925, s. 7.

(b) places poison in such a position as to be easily partaken of by, any dog, bird, beast or other animal, not being cattle but being either the subject of larceny at common law or being ordinarily kept in a state of confinement or for any domestic purpose, shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding six months or to pay the amount of the damage and a fine not exceeding forty dollars.

Saving of rights under Impounding Act, 1920.
38, 1876, s. 119.
S. 117 amended by 50, 1984, s. 3 (1) (1st Sched.).

117. Nothing in section 114, 115 or 116 shall be deemed to affect the right of any person to kill any goat, pig or poultry as mentioned in section 41 of the Impounding Act, 1920.

Damage to Ships

Setting fire to ships, etc.
38, 1876, s. 70.
S. 118 amended by 50, 1984, s. 3 (1) (1st Sched.).

118. Any person who unlawfully and maliciously sets fire to, casts away or destroys any ship or vessel, whether it is complete or in an unfinished state, shall be guilty of felony and liable to be imprisoned for life.

S. 119 repealed by 50, 1984, s. 3 (1) (1st Sched.).

* * * * *

Placing gunpowder near a vessel with intent to damage it.
38, 1876, s. 123.
S. 120 amended by 58, 1971, s. 6.

120. Any person who unlawfully and maliciously places or throws in, into, upon, against or near any ship or vessel any gunpowder or other explosive substance with intent to destroy or damage any ship or vessel, or any machinery, working tools, goods or chattels, shall, whether or not an explosion takes place and whether or not any injury is effected, be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Damaging ships otherwise than by fire.
38, 1876, s. 124.

121. Any person who unlawfully and maliciously damages, otherwise than by fire, gunpowder or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy it or render it useless, shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Exhibiting false signals, etc.
S. 122 amended by 58, 1971, s. 6.

122. Any person who—

- (a) unlawfully masks, alters or removes any light or signal, or unlawfully exhibits any false light or signal, with intent to bring any ship, vessel or boat into danger;
- (b) unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship, vessel or boat and for which no punishment is hereinbefore provided,

shall be guilty of felony and liable to be imprisoned for life.

Removing or concealing buoys and other sea marks.
38, 1876, s. 126, 1670, 1925, s. 13.

123. Any person who unlawfully and maliciously cuts away, casts adrift, removes, alters, defaces, sinks or destroys, or unlawfully and maliciously does any act with intent to cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other manner unlawfully and maliciously injures or conceals, any boat, buoy, buoy rope, perch or mark used or intended to be used for the guidance of seamen or for the purpose of navigation shall be guilty of felony and liable to be imprisoned for life.

124. Any person who unlawfully and maliciously destroys any part of any ship or vessel which is in distress, wrecked, stranded or cast on shore, or any goods, merchandise or articles belonging to such a ship or vessel, shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Destroying wrecks or any articles belonging thereto. 38, 1876, s. 127. S. 124 amended by 50, 1984, s. 3 (1) (1st Sched.).

Sending Letters Threatening to Burn or Destroy

125. Any person who sends, delivers or utters, or directly or indirectly causes to be received, knowing its contents, any letter or writing threatening—

(a) to burn or destroy any house, barn or other building, or any stack of grain, hay, straw or other agricultural produce, or any ship or vessel;

(b) to kill, maim or wound any cattle, except goats and pigs,

shall be guilty of felony and liable to be imprisoned for a term not exceeding ten years.

Sending letters threatening to burn or destroy houses, etc. 38, 1876, s. 128. S. 125 amended by 50, 1984, s. 3 (1) (1st Sched.).

Damage Not Before Provided For

126. Any person who unlawfully and maliciously damages real or personal property (either of a public or private nature), the damage not being punishable under the foregoing provisions of this Act and being of an amount exceeding one hundred dollars, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years and, where any such offence is committed in the night, shall be liable to be imprisoned for a term not exceeding five years.

Malicious damage not before provided for. 38, 1876, s. 129. S. 126 amended by 50, 1984, s. 3 (1) (1st Sched.).

127. (1) Any person who wilfully or maliciously damages real or personal property (either of a public or private nature), the damage not being punishable under the foregoing provisions of this Act, shall be guilty of an offence punishable summarily before a justice and liable to be imprisoned for a term not exceeding three months or to a fine not exceeding ten dollars and to pay such amount by way of compensation to the party aggrieved not exceeding ten dollars as the justice may think fit.

Summary proceedings for other malicious damage. 38, 1876, s. 130. Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) The provisions of this section shall not extend to any case where the party accused acted under a fair and reasonable supposition that he had a right to do the act complained of, nor (without affecting the liability of any person to be dealt with under any other Act or law) to any trespass, not being wilful or malicious, committed in hunting, fishing or in the pursuit of game.

Supplementary Provisions

128. Every punishment and forfeiture imposed by this Act on any person maliciously committing any offence, whether the offence is punishable on information or on summary conviction, shall equally apply and be enforced, whether the offence is committed from malice against the owner of the property in respect of which it is committed or otherwise.

Malice against owner of property unnecessary. 38, 1876, s. 131.

129. Every provision of this Act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any other person, does any of the acts hereinbefore made punishable, although the offender is in possession of the property against or in respect of which the act is done.

Provisions of this Act shall apply to persons in possession of the property injured. 38, 1876, s. 132.

PART V

LARCENY AND SIMILAR OFFENCES

130. In this Part—

Interpretation.
38, 1876, s. 133.

Def. amended by
50, 1984, s. 3 (1)
(1st Sched.).

“document of title to goods” includes any bill of lading, India warrant, dock warrant, warehousekeeper’s certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive any goods represented by, or mentioned or referred to in, that document:

“document of title to lands” includes any deed, map, paper or parchment, written or printed or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate or to any interest in, or out of, any real estate:

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

“trustee” means a trustee on some express trust created by some deed, will or instrument in writing and includes the heir or personal representative of any such trustee and any other person on or to whom the duty of the trust has devolved or come and also all executors and administrators, receivers under any Act of Parliament, or under any order or decree of the Supreme Court, and all assignees and trustees in bankruptcy:

Def. amended by
50, 1984, s. 3 (1)
(1st Sched.).

“valuable security” includes any order or other security entitling, or evidencing the title of, any person to any share or interest in any public stock or fund or in any fund of any body corporate, company or society, whether within the State or elsewhere, or to any deposit in any bank, and also includes any debenture, deed, bond, bill, note, warrant, order or other security for money or for payment of money and any document of title to lands or goods as hereinbefore defined.

Simple larceny.
38, 1876, s. 135.
1940, 1929, s. 3.

131. Any person convicted of simple larceny, or of any felony by this Act made punishable like simple larceny, shall (except in the cases hereinafter otherwise provided for) be liable to be imprisoned for a term not exceeding five years.

Larceny by bailee.
38, 1876, s. 134.
S. 132 amended
by 50, 1984,
s. 3 (1) (1st
Sched.).

132. Any person who, being a bailee of any chattel, money or valuable security, fraudulently takes or converts it to his own use or the use of any person other than the owner, although he does not break bulk or otherwise determine the bailment, shall be guilty of larceny and liable to be punished accordingly.

133. (1) In an information for any offence of stealing under this Act, distinct acts of stealing, not exceeding three, which have been committed by the person accused against the same person within the space of six months may be charged in separate counts of the same information and tried together.

Joinder of counts for larceny.
38, 1876, ss. 136, 137.

(2) If on the trial of an information for stealing any property it appears that the property alleged in the information to have been stolen at one time was taken at different times, the separate takings may be tried together to a number not exceeding three provided that not more than six months elapsed between the first and the last of those takings.

134. Any person who commits simple larceny after a previous conviction for felony, whether the previous conviction took place on information before the Supreme Court or before a court of summary jurisdiction, shall be liable to be imprisoned for a term not exceeding ten years.

Larceny after a previous conviction for felony.
38, 1876, s. 138.

135. Any person who commits simple larceny, or any offence by this Act made punishable like simple larceny, after having been previously convicted of any indictable misdemeanour punishable under this Part shall be liable to be imprisoned for a term not exceeding seven years.

Larceny after a previous conviction for misdemeanour.
cf. U.K., 24 & 25, Vict., c. 96, s. 8.

Larceny of Cattle and Other Animals

136. Any person who steals any cattle shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Stealing cattle.
38, 1876, s. 140.

137. Any person who wilfully kills any animal with intent to steal the carcase, skin or any other part thereof shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Killing animals with intent to steal the carcase.
38, 1876, s. 141.

138. Any person who unlawfully and wilfully snares, carries away, kills or wounds any deer, llama or alpaca kept or being in any enclosed land in which such animals are usually kept shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Stealing deer, etc., in enclosed land.
38, 1876, s. 142.
S. 138 amended by 107, 1981, s. 20.

139. (1) Any person who steals any dog, or unlawfully has in his possession or on his premises any stolen dog or the skin of any stolen dog, knowing that dog or skin to have been stolen or to be part of a stolen dog, shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding six months or to a fine of not more than forty dollars and to pay the value of the dog.

Stealing dogs.
38, 1876, s. 143.

(2) Any person who commits an offence against this section after a previous conviction for such an offence shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding eighteen months.

140. Any person who corruptly takes any money or reward, directly or indirectly, under pretence or on account of aiding any person to recover any animal which has been stolen, or which is in the possession of any person not being the owner, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding eighteen months.

Taking reward to restore stolen animals.
38, 1876, s. 144.

141. Any person who unlawfully and wilfully kills, wounds or takes any house dove or pigeon under circumstances which do not amount to larceny at common law shall be guilty of an offence punishable summarily and liable to pay the value of the bird and a fine not exceeding four dollars.

Killing pigeons
38, 1876, s. 147.

Stealing birds and animals not the subject of larceny at common law.
38, 1876, ss. 145, 146.

142. (1) Any person who—

(a) steals any bird, beast or other animal, or any fish, ordinarily kept in a state of confinement or for any domestic purpose, but not being the subject of larceny at common law;

(b) wilfully kills any such bird, beast, animal or fish with intent to steal it or any part of it,

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of an offence punishable summarily and liable for a first offence to be imprisoned for a term not exceeding six months, or to pay the value of the bird, beast, animal or fish and a fine not exceeding forty dollars, and for any subsequent offence to be imprisoned for a term not exceeding twelve months.

(2) Any person who has in his possession or on his premises any such bird, beast, fish or other animal or any part thereof, knowing it to be stolen or to be part of a stolen bird, beast, fish or other animal, shall be guilty of an offence punishable summarily and liable for a first offence to pay the value of the bird, beast, fish or other animal and a fine not exceeding forty dollars and for any subsequent offence to be imprisoned for a term not exceeding twelve months.

(3) Any such stolen bird, beast, fish or other animal or any part thereof found in the possession or on the premises of any person other than the owner may be restored to the owner by any magistrate or two justices, although no proceedings are taken for any offence relating thereto.

Stealing or dredging for oysters in oyster fisheries.
38, 1876, s. 148, 1293, 1917, s. 58.

143. (1) Any person who steals any oysters or oyster brood from any oyster bed, laying or fishery described in any lease or exclusive licence under the Fisheries Act, 1982¹, being the property of any other person and sufficiently marked out or known as such, shall be guilty of felony and liable to be imprisoned for a term not exceeding two years.

(2) Any person who unlawfully and wilfully—

(a) uses any dredge, or any net, instrument or device, within the limits of any oyster bed, laying or fishery, being the property of any other person and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none is actually taken;

(b) with any net, instrument or device, drags upon the ground or soil of any such fishery,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three months.

(3) Nothing in this section prevents any person from catching, or fishing for, any floating fish, within the limits of any oyster fishery, with any net, instrument or device adapted for taking floating fish only.

Larceny of Written Instruments

Stealing bonds, bills, notes, etc.
38, 1876, s. 149.

144. Any person who steals, or for any fraudulent purpose destroys, cancels or obliterates, the whole or any part of any valuable security, other than a document of title to lands, shall be guilty of felony of the same nature and in the same degree and punishable in the same manner as if he had stolen a chattel of like value with—

(a) the share, interest or deposit to which the security so stolen relates;

¹ "Fisheries Act, 1982" substituted for "Fisheries Act, 1917" pursuant to the Acts Republication Act, 1967, s. 7 (1).

(b) the money due on the security so stolen or secured thereby and remaining unsatisfied;

or

(c) the value of the goods or other valuable thing represented, mentioned or referred to in or by the security.

145. (1) Any person who steals, or for any fraudulent purpose destroys, cancels, obliterates or conceals, the whole or any part of—

Stealing deeds, wills, etc.
38, 1876, ss. 150, 151.

(a) any document of title to lands;

(b) any will, codicil or other testamentary instrument, whether it relates to real or personal estate, or to both, and whether during the life of the testator or after his death,

shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

(2) Nothing in this section, nor any proceeding, conviction or judgment under this section, shall prevent, lessen or impeach any remedy, at law or in equity, of any party aggrieved by any such offence, but no conviction for an offence under this section shall be received in evidence in any action against the offender.

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

(3) No person shall be liable to be convicted of any offence against this section by any evidence in respect of any act done by him if, at any time before being charged with the offence, he has first disclosed the act on oath in consequence of any compulsory process of any court in any action or proceeding *bona fide* instituted by any party aggrieved or if he has first disclosed the act in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy.

146. Any person who 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 original document of, or belonging to, any court of record or relating to any matter, civil or criminal, begun, pending or terminated in any such court, or of any original document relating to the business of any office or employment under the Crown or any public or government business, and being in any office appertaining to any court of justice or in any government or public office, shall be guilty of felony and liable to be imprisoned for a term not exceeding three years.

Stealing court records.
38, 1876, s. 152.
S. 146 amended by 50, 1984, s. 3 (1) (1st Sched.).

Larceny of Things Attached To, or Growing On, Land

147. Any person who steals, or rips, cuts, severs or breaks with intent to steal—

Glass, wood, metal, etc., fixed to houses and land.
38, 1876, s. 153.

(a) any glass or woodwork belonging to any building;

(b) any metal, or any utensil or fixture made of any material, fixed in or to any building;

(c) anything made of metal fixed in any land, being private property, or for a fence to any dwelling house or garden, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground or cemetery,

shall be guilty of felony and liable to be punished as in the case of simple larceny.

Trees, etc., in
pleasure grounds.
38, 1876, s. 154.

148. Any person who steals, or cuts, breaks, roots up or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling, shrub or underwood growing in any pleasure ground, garden or other enclosed land shall (where the value of the article stolen or the amount of the damage exceeds ten cents) be guilty of felony and liable to be punished as in the case of simple larceny.

Other trees.
38, 1876, s. 155.

149. (1) Any person who steals, or breaks, roots up or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling, shrub or underwood growing elsewhere than is mentioned in section 148 shall (where the value of the article stolen or the amount of the damage exceeds ten cents) be guilty of an offence punishable summarily and liable for a first offence to pay the value of the article stolen and a fine of not more than ten dollars and for a second offence to imprisonment for a term not exceeding twelve months.

(2) Any person who commits an offence against this section after having been twice previously convicted of any such offence shall be guilty of felony and liable to be imprisoned for a term not exceeding two years.

Fences, gates, etc.
38, 1876, s. 156.
S. 150 amended
by 50, 1984,
s. 3 (1) (1st
Sched.).

150. Any person who steals, or cuts, breaks or throws down with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire or rail set up or used as a fence, or any stile or gate or part of a stile or gate, shall be guilty of felony and liable to be imprisoned for a term not exceeding two years.

Plants, etc., in
gardens, etc.
38, 1876, s. 157.

151. (1) Any person who—

- (a) steals, or destroys or damages with intent to steal, any plant, root, fruit or vegetable growing in any garden, orchard, pleasure ground, nursery ground, hothouse or greenhouse;
- (b) steals any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any open or enclosed land,

shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding six months or to pay the value of the articles stolen or the amount of the damage and a fine of not more than forty dollars.

(2) Any person who commits an offence against this section after a previous conviction for such an offence shall be guilty of felony and liable to be imprisoned for a term not exceeding two years.

Larceny from Mines or Mineral Lands

Ore, metal, etc.
38, 1876, s. 158.
S. 152 amended
by 50, 1984,
s. 3 (1) (1st
Sched.).

152. Any person who steals, or severs with intent to steal, gold, the ore of any metal, metalliferous stone or coal, from any mine, bed or vein, or from any claim, or from any land comprised in any lease for mining purposes granted or to be granted by, or on behalf of, the Crown, shall be guilty of felony and liable to be imprisoned for a term not exceeding two years.

Precious stones.
S. 152a inserted
by 122, 1972,
s. 3.

152a. Any person who steals, or severs with intent to steal, any precious stones from land comprised in a mine shall be guilty of felony and liable to be imprisoned for a term not exceeding five years.

153. Any person who, being employed in or about any mine or claim or any land comprised in such lease as is mentioned in section 152, takes, removes or conceals any gold, or the ore of any metal or other mineral, or any precious stones, found or being in such mine, claim or land, with intent to defraud any proprietor of, or any adventurer in, such mine, claim or land, or any workman or miner employed therein, shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Fraudulently removing ore, etc., from mines. 38, 1876, s. 159. S. 153 amended by 122, 1972, s. 4 (a), (b).

153a. For the purposes of sections 152, 152a and 153, "mine" and "precious stones" bear the respective meanings assigned to them by the Mining Act, 1971.

Interpretation. S. 153a inserted by 122, 1972, s. 5; amended by 50, 1984, s. 3 (1) (1st Sched.).

Larceny of Electricity

Heading inserted by 50, 1984, s. 3 (1) (1st Sched.).

154. Any person who wilfully and fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity shall be guilty of simple larceny and punishable accordingly.

Stealing electricity. 2156, 1934, s. 889 (b). S. 154 amended by 50, 1984, s. 3 (1) (1st Sched.).

Larceny from the Person and Other Like Offences

155. Any person who robs another, or steals any chattel, money or valuable security from the person of another, shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Robbery and stealing from the person. 38, 1876, s. 160, 1670, 1925, s. 13.

* * * * *

S. 156 amended by 58, 1971, s. 6; repealed by 107, 1981, s. 21.

157. If on the trial of any person for robbery the jury is not satisfied that the accused is guilty of robbery but is satisfied that he is guilty of an assault with intent to rob, it shall be lawful for the jury to find him guilty of assault with intent to rob and he shall thereupon be punishable in the same manner as if convicted on an information for assault with intent to rob.

Power to convict of lesser offence. 38, 1876, s. 161.

158. Any person who—

- (a) being armed with any offensive weapon or instrument, robs, or assaults with intent to rob, any person;
- (b) together with one or more other person or persons, robs, or assaults with intent to rob, any person;
- (c) robs any person and at the time of, or immediately before or immediately after, the robbery wounds, beats, strikes or uses any other personal violence to any person,

Robbery with violence. 38, 1876, s. 163, 1670, 1925, s. 13, 1940, 1929, s. 4. S. 158 amended by 58, 1971, s. 6.

shall be guilty of felony and liable to be imprisoned for life.

159. Any person who sends, delivers or utters, or directly or indirectly causes to be received, knowing its contents, any letter or writing demanding of any person, with menaces and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing shall be guilty of felony and liable to be imprisoned for life.

Letters demanding money by menaces. 38, 1876, s. 164, 1670, 1925, s. 13. S. 159 amended by 50, 1984, s. 3 (1) (1st Sched.).

160. Any person who, with menaces or by force, demands any property, chattel, money, valuable security or other valuable thing of any person with intent to steal it shall be guilty of felony and liable to be imprisoned for a term not exceeding three years.

Demanding money, etc., with menaces or by force and with intent to steal. 38, 1876, s. 165. S. 160 amended by 58, 1971, s. 6.

Letter threatening to accuse of a crime, with intent to extort.
38, 1876, s. 166, 1670, 1925, s. 13.
S. 161 amended by 58, 1971, s. 6; 50, 1984, s. 3 (1) (1st Sched.).

161. Any person who sends, delivers or utters, or directly or indirectly causes to be received, knowing its contents, any letter or writing accusing, or threatening to accuse, any other person of—

- (a) any crime punishable by law with death or imprisonment for a longer term than two years;
- (b) any assault with intent to commit rape or any attempt to commit rape;
- (c) any infamous crime,

with a view or intent thereby to extort or gain any property, chattel, money, valuable security or other valuable thing from any person, shall be guilty of felony and liable to be imprisoned for life.

Accusing or threatening to accuse with intent to extort.
38, 1876, s. 167, 1670, 1925, s. 13.
S. 162 amended by 50, 1984, s. 3 (1) (1st Sched.).

162. Any person who accuses, or threatens to accuse, either the person to whom the accusation or threat is made or any other person of any of the crimes referred to in section 161, with the view or intent to extort or gain from the person so accused, or threatened to be accused, or from any other person any property, chattel, money, valuable security or valuable thing, shall be guilty of felony and liable to be imprisoned for life.

Threatening to accuse with a view to extort money.
358, 1885, s. 15.

163. (1) Any person who, with intent—

- (a) to cause any person to marry, or to promise to marry, any person;
- (b) to obtain any money or valuable consideration for the benefit of any person,

directly or indirectly—

- (c) threatens to accuse any person of any offence;
- (d) offers to refrain from accusing any person of any offence;
- (e) knowingly sends, posts or delivers, or causes to be received by any person, any letter or paper threatening to accuse any person of any offence or offering to refrain from accusing any person of any offence,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

(2) Nothing contained in this section shall apply to any *bona fide* claim made by, or on behalf of, any injured person in any case in which compensation for the injury may be legally recovered.

Threatening to publish a libel with intent to extort.
38, 1876, s. 168.

164. Any person who—

- (a) publishes, or threatens to publish, any libel upon any other person;
- (b) directly or indirectly threatens, proposes or offers to print or publish, or abstain from printing or publishing, or to prevent the printing or publishing of, any matter or thing touching any other person,

with intent to extort any money or security for money or any valuable thing from any person, or with intent to induce any person to confer on, or procure for, any person any appointment or office of profit or trust, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

165. Any person who, with intent to defraud or injure any other person—

- (a) by any unlawful violence to, or restraint of, or threat of violence to, or restraint of, the person of another;
- (b) by accusing, or threatening to accuse, any person of any treason, felony or infamous crime,

Obtaining execution of documents by force.
38, 1876, s. 169.
1670, 1925, s. 13.

compels or induces any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix his name or the name of any other person or of any company, firm or co-partnership or the seal of any body corporate, company or society on or to any paper or parchment, in order that it may be afterwards made or converted into, or used or dealt with as, a valuable security, shall be guilty of felony and liable to be imprisoned for life.

166. (1) For the purposes of this Part, it is immaterial whether the menaces or threats mentioned are of violence, injury or accusation to be caused or made by the offender or any other person.

Interpretation.
38, 1876, ss. 166.
170.

(2) In this Part—

“infamous crime” means buggery, any assault with intent, or attempt, to commit buggery and any solicitation, persuasion, promise or threat offered or made to any person to move or induce that person to permit or commit buggery.

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

Sacrilege, Burglary, Housebreaking, etc.

167. Any person who—

- (a) breaks and enters any place of divine worship and commits any felony therein;
- (b) breaks out of any place of divine worship, having committed any felony therein,

Sacrilege.
38, 1876, s. 171.
1670, 1925, s. 13.

shall be guilty of the felony of sacrilege and liable to be imprisoned for life.

168. Any person who, in the night—

- (a) breaks and enters the dwelling house of another with intent to commit any felony therein;
- (b) breaks out of the dwelling house of another, having—
 - (i) entered that dwelling house with intent to commit any felony therein;
 - or
 - (ii) committed any felony in that dwelling house,

Burglary.
38, 1876 ss. 172.
174.
1670, 1925, s. 13.

shall be guilty of the felony of burglary and liable to be imprisoned for life.

169. Any person who enters any dwelling house in the night with intent to commit any felony therein shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

Entering a dwelling house in the night with intent to commit a felony.
38, 1876, s. 176.

170. (1) Any person who breaks and enters and commits any felony in any building, or breaks out of any building having committed any felony therein, shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Breaking and entering buildings and committing a felony.
S. 170 substituted by 54, 1940, s. 8.

(2) In this section—

“building” includes any dwelling house, building within the curtilage of a dwelling house, school house, shop, warehouse, counting house, office, store, garage, pavilion, factory, workshop, dancing hall, place of public entertainment, billiard saloon, dressing room and any other building, whether of the same class as those previously mentioned in this subsection or not.

Housebreaking, etc., with intent to commit a felony.
38, 1876, s. 179.
1670, 1925, s. 9.
S. 171 amended by 50, 1984, s. 3 (1) (1st Sched.).

Being found by night, armed, or in possession of housebreaking implements.
38, 1876, ss. 180, 181.

171. Any person who breaks and enters any of the buildings referred to in section 170, or any place of divine worship, with intent to commit any felony therein shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

172. Any person who is found by night—

- (a) armed with any dangerous or offensive weapon or instrument with intent to break, or enter, into any building and to commit any felony therein;
- (b) having in his possession without lawful excuse (the proof of which shall lie on that person) any key, picklock, crow, jack, bit or other implement of housebreaking;
- (c) having his face blackened or being otherwise disguised with intent to commit any felony;
- (d) in any building with intent to commit any felony therein,

shall be guilty of a misdemeanour and liable—

- (e) if he has been previously convicted of any such misdemeanour or of any felony, to be imprisoned for a term not exceeding ten years;
- (f) in all other cases, to be imprisoned for a term not exceeding seven years.

Para. (f) amended by 58, 1971, s. 6.

Larceny in dwelling houses.
38, 1876, ss. 182, 183.

173. Any person who steals in any dwelling house any chattel, money or valuable security shall—

- (a) if the value of the property stolen amounts to ten dollars or more;
- or
- (b) if he, by any menace or threat, puts any person being in the dwelling house in bodily fear,

be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Heading inserted by 50, 1984, s. 3 (1) (1st Sched.).

Larceny of Goods in Process of Manufacture

Stealing goods in process of manufacture.
38, 1876, s. 184.
S. 174 amended by 50, 1984, s. 3 (1) (1st Sched.).

174. Any person who steals any woollen, linen, hempen or cotton yarn, or any goods or article of silk, wool, linen, cotton, alpaca or mohair, or of any one or more of those materials mixed with each other or mixed with any other material, while laid, placed or exposed during any stage, process or progress of manufacture in any building, field or other place shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Larceny from Ships and Wharves, etc.

175. Any person who steals—

- (a) any goods or merchandise in any vessel, barge or boat, or the gear, fittings or other articles belonging to any vessel, barge or boat, in any haven or any port of entry or discharge, or on any navigable river or canal, or in any creek or basin belonging to, or communicating with, any such haven, port, river or canal;
- (b) any goods or merchandise from any dock, wharf or quay adjacent to any such haven, port, river, canal, creek or basin;
- (c) any part of any vessel in distress, wrecked, stranded or cast on shore, or any goods, merchandise or articles belonging to such a vessel,

Stealing from ships, docks, etc. 38, 1876, ss. 185, 186.

Para. (a) amended by 50, 1984, s. 3 (1) (1st Sched.).

Para. (c) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Larceny and Embezzlement by Clerks, Servants and Persons in the Public Service

176. (1) Any person who, being a clerk or servant or employed in the capacity of a clerk or servant—

- (a) steals any chattel, money or valuable security belonging to, or in the possession or power of, his master or employer;
- (b) fraudulently embezzles the whole or any part of any chattel, money or valuable security delivered to, or received or taken into possession by, him for or in the name or on the account of his master or employer,

Larceny and embezzlement by clerks and servants. 38, 1876, ss. 188-190.

shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

(2) Every person who is employed for the purpose, or in the capacity, of a clerk or servant, or as a collector of moneys, and although temporarily only, shall be deemed to be a clerk or servant.

177. Any person who, being employed in the public service of the Crown—

- (a) steals any chattel, money or valuable security belonging to, or in the possession or power of, the Crown, or entrusted to, or received or taken into possession by, that person by virtue of his employment;
- (b) embezzles, or in any manner fraudulently applies or disposes of, for any purpose except for the public service, any chattel, money or valuable security entrusted to, or received or taken into possession by, him by virtue of his employment,

Larceny and embezzlement in the Public Service. 38, 1876, ss. 192, 193.

S. 177 amended by 50, 1984, s. 3 (1) (1st Sched.).

Para. (a) amended by 50, 1984, s. 3 (1) (1st Sched.).

shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Falsification of
accounts, etc.
38, 1876, s. 191.

178. Any person who, being a clerk, officer or servant or any person employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud—

- (a) destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to, or is in the possession of, his employer, or has been received by him for, or on behalf of, his employer;
- (b) 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, document or account,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

General
deficiency.
38, 1876, s. 194.
S. 179 amended
by 50, 1984,
s. 3 (1) (1st
Sched.).

179. On the prosecution of any person for larceny or embezzlement as a clerk or servant of any money the property of his master or employer, it shall not be necessary to prove the larceny or embezzlement of any specific sum of money, but the accused shall be liable to be convicted on proof that there is a general deficiency in the moneys under his control and that he stole or embezzled the deficient moneys or any part of those moneys.

Information for
embezzlement.
38, 1876, s. 195.
Subsec. (1)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

180. (1) Any number of distinct acts of embezzlement, or of fraudulent application or disposition, committed by any person against the Crown or against the same master or employer may be charged in the same information and tried together.

(2) In every such information, where the offence relates to any money or any valuable security, it shall be sufficient to allege the embezzlement, or fraudulent application or disposition, to be of money without specifying any particular coin or valuable security; and the allegation, so far as regards the description of the property, shall be sustained if the offender is proved—

- (a) to have embezzled, or fraudulently applied or disposed of, any amount, although the particular coin or valuable security of which that amount was composed is not proved;

or

- (b) to have embezzled, or fraudulently applied or disposed of, any piece of coin or any valuable security, or any portion of the value thereof, although the piece of coin or valuable security was delivered to him in order that some part of the value thereof should be returned to any person and that part was returned accordingly.

Verdict of larceny
where
embezzlement
charged, and vice
versa.
38, 1876, s. 196.

181. If on the trial of any person for embezzlement, or fraudulent application or disposition, as aforesaid it is proved that he took the property in question in any such manner as to amount in law to larceny, the jury shall be at liberty to return as their verdict that that person is guilty of simple larceny, or of larceny as a clerk, servant or person employed for the purpose, or in the capacity, of a clerk or servant or as a person employed in the public service, as the case may be, and thereupon that person shall be liable to be punished in the same manner as if he had been convicted on information for such larceny; and if on the trial of any person for such larceny it is proved that he took the property in question in any such manner as to amount in law to embezzlement, or fraudulent application or disposition, as aforesaid, the jury shall be at liberty to return as their verdict that that person is guilty of embezzlement, or fraudulent application or disposition,

as the case may be, and thereupon that person shall be liable to be punished in the same manner as if he had been convicted on information for such embezzlement, fraudulent application or disposition.

182. If any person, being a member of any co-partnership or being one of two or more beneficial owners of any money, goods or effects, bills, notes, securities or other property, steals or embezzles any such money, goods or effects, bills, notes, securities or other property of, or belonging to, the co-partnership or joint beneficial owners, he shall be liable to be dealt with, tried, convicted and punished as if he had not been, or was not, a member of the co-partnership or one of the beneficial owners.

Larceny by partners.
38, 1876, s. 197.

Larceny by Tenants and Lodgers

183. Any person who, being a tenant or lodger or the husband or wife of a tenant or lodger, steals any chattel or fixture let to be used in or with any house or lodging shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Larceny by tenants and lodgers.
38, 1876, 198.

Frauds by Trustees, Agents, Bankers or Factors

184. (1) Any person who—

(a) being entrusted, whether the instructions are written, verbal or implied, either solely or jointly with any other person, with any property in order that he may retain in safe custody, or apply, pay or deliver for any purpose or to any person, the property or any part thereof or any proceeds thereof;

or

(b) having, either solely or jointly with any other person, received any property for, or on account of, any other person,

fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof, or fraudulently destroys the property or any part thereof or any proceeds of the property or part thereof, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

(2) Nothing in this section shall apply to or affect any trustee of any express trust created by a deed or will, or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in, or affected by, any such trust or mortgage.

185. Any person who, being entrusted, either solely or jointly with any other person, with any power of attorney for the sale or transfer of any property, fraudulently sells, or transfers or otherwise converts, the property, or any part thereof, to his own use or benefit, or the use or benefit of any person other than the person by whom he was so entrusted, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Fraudulent sales under powers of attorney.
38, 1876, s. 201.

186. (1) Any person who, being a factor or agent entrusted, either solely or jointly with any other person for the purpose of sale or otherwise, with the possession of any goods or of any document of title to goods, contrary to, or without, the authority of his principal in that behalf, for his own use

Factors obtaining advances on the property of their principals.
38, 1876, ss. 202, 203.

or benefit, or the use or benefit of any person other than the person by whom he was so entrusted, and in violation of good faith—

(a) consigns, deposits, transfers or delivers any goods or document of title so entrusted to him as and by way of a pledge, lien or security for any money or valuable security borrowed or received, or intended to be borrowed or received, by him;

or

(b) accepts any advance of any money or valuable security on the faith of any contract or agreement to consign, deposit, transfer or deliver any such goods or document of title,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years; but no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring or delivering any such goods or document of title, if the goods or document of title is not made a security for, or subject to the payment of, any greater sum of money than the amount which, at the time of the consignment, deposit, transfer or delivery, was justly due and owing to the factor or agent from his principal, together with the amount of any bill of exchange drawn by, or on account of, the principal and accepted by the factor or agent.

(2) Any factor or agent entrusted as aforesaid and in possession of any document of title to goods shall be deemed to have been entrusted with the possession of the goods represented by the document of title.

(3) Every contract pledging or giving a lien on any document of title to goods shall be deemed to be a pledge of and lien on the goods to which the document relates.

(4) Any such factor or agent shall be deemed to be in possession of such goods or documents, whether they are in his actual custody or are held by any other person subject to his control or for him or on his behalf.

(5) Where any loan or advance is made in good faith to any factor or agent entrusted with, and in possession of, any such goods or document of title on the faith of any contract or agreement in writing to consign, deposit, transfer or deliver the goods or document of title and the goods or document of title are actually received by the person making the loan or advance without notice that the factor or agent was not authorized to make the pledge or security, every such loan or advance shall be deemed to be a loan or advance on the security of the goods or document of title and within the meaning of this section, although the goods or document of title are not actually received by the person making the loan or advance until the period subsequent thereto.

(6) Any payment made, whether by money or bill of exchange or other negotiable security, shall be deemed to be an advance within the meaning of this section.

(7) Any contract or agreement, whether made direct with a factor or agent or with any person on his behalf, shall be deemed to be a contract with the factor or agent.

(8) Any factor or agent in possession as aforesaid of any goods or document of title to goods shall be deemed, for the purposes of this section, to have been entrusted therewith by the owner thereof unless the contrary is shown in evidence.

187. (1) Any person, being a trustee of any property for the use or benefit, either wholly or partially, of some other person or for any public or charitable purpose, who, with intent to defraud, converts or appropriates the property or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person for whose use or benefit the property is held in trust, or for any purpose other than the public or charitable purpose, or otherwise disposes of or destroys the property or any part thereof, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Trustees fraudulently disposing of property.
38, 1876, s. 204.

(2) No prosecution under this section shall be commenced without the sanction of the Attorney-General.

188. Any person who, being the promoter of a public company, registered or incorporated or intended to be registered or incorporated, knowingly makes, circulates or publishes, or causes to be made, circulated or published, any untrue statement or advertisement, with intent to defraud or to induce any person to become a shareholder or partner in the company so that that person may be defrauded, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Promoters of companies making untrue statements.
38, 1876, s. 205.

189. Any person who, being a director, member or public officer of any body corporate or public company, fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of the body corporate or public company, any of the property of the body corporate or public company shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Directors of companies fraudulently appropriating property.
38, 1876, s. 206.

190. Any person who, being a director, public officer or manager of any body corporate or public company, receives, or possesses himself of, any of the property of the body corporate or public company otherwise than in payment of a just debt or demand and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of the body corporate or public company shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Directors, etc., keeping fraudulent accounts.
38, 1876, s. 207.

191. Any person who, being a director, manager, public officer or member of any body corporate or public company, with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company, or makes, or concurs in the making of, any false entry, or omits, or concurs in omitting, any material particular in any book of account or other document, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Directors, etc., wilfully destroying books, etc.
38, 1876, s. 208.

192. Any person who, being a director, manager or public 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 the body corporate or public company or with intent to induce any person to become a shareholder or partner therein or to entrust or advance any property to the body corporate or public company or to enter into any security for the benefit thereof, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

Directors, etc., publishing fraudulent statements.
38, 1876, s. 209.

Protection to persons disclosing offences in civil proceedings.
38, 1876, s. 210.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

193. (1) Nothing in sections 184 to 192 shall enable or entitle any person to refuse to make a full and complete discovery or to answer any question or interrogatory in any civil proceeding in any court or on the hearing of any matter in bankruptcy.

(2) No person shall be liable to be convicted of any of the misdemeanours referred to in those sections by any evidence in respect of any act done by him if, at any time prior to his being charged with the offence, he has first disclosed the act on oath, in consequence of any compulsory process of any court, in any action or proceeding *bona fide* instituted by any party aggrieved or if he has first disclosed the act in a compulsory examination or deposition before any court on the hearing of any matter in bankruptcy.

Civil remedies not affected.
38, 1876, s. 211.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

194. (1) Nothing in sections 184 to 193, nor any proceeding, conviction or judgment under those sections, shall prevent, lessen or impeach any remedy, at law or in equity, of any party aggrieved by any offence against any of those sections; but no conviction of any such offender shall be received in evidence in any action against him.

(2) Nothing in those sections shall affect or prejudice any agreement entered into, or security given, by any trustee, having for its object the restoration or repayment of any misappropriated trust property.

False Pretences

False pretences.
38, 1876, ss. 213-215.

195. (1) Any person who, by any false pretence—

(a) with intent to defraud, obtains from any other person any chattel, money or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered, to himself or to any other person for the use or benefit or on account of himself or any other person;

or

(b) with intent to defraud or injure any other person, fraudulently causes or induces any other person—

(i) to execute, make, accept, endorse or destroy the whole or any part of any valuable security;

(ii) to write, impress or affix his name or the name of any other person or the seal of any body corporate or society on any paper or parchment, in order that it may be afterwards made or converted into, or used or dealt with as, a valuable security,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding four years.

(2) On the trial of any information under this section, it shall not be necessary to prove an intent to defraud any particular person but it shall be sufficient to prove that the accused did the act charged with intent to defraud.

(3) If on the trial of any information under subsection (1) (a) it is proved that the accused stole the property in question, he shall not by reason thereof be entitled to be acquitted of obtaining the property by false pretences.

Receiving

196. (1) Any person who receives any property, knowing it to have been stolen, or obtained or disposed of in any way under circumstances which amount to felony either at common law or by virtue of this Act, shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Receiving where principal guilty of felony.
38, 1876, ss. 216-218.

(2) Charges of stealing any property and of feloniously receiving that property or part of that property may be included in separate counts of the same information and those counts may be tried together.

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

(3) Any person or persons charged in separate counts of the same information with stealing any property and with feloniously receiving that property or part of that property may severally be found guilty either of stealing or of receiving the property or part of the property.

Subsec. (3) amended by 50, 1984, s. 3 (1) (1st Sched.).

(4) In an information for feloniously receiving any property, any number of persons who have at different times so received that property or any part of that property may be charged and tried together and either with or without the principal felon.

Subsec. (4) amended by 50, 1984, s. 3 (1) (1st Sched.).

197. Any person who receives any property, knowing it to have been taken, obtained, converted or disposed of in any way in circumstances which amount to misdemeanour, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding four years.

Receiving where principal guilty of misdemeanour.
38, 1876, s. 220.

197a. (1) Any person who receives any property, knowing it to have been taken, obtained, converted or disposed of outside the State under such circumstances that, if the act of taking, obtaining, converting or disposing had been done in the State, the person doing it would have been guilty of an offence triable on information in the Supreme Court, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding eight years.

Receiving goods stolen outside the State.
S. 197a inserted by 54, 1940, s. 9.

(2) No person shall be liable to conviction under this section if the act of taking, obtaining, converting or disposing was not an offence in the place in which that act was done.

(3) In an information for receiving any property in contravention of this section, any number of persons who have at different times so received that property or any part of that property may be charged and tried together, notwithstanding that the principal has not been charged or tried.

Subsec. (3) amended by 50, 1984, s. 3 (1) (1st Sched.).

(4) If on the trial of any two or more persons prosecuted jointly for receiving any property in contravention of this section it is proved that one or more of those persons separately received any part of that property, it shall be lawful for the jury to convict such of the persons as are proved to have received any part of that property.

198. (1) Any person may be informed against and convicted of any offence against section 196, 197 or 197a, whether the principal offender has or has not been previously convicted or is or is not amenable to justice.

Conviction of receivers in absence of principal.
38, 1876, ss. 216, 219, 220.

(2) If on the trial of any two or more persons prosecuted jointly for receiving any property it is proved that one or more of those persons separately received any part of that property, it shall be lawful for the jury to convict such of the persons as are proved to have received any part of that property.

Subsec. (1) amended by 71, 1969, s. 9.

Receiving where principal punishable summarily. S. 199 amended by 54, 1940, s. 10.

199. Any person who receives any property, the stealing or taking of which is punishable on summary conviction (whether for every offence or for the first or second offence only or for the first offence only), knowing the property to have been unlawfully come by, shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding one year.

Previous convictions may be proved in receiving charges. 9, 1870, s. 5. Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

200. (1) When any person is proceeded against for receiving any property, knowing it to have been stolen, or for any other offence arising out of his possession of stolen property, for the purpose of proving guilty knowledge there may be given in evidence at any stage of the proceedings—

- (a) the fact that other property stolen within the period of twelve months preceding the date of the offence charged was found, or had been, in his possession;
- (b) the fact that prior to the date of the offence charged he was convicted of any offence specified in subsection (2) and involving fraud or dishonesty,

and, on proof of such a conviction, he shall be deemed to have known that the goods the subject matter of the charge had been stolen at the time they came into his possession until he has proved the contrary; but no previous conviction shall be proved pursuant to this section unless not less than seven days written notice has been given to the person charged, or his solicitor, that proof is intended to be given of his previous conviction and, on such proof, he will be deemed to have known that the goods the subject matter of the charge against him were stolen at the time they came into his possession, until he has proved the contrary.

Subsec. (2) substituted by 54, 1940, s. 11; amended by 71, 1969, s. 10 (b).

(2) The offences referred to in subsection (1) are the following:

- (a) any indictable offence against the laws of the Commonwealth or any Territory of the Commonwealth or any State, whether the offence was tried on indictment or summarily;

and

- (b) any offence against section 39 or 41 of the Police Offences Act, 1953, or any offence against any enactment of another State, or of any Territory of the Commonwealth, corresponding with either of those sections.

Para. (b) amended by 71, 1969, s. 10 (a).

Restitution and Recovery of Stolen Property

Restitution of stolen property. 38, 1876, s. 222.

201. (1) If any person guilty of any felony or misdemeanour mentioned in this Act of stealing, taking, obtaining, extorting, embezzling, converting or disposing of, or of knowingly receiving, any property is prosecuted for any offence by, or on behalf of, the owner of the property, and convicted, the property shall be restored to the owner or his representative.

(2) The court before whom any person is tried for any such felony or misdemeanour shall have power to order the restitution of the property in a summary manner.

(3) If the property has been expended in the purchase of goods and the price is, or the goods so purchased are, in the custody or under the control of the person so convicted, the court may order the moneys or goods to be handed over to the person entitled to restitution.

(4) The court (although the accused has been acquitted), if satisfied that any property has been stolen, may in like manner order restitution.

(5) If it appears before any order is made that any valuable security has been *bona fide* taken or received, by transfer or delivery, by some person liable to the payment thereof or, being a negotiable instrument, has been *bona fide* taken or received, by transfer or delivery, by some person for a just and valuable consideration, without any notice or without any reasonable cause to suspect that they had, by any felony or misdemeanour, been stolen, taken, obtained, extorted, embezzled, converted or disposed of, the court shall not award or order the restitution of the security.

(6) The provisions of this section shall not apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker or other agent entrusted with the possession of goods, or documents of title to goods, for any misdemeanour against this Act.

202. Any person who corruptly takes any money or reward, directly or indirectly, under pretence or on account of helping any person to recover any property which has, by any felony or misdemeanour, been stolen, taken, obtained, extorted, embezzled, converted or disposed of as previously mentioned in this Act shall (unless he has used all due diligence to cause the offender to be brought to trial) be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Corruptly taking reward for recovery of stolen property.
38, 1876, s. 223.

203. Any person who—

(a) publicly advertises a reward for the return of any property which has been stolen and in that advertisement uses any words to the effect that no questions will be asked, or that a reward will be given or paid for the return of any stolen property, without seizing, or making any inquiry after, the person producing the property;

(b) promises or offers in any such public advertisement to return to any pawnbroker or other person who may have bought, or advanced money by way of loan on, any stolen property the money so paid or advanced or any other sum of money or reward for the return of the property;

or

(c) prints or publishes any such advertisement,

shall forfeit the sum of one hundred dollars for every such offence, one-half of that sum to be paid into the Treasury for the purposes of the General Revenue and the other half to be paid to the informer; and that penalty may be recovered with full costs by action in the local court.

Advertising a reward for the return of stolen property, etc.
38, 1876, s. 224.

False Impersonation, etc.

204. Any person who falsely and deceitfully impersonates any person, or the heir, executor, administrator, wife, widow, next of kin or relation of any person, with intent fraudulently to obtain any land, estate, chattel, money, valuable security or property, shall be guilty of felony and liable to be imprisoned for life.

Impersonation in order to obtain property.
38, 1876, s. 225.
1670, 1925, s. 13.

Impersonating the owner of stock.
38. 1876, s. 235.

205. Any person who—

(a) falsely and deceitfully impersonates any owner of any share or interest of or in the capital stock of any body corporate, company or society, or any owner of any dividend or money payable in respect of any such share or interest;

and

(b) thereby—

(i) transfers any share or interest belonging to any such owner;

or

(ii) receives any money due to any such owner,

as if the offender were the true and lawful owner,

shall be guilty of felony and liable to be imprisoned for life.

Para. (b) amended by 107, 1981, s. 22.

Piracy

Piracy.
38. 1876, s. 226.

206. Any person who commits any robbery on the high seas or in any haven, river, creek or place within the jurisdiction of the Admiralty of England shall be guilty of felony and liable to be imprisoned for life.

Assaults with intent to commit, or in furtherance of, piracy.
38. 1876, s. 227.
S. 207 amended by 115, 1976, s. 7.

207. Any person who, with intent to commit, or at the time of or immediately before or immediately after committing, the crime of piracy in respect of any ship or vessel, assaults with intent to murder any person being on board, or belonging to, the ship or vessel, or wounds any such person, or unlawfully does any act by which the life of any such person may be endangered, shall be guilty of felony and, being convicted thereof, shall be imprisoned for life.

Robbery or other act of hostility at sea under colour of a foreign commission.
38. 1876, s. 228.
S. 208 amended by 50, 1984, s. 3 (1) (1st Sched.).

208. Any person who, being a natural born subject of Her Majesty, commits any piracy or robbery, or any act of hostility, against any other of Her Majesty's subjects on the high seas, or in any haven, river, creek or place within the jurisdiction of the Admiralty of England, under colour of any commission from any foreign prince or state or pretence of authority from any person whatsoever, shall be guilty of felony and liable to be imprisoned for life.

Piracy by master or seaman of ship.
38. 1876, s. 229.
S. 209 amended by 50, 1984, s. 3 (1) (1st Sched.).

209. Any person who, being a commander or master of any ship or a seaman or mariner, in any place within the jurisdiction of the Admiralty of England, betrays his trust and turns pirate, enemy or rebel and piratically or feloniously runs away with, or yields up voluntarily to any pirate, his ship or any barge, boat, ordnance, ammunition, goods or merchandise, or brings any seducing messages from any pirate, enemy or rebel, or consults, combines or confederates with, or attempts or endeavours to corrupt, any commander, master, officer or mariner to yield up, or run away with, any ship, goods or merchandise, or turn pirate or go over to pirates; and any person who lays violent hands on his commander, so as to hinder him from fighting in the defence of his ship and goods committed to his trust, or confines his master, or makes, or endeavours to make, a revolt in the ship, shall be guilty of felony and liable to be imprisoned for life.

210. Any person who, belonging to any ship or vessel, on meeting any merchant ship or vessel on the sea or in any port, haven or creek, forcibly boards or enters into the ship or vessel and, although he does not seize and carry off the ship or vessel, throws overboard or destroys any part of the goods or merchandise belonging to the ship or vessel shall be guilty of felony and liable to be imprisoned for life.

Forcibly boarding a ship and throwing goods overboard.
38, 1876, s. 230.

211. Any person who trades with any pirate by truck, barter, exchange or in any other manner, or furnishes any pirate, felon or robber on the seas with any ammunition, provision or stores, or fits out any ship or vessel knowingly and with a desire to trade with or supply, or correspond with, any pirate, felon or robber on the seas, or consults, combines, confederates or corresponds with any pirate, felon or robber on the seas, knowing him to be guilty of any such piracy, felony or robbery, shall be guilty of felony and liable to be imprisoned for life.

Trading with pirates.
38, 1876, s. 231.
S. 211 amended by 50, 1984, s. 3 (1) (1st Sched.).

PART VI

FORGERY

212. (1) In this Part—

Interpretation.
38, 1876, ss. 256, 257, 261, 262.

“bank” means a person, firm or company carrying on the business of banking;

“forge” includes to alter and to counterfeit:

“resembling” means made or apparently intended to resemble:

“utter” includes to offer, dispose of or put off and, when any uttering is made an offence or punishable, uttering with knowledge of the character of the thing uttered is intended.

(2) When the forging or uttering of any document is made an offence or punishable—

(a) it is immaterial in what language the document is expressed or in what place within the State or elsewhere it was, or purports to have been, made or is expressed to take effect;

(b) a reference to a document by any name or designation includes a reference to any document purporting to be a document of that character.

(3) Where the having of any thing in the custody or possession of any person is expressed to be an offence or to involve any other consequences, that expression includes having the thing referred to—

(a) in the custody or possession of any other person;

(b) in any place for the use or benefit of the person having the thing in his custody or possession, or of any other person.

(4) On the trial of any information for the forgery or uttering of any instrument, when it is necessary to prove an intent to defraud, it shall not be necessary to prove an intent to defraud any particular person but it shall be sufficient to prove that the accused did the act charged with an intent to defraud.

The Public Seal.
38, 1876, s. 232.

213. Any person who—

- (a) forges or utters the Public Seal of the State;
- (b) forges the stamp or impression of that Seal;
- (c) utters any document or instrument having thereon or affixed thereto—
 - (i) the stamp or impression of that forged Seal;
 - (ii) any forged stamp or impression resembling the stamp or impression of that Seal;
- (d) forges or utters any document or instrument having that stamp or impression thereon or affixed thereto,

shall be guilty of felony and liable to be imprisoned for life.

Deeds, wills, bills
of exchange, etc.
38, 1876, s. 233.

214. Any person who, with intent to defraud—

- (a) forges or utters—
 - (i) any deed, bond or writing obligatory;
 - (ii) any assignment at law or in equity of any bond or writing obligatory;
 - (iii) any will, testament, codicil or testamentary instrument;
 - (iv) any bill of exchange or any acceptance, endorsement or assignment of any bill of exchange;
 - (v) any promissory note for the payment of money or any endorsement or assignment of any such promissory note;
 - (vi) any undertaking, warrant, order, authority or request for the payment of money or for the delivery or transfer of any goods or chattels or of any note, bill or other security for the payment of money or for procuring or giving credit;
 - (vii) any endorsement on, or assignment of, any such undertaking, warrant, order, authority or request;
 - (viii) any accountable receipt, acquittance or receipt for money or goods or for any note, bill or other security for the payment of money;
 - (ix) any endorsement on, or assignment of, any such accountable receipt;
- (b) forges any name, handwriting or signature purporting to be the name, handwriting or signature of a witness attesting the execution of any deed, bond or writing obligatory;
- (c) utters any deed, bond or writing obligatory having thereon any such forged name, handwriting or signature,

shall be guilty of felony and liable to be imprisoned for life.

Transfers of
stock, etc.
38, 1876, s. 234.

215. Any person who, with intent to defraud—

- (a) forges or utters—
 - (i) any transfer of any share or interest of or in the capital stock of any body corporate, company or society;

(ii) any power of attorney or other authority to transfer any share or interest of or in any such capital stock or to receive any dividend or money payable in respect of any such share or interest;

(b) 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 other authority, knowing it to be forged,

shall be guilty of felony and liable to be imprisoned for life.

216. Any person who—

(a) forges any name, handwriting or signature purporting to be the name, handwriting or signature of a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in the capital stock of any body corporate, company or society or to receive any dividend or money payable in respect of any such share or interest;

(b) utters any such power of attorney or other authority with any such forged name, handwriting or signature thereon,

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

Attestation to power of attorney for transfer of stock.
38, 1876, s. 236.

Making and Engraving Plates for Bank Notes

217. Any person who, without lawful authority or excuse (the proof of which shall lie on the person accused)—

(a) makes or uses any frame, mould or instrument for the manufacture of paper, with the name of any bank appearing visible in the substance of the paper;

(b) knowingly has in his custody or possession any such frame, mould or instrument;

(c) manufactures, uses, sells, exposes for sale or utters, or knowingly has in his custody or possession, any paper in the substance of which the name of any bank appears visible;

(d) causes the name of any bank to appear visible in the substance of any paper on which the name of the bank is written or printed,

shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Making moulds for bank paper, etc.
38, 1876, s. 237.

218. Any person who, without lawful authority or excuse (the proof of which shall lie on the person accused)—

(a) engraves or makes on any plate or any material—

(i) any bill of exchange or promissory note for the payment of money purporting to be the bill or note, or part of the bill or note, of any bank;

(ii) any word or words resembling any subscription subjoined to any bill of exchange or promissory note for the payment of money issued by any bank;

Engraving plates for making bank notes.
38, 1876, s. 238.

(b) knowingly has in his custody or possession any plate or other material on which any such bill or note or part thereof, or any word or words resembling any such subscription, is or are engraved or made;

(c) knowingly utters or has in his custody or possession any paper on which any part of such bill or note, or any word or words resembling any such subscription, is or are made or printed,

shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

Forging Bank Notes

Forging bank notes.
38, 1876, s. 240,
1670, 1925, s. 13.

219. Any person who, with intent to defraud, forges or utters—

(a) any note or bill of exchange of any bank, commonly called a bank note, bank bill of exchange or bank post bill;

(b) any endorsement on, or assignment of, any bank note, bank bill of exchange or bank post bill,

shall be guilty of felony and liable to be imprisoned for life.

Receiving forged bank notes.
38, 1876, s. 241.

220. Any person who, without lawful authority or excuse (the proof of which shall lie on the person accused)—

(a) purchases or receives from any other person;

(b) has in his custody or possession,

any forged bank note, bank bill of exchange or bank post bill, or blank bank note, blank bill of exchange or blank bank post bill, knowing it to be forged, shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Drawing bill without lawful authority.
38, 1876, s. 239.

221. Any person who, with intent to defraud—

(a) by procuration or otherwise, draws, makes, signs, accepts or endorses any bill of exchange, promissory note, undertaking, warrant, order, authority or request for the payment of money, or for the delivery or transfer of goods or chattels or of any bill, note or other security for money for, in the name or on the account of any other person, without lawful authority or excuse;

(b) utters any such document, knowing it to have been so drawn, made, signed, accepted or endorsed,

shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Crossings on cheques.
2168, 1934, s. 4
(2nd Sched.).

222. Any person who, with intent to defraud—

(a) obliterates, adds to or alters the crossing of any cheque or draft on a bank;

(b) utters any cheque or draft so dealt with,

shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

223. Any person who forges or utters any debenture issued under any lawful authority, either within the State or elsewhere, shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Debentures.
38, 1876, s. 243.

Forging Official and Legal Documents

224. Any person who forges or utters—

- (a) any original document of, or belonging to, any court of record;
- (b) any document or writing, or any copy of any document or writing, used, or intended to be used, as evidence in any court of record;
- (c) any instrument made evidence by any Act of Parliament in respect of the forging or uttering of which no other penalty is provided in this Act,

Original documents of courts of record.
38, 1876, ss. 244, 246.

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

225. Any person who, with intent to defraud, forges or utters—

- (a) any summons, conviction, order or warrant of any justice;
- (b) any recognizance purporting to have been entered into before any justice or any other officer authorized to take it;
- (c) any examination, deposition, affidavit, affirmation or declaration taken or made before any justice,

Orders of justices.
38, 1876, s. 248.

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

226. Any person who—

- (a) being a clerk of any court or other officer having the custody of the records of any court, or the deputy of any such clerk or officer, utters any false copy or certificate of any record;
- (b) not being such a clerk, officer or deputy, signs or certifies any copy or certificate of any record as such a clerk, officer or deputy;
- (c) forges or utters any copy or certificate of any record having on it any false or forged name, handwriting or signature;
- (d) forges the seal of any court of record;
- (e) forges any process of any court other than a court of record;
- (f) serves or enforces any forged process of any court, knowing it to be forged;
- (g) delivers, or causes to be delivered, to any person any paper falsely purporting to be the process of any court, or a copy thereof, or any judgment, decree or order of any court, or a copy thereof, knowing it to be false;
- (h) acts, or professes to act, under any false process of any court, knowing it to be false,

Copies of certificates of record and using forged process.
38, 1876, s. 245.

shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

False copies of
record.
38, 1876, s. 249.

227. Any person who, being employed in any court having the custody of records—

- (a) certifies any writing as a true and authentic copy of a record in the custody of the court, knowing it to be false in any material part;
- (b) forges the signature of any officer of the court for the purpose of forging a certified copy of a record;
- (c) forges the seal of the court,

shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

False certificates
of previous
convictions.
38, 1876, s. 250.

228. Any person who—

- (a) being a clerk or officer of any criminal court and having the custody of the records of the court, or being the deputy of such a clerk or officer, utters a false certificate of any information and conviction for a felony;
- (b) not being such a clerk, officer or deputy, signs any such certificate as such a clerk, officer or deputy, or utters any such certificate with a false or forged signature thereto,

shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

Certificates of
judgment.
38, 1876, s. 251.

229. Any person who, with intent to cause any person to be discharged from custody or otherwise to prevent the due course of justice, forges or utters—

- (a) any certificate of, or copy certified by, any judge or by any associate or his deputy or by any officer of a court;
- (b) any certificate of determination of any of the judges in any criminal case reserved for their opinion on a question of law,

shall be guilty of felony and liable to be imprisoned for a term not exceeding six years.

Para. (a) amended
by 50, 1984,
s. 3 (1) (1st
Sched.).

Forging official
documents and
tendering same in
evidence.
38, 1876, s. 252.

230. Any person who—

- (a) forges—
 - (i) any certificate, official or public document, or document or proceeding of any corporation or company;
 - (ii) any certified copy of any document, by-law or entry in any register or other book;
 - (iii) any proceeding receivable in evidence before any legal tribunal or either House of Parliament, or any committee of either House, or in any judicial proceeding under any Act;
- (b) tenders in evidence any such forged documents or matters, knowing them to be forged;
- (c) forges the signature of any judge to any decree, order, certificate or other judicial or official document;

- (d) tenders in evidence any order, decree, certificate or other judicial or official document bearing a forged signature of a judge, knowing it to be forged;
- (e) prints any copy of any private Act, or of the journals of either House of Parliament, which copy falsely purports to have been printed by the Government Printer;
- (f) tenders in evidence any such copy, knowing that it was not printed by the Government Printer,

shall be guilty of felony and liable to be imprisoned for a term not exceeding four years.

231. Any document or matter referred to in section 230 which is put in evidence in any proceeding may be impounded by the judge or other person presiding until further order.

Impounding of forged documents.
38, 1876, s. 252.
S. 231 amended by 50, 1984, s. 3 (1) (1st Sched.).

232. Any person who—

- (a) forges or utters any document, writing or entry made or issued under the provisions of any Act relating to the registration of deeds or the registration of titles to lands;
- (b) forges the seal of the Registrar-General of Deeds or any office relating to the registration of deeds or of titles to lands, or the stamp or impression of any such seal, or utters any document, writing or entry bearing the forged stamp or impression of any such seal,

Documents relating to registration of deeds.
38, 1876, s. 247.

shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Miscellaneous Matters

233. Any person who, without lawful authority or excuse (the proof of which shall lie on the person accused), in the name of any other person, acknowledges any recognizance or bail or any *cognovit actionem* or judgment or any deed or other instrument before any court, judge or other person lawfully authorized in that behalf shall be guilty of felony and liable to be imprisoned for a term not exceeding seven years.

Falsely acknowledging recognizances, etc.
38, 1876, s. 253.

234. Any person who, with intent to defraud, demands, receives or obtains or causes or procures to be delivered or paid to any person, or endeavours to receive or obtain or to cause or procure to be delivered or paid to any person, any chattel, money, security for money or other property whatsoever—

Demanding property upon forged instruments.
38, 1876, s. 255.

- (a) under, upon or by virtue of any forged instrument, knowing the instrument to be forged;
- (b) under, upon or by virtue of any probate or letters of administration, knowing the will, testament, codicil or testamentary writing on which the probate or letters of administration were obtained to have been forged or knowing the probate or letters of administration to have been obtained by false oath, affirmation or affidavit,

shall be guilty of felony and liable to be imprisoned for a term not exceeding fourteen years.

Forgeries not
already specified.
38, 1876, s. 258.

235. Any person who forges any instrument or matter, the forging of which is not punishable under any of the preceding sections or under any other Act, shall be liable to be imprisoned for a term not exceeding fourteen years.

Search warrants
for implements of
forgery.
38, 1876, s. 263.
S. 236 amended
by 50, 1984, s. 3
(1) (1st Sched.).

236. If it is made to appear, by information on oath before a justice, that there is reasonable cause to believe that any person has in his custody or possession, without lawful authority or excuse—

- (a) any note or bill of any bank;
- (b) any frame, mould or implement for making paper in imitation of the paper used for such notes or bills;
- (c) any such paper, or any plate or other material having thereon any words, forms, devices or characters capable of producing, or intended to produce, the impression of any such note or bill or any part thereof;
- (d) any tool, implement or material used or employed, or intended to be used or employed, in or about any of those operations;
- (e) any forged security, document or instrument;
- (f) any machinery, frame, mould, plate, die, seal, paper or other matter or thing used or employed, or intended to be used or employed, in the forgery of any security, document or instrument,

the justice may, if he thinks fit, grant a warrant to search for the same and, if the same is found on such a search, it shall be lawful to seize and carry the same before some justice to be disposed of by him according to law; and all such matters and things so seized shall, by order of the court before which the offender is tried or, if there is no trial, then by order of a justice, be defaced and destroyed or otherwise disposed of as the court or justice directs.

PART VII

OFFENCES OF A PUBLIC NATURE

Offences against Public Justice

Compounding
penal actions.
38, 1876, s. 289.

237. Any person who, having brought, or under colour of bringing, any action against any person under any penal statute in order to obtain from him any penalty, compounds the action without the order or consent of the Supreme Court shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Rescuing
murderers.
38, 1876, s. 290.
S. 238 amended
by 115, 1976,
s. 8; 107, 1981,
s. 23.

238. Any person who, by force, sets at liberty, or rescues, any person committed for, or found guilty of, murder shall be guilty of felony and liable to be imprisoned for life.

Perjury and
subornation.
38, 1876, ss. 291,
295, 376.
S. 239 substituted
by 56, 1984, s. 4.

239. (1) A person who makes a false statement under oath is guilty of perjury.

(2) A person who incites, procures, induces, aids or abets another to make a false statement under oath is guilty of subornation of perjury.

(3) In proceedings upon a charge of perjury or subornation of perjury, an apparently genuine document that appears to be a transcript of evidence given before a court in some other proceedings shall be accepted as evidence—

- (a) of the evidence given in those other proceedings;
- (b) where evidence appears from the transcript to have been given by a particular person—that it was so given;

and

- (c) where evidence appears from the transcript to have been given under oath—that it was so given.

(4) Where it appears to a court that there are reasonable grounds to believe that a person appearing as a witness before the court has made, under oath, a false statement in evidence given before the court, the court may direct that the person be prosecuted for perjury and, in that event, the person shall be immediately taken before a justice to be dealt with upon a charge of perjury.

(5) It is not necessary for the conviction of a person for perjury or subornation of perjury that evidence of the perjury be corroborated.

(6) A person who is convicted of perjury or subornation of perjury is liable to imprisonment for a term not exceeding four years.

(7) For the purposes of this section—

- (a) “court” includes a tribunal, authority or person invested by law with judicial or quasi-judicial powers, or with authority to make any inquiry or to receive evidence:

“oath” includes an affirmation;

and

- (b) a statement shall be taken to be false if it is false in a material particular and—

- (i) in the case of perjury—the person by whom it was made knew it to be false or did not believe it to be true;

or

- (ii) in the case of subornation of perjury—the person who incited, procured, induced, aided or abetted the other person to make the statement knew it to be false or did not believe it to be true.

240. Any person who, being an associate, clerk of a court or any other officer, exacts any fee or gratuity from any prisoner on his entrance or commitment to, or discharge from, prison or from any person charged with any felony or misdemeanour before any court of criminal jurisdiction who on his trial is acquitted, or discharged in any other way, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding one year.

Exacting fees
from prisoners.
38, 1876, s. 297.

241. Any person who, being a gaoler, exacts from any prisoner any fee or gratuity on account of the entrance, commitment or discharge of that prisoner, or detains any person in custody for non-payment of any fee or gratuity, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding one year.

Gaoler exacting
fees from
prisoners.
38, 1876, s. 298.

Unlawfully
administering
oaths.
38, 1876, s. 296.

242. (1) Any person who knowingly administers, or causes or allows to be administered, or receives, or causes or allows to be received, any oath, affidavit or affirmation, without statutory authority, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding one year.

(2) The provisions of this section do not extend to any oath, affidavit or affirmation made before any justice in any matter or thing touching the preservation of the peace or the prosecution, trial or punishment of offences, or any proceedings before either House of Parliament or any committee thereof, or any commission, or to any oath, affidavit or affirmation which is required by the laws of any foreign country to give validity to instruments in writing designed to be used in that foreign country.

Forcible Entry

Forcible entry.
2168, 1934, s. 4
(2nd Sched.).

243. Any person who, by force or threats or by collecting together an unusual number of people, enters on any lands or tenements in order to take possession thereof, whether he has a legal right to enter thereon or not, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Riots

Rioters remaining
after
proclamation.
38, 1876, ss. 300,
301.
Subsec. (1)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

244. (1) Whenever twelve or more persons are unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, it shall be the duty of the sheriff, the Lord Mayor of the City of Adelaide or the mayor of any corporate town where the assembly is, and all special magistrates and justices, on notice or knowledge of the assembly, to resort to the place of assembly and among the rioters, or as near to them as the person making the proclamation can safely come, and with a loud voice command, or cause to be commanded, silence to be kept and then openly and with a loud voice make, or cause to be made, a proclamation in these words: "Our Sovereign Lady the Queen charges and commands all persons here assembled immediately to disperse themselves and peaceably to depart to their habitations or lawful business, or they will be guilty of a crime and liable to be imprisoned. God Save The Queen."

(2) All persons who—

- (a) wilfully and knowingly oppose, obstruct, hinder or hurt any person who begins to make, or goes to make, the proclamation, so that the proclamation is not made;
- (b) remain or continue together to the number of twelve or more unlawfully, riotously and tumultuously for one hour after the proclamation was made or, if they know that its making was hindered, for one hour after it would have been made if it had not been hindered,

shall be guilty of felony and liable to be imprisoned for life.

Riotously
preventing
loading of ships.
38, 1876, ss. 302,
303.

245. (1) All persons who, being riotously assembled together to the number of three or more, unlawfully and with force—

- (a) prevent, hinder or obstruct the loading or unloading, or the sailing or navigating, of any ship or other vessel;

- (b) board any ship or other vessel with intent to prevent, hinder or obstruct the loading or unloading, or the sailing or navigating, of the ship or other vessel,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding one year.

(2) Any person who commits an offence against this section after a previous conviction for such an offence shall be guilty of felony and liable to be imprisoned for a term not exceeding eight years.

(3) No person shall be prosecuted for any offence against this section unless the prosecution is commenced within one year of the commission of the offence.

Defamatory Libels

246. Any person who maliciously publishes any defamatory libel, knowing it to be false, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years or to pay a fine not exceeding two thousand dollars or to both.

Publishing defamatory libel knowing it to be false.
38, 1876, s. 305.
S. 246 amended by 50, 1984, s. 3 (1) (1st Sched.).

247. Any person who maliciously publishes any defamatory libel shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding one year or to pay a fine not exceeding one thousand dollars or to both.

Defamatory libel.
38, 1876, s. 304.
S. 247 amended by 50, 1984, s. 3 (1) (1st Sched.).

248. (1) On the trial of an information for publishing a defamatory libel, the truth of the matters charged in the alleged libel shall not amount to a defence or be inquired into unless—

Plea of justification.
38, 1876, s. 306.

- (a) the publication of those matters was for the public benefit;

and

- (b) the defendant has entered a plea of justification.

(2) A plea of justification shall be in the form used for such a plea in an action for defamation and must allege, with particulars of the facts relied on, that it was for the public benefit that the matters charged in the alleged libel should be published and that those matters were true.

(3) The prosecutor may reply generally to a plea of justification, denying the whole.

(4) If a defendant who has entered a plea of justification is convicted, the court may, in fixing sentence, consider any evidence given in support of, or in answer to, that plea, either in aggravation or mitigation.

(5) A defendant may enter a plea of not guilty in addition to a plea of justification, and the provisions of this section shall not take away or prejudice any defence under the plea of not guilty which it is now competent for the defendant to make under that plea to an action or information for defamatory words or libel.

249. (1) It shall be lawful for any defendant, in any civil or criminal proceeding in respect of the publication of any report, paper, votes or proceedings of Parliament which either House of Parliament thinks fit and necessary and has authorized to be published, to bring before the court, after giving twenty-four hours notice to the plaintiff or prosecutor of his

Publishing parliamentary reports.
38, 1876, ss. 307, 308.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

intention so to do, a certificate under the hand of the President or Clerk of the Legislative Council or the Speaker or Clerk of the House of Assembly stating that the matter in question was published by order or under the authority of the Legislative Council or House of Assembly, as the case may be, together with an affidavit verifying the certificate, and the court shall thereupon stay the proceeding and that proceeding, and every writ and process pertaining to that proceeding, shall be put an end to and superseded by virtue of this Act.

Subsec. (2)
amended by 50,
1984, s. 3 (1)
(1st Sched.).

(2) It shall be lawful for the defendant in any civil or criminal proceeding in respect of the publication of any copy of any such report, paper, votes or proceedings to lay before the court, at any stage of the proceeding, the report, paper, votes or proceedings and the copy, together with an affidavit verifying the copy and the correctness of the copy, and the court shall thereupon stay the proceeding and that proceeding, and every writ and process pertaining to that proceeding, shall be put an end to and superseded by virtue of this Act.

(3) It shall be a good defence to any civil or criminal proceeding in respect of the printing of any extract from, or abstract of, any such report, paper, votes or proceedings if the defendant proves that the extract or abstract was published in good faith and without malice.

Evidence of
publication.
38, 1876, s. 308.

250. Whenever on the trial of any information for the publication of a libel evidence has been given which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be a good defence if the defendant proves that the publication was made without his authority, consent or knowledge and that the publication did not arise from want of due care or caution on his part.

Verdict.
38, 1876, s. 309.
S. 251 amended
by 50, 1984,
s. 3 (1)
(1st Sched.).

251. On the trial of any information for making or publishing a libel where any issue is joined on the plea of not guilty, the jury may give a general verdict of guilty or not guilty on the whole matter put in issue and shall not be required or directed by the court or judge before whom the information is tried to find the defendant guilty merely on proof of the publication by him of the paper charged to be a libel and of the sense ascribed to it in the information; but nothing in this section prevents the jury from finding a special verdict in their discretion as in other criminal cases; and on every such trial, the court or judge shall give its or his opinion and directions to the jury on the matter in issue as in other criminal cases.

Costs in
prosecutions for
libel.
38, 1876, s. 310.

252. In the case of any information by a private prosecutor for the publication of any defamatory libel, if judgment is given for the defendant, he shall be entitled to recover from the prosecutor his costs sustained by reason of the information and, on a plea of justification to the information, if the issue is found for the prosecutor, the prosecutor shall be entitled to recover from the defendant his costs sustained by reason of that plea, those costs in either case to be taxed by a master of the Supreme Court.

Trafficking in Public Offices

Trafficking in
public offices.
38, 1876, ss. 312,
313.

253. (1) Any person who—

(a) sells, or agrees to sell, or takes, or agrees to take, any reward or profit from the sale of;

or

(b) purchases, or agrees or promises to purchase, or gives, or agrees or promises to give, any reward or profit for the purchase of, any office, or any appointment to, or resignation of, any office, or any consent to any such resignation or appointment, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

(2) Any person who—

- (a) receives, or agrees to receive, any reward or profit for any interest, request or negotiation about any office or, under pretence of using any such interest, making any such request or being concerned in any such negotiation;
- (b) gives, or procures to be given, or makes, or procures to be made, any agreement for the giving of any reward or profit for any such interest, request or negotiation;
- (c) solicits, recommends or negotiates in any manner as to any appointment to, or resignation from, any office, in expectation of reward or profit;
- (d) opens, or keeps open, any place for transacting or negotiating any business relating to vacancies in, or the sale or purchase of, or appointment to, or resignation from, offices,

shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

(3) The provisions of this section do not prevent or make void any deputation to any office in any case in which it is lawful to appoint a deputy, or any agreement lawfully made in respect of any allowance, salary or payment made, or agreed to be made, by or to the principal or deputy respectively out of the fees or profits of the office.

(4) In this section—

“office” means any office, commission, place or employment of profit or emolument under the Crown in South Australia, or any deputation thereto, or participation in the profits thereof.

Subsec. (4) amended by 50, 1984, s. 3 (1) (1st Sched.).

Nuisance by Fireworks

254. Any person who throws or fires any fireworks in or into any public street, house, shop, highway, road or passage shall be guilty of a misdemeanour punishable summarily and liable to be imprisoned for a term not exceeding six months.

Nuisance by fireworks. 38, 1876, s. 319.

Offences against Morality, Public Health, etc.

255. Any person who lewdly exposes his person in, or within view of, any street, road or public place shall be guilty of a misdemeanour and liable for a first offence to be imprisoned for a term not exceeding two years and for a subsequent offence shall be liable to be imprisoned for a term not exceeding four years.

Lewdness. 38, 1876, s. 315. 1303, 1917, s. 4. S. 255 amended by 58, 1971, s. 6.

256. (1) Any person who—

(a) suffering from any dangerous infectious disease—

- (i) enters any railway carriage or public conveyance without notifying the fact that he is so suffering to the guard of the railway carriage or the owner or driver of the conveyance;

Offences in respect of infectious diseases. 38, 1876, ss. 316-318.

Subpara. (ii) amended by 50, 1984, s. 3 (1) (1st Sched.).

(ii) wilfully exposes himself without proper precaution against spreading that disease in any street, road, public place, railway carriage or public conveyance;

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

(b) being in charge of any person so suffering, wilfully exposes that person in any manner referred to in paragraph (a);

(c) being the owner or driver of a public conveyance, does not immediately provide for the disinfection of the conveyance after it has, with his knowledge, conveyed any person so suffering;

(d) without previous disinfection, gives, lends, sells, transmits or exposes any bedding, clothing or other thing which has been exposed to infection from such disease;

(e) knowingly lets any house, room or part of a house in which any person so suffering has been lodging or residing to any other person without having the house, room or part of a house and all articles therein liable to retain infection disinfected to the satisfaction of an inspector of the Board of Health or of a legally qualified medical practitioner, as testified by a certificate to be given by the inspector or medical practitioner,

shall be guilty of an offence punishable summarily and liable to a fine not exceeding one hundred dollars.

(2) For the purposes of this section, the holder of a publican's licence shall be deemed to let part of a house to any person admitted as a guest into the licensed premises.

Offences against Religion, etc.

Interrupting religious worship. 38, 1876, s. 320. S. 257 amended by 50, 1984, s. 3 (1) (1st Sched.).

257. Any person who wilfully interrupts or disturbs any congregation, meeting or assembly of persons assembled for religious worship, by noise, profane discourse or rude or indecent behaviour, either within the place where that congregation, meeting or assembly is held or so near to it as to disturb the order and solemnity of that congregation, meeting or assembly, shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Molesting preachers. 38, 1876, s. 321.

258. Any person who in any way wilfully disturbs, molests or misuses any preacher, teacher or person officiating at any congregation, meeting or assembly of persons assembled for religious worship or any person present at such a congregation, meeting or assembly shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Pretending to witchcraft. 38, 1876, s. 322.

259. Any person who pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration or undertakes to tell fortunes or pretends from his skill or knowledge in any occult science to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding two years.

Conspiracy and Protection of Property

Conspiracy in relation to industrial disputes. 38, 1876, s. 324. 109, 1878, s. 3. S. 260 amended by 109, 1972, s. 3.

260. (1) No agreement or combination by two or more persons to do, or procure to be done, any act in contemplation or furtherance of an industrial dispute as defined in the Industrial Conciliation and Arbitration Act, 1972, shall be punishable as a conspiracy if the act, if committed by one person, would not be punishable by imprisonment.

(2) When any person is convicted of conspiracy by reason of any such agreement or combination to do, or procure to be done, any act which is punishable only on summary conviction, any term of imprisonment imposed on him shall not exceed three months, unless a longer term is prescribed by an Act of Parliament for the punishment of that act when committed by one person.

(3) Nothing in this section affects the law relating to riot, unlawful assembly, breach of the peace, sedition or any offence against the Sovereign or exempts from punishment any person guilty of a conspiracy for which any punishment is prescribed by any Act of Parliament.

(4) No person shall be liable to any punishment for doing, or conspiring to do, any act on the ground that the act restrains, or tends to restrain, the free course of trade, unless the act amounts to an offence against this Act.

261. (1) Any servant in the employ of the Government, or of any person on whom is imposed by any Act, or who has otherwise assumed, the duty of carrying on and conducting railways or tramways, or of supplying any place with gas or water, who wilfully or maliciously breaks his contract of service or hiring, knowing, or having reasonable cause to believe, that the probable consequence of his so doing, either alone or in combination with others, will be to deprive any person, either wholly or to a great extent, of the use of the railway or tramway or the supply of gas or water, shall be guilty of an offence and liable to a fine not exceeding forty dollars or to be imprisoned for a term not exceeding three months.

Breach of contract by railway and other employees.
109, 1878, s. 4.

(2) No person shall be convicted of an offence against this section unless there is posted up at his place of employment a printed copy of this section, in a conspicuous place where it may conveniently be read by the persons employed.

262. Any servant who wilfully and maliciously breaks his contract of service or hiring, knowing, or having reasonable cause to believe, that the probable consequence of his so doing, either alone or in combination with others, will be to endanger human life or cause serious bodily injury or to expose valuable property, whether real or personal, to destruction or serious injury, shall be guilty of an offence and liable to a fine not exceeding forty dollars or to be imprisoned for a term not exceeding three months.

Breach of contract by servant involving probable injury to persons or property.
109, 1878, s. 5.

263. Any master who, being legally liable to provide for his servant necessary food, clothing, medical aid or lodging, wilfully and without lawful excuse refuses or neglects to provide such food, clothing, medical aid or lodging, so that the health of the servant is, or is likely to be, seriously or permanently injured, shall be guilty of an offence and liable to a fine not exceeding forty dollars or to be imprisoned for a term not exceeding six months.

Neglect by master to provide food, clothing, etc., for servant.
109, 1878, s. 6.

264. Any person who, with a view to compelling another person to do or abstain from doing any act which that other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

Penalty for intimidation or annoyance by violence or otherwise.
109, 1878, s. 7.

(a) uses violence to, or intimidates, that other person or his wife or children, or injures his property;

S. 264 amended by 50, 1984, s. 3 (1) (1st Sched.).

(b) persistently follows that other person about from place to place;

(c) hides any tools, clothes or other property owned or used by that other person, or deprives him of, or hinders him in, the use thereof;

(d) watches or besets the house or other place where that other person resides, works or carries on business, or happens to be on the approach to that house or place;

(e) follows that other person with two or more other persons in a disorderly manner in or through any street or road,

shall be guilty of an offence and liable to a fine not exceeding forty dollars or to be imprisoned for a term not exceeding three months; but, for the purposes of this section, attending at or near the house or place where a person resides, works or carries on business, or happens to be on the approach to that house or place, with the object merely of obtaining or giving information shall not be deemed to be a watching or besetting within the meaning of this section.

Offences triable summarily.
109, 1878, s. 8.
S. 265 amended by 50, 1984, s. 3 s. 3 (1) (1st Sched.)

265. All proceedings for offences against sections 261 to 264 shall be disposed of summarily but, if any accused person objects to being tried summarily, the court shall treat the proceedings as though they were for an indictable offence and the accused person may be informed against and tried in the Supreme Court.

Interpretation.
109, 1878, ss. 2, 10.
S. 266 amended by 50, 1984, s. 3 (1) (1st Sched.).

266. In sections 261 to 265 the following provisions shall apply:

(a) nothing in those sections shall apply to seamen or apprentices to the sea service;

(b) nothing in those sections shall in any way affect the provisions of the Industrial Conciliation and Arbitration Act, 1972;

(c) unless inconsistent with the context—

“master” includes any person, and the attorney, agent or any person having the control or management of the business of any person, who has entered into a contract to employ any servant, workman, clerk, labourer, apprentice or other person:

“servant” includes any person who has entered into a contract to serve any master, either at salary, wages or any other remuneration or by the performance of work at a price by the piece or in gross.

Para. (b) amended by 71, 1969, s. 11; 109, 1972, s. 4.

PART VIII ACCESSARIES

Accessaries before the fact.
38, 1876, ss. 325-327.

267. (1) Any person who becomes an accessory before the fact to any felony, whether a felony at common law or under any Act, may be informed against, tried, convicted and punished in all respects as if he were a principal felon.

(2) An accessory before the fact to a felony may be tried either together with or without the principal felon and whether the principal felon has or has not been tried or is or is not amenable to justice.

(3) An accessory before the fact to a felony may be dealt with by the court having jurisdiction to deal with the principal felon wherever (either within or outside the State) the offence of the accessory was committed.

268. (1) A person who becomes an accessory after the fact to a felony (whether the felony is constituted by statute or common law) shall be guilty of a felony and liable to be imprisoned for a term not exceeding five years or, where the felony to which he became an accessory was a homicide, for a term not exceeding ten years.

Accessories after the fact. 38, 1876, ss. 328, 329. Subsec. (1) substituted by 107, 1981, s. 24.

(2) An accessory after the fact may be informed against, tried and convicted either together with or without the principal felon and whether the principal felon has or has not been convicted or is or is not amenable to justice.

(3) An accessory after the fact may be dealt with by the court having jurisdiction to deal with the principal felon wherever (either within or outside the State) the offence of the accessory was committed.

269. Any person who aids, abets, counsels or procures the commission of any misdemeanour, whether it is a misdemeanour at common law or under any Act, shall be liable to be prosecuted and punished as a principal offender.

Abettors in misdemeanours. 38, 1876, s. 331.

PART IX

MISCELLANEOUS AND PROCEDURE

Punishment for Certain Common Law Misdemeanours

270. (1) Any person convicted of any of the following common law misdemeanours, that is to say:

Punishment for certain offences. 38, 1876, s. 389, 1670, 1925, s. 10. Para. (a) repealed by 107, 1981, s. 25.

* * * * *

- (b) any nuisance, keeping a common gaming house, a common bawdy house or a common ill-governed and disorderly house;
- (c) any cheat or fraud punishable at common law;
- (d) any escape or rescue from lawful custody on a criminal charge;
- (e) any public selling, or exposing for public sale or to public view, of any obscene book, print, picture or other indecent exhibition,

shall be liable to be imprisoned for a term not exceeding two years.

(2) Any person convicted of any of the following common law misdemeanours, that is to say, any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert or defeat the course of public justice, shall be liable to be imprisoned for a term not exceeding seven years.

Attempts

Heading inserted by 107, 1981, s. 26. Attempts. S. 270a inserted by 107, 1981, s. 26.

270a. (1) Subject to subsection (2), a person who attempts to commit an offence (whether the offence is constituted by statute or common law) shall be guilty of the offence of attempting to commit that offence.

(2) Where under a provision of any other Act, or any other provision of this Act, an attempt is constituted as an offence, this section—

(a) does not apply in relation to that offence;

and

(b) does not operate to create a further or alternative offence with which a person who commits the former offence might be charged.

(3) The penalty for an attempt to which this section applies shall be as follows:

(a) in the case of attempted murder or attempted treason, the penalty shall be life imprisonment or imprisonment for some lesser term;

(b) where the penalty or maximum penalty for the principal offence (not being treason or murder) is life imprisonment, the penalty for the attempt shall be imprisonment for a term not exceeding twelve years;

(c) in any other case, the penalty for the attempt shall be a penalty not exceeding a maximum of two-thirds of the maximum penalty prescribed for the principal offence.

(4) Where the principal offence is an indictable offence, an attempt to commit that offence shall also be an indictable offence; where the principal offence is a minor indictable offence, an attempt to commit that offence shall also be a minor indictable offence; and where the principal offence is a summary offence, an attempt to commit that offence shall also be a summary offence.

Attempted
manslaughter.
S. 270ab inserted
by 45, 1983, s. 3.

270ab. (1) Where—

(a) a person attempts to kill another or is a party to an attempt to kill another;

and

(b) he would, if the attempt had been successfully carried to completion, have been guilty of manslaughter rather than murder,

he shall be guilty of the felony of attempted manslaughter.

(2) The penalty for attempted manslaughter is imprisonment for a term not exceeding twelve years.

(3) If on the trial of a person for attempted murder the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of attempted manslaughter, the jury shall acquit the accused of attempted murder but may find him guilty of attempted manslaughter.

Heading inserted
by 107, 1981,
s. 26.

Assaults with Intent to Commit Felonies or Indictable Misdemeanours

Assaults with
intent.
S. 270b inserted
by 107, 1981,
s. 26.

270b. (1) Subject to subsection (2), a person who assaults another with intent to commit a felony or indictable misdemeanour (whether constituted by statute or common law) shall be guilty of an indictable misdemeanour.

(2) Where under a provision of any other Act, or any other provision of this Act, an assault with intent to commit a felony or indictable misdemeanour is constituted as an offence, this section—

- (a) does not apply in relation to that offence;
and
- (b) does not operate to create a further or alternative offence with which a person who commits the former offence might be charged.
- (3) The penalty for assault to which this section applies shall be—
- (a) imprisonment for a term not exceeding seven years;
or
- (b) imprisonment for a term not exceeding the maximum term that may be imposed for an attempt to commit the principal offence, whichever is the greater maximum penalty.

Apprehension of Offenders

271. Any person found committing any offence punishable either on information or on summary conviction by virtue of this Act, or found in possession of any property on or in respect of which there is reasonable cause to believe that any felony or misdemeanour has been committed and that the person either committed the felony or misdemeanour or unlawfully received the property, knowing the felony or misdemeanour to have been committed, may be immediately apprehended, without a warrant, by any person and forthwith taken, together with the property (if any), before a justice to be dealt with according to law.

Persons committing offences may be arrested by any person.
38, 1876, s. 402.

272. Any person may take into custody, without a warrant, any person whom he finds lying or loitering in any highway, yard or other place during the night and whom he has good cause to suspect of having committed, or being about to commit, any felony referred to in this Act, and shall take that person as soon as reasonably may be before a justice to be dealt with according to law; and, if any person so liable to be apprehended under this Act, or any Act relating to the criminal law, assaults or offers any violence to any person authorized by this Act to apprehend or detain him, or to any person acting in his aid and assistance, every such offender shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding three years.

Persons loitering at night and suspected of any felony, etc., may be apprehended.
38, 1876, s. 403.
S. 272 amended by 50, 1984, s. 3 (1) (1st Sched.).

273. (1) Whenever it is made to appear to a judge, by affidavit or certificate, that any person is charged with any offence other than treason for which he may be prosecuted in the Supreme Court, it shall be lawful for the judge to issue a warrant and thereby to cause that person to be apprehended and brought before a judge or a justice in order to be bound, with or without two sufficient sureties, in such sum as is stated in the warrant, with condition to appear in that Court at the time mentioned in the warrant and to answer the information.

Judge's warrant for arrest of person charged.
38, 1876, s. 364.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) Where any such person neglects or refuses to become so bound, it shall be lawful for the judge or justice to commit him to gaol until he becomes so bound or is discharged by order of a judge.

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

Informations

274. (1) The provisions of this Part relating to informations shall apply to any other criminal pleading with any modification made by rules under this Part.

Interpretation.
1909, 1929, s. 2.

Subsec. (2)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

(2) In this Part (except in sections 275 and 276)—

“information” means any criminal information presented to the Supreme Court or a District Criminal Court.

Informations may
be presented in
the name of the
Attorney-General.
38, 1876, s. 334.

275. (1) Any person may be put upon his trial at any criminal sessions of the Supreme Court, for any offence, on an information presented to the Court in the name and by the authority of the Attorney-General.

(2) Every rule of law and enactment for the time being in force in the State relating to indictments and to the manner and form of pleading thereto and to the trial thereon, and generally to all matters subsequent to the finding of the indictment, shall apply to any information so presented.

Attorney-General
may decline to
prosecute.
38, 1876, ss. 334,
335.

276. (1) Subject to subsection (2), in every case in which any person has been lawfully committed for trial at any criminal sessions, it shall be the duty of the Attorney-General to present, or cause to be presented, an information against that person.

Subsec. (2)
amended by 88,
1975, s. 3 (1)
(2nd Sched.); 50,
1984, s. 3 (1) (1st
Sched.).

(2) If on examining the depositions taken in any case the Attorney-General is of the opinion that there is no reasonable ground for putting the person committed for trial upon his trial for any offence, he may so certify, in the form contained in schedule 1, to the judges of the Supreme Court, any one of whom may, if the accused person is in prison, thereupon, by warrant in the form contained in schedule 2, direct the Director of Correctional Services, or the gaoler in whose custody the person is, immediately to discharge him from imprisonment in respect of the offence mentioned in that warrant and, where the person mentioned in the certificate is on bail, the recognizances of bail taken from him and his sureties shall, on the Attorney-General so certifying, become void.

General
provisions as to
informations.
1909, 1929, s. 3.

277. (1) Every information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) Notwithstanding any rule of law or practice, an information shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the rules under this Part.

Joinder of
charges.
1670, 1925, s. 12.

278. (1) Subject to the provisions of this Act, charges for more than one felony or for more than one misdemeanour, and charges for both felonies and misdemeanours, may be joined in the same information if those charges are founded on the same facts, or form, or are a part of, a series of offences of the same or a similar character.

(2) Where before trial, or at any stage of a trial, the court is of the opinion that an accused person may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information or that, for any other reason, it is desirable to direct that an accused person should be tried separately for any one or more offences charged in an information, the court may order a separate trial of any count or counts of the information.

(3) This section does not affect any other provision of this Act or any other enactment permitting more than one charge to be joined in the same information.

279. Any number of accessories at different times to any felony and any number of receivers at different times of property which has been stolen at one time may be charged with substantive felonies in the same information and may be tried together, notwithstanding that the principal felon is not included in the same information or is not amenable to justice.

Joint trial of accessories.
38, 1876, s. 332.

280. (1) In every information in which it is necessary to mention or make any allegation as to any money or any note of any bank, it is sufficient to describe the money or bank note simply as money, without specifying any particular coin or bank note.

Coin and bank notes may be described simply as money.
38, 1876, s. 349.

(2) Any such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note although the particular species of coin of which the amount was composed or the particular nature of the bank note is not proved and, in cases of embezzlement and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any coin or any bank note, or any portion of the value thereof, although the coin or bank note was delivered to him in order that some part of its value should be returned to the party delivering it, or to some other person, and that part has been returned accordingly.

Subsec. (2) amended by S.O. 1984, s. 3 (1) (1st Sched.).

281. (1) Every objection to any information for any formal defect apparent on the face thereof shall be taken by demurrer, or motion to quash the information, before the jury is empanelled and not afterwards.

Objections to informations, amendments and postponement of trial.
1909, 1929, s. 4,
38, 1876, ss. 337,
338, 341.

(2) When before trial, or at any stage of a trial, it appears to the court that any information is defective or that there is any variation between any particular stated therein and the evidence offered in proof thereof, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case unless, having regard to the merits of the case, the required amendment cannot be made without injustice.

(3) When an information is so amended, a note of the order for amendment shall be endorsed on the information and the information shall be treated, for the purposes of the trial and all proceedings in connection therewith, as having been presented in the amended form.

(4) When before trial, or at any stage of a trial, the court is of the opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the court under this Act to amend an information or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(5) When an order of the court is made for a separate trial or for the postponement of a trial—

(a) if the order is made during a trial, the court may order that the jury be discharged from giving a verdict on the count or counts the trial of which is postponed or on the whole information, as the case may be;

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been presented as a separate information and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged) as if the trial had not commenced;

and

- (c) the court may make such order as to admitting the accused person to bail and as to the enlargement of recognizances and otherwise as the court thinks fit.

(6) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

Change of Forum

Heading inserted by 109, 1981, s. 59.

Change of forum. S. 281a inserted by 109, 1981, s. 59.

281a. (1) Where a person has been committed for trial in the Supreme Court and the Court is of the opinion that the trial of the defendant might be appropriately conducted by a District Court, the Supreme Court may, of its own motion, or on the application of the Attorney-General or the defendant, direct that the case be referred to a District Court and, where such a direction is given, the District Court to which the case is referred shall hear and determine the case as if the defendant had been committed for trial in that District Court.

(2) A direction shall not be given under subsection (1) in respect of a case involving a charge of treason, murder, attempted murder, rape or armed robbery.

(3) Where a person has been committed for trial in a District Court and the Supreme Court is of the opinion that the trial should be conducted by the Supreme Court, the Supreme Court may, on the application of the Attorney-General or the defendant, direct that the case be referred to the Supreme Court and, where such a direction is given, the Supreme Court shall hear and determine the case as if the defendant had been committed for trial in the Supreme Court.

(4) In determining whether to make a direction under subsection (1) or (3), the Supreme Court shall have regard to—

- (a) the gravity of the offence or offences;
- (b) the complexity or otherwise of the evidence to be given at the trial;
- (c) the difficulty or uncertainty of the law involved or likely to be involved at the trial;
- (d) the views (so far as they have been expressed) of the parties to the proceedings;

and

- (e) the circumstances of the case generally.

Saving and Transitional Provisions

Heading inserted by 109, 1981, s. 60.

Saving provisions. 1909, 1929, s. 5. S. 282 amended by 50, 1984, s. 3 (1) (1st Sched.).

282. Nothing in this Part—

- (a) affects the law or practice relating to the jurisdiction of any court or the place where an accused person can be tried;
- (b) (except where expressly provided) prejudices or diminishes in any respect the obligation to establish, by evidence according to law, any acts, omissions or intentions which are legally necessary

to constitute the offence with which the accused person is charged;

or

(c) otherwise affects the laws of evidence in criminal cases.

283. (1) Subject to subsection (2), the rules contained in schedule 3, with any variation thereof or addition thereto under this section, shall have effect as if enacted in this Act.

Rules of court.
1909, 1929, s. 6.

(2) Rules of court made under the Supreme Court Act, 1935, may revoke, vary or add to the rules contained in the schedule or any other rules for the time being in force under this Part.

Subsec. (2)
amended by 71,
1969, s. 12; 50,
1984, s. 3 (1) (1st
Sch.).

Pleas and Proceedings on Trial

284. (1) Any person arraigned on any information who pleads not guilty thereto shall, by that plea, without any further form, be taken to have put himself upon the country for trial; and the court shall, in the usual manner, proceed to the trial of that person accordingly.

Plea of not guilty
and refusal to
plead.
38, 1876, s. 368.

(2) If any person, being so arraigned, stands mute, of malice, or is dumb, or will not answer directly to the information, it shall be lawful for the court to order a plea of not guilty to be entered on his behalf and the plea so entered shall have the same effect as if he had actually pleaded not guilty.

285. In any plea of *autrefois convict* or of *autrefois acquit*, it is 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 information, without specifying the time or place of the previous conviction or acquittal.

Form of plea of
autrefois convict
or *autrefois*
acquit.
38, 1876, s. 369.

285a. A court before which a person has been arraigned may, if it thinks fit, hear and determine any question relating to the admissibility of evidence, and any other question of law affecting the conduct of the trial, before the jury is empanelled.

Certain questions
of law may be
determined before
jury empanelled.
S. 285a inserted
by 108, 1981, s. 2.

285b. Where a person arraigned on an information pleads not guilty of an offence charged in the information but guilty of some other offence of which he might be found guilty upon trial for the offence charged, and the plea of guilty is accepted by the prosecution, then (whether or not the two offences are separately charged in distinct counts)—

Conviction on
plea of guilty of
offence other than
that charged.
S. 285b inserted
by 45, 1983, s. 4.

(a) the person may be convicted on the plea of guilty and his conviction shall operate as an acquittal of the offence charged;

(b) if he has been placed in the charge of the jury, the jury shall be discharged without being required to give a verdict (unless the trial is to continue in respect of further counts that are unaffected by the plea);

and

(c) he shall be liable to be punished for the offence of which he has been convicted in the same manner as if he had been found guilty of the offence upon trial for the offence charged.

285c. (1) Subject to subsection (2), if a defendant proposes to introduce evidence of alibi at the trial of an indictable offence in the Supreme Court or a District Criminal Court, prior notice of the proposed evidence must be given.

Notice of certain
evidence to be
given.
S. 285c inserted
by 78, 1984, s. 2.

(2) Notice of proposed evidence of alibi is not required under subsection (1) if the same evidence, or evidence to substantially the same effect, was received at the preliminary examination at which the defendant was committed for trial.

(3) The notice—

(a) must be in writing;

(b) must contain—

(i) a summary setting out with reasonable particularity the facts sought to be established by the evidence;

(ii) the name and address of the witness by whom the evidence is to be given;

and

(iii) any other particulars that may be required by the rules;

(c) must be given within seven days after the defendant is committed for trial;

(d) must be given by lodging the notice at the office of the Crown Prosecutor or by serving the notice by post on the Crown Prosecutor.

(4) Non-compliance with this section does not render evidence inadmissible but the non-compliance may be made the subject of comment to the jury.

(5) Except by leave of the court, evidence in rebuttal of an alibi shall not be adduced after the close of the case for the prosecution.

(6) Leave shall be granted under subsection (5) where the defendant gives or adduces evidence of alibi in respect of which—

(a) no notice was given under this section;

or

(b) notice was given but not with sufficient particularity,

(but this section does not limit the discretion of the court to grant such leave in any other case).

(7) In any legal proceedings, a certificate apparently signed by the Crown Prosecutor certifying receipt or non-receipt of a notice under this section, or any matters relevant to the question of the sufficiency of a notice given by a defendant under this section, shall be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

(8) In this section—

“evidence” includes an unsworn statement:

“evidence of alibi” means evidence given or adduced, or to be given or adduced, by a defendant tending to show that he was in a particular place or within a particular area at a particular time and thus tending to rebut an allegation made against him either in the charge on which he is to be tried or in evidence adduced in support of the charge at the preliminary examination at which he was committed for trial.

286. Every accused person shall be entitled—

- (a) at the time of his trial, to inspect, without fee or reward, all depositions taken against him which are in the custody of the court;
- (b) at any time before his trial, to have a copy of all depositions taken against him from the person having the lawful custody thereof, on payment of such fee as the court or a judge may direct.

Inspection and copies of depositions. 38, 1876, ss. 374, 375.

Para. (b) amended by 71, 1969, s. 13.

287. Any judge may order any money or property in the hands of the police taken from any prisoner to be paid out on the order of the prisoner for the purposes of his defence, except where, in the opinion of the judge, it is required for the purposes of identification or otherwise at the trial or where the property is the subject of a criminal prosecution.

Prisoner's property may be made available for his defence. 38, 1876, s. 396.

288. (1) All persons tried on information shall be permitted to be defended by counsel.

Defence by counsel and addresses. 38, 1876, s. 372. 13, 1866-7, s. 2.

(2) If any accused person is defended by counsel, but not otherwise, it is the duty of the judge, at the close of the case for the prosecution, to ask the counsel for each accused so defended whether he or they intend to adduce evidence and, in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time for the purpose of summing up the evidence.

(3) Every accused person, whether defended by counsel or not, shall be allowed to open his case and, after the conclusion of the opening or of all the openings if more than one, to examine such witnesses as he thinks fit and, when all the evidence is concluded, to sum up the evidence.

(4) The right of reply and the practice and course of proceedings shall be the same as on the trial of an action, but (subject to the provisions of section 20 of the Evidence Act, 1929) no right of reply shall be allowed to counsel for the prosecution unless the accused or some of them have called evidence.

289. (1) No person is entitled to traverse or postpone the trial of any information presented against him in any court of criminal jurisdiction but, if the court is of the opinion that any trial should, for any reason, be adjourned, it may adjourn it to any day during the current sessions, or to the next sessions, on such terms as to bail or otherwise as it thinks fit, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend on the day to which the trial has been adjourned without entering into any fresh recognizances for that purpose.

Postponement of trial. 38, 1876, s. 370.

(2) Nothing in this section extends to any prosecution by information in the nature of a *quo warrantò*.

290. If on the trial of any person charged with any felony or misdemeanour it appears to the jury on the evidence that the accused did not complete the offence charged but that he was guilty only of an attempt to commit the offence, the jury may return as their verdict that the accused is guilty of an attempt to commit the offence charged and thereupon the accused shall be liable to be punished in the same manner as if he had been convicted on an information for such an attempt.

Verdict for attempt where full offence charged. 38, 1876, s. 345.

Conviction of persons tried for misdemeanour if felony proved.
38, 1876, s. 347.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

291. (1) If on the trial of any person for any misdemeanour it appears that the facts given in evidence amount in law to a felony, that person shall not for that reason be entitled to be acquitted of the misdemeanour.

(2) No person tried for a misdemeanour shall be liable to be afterwards prosecuted for felony on the same facts unless the court before which the trial takes place thinks fit, in its discretion, to discharge the jury from giving any verdict on the trial and to direct that the accused be prosecuted for felony, in which case the accused may be dealt with in all respects as if he had not been put upon his trial for the misdemeanour.

Insanity

Verdict of not guilty on ground of insanity.
38, 1876, s. 381.

292. (1) Where it is given in evidence that any person charged with an indictable offence was insane at the time of the commission of the offence and the person so charged is acquitted, the jury shall be required to declare whether he was acquitted by them on the ground of insanity.

(2) The court shall order any person found not guilty on the ground of insanity to be kept in strict custody in such place and in such manner as it thinks fit until the Governor's pleasure is known.

(3) On such an order being made, it shall be lawful for the Governor to order the safe custody of the person so found, during his pleasure, in such place and in such manner as he thinks fit.

Insanity affecting capacity to plead.
38, 1876, s. 382.

293. (1) Where any person charged with an indictable offence is insane, so that he cannot be tried on the information, and is so found either—

(a) by a jury lawfully empanelled for that purpose;

or

(b) by the jury empanelled to try the information,

the court shall direct him to be kept in strict custody until the Governor's pleasure is known.

(2) Where any person charged with an indictable offence and brought before any court to be discharged for want of prosecution appears to be insane, it shall be lawful for the court to order a jury to be empanelled to try the sanity of that person and, if the jury finds him to be insane, the court may order him to be kept in strict custody in such place and in such manner as it thinks fit until the Governor's pleasure is known.

(3) The Governor may order the safe custody, during his pleasure, of any person found to be insane in any of the cases mentioned in this section, in such place and in such manner as he thinks fit.

Release on licence.
S. 293a inserted by 74, 1972, s. 4.

293a. (1) Where the Governor has ordered the safe custody, during his pleasure, of any person found to be insane, he may, on the recommendation of the Parole Board, release that person on licence.

(2) The terms and conditions on which a person is released on licence under this section shall be determined by the Governor on the recommendation of the Parole Board.

(3) Where—

(a) the period for which a person was released on licence under this section has expired;

or

(b) the Parole Board has reasonable cause to suspect that any such person has contravened, or failed to comply with, any term or condition on which he was released,

a person authorized by warrant signed by any two members of the Parole Board may apprehend the person so released and return him to custody, or detain him for examination by the Parole Board, in accordance with the terms of the warrant.

Verdicts

294. No judgment after verdict for any indictable offence shall be stayed or reversed for want of a similitur, nor by reason of any defect or irregularity in the summoning of the jurors, nor for the misnomer or misdescription of a juror, nor because any person has served as a juror who has not been returned by the sheriff as a juror.

Defects cured by verdict.
38, 1876, s. 383.

295. (1) No confession, verdict, inquest, conviction or judgment of or for any treason or felony shall cause any attainder, forfeiture or escheat.

Forfeiture abolished.
25, 1874, ss. 1, 5.
38, 1876, s. 371.

(2) When any person is charged with treason or felony, the jury shall not be charged to inquire concerning his lands, tenements or goods or whether he fled for the treason or felony.

Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(3) In this section—

Subsec. (3) amended by 50, 1984, s. 3 (1) (1st Sched.).

“forfeiture” does not include any fine or penalty imposed by way of sentence.

* * * * *

S. 296 amended by 115, 1976, s. 9; repealed by 49, 1984, s. 3.

Costs, Witness Fees and Compensations

297. (1) The court before which any person is tried, or before which he is committed or bailed to appear for trial, for any indictable offence may order payment of reasonable fees to the witnesses for the prosecution to compensate them for expenses incurred and for their trouble and loss of time in attending before the examining magistrate or justice and in attending the trial and, where there is no trial, in attending the court in good faith in obedience to a recognizance or subpoena.

Fees and compensation.
38, 1876, s. 391.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) The examining magistrate or justice may certify the amount which he considers reasonable for the compensation of a witness for his attendance at the preliminary examination and shall forward his certificate to the court.

Subsec. (2) amended by 102, 1972, s. 4 (a).

(2a) This section does not derogate from the powers conferred on an examining magistrate or justice under the Justices Act, 1921, to order payment of any fees or compensation to witnesses in the course, or at the conclusion, of a preliminary examination.

Subsec. (2a) inserted by 102, 1972, s. 4 (b).

(3) The court may, at the request of any witness for the defence, certify that the witness ought to be paid his expenses and in that case the amount to be paid to the witness shall be the same, and shall be ascertained and paid in the same manner, as if he had been a witness for the prosecution.

1479, 1921, s. 157.

(4) Any court or judge may, in addition to any fees, order the payment of such sum of money as it or he considers reasonable to compensate any person who appears to the court or judge to have been active in or towards the apprehension of any person charged with felony, for his expenses, exertions and loss of time.

38, 1876, s. 393.
Subsec. (4) amended by 50, 1984, s. 3 (1) (1st Sched.).

38, 1976, s. 395.
Subsec. (5)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

(5) If any man is killed in endeavouring to apprehend any person charged with any felony or misdemeanour, the court before which the offender is tried may order the sheriff to pay to the widow of the man so killed, if he was married, or to his child or children, if his wife is dead, or to his father or mother, if he left neither wife nor child, such sum of money as the court in its discretion thinks fit.

1479, 1921,
s. 156.
Subsec. (6)
amended by 102,
1972, s. 4 (c); 50,
1984, s. 3 (1) (1st
Sched.).

(6) Orders for witness fees and other amounts directed to be paid pursuant to this section shall be forthwith made out and delivered by the proper officer to the sheriff, who shall pay the specified amounts to the persons named in the orders out of any moneys in his hands or voted to him for that purpose. If such an order is endorsed "PAY BEARER", or words to that effect, and signed by the person named therein and witnessed by an independent witness, the sheriff shall pay the amount set out therein to the bearer, and that payment shall effectually discharge him from any claims by the person named in the order or any person claiming by, through or under him.

39, 1876, s. 390.

(7) The Governor may make regulations prescribing—

- (a) the rates of expenses and compensation to be allowed or ordered by the court to witnesses or to be certified by the examining magistrate or justice;
- (b) the amount which may be paid to any person who has been active in or towards the apprehension of felons;
- (c) the forms of certificates to be granted by the examining magistrate or justice and the details to be inserted therein.

(8) Such regulations shall not prevent the court from making a special allowance to any person who appears to the court to have shown extraordinary courage, diligence or exertion in or towards the apprehension of any person charged with felony.

Persons convicted
may be
condemned in
costs.
25, 1874, s. 3.

298. (1) It shall be lawful for any court before which any person is convicted of treason or felony, in addition to any sentence which it may impose, to order that person to pay the whole, or any part, of the costs or expenses incurred in and about the prosecution and conviction of that person.

(2) The payment of those costs and expenses, or any part thereof, may be ordered by the court to be made out of any moneys taken from the person on his arrest, or may be enforced at the instance of any person liable to pay, or who has paid, them, in the same manner as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding.

(3) In the meantime and until the recovery of the costs and expenses from the person convicted, or from his estate, they shall be paid and provided for in the same manner as if this section had not been passed, and any money which is recovered in respect thereof from the person convicted, or from his estate, shall be applied to the reimbursement of any person or fund by whom, or out of which, the costs and expenses were paid or defrayed.

Compensation to
persons injured.
25, 1874, s. 4.

299. It shall be lawful for any court before which any person is convicted of felony, on the application of any person aggrieved, to award any sum of money by way of satisfaction for any loss of property suffered by the applicant through, or by means of, the felony, and the amount so awarded shall be deemed a judgment debt due to the person entitled to receive it

from the person convicted and the order for payment of that amount may be enforced in the same manner as in the case of any costs ordered by the court to be paid under section 298.

Firearms and Offensive Weapons

Heading inserted by 102, 1972, s. 5.

299a. (1) Where a court is satisfied by evidence adduced before it that—

(a) a firearm or other offensive weapon was used in the commission of an offence;

(b) the commission of an offence was facilitated by the use of a firearm or other offensive weapon;

or

(c) in the circumstances it is expedient that an order or orders be made under this section,

the court may make any one or more of the following orders:

(d) an order that the firearm or other weapon be forfeited to the Crown;

(e) an order that the firearm or other weapon be delivered into the custody of the Commissioner of Police for a period specified in the order or until further order;

(f) any other order as to the custody or disposition of the firearm;

(g) an order prohibiting any person or persons specified in the order from using or possessing a firearm or offensive weapon of any kind, or of a kind specified in the order, for a period specified in the order or until further order.

(2) Upon application by a person with a proper interest in the matter, the court may vary or revoke an order under subsection (1) (e), (f) or (g).

(3) Where an application is made under subsection (2), the court shall not vary or revoke the order in respect of which the application is made unless it is satisfied that it is not inimical to the safety of the community to do so.

(4) A person who contravenes or fails to comply with an order under this section shall be guilty of an offence cognizable by the court by which the order was made and liable to a penalty not exceeding five hundred dollars or imprisonment for twelve months.

(5) Subsection (4) shall not derogate from the power of a court to punish for contempt.

(6) In this section—

“court” means the Supreme Court, a District Criminal Court or a court of summary jurisdiction and includes any judge or special magistrate or justices entitled to preside over or constitute the court.

Fines and Forfeited Recognizances

Heading substituted by 54, 1956, s. 6.

300. (1) In sections 300a to 300h, unless the context otherwise requires or some other meaning is clearly intended—

Interpretation.
S. 300 substituted by 54, 1956, s. 6.

“fine” means a fine imposed by the Supreme Court in its criminal jurisdiction as a penalty for an offence and includes an instalment or part of any such fine but does not include a fine imposed on a juror:

“forfeiture” means—

(a) the amount due under a recognizance forfeited by the Supreme Court in its criminal jurisdiction;

and

(b) if the amount due is reduced by the Court or a judge, the amount as so reduced,

and includes an instalment or part of any such amount:

Def. of “Master of the Supreme Court” repealed by 50, 1984, s. 3 (1) (1st Sched.).

* * * * *

“paid” includes recovered by execution of a writ of *feri facias* and “payment” has a corresponding meaning:

“writ of *capias*” means a writ of *capias ad satisfaciendum*.

(2) References in sections 300a to 300h to the forfeiting of a recognizance shall be deemed to refer to the forfeiting of a recognizance by the Supreme Court in its criminal jurisdiction.

(3) Sections 300a to 300h apply notwithstanding anything contained in the Debtors Act, 1936.

Powers in relation to fines and forfeited recognizances. S. 300a inserted by 54, 1956, s. 6.

300a. (1) Where a fine is imposed or a recognizance forfeited by the Supreme Court, the Court or any judge thereof may make any one or more of the following orders:

(a) an order fixing a term of imprisonment which the person liable to pay the fine or forfeiture is to undergo if any sum which he is liable to pay is not duly paid;

(b) an order allowing time for payment of the fine or forfeiture;

(c) an order directing payment of the fine or forfeiture by instalments of such amounts and on such days respectively as are specified in the order;

(d) an order discharging the recognizance or reducing the amount due thereunder.

(2) A term of imprisonment fixed under subsection (1)—

(a) shall, if the Court or judge so directs, be imprisonment with hard labour;

and

(b) shall not exceed twelve months.

(3) An order under this section—

(a) may be made either at the time when the fine is imposed or the recognizance forfeited or subsequently and either by the Court or judge imposing the fine or forfeiting the recognizance or by any other judge;

and

(b) may amend any previous order under this section.

300b. If default is made in payment of any instalment of a fine or forfeiture, the whole of that fine or forfeiture or, as the case may be, the whole of the balance thereof remaining unpaid shall immediately become payable.

Default in payment of instalments.
S. 300b inserted by 54, 1956, s. 6.

300c. Where an order fixing a term of imprisonment to be served in default of payment of a fine or forfeiture is made against a person present before the Court or judge and the Court or judge does not allow time for payment and the fine or forfeiture is not immediately paid, that person may, while the default continues, be detained in custody without the issue of any writ for the term so fixed, subject to any reduction under section 300g.

Imprisonment under order of Court when no time allowed for payment.
S. 300c inserted by 54, 1956, s. 6.

300d. (1) The sheriff shall recover all fines and forfeitures and, whenever he deems it necessary, apply for and execute writs for that purpose.

Recovery and payment of fines and forfeitures.
S. 300d inserted by 54, 1956, s. 6.

(2) Payment of a fine or forfeiture may be made—

Subsec. (2) amended by 71, 1969, s. 14 (a).

(a) to the sheriff or deputy sheriff or some other person appointed by the sheriff to receive such payments;

Para. (a) amended by 71, 1969, s. 14 (b).

(b) where the person liable to make payment is in prison, to the keeper of the prison.

(3) The keeper of a prison shall, on receiving payment of a fine or forfeiture, forthwith pay the amount received to the sheriff.

(4) If rules of court are made providing for the costs of execution of a writ of *feri facias* issued under section 300e to be recovered, the sheriff shall recover those costs and for that purpose sections 300a to 300h shall apply as though the fine or forfeiture were increased by the amount of the costs.

300e. (1) Subject to this section, a judge or master of the Supreme Court shall have power to issue writs of *feri facias* and *capias* for the purpose of enforcing payment of fines and forfeitures.

Issue of writs.
S. 300e inserted by 54, 1956, s. 6.

(2) No such writ shall be issued except on application made by the sheriff and proof of default, which application may be dealt with *ex parte*.

Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(3) A writ of *feri facias*—

(a) may be issued notwithstanding that a term of imprisonment to be served in default of payment has been fixed by order of the Court or a judge;

but

(b) shall not be issued or executed after the person in default has been lodged in prison for the default, whether under a writ of *capias* or otherwise.

(4) A writ of *capias* may be issued—

(a) without the previous issue of a writ of *feri facias* against the person in default;

or

(b) after the issue of a writ of *feri facias* against the person in default, if the sheriff certifies that he could find no goods, chattels,

lands or tenements, or insufficient goods, chattels, lands or tenements, of that person from which he could cause to be made the amount mentioned in the writ or so much thereof as had not previously been paid.

(5) A writ of *capias* issued under this section shall specify the term of imprisonment of the person in default and the term shall be as follows:

(a) if an order has been made under section 300a fixing a term of imprisonment, the term of imprisonment so fixed subject to any reduction under section 300g;

or

(b) if no order is in force under section 300a fixing a term of imprisonment, such term of imprisonment, with or without hard labour, as the judge or master issuing the writ thinks fit, but not exceeding twelve months.

(6) A writ issued under this section shall remain in force until executed or returned by the sheriff.

(7) A writ issued under this section shall be in the prescribed form or, if no form is prescribed, in such form as the judge or master issuing the writ thinks fit.

Term of imprisonment may run from termination of a sentence.
S. 300f inserted by 54, 1956, s. 6.

300f. The Court, judge or master, when fixing, or specifying in a writ, the term of imprisonment which a person in default is liable to serve, may order that the term shall not begin to run until after the end of any other term of imprisonment which the person is serving or is liable to serve.

Reduction of imprisonment on part payment of a fine or forfeiture.
S. 300g inserted by 54, 1956, s. 6.

300g. (1) A term of imprisonment which a person is serving or liable to serve in default of payment of a fine or forfeiture shall, on payment of a part of the fine or forfeiture, be reduced by such number of days as bears to the total number of days of the term less one the proportion most nearly approximating to (without exceeding) the proportion which the part paid bears to the amount of the fine or forfeiture.

(2) When application is made to a judge or master to issue a writ of *capias* in respect of a fine or forfeiture and it is made to appear to him that any part of the fine or forfeiture has been paid, he shall issue the writ accordingly for the term as reduced under this section.

(3) Where a writ of *capias* has been issued against any person pursuant to section 300e and payment is made of any part of the fine or forfeiture, the sheriff shall endorse a memorandum of the payment and the reduction thereby effected on the writ, which shall thereupon be deemed to have been amended accordingly.

Proof of orders and defaults.
S. 300h inserted by 54, 1956, s. 6.

300h. On the hearing of any application in which it is necessary to prove the making of an order under section 300a or default in payment of a fine or forfeiture—

Para. (a) amended by 50, 1984, s. 3 (1) (1st Sched.).

(a) a certificate signed by the judge, or one of the judges, who made the order, or by the associate of such a judge or the registrar or chief clerk of the Supreme Court, and purporting to certify the terms of any such order shall be sufficient proof of the making and terms of the order;

(b) a certificate signed by the sheriff (whether endorsed on a writ or otherwise) and purporting to certify that default has been made in payment shall be sufficient proof of the matters mentioned in the certificate;

(c) judicial notice shall be taken of the signature of any judge or any of the officers mentioned in this section.

<i>Sentence</i>										Heading amended by 115, 1976, s. 10 (1).
*	*	*	*	*	*	*	*	*	*	S. 301 repealed by 115, 1976, s. 10 (2).
*	*	*	*	*	*	*	*	*	*	S. 301a inserted by 96, 1971, s. 2; repealed by 115, 1976, s. 10 (2).
*	*	*	*	*	*	*	*	*	*	S. 302 repealed by 115, 1976, s. 10 (2).
*	*	*	*	*	*	*	*	*	*	S. 303 amended by 96, 1971, s. 3; repealed by 115, 1976, s. 10 (2).
*	*	*	*	*	*	*	*	*	*	Ss. 304-306 repealed by 115, 1976, s. 10 (2).
*	*	*	*	*	*	*	*	*	*	S. 307 repealed by 96, 1971, s. 4.
*	*	*	*	*	*	*	*	*	*	S. 308 repealed by 58, 1971, s. 10.

309. No punishment by means of the pillory shall be awarded.

Abolition of the pillory.
14, 1841-2 adopting 1 Vict., c. 23.

310. (1) The court by which a sentence of imprisonment is imposed may direct that the sentence be cumulative upon any other sentence or sentences of imprisonment then being served, or to be served, by the convicted person.

Sentences of imprisonment may be made cumulative.
S. 310 substituted by 67, 1980, s. 3.

(2) A direction may be given under subsection (1)—

(a) irrespective of the number of cumulative sentences that the convicted person is already serving or liable to serve or will, in consequence of the direction, be liable to serve;

and

(b) irrespective of whether the offence for which the convicted person has been sentenced is, or is not, a felony.

311. Whenever imprisonment may by law be awarded for any offence under this Act, the court may direct that the offender shall not be kept to hard labour or to any labour, any law or regulation to the contrary notwithstanding.

Power to exempt from hard labour.
38, 1876, s. 404.

*	*	*	*	*	*	*	*	*	*	S. 312 repealed by 58, 1971, s. 10.
---	---	---	---	---	---	---	---	---	---	-------------------------------------

313. (1) Where any person is convicted in the Supreme Court of any felony (other than treason or murder) or of any misdemeanour, the Court

Fines and sureties.
S. 313 substituted by 27, 1952, s. 12.

may, in addition to, or instead of, imposing any other punishment which may lawfully be imposed, exercise all or any of the following powers:

(a) fine the offender such amount as the Court thinks just;

Para. (b) repealed
by 54, 1956, s. 7.

* * * * *

(c) require the offender to enter into his own recognizance, with or without sureties, for keeping the peace or being of good behaviour, or for both of those purposes, and for complying with such other conditions as the Court may impose.

(2) A person shall not be imprisoned for more than one year for not finding sureties under this section.

(3) Notwithstanding any other enactment, any power conferred by subsection (1) may be exercised in relation to any offence punishable in the Supreme Court, other than—

(a) treason and murder;

and

(b) any offence in respect of which it is expressly provided by any enactment that the power shall not be used.

Persistent
offenders.
S. 313a inserted
by 88, 1969, s. 5.

313a. Where any person apparently of or above the age of twenty-five years—

(a) is convicted of an offence punishable by imprisonment for a term of two years or more;

and

(b) has been convicted on at least two previous occasions since he attained the age of eighteen years of an offence punishable by imprisonment for a term of two years or more,

and the court is satisfied that in the interests of the public or in his own interests he should be detained in prison for a substantial period, the court may impose, instead of any other sentence, a sentence of imprisonment for a term of not more than ten years.

Previous
convictions for
felony.
38, 1876, ss. 379,
380.
791, 1902, s. 3.
Subsec. (1)
amended by 115,
1976, s. 11; 50,
1984, s. 3 (1) (1st
Sched.).

314. (1) Any person who is convicted of any felony committed after a previous conviction for felony, whether the previous conviction was for a felony committed within the State or within any other State of the Commonwealth, shall be liable to be imprisoned for life; but no person shall be liable to be imprisoned for more than ten years by reason only of a conviction for larceny after a previous conviction for felony.

(2) For the purposes of this section, a conviction may be proved by the production of a certificate purporting to be signed by an officer, or the deputy of an officer, having or purporting to have custody of the records of the court where the conviction took place and containing the substance and effect (omitting the formal parts) of the conviction and information (or, in the case of a conviction in another State, the charge on which the offender was convicted, whether called an information or not) and on proof of the identity of the person charged with the person named in the certificate as having been convicted.

(3) Subject to subsection (4), when an accused person is charged with a previous conviction, he shall not be arraigned on the information or part of the information in which he is so charged, nor shall the fact that he is

so charged be otherwise disclosed to the jury, until he has either pleaded guilty or been found guilty on the charge for the subsequent offence, unless he gives evidence of good character, in which case the prosecution may, in answer thereto, give evidence of the previous conviction.

(4) The provisions of subsection (3) do not limit the right of the prosecution to give evidence that an accused person has been previously convicted in cases where such evidence may lawfully be given.

(5) If an accused person who is charged with a previous conviction does not admit the conviction on being asked whether he has been so convicted, the question whether he has been so convicted shall be tried by a jury.

Police Supervision of Certain Offenders and Harbours Thieves

315. In sections 316 to 318—

“court” includes any justice, magistrate or other person having jurisdiction in the matters to which the term refers:

“inspector of police” includes the Commissioner of Police.

Interpretation.
9, 1870, s. 2.
S. 315 amended
by 50, 1984, s. 3
(1) (1st Sched.).

316. (1) Where any person is convicted on information of any offence specified in subsection (5) and is proved to have been previously convicted of any offence specified in that subsection, in addition to any other punishment it shall be deemed part of the sentence passed on him, unless otherwise declared by the court, that he is to be subject to the supervision of the police for a period of seven years, or such lesser period as the court directs, commencing from the time at which he is convicted and exclusive of the time during which he is undergoing his punishment.

Persons twice
guilty of felony to
be subject to
police
supervision.
9, 1870, s. 3.

(2) When any person becomes subject to the supervision of the police, the record of his conviction shall contain a statement to that effect setting out the time during which he is so subject, but the omission of any such statement shall not exempt that person from the operation of this section.

(3) Any person subject to the supervision of the police who—

(a) on being charged by a police officer with getting his livelihood by dishonest means, fails to make it appear to the court that he is not getting his livelihood by dishonest means;

(b) is found by any police officer in any place, whether public or private, under such circumstances as to satisfy the court that he was about to commit, or aid in the commission of, any crime punishable summarily or on information, or was waiting for an opportunity to commit, or aid in the commission of, any such crime;

(c) is found by any person in or on any dwelling house or building, or any yard or premises being parcel of, or attached to, any dwelling house or building, or in any place of business, or in any garden, orchard, pleasure ground, nursery ground or enclosed land, being private property, without being able to account to the satisfaction of the court for his being there,

Para. (c) amended
by 50, 1984, s. 3
(1) (1st Sched.).

shall be guilty of an offence punishable summarily and liable to be imprisoned for a term not exceeding one year.

(4) Any person charged with any offence under subsection (3) may be arrested by any police officer without warrant and, if charged with an offence

under subsection (3) (c), may be arrested by the owner or occupier of the premises, or any person authorized by him, but no person shall be arrested for an offence against subsection (3) (a) without the written authority of an inspector of police.

(5) The offences referred to in subsection (1) are as follows: Any felony, obtaining property by false pretences, conspiracy to defraud, uttering or possessing false or counterfeit coins.

Harbouring
thieves.
9, 1870, s. 4.
Subsec. (1)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

317. (1) Any person who occupies or keeps any lodging house, public house, wine shop or other place where spirituous liquors are sold, or any place of public entertainment or public resort, and—

- (a) knowingly lodges or harbours thieves or reputed thieves, or knowingly permits or suffers them to meet or assemble therein;
- (b) allows the deposit of goods therein, having reasonable cause to believe them to be stolen,

shall be guilty of an offence punishable summarily and liable to a fine of not more than twenty dollars and, in addition to, or instead of, such a fine, may be ordered to enter into a recognizance, with or without sureties, in any sum not exceeding forty dollars, to keep the peace, or to be of good behaviour, for twelve months; but no person shall be imprisoned for a longer period than three months for not finding sureties in pursuance of this section.

(2) If any person convicted of an offence against this section is the holder of a licence for the sale of spirituous liquors, the licence shall be forfeited and, on a second conviction, he shall be disqualified for a period of two years from holding or receiving any such licence.

(3) Where two convictions under this section have taken place within two years in respect of the same premises, whether the person convicted is the same or not, the court before which the second conviction takes place may order that, for a period not exceeding one year from the date of the second conviction, no licence for the sale of spirituous liquors shall be granted to any person in respect of those premises and any licence purportedly granted during the currency of such an order shall be void.

Authority to
search for stolen
property.
9, 1870, s. 5.

318. (1) When any inspector of police has reason to believe that any premises which—

- (a) are, or at any time within the preceding eighteen months have been, in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves;
- or
- (b) are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty and punishable by imprisonment,

are being made a receptacle for stolen goods, he may, by writing, authorize any police officer to enter the premises in search of stolen goods.

(2) It is not necessary for the inspector to specify any particular property in the authority.

(3) Any police officer so authorized may enter the premises and search for and seize any property which he believes to be stolen without any other warrant or authority.

(4) The person whose premises are so entered, or the person from whose possession the property was taken if other than the person on whose premises it was, shall, unless previously charged with an offence arising out of that possession, be summoned within three days before a magistrate or justice to account for his possession of the property and the magistrate or justice may make such order respecting the disposal of the property as the justice of the case may require.

Habitual Criminals

319. (1) When any person is convicted on information of an offence of one of the classes of offences referred to in subsection (3), the following provisions shall take effect:

Judge may declare convicted person an habitual criminal. 927, 1907, s. 3. Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(a) where that person is so convicted of an offence included in classes I, II, III or IV and has been previously so convicted on at least two occasions of an offence of the same class, the judge before whom that person is so convicted may, in his discretion, declare as part of the sentence of that person that he is an habitual criminal;

Para. (a) amended by 50, 1984, s. 3 (1) (1st Sched.).

(b) where that person is so convicted of an offence included in any of the classes V, VI, VII or VIII and has been previously convicted on at least three occasions of an offence included in any of those classes, the judge may, in his discretion, declare as part of the sentence of that person that he is an habitual criminal.

Para. (b) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) This section applies whether the previous convictions took place within or outside South Australia and either before or after the commencement of this Act.

(3) The classes of offences referred to in this section are those dealt with in the sections set out below—

Subsec. (3) amended by 42, 1957, s. 3 (2nd Sched.); 71, 1969, s. 15; 50, 1984, s. 3 (1) (1st Sched.).

Class	I	Sections 21 to 25 inclusive—Wounding.
Class	II	Sections 26 and 27—Poisoning.
Class	III	Sections 48, 49, 56, 59, 69 and 72—Sexual Offences.
Class	IV	Sections 81 and 82—Attempts to Procure Abortion.
Class	V	Sections 155 to 158 inclusive—Robbery. Sections 159, 160, 161, 162, 164 and 165—Extortion. Sections 167 to 172 inclusive—Burglary, etc. Sections 131, 132 and 173—Larceny. Sections 176 to 178 inclusive and 182 to 192 inclusive—Embezzlement, etc. Sections 195, 196, 197 and 199—False Pretences and Receiving.
Class	VI	Sections 84 to 86 inclusive—Arson.
Class	VII	Under any of the sections in Part VI—Forgery.
Class	VIII	Under any of the sections in Part IV of the <i>Crimes Act</i> 1914 of the Commonwealth—Coinage.

Proof of previous conviction. 927, 1907, s. 4.

320. (1) For the purposes of section 319, a previous conviction against any person may be proved by producing a record or extract of the conviction and by giving proof of the identity of the person with the person appearing in the record or extract of conviction to have been convicted.

(2) A record or extract of a conviction shall consist of—

- (a) an extract from the information or the counts of the information on which the person was convicted;
- (b) a statement of the verdict;
- (c) a statement of the sentence (if sentence has been passed),

certified under the hand of the clerk of the court or other officer purporting to have the custody of the records of the court by which the conviction was made.

(3) The record or extract shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed it.

(4) The mode of proving a previous conviction authorized by this section shall be in addition to, and not in exclusion of, any other authorized mode of proving such a conviction.

Habitual criminal to be detained during pleasure. S. 321 substituted by 54, 1956, s. 8 (1).

321. (1) Subject to this Act, every habitual criminal shall, at the expiration of his sentence, be detained during Her Majesty's pleasure in some place of confinement set apart for that purpose by proclamation.

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) A place of confinement so proclaimed shall be a prison within the meaning of the Prisons Act, 1936, and the detention of an habitual criminal therein shall be subject to that Act.

(3) The Governor may, by proclamation, vary or revoke any proclamation made under subsection (1).

S. 322 repealed by 54, 1956, s. 9.

* * * * *

Release on licence of habitual criminals. S. 323 substituted by 54, 1956, s. 10. Subsec. (1) amended by 88, 1969, s. 6.

323. (1) The Governor may at any time, on the recommendation of the Parole Board, release an habitual criminal on licence subject to compliance with such conditions, if any, as the Governor may from time to time determine.

(2) The Governor may at any time, by order, recall to a place of confinement an habitual criminal released on licence under this section, but without prejudice to the power of the Governor to release him on licence again and, when any habitual criminal is so recalled, his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

(3) If during the period of three years following the release of an habitual criminal on licence under this section he is not recalled by the Governor, he shall cease to be an habitual criminal at the expiration of that period unless the Governor orders to the contrary.

Ss. 324 and 325 repealed by 54, 1956, s. 10.

* * * * *

Ss. 326 and 327 repealed by 54, 1956, s. 11.

* * * * *

328. Regulations not inconsistent with this Act may be made under the Prisons Act, 1936, for the purposes of the provisions of this Act relating to habitual criminals and for prescribing the duties, liabilities, privileges and conditions of detention of an habitual criminal in a place of confinement and, without limiting the generality of the foregoing—

Regulations under Prisons Act, 1936. S. 328 substituted by 54, 1956, s. 12 (1).

(a) with respect to the control and management of a place of confinement of habitual criminals;

* * * * *

Paras. (b) and (c) repealed by 88, 1969, s. 7.

(d) for the application to habitual criminals of any provision of the Prisons Act, 1936.

Abolition of Presumption of Marital Coercion

Heading inserted by 54, 1940, s. 12.

328a. Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is abolished; but, on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence, and under the coercion, of the husband.

Abolition of presumption of marital coercion. S. 328a inserted by 54, 1940, s. 12.

329. A person who has been convicted of treason, a felony or any other offence shall not, by reason of that conviction, suffer any legal disability except such as is prescribed by an Act of the State or the Commonwealth.

Provision as to persons convicted of treason or a felony. S. 329 inserted by 49, 1984, s. 4.

* * * * *

Part X comprising ss. 329-346 and heading amended by 7, 1966, ss. 4-9; 102, 1972, s. 6; 77, 1973, s. 3 (1) (2nd Sched.); repealed by 49, 1984, s. 5.

PART XI

CASES STATED AND APPEALS

* * * * *

S. 347 repealed by 67, 1980, s. 4.

348. In this Part, unless inconsistent with the context or subject matter—

Interpretation. 1613, 1924, s. 3.

“appellant” includes a person who has been convicted and desires to appeal under this Act:

“District Criminal Court” means a court constituted of a person, appointed to, and holding, judicial office under the Local and District Criminal Courts Act, 1926, when sitting in the exercise of the jurisdiction conferred on him by the district criminal court provisions as defined in that Act:

Def. inserted by 71, 1969, s. 16 (a); amended by 54, 1972, s. 36 (1) (a).

“Full Court” means the Supreme Court constituted of an uneven number of judges, not being less than three:

“information” means an information on which a person is put upon his trial for any crime or offence at any criminal session of the Supreme Court or before any court of Oyer and Terminer and General Gaol Delivery or at any sitting of a District Criminal Court, as the case may be:

Def. substituted by 71, 1969, s. 16 (b); amended by 50, 1984, s. 3 (1) (1st Sched.).

Def. substituted by 54, 1972, s. 36 (1) (b).

“judge” means a judge of the Supreme Court or a District Criminal Court:

Def. of “Master” amended by 71, 1969, s. 16 (c); repealed by 50, 1984, s. 3 (1) (1st Sched.).

* * * * *

Def. of “Recorder” inserted by 71, 1969, s. 16 (d); repealed by 54, 1972, s. 36 (1) (c).

* * * * *

Def. amended by 71, 1969, s. 16 (e); 54, 1972, s. 36 (1) (d).

“sentence” includes any order of the court of trial or of the judge thereof made on, or in connection with, a conviction with reference to the convicted person, or any property, or with reference to any moneys to be paid by him.

Delegation of certain powers by the Attorney-General.

348a. (1) The Attorney-General may, by instrument in writing, delegate any of his powers under this Part—

S. 348a inserted by 67, 1980, s. 5.

- (a) to apply for the reservation of a question of law;
- or
- (b) to appeal against sentence,

to any legal practitioner in the service of the Crown.

(2) A delegation under this section is revocable at will.

(3) An apparently genuine document purporting to be an instrument of delegation under subsection (1) shall, in the absence of proof to the contrary, be accepted in any legal proceedings as proof that the powers referred to in the instrument have been delegated to the legal practitioner referred to in the instrument.

(4) Any document for the institution of proceedings that the Attorney-General is empowered to take under this Part—

- (a) purporting to be signed by the Solicitor-General, the Crown Solicitor or the Crown Prosecutor;
- and
- (b) alleging a delegation by the Attorney-General under this section,

shall, in the absence of proof to the contrary, be deemed to be proof of that delegation.

Court to decide according to opinion of majority. 1613, 1924, s. 4.

349. The determination of any question before the Full Court under this Act shall be according to the opinion of the majority of the members of the Court hearing the case.

Subsec. (2) repealed by 13, 1974, s. 2.

* * * * *

Cases Stated

Questions of law may be reserved. 38, 1876, s. 397. Subsec. (1) amended by 71, 1969, s. 17 (a)-(c); 54, 1972, s. 36 (1) (e).

350. (1) If on the trial or sentencing of any person convicted on information any question of difficulty in point of law or concerning the sentencing has arisen, it shall be lawful for the presiding judge in his discretion to reserve the question for the consideration and determination of the Full Court and to respite execution of the judgment or postpone judgment until the question has been considered and decided.

(1a) Where a person is tried on information and acquitted, the court shall, on the application of the Attorney-General, reserve any question of law arising at the trial for the consideration and determination of the Full Court.

Subsec. (1a)
inserted by 67,
1980, s. 6 (a).

(2) A case shall be stated as provided in section 351—

Subsec. (2)
amended by
50, 1984, s. 3 (1)
(1st Sched.).

(a) if the Full Court, on motion, makes a rule or order for that purpose, which rule or order the Full Court is hereby authorized to make;

(b) if the Full Court, on an appeal involving a question of law alone, so requires as hereinafter mentioned.

(3) Where a person has been convicted on information and a question of law has been reserved, or the Full Court has ordered a case to be stated, in relation to his trial or sentencing, the presiding judge may, in his discretion, commit the convicted person to gaol or release him on recognizance of bail with one or two sufficient sureties and in such sum as the judge thinks fit, conditioned to appear at such time or times as the court directs, and receive judgment or render himself in execution, as the case may be.

Subsec. (3)
amended by 71,
1969, s. 17 (c);
54, 1972, s. 36 (1)
(e); 67, 1980, s. 6
(b).

351. (1) In any of the cases referred to in section 350, the presiding judge shall state a case setting forth the question reserved, with the circumstances on which it has arisen, and shall sign the case and transmit it within a reasonable time to the Full Court.

Case to be stated
by trial judge and
powers of Full
Court.

38, 1876, s. 398.

Subsec. (1)
amended by 71,
1969, s. 18; 54,
1972, s. 36 (1) (f);
50, 1984, s. 3 (1)
(1st Sched.).

(2) Where a person has been convicted on information and a case has been stated in pursuance of subsection (1) in relation to his trial or sentencing, the Full Court shall have authority to hear and finally determine the question reserved and may—

38, 1876, s. 398,
401.

Subsec. (2)
amended by 67,
1980, s. 7 (a).

(a) send the case back for amendment if it thinks necessary;

(b) affirm, amend, reverse or avoid any judgment which has been given on the information;

(c) set aside the conviction;

(d) arrest the judgment or, if no judgment has been given, order judgment to be given at some other sessions of the court where the question arose;

or

(e) make such other order as justice may require,

but—

(f) no judgment shall be reversed, avoided or arrested on the ground of the improper admission of evidence, if it appears to the Court that the evidence was merely of a formal character and not material, nor on the ground of the improper admission of evidence adduced for the defence;

(g) where any judgment has been reversed, avoided or arrested, the Court may order a new trial;

and

(h) the Court may, notwithstanding that it is of the opinion that the question so reserved might be decided in favor of the convicted person, affirm the judgment if it considers that no substantial miscarriage of justice has actually occurred.

Para. (h)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

Subsec. (2a)
inserted by 67,
1980, s. 7 (b).

(2a) Where a person is tried on information and acquitted but a question of law arising at the trial is reserved for the consideration and determination of the Full Court, the Full Court shall have authority to hear and finally determine the question reserved, but the determination of the Full Court shall not invalidate or otherwise affect the acquittal.

Subsec. (2b)
inserted by 67,
1980, s. 7 (b).

(2b) Where a person is tried on information and acquitted but a question of law arising at the trial is reserved for consideration and determination by the Full Court, the Attorney-General is liable to pay the taxed costs of the defendant in proceedings relating to the reservation and determination of the question of law and, if the defendant does not appear in those proceedings, the Attorney-General shall instruct counsel to present such argument to the Court as might have been presented by counsel for the defendant.

Subsec. (3)
amended by 88,
1975, s. 3 (1) (2nd
Sched.).

(3) The judgment and order (if any) of the Full Court shall be certified under the hand of the Chief Justice or senior member of the Court to the associate or clerk of arraigns, who shall enter it on the original record in proper form, and a certificate of the entry in, or to the effect of, the form contained in schedule 10 shall be transmitted to the Director of Correctional Services and shall be a sufficient warrant to all persons—

(a) to execute the judgment as affirmed or amended;

or

(b) to discharge the convicted person from custody,

as the case may be.

(4) If judgment is ordered to be given at some other sessions of the court where the question arose, it shall be given accordingly and, if the conviction is set aside in the case of a person released on bail, the recognizances of bail shall be vacated.

Restriction on
reporting
proceedings
relating to
reservation of
question of law
on trial of
acquitted person.
S. 351a inserted
by 67, 1980, s. 8.

351a. (1) Where an application has been made for the reservation of a question of law arising at the trial of a person who was tried on information and acquitted, no person shall publish, by newspaper, radio or television, any report, statement or representation in relation to the application or any consequent proceedings—

(a) by which the identity of the acquitted person is revealed;

or

(b) from which the identity of the acquitted person might reasonably be inferred,

unless the acquitted person consents to the publication.

Penalty: One thousand dollars.

(2) In this section—

“newspaper” means any newspaper, journal, magazine or other publication that is published daily or at periodic intervals, but does not include—

(a) a publication consisting solely or primarily of the reported decisions or judgments of the Court;

or

(b) a publication of a technical nature designed primarily for use by legal practitioners.

Right of Appeal and Determination of Appeals

352. (1) A person convicted on information may appeal under this Act to the Full Court—

Right of appeal in criminal cases. 1613, 1924, s. 5. S. 352 redesignated s. 352 (1) by 67, 1980, s. 9.

(a) against his conviction on any ground of appeal which involves a question of law alone; but the Full Court in any such case may, if it thinks fit, decide that the procedure with relation to cases reserved should be followed and require a case to be stated accordingly in the same manner as if a question of law had been reserved, and thereupon the provisions of this Part relating to cases so reserved shall, with the necessary modifications, apply accordingly;

Para. (a) amended by 50, 1984, s. 3 (1) (1st Sched.).

(b) on the certificate of the judge of the Supreme Court or District Criminal Court before whom he was tried that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact;

Para. (b) amended by 71, 1969, s. 19; 54, 1972, s. 36 (1) (g).

(c) with the leave of the Full Court, on any ground referred to in paragraph (b) or any other ground which appears to the Full Court to be a sufficient ground of appeal;

Para. (c) amended by 50, 1984, s. 3 (1) (1st Sched.).

and

(d) with the leave of the Full Court, against the sentence passed on his conviction, unless the sentence is one fixed by law.

(2) Where a person is convicted on information and sentenced, the Attorney-General may, with the leave of the Full Court, appeal to that Court against the sentence passed on that person, unless the sentence is one fixed by law.

Subsec. (2) inserted by 67, 1980, s. 9.

353. (1) The Full Court on any such appeal against conviction shall allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal; but the Full Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

Determination of appeals in ordinary cases. 1613, 1924, s. 6. Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) Subject to the special provisions of this Act, the Full Court shall, if it allows an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or direct a new trial.

Subsec. (2) amended by 50, 1984, s. 3 (1) (1st Sched.).

(3) Where a new trial is directed, the Full Court may make such order as it thinks fit for the safe custody of the appellant or for admitting him to bail.

(4) Subject to subsection (5), on an appeal against sentence, the Full Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

Subsec. (4) amended by 67, 1980, s. 10 (a).

Subsec. (5)
inserted by 67,
1980, s. 10 (b).

(5) The Full Court shall not exercise its powers under subsection (4) to increase the severity of a sentence except on an appeal by the Attorney-General against the sentence.

Powers of Court
in special cases.
1613, 1924, s. 7.

354. (1) If it appears to the Full Court that an appellant, although not properly convicted on some count or part of the information, has been properly convicted on some other count or part of the information, the Court may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the count or part of the information on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could, on the information, have found him guilty of some other offence and, on the finding of the jury, it appears to the Full Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury has found a special verdict and the Full Court considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Full Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) If on any appeal it appears to the Full Court that an appellant found guilty of the offence with which he was charged was insane at the time of the commission of the offence so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in strict custody until the Governor's pleasure is known, in the same manner as if the appellant had been found to be insane by the special verdict of the jury under this Act.

Revesting and
restitution of
property on
conviction.
1613, 1924, s. 8.
Subsec. (1)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

355. (1) The operation of any order for the restitution of any property to any person, or with reference to any property or the payment of money, made on, or in connection with, a conviction on information and the operation, in case of any such conviction, of the provisions of section 24 (1) of the Sale of Goods Act, 1895, as to the revesting of the property in stolen goods on conviction shall (unless the court before which the conviction takes place directs to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended—

(a) in any case, until the expiration of ten days after the date of the conviction;

and

(b) in cases where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal,

and, in cases where the operation of any such order or provisions is suspended until the determination of the appeal, the order or provisions (as the case may be) shall not take effect as to the property in question if the conviction is quashed on appeal, except by the special order of the Full Court. Provision

may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order or provisions.

(2) The Full Court may, by order, annul or vary, or refuse to annul or vary, any order made on, or in connection with, a conviction for the restitution of any property to any person, or with reference to any property or the payment of money, whether the conviction or sentence is or is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

356. All jurisdiction and authority under any other Act in relation to questions of law arising in criminal trials which are vested in the judges of the Supreme Court or the Full Court of the Supreme Court as constituted by the Supreme Court Act, 1935, shall be vested in the Full Court for the purposes of this Act.

Jurisdiction of Full Court. 1613, 1924, s. 9. S. 356 amended by 71, 1969, s. 20.

Procedure

357. Where a convicted person desires to appeal under this Act to the Full Court or to obtain the leave of that Court to appeal, he shall give notice of appeal, or notice of his application for leave to appeal, in such manner as may be directed by rules of court, within ten days of the date of conviction. Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Full Court.

Time for appealing. 1613, 1924, s. 10. S. 357 amended by 115, 1976, s. 12 (a).

The time within which notice of appeal, or notice of an application for leave to appeal, may be given may be extended at any time by the Full Court notwithstanding that the application for extension was made after the time had expired.

* * * * *

Subsec. (2) amended by 58, 1971, s. 11; repealed by 115, 1976, s. 12 (b).

358. The judge of the Supreme Court or District Criminal Court before whom a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence or in the case of an application for leave to appeal under this Act, furnish to the registrar in accordance with rules of court his notes of the trial and shall also furnish to the registrar in accordance with rules of court a report giving his opinion on the case or on any point arising in the case.

Judge's notes and report to be furnished on appeal. 1613, 1924, s. 11. S. 358 amended by 71, 1969, s. 21; 54, 1972, s. 36 (l) (h); 58, 1984, s. 3 (1) (1st Sched.).

359. For the purposes of this Act, the Full Court may, if it thinks it necessary or expedient in the interests of justice—

Supplemental powers of Court. 1613, 1924, s. 12.

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in the manner provided by rules of court before any judge of the Supreme Court or before any officer of the Supreme Court or justice of the peace or other person appointed by the Full Court for the purpose, and allow the admission of any depositions so taken as evidence before the Full Court;

- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant consents, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except with such consent;
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Full Court, conveniently be conducted before the Court, order the reference of the question in the manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court and act on the report of any such commissioner so far as it thinks fit to adopt it;
- (e) appoint any person with special expert knowledge to act as assessor to the Full Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case;
- (f) exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals or applications in civil matters;
- and
- (g) issue any warrants necessary for enforcing the orders or sentences of the Court,

but in no case shall any sentence be increased by reason of, or in consideration of, any evidence that was not given at the trial.

Legal assistance to appellant.
1613, 1924, s. 13.
S. 360 amended by 71, 1969, s. 22; 54, 1972, s. 36 (1) (i).

360. A judge may assign to an appellant a solicitor and counsel, or counsel only, in any appeal or new trial or proceedings preliminary or incidental to any appeal or new trial in which, in the opinion of the judge, it appears desirable in the interests of justice that the appellant should have legal aid and when, in the opinion of the judge, he has not sufficient means to enable him to obtain that aid.

Right of appellant to be present.
1613, 1924, s. 14.

361. (1) An appellant if he so desires shall, notwithstanding that he is in custody, be entitled to be present on the hearing of his appeal except where the appeal is on some ground involving a question of law alone, but in that case, and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, he shall not be entitled to be present except where rules of court provide that he shall have the right to be present or where the Full Court gives him leave to be present.

(2) The power of the Full Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

Attorney-General to be represented.
1613, 1924, s. 15.

362. The Attorney-General or counsel on his behalf shall appear for the Crown on every appeal to the Full Court under this Act, unless a private prosecutor in the case of a private prosecution undertakes the defence of the appeal, and provision shall be made by rules of court for the transmission to the Attorney-General of all such documents, exhibits and other things connected with the proceedings as he may require for the purposes of his duties under this section.

363. (1) On the hearing and determination of an appeal or new trial or any proceedings preliminary or incidental thereto under this Act, no costs shall be allowed on either side.

Costs of appeal.
1613, 1924, s. 16.

(2) The expenses of any solicitor or counsel assigned to an appellant under this Act and the expenses of any witnesses attending on the order of the Full Court, or examined in any proceedings incidental to the appeal or new trial, and of the appearance of an appellant on the hearing of his appeal or new trial or on any proceedings preliminary or incidental to the appeal or new trial, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Full Court for the purpose of any reference of a question to a special commissioner appointed by the Full Court, or of any person appointed as assessor to the Full Court, shall be defrayed, up to an amount allowed by a master and approved by any judge who was a member of the Full Court on the hearing of the appeal, out of moneys provided by Parliament for the purpose, but subject to any regulations as to rates and scales of payment made by the Governor.

364. (1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in such manner as may be directed by or under the Acts regulating prisons.

Admission of appellant to bail and custody when attending Court.
1613, 1924, s. 17.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

(2) The Full Court may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal or, where a new trial is directed, until the commencement of the new trial.

(3) The time during which an appellant, pending the determination of his appeal or pending a new trial, is admitted to bail and, subject to any directions which the Full Court may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated as an appellant under this section shall not count as part of any term of imprisonment under his sentence. And, in the case of an appeal under this Act, any imprisonment of the appellant, whether it is under the sentence passed by the court of trial or the sentence passed by the Full Court, shall, subject to any directions which may be given by the Full Court, be deemed to be resumed or begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined and, if he is not in custody, as from the day on which he is received into prison under the sentence.

(4) Where a question of law is reserved under this Part, this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant.

(5) Provision shall be made under the Acts regulating prisons for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Act, or to any place to which the Full Court or any judge of the Supreme Court may order him to be taken for the purposes of any proceedings of the Full Court, and for the manner in which he is to be kept in custody while absent from prison for any of those purposes.

Subsec. (5) amended by 50, 1984, s. 3 (1) (1st Sched.).

365. (1) The registrar shall take all necessary steps for obtaining a hearing under this Act of any appeals or applications, notice of which is given to him under this Act, and shall obtain and lay before the Full Court in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

Duties of registrar with respect to notices of appeal, etc.
1613, 1924, s. 18.
Subsec. (1) amended by 50, 1984, s. 3 (1) (1st Sched.).

Subsec. (2)
amended by 50,
1984, s. 3 (1) (1st
Sched.)

(2) If it appears to the registrar that any notice of an appeal against a conviction does not show any substantial ground of appeal, the registrar may refer the appeal to the Full Court for summary determination and, where the case is so referred, the Court may, if it considers that the appeal is frivolous or vexatious and can be determined without adjourning it for a full hearing, dismiss the appeal summarily without calling on any persons to attend the hearing or to appear for the Crown.

(3) Any documents, exhibits or other things connected with the trial of any person on information shall be kept in the custody of the court of trial, in accordance with rules of court made for the purpose, for such time as may be provided by the rules and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits or things from that custody.

Subsec. (4)
amended by 50,
1984, s. 3 (1) (1st
Sched.)

(4) The registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Act to any person who demands them and to officers of courts, keepers of gaols and such other officers or persons as he thinks fit, and the keeper of a gaol shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Act and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the registrar.

Notes of evidence
on trial.
1613, 1924, s. 19.
Subsec. (1)
amended by 71,
1969, s. 23; 54,
1972, s. 36 (1) (f);
50, 1984, s. 3 (1)
(1st Sched.).

366. (1) On any appeal, or application for leave to appeal, a transcript of the notes of the judge of the court of trial, or, where shorthand notes have been taken by direction of the judge, a transcript of the notes or any part thereof, shall be made, if the registrar so requests, and furnished to the registrar for the use of the Full Court or any judge thereof; and a transcript shall be furnished to any interested party on the payment of such charges as the Attorney-General may fix.

(2) The Attorney-General may also, if he thinks fit in any case, request a transcript of the notes to be made and furnished to him for his use.

Subsec. (3)
amended by 50,
1984, s. 3 (1) (1st
Sched.).

(3) The cost of making any such transcript, where a transcript is requested to be made by the registrar or by the Attorney-General, shall be defrayed in accordance with scales of payment fixed for the time being by the Attorney-General out of moneys provided by Parliament for the purpose.

(4) Rules of court may make such provision as is necessary for the verification of the transcript.

Powers which
may be exercised
by a judge of the
Court.
1613, 1924, s. 20.
S. 367 amended
by 67, 1980,
s. 11.

367. The powers of the Full Court under this Act to give leave to appeal, to extend the time within which notice of appeal, or of an application for leave to appeal, may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, to admit an appellant to bail and to direct that time spent in custody by an appellant pending determination of an appeal be counted as part of a term of imprisonment may be exercised by any judge of the Supreme Court in the same manner as they may be exercised by the Full Court, and subject to the same provisions, but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Full Court.

368. (1) Rules of court for the purposes of this Part shall be made by the judges of the Supreme Court.

Rules of court.
1613, 1924, s. 21.

(2) Rules so made may make provision with respect to any matter for which provision is to be made under this Act by rules of court and may regulate generally the practice and procedure under this Part.

(3) No person shall fail to comply with the requirements of rules made under this section and compliance with those rules may be enforced by order of the Full Court or of any judge of the Supreme Court.

Subsec. (3)
amended by 71,
1969, s. 24 (a);
substituted by 50,
1984, s. 3 (1) (1st
Sched.).

(4) The provisions which relate to making rules of court and are contained in the Acts regulating the general practice and procedure of the Supreme Court shall, so far as applicable, apply to rules made under this section.

(5) All rules of court and all regulations and rules made before or after the commencement of the Criminal Law Consolidation Act Amendment Act (No. 2), 1969, under this Act or any other Act, for the purposes of this Act or of any provision of this Act, that apply to or in relation to the Supreme Court, or a judge of the Supreme Court, in the exercise of its criminal jurisdiction shall, until other provision is duly made, have effect and be construed, with such adaptations and modifications as may be necessary, so as to extend and apply to and in relation to District Criminal Courts and District Criminal Court Judges, respectively, in the exercise of the criminal jurisdiction conferred by the district criminal court provisions within the meaning of the Local and District Criminal Courts Act, 1926, and to and in relation to appeals from and cases stated by District Criminal Courts to the Full Court.

Subsec. (5)
inserted by 71,
1979, s. 24 (b);
amended by 54,
1972, s. 36 (1)
(k), (l).

References on Petitions for Mercy

369. Nothing in this Part affects the prerogative of mercy but the Chief Secretary, on the consideration of any petition for the exercise of Her Majesty's mercy having reference to the conviction of a person on information or to the sentence passed on a person so convicted, may, if he thinks fit, with the concurrence of the Attorney-General, at any time, either—

References by
Chief Secretary.
1613, 1924, s. 22.
S. 369 amended
by 115, 1976,
s. 13.

(a) refer the whole case to the Full Court, and the case shall then be heard and determined by that Court as in the case of an appeal by a person convicted;

or

(b) if he desires the assistance of the judges of the Supreme Court on any point arising in the case with a view to the determination of the petition, refer that point to those judges for their opinion and those judges, or any three of them, shall consider the point so referred and furnish the Chief Secretary with their opinion accordingly.

SCHEDULES

SCHEDULE 1

In the Supreme Court. }
Criminal Jurisdiction. }

This is to certify that I decline to file any information against A.B., a person lawfully committed for trial at the Criminal Sessions to be held at _____ upon a charge of [state charge].
Given under my hand this _____ day of _____ 19 _____

Attorney-General

To their Honours the Judges of the Supreme Court.

Sched. 2 amended by 88, 1975, s. 3 (1) (2nd Sched.).

SCHEDULE 2

In the Supreme Court. }
Criminal Jurisdiction. }

Whereas A.B. is detained in your custody under a warrant upon a charge of [as in the certificate], and it has been certified to the Judges of this Court by the 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 _____ 19 _____

A Judge of the Supreme Court.

To the Director of Correctional Services and to the Keeper of Her Majesty's Prison at _____

SCHEDULE 3

RULES

- 1. (1) Informations and other criminal pleadings may be written or printed, or partly written and partly printed, and shall be on white folio foolscap paper on one side only with a quarter margin, and shall be folded lengthwise.
- (2) Figures and abbreviations may be used in informations for expressing anything which is commonly expressed thereby.
- (3) There shall be endorsed on the back of every information the names of the witnesses intended to be called at the trial.
- (4) An information shall not be open to objection by reason only of any failure to comply with this rule.
- 2. The commencement of an information shall be in the following form:

Rule 2 amended by 50, 1984, s. 3 (1) (1st Sched.).

SOUTH AUSTRALIA

The Queen v. A.B.

COURT OF TRIAL

[e.g., Supreme Court, Adelaide, or Gladstone Circuit Court.]

..... Sessions

Information of the Attorney-General

A.B. is charged with the following offence (offences) :

- 3. Charges for any offences, whether felonies or misdemeanours, may be joined in the same information if those charges are founded on the same facts or form, or are a part of, a series of offences of the same or a similar character.
- 4. (1) A description of the offence charged in an information or, where more than one offence is charged in an information, of each offence so charged, shall be set out in the information in a separate paragraph, called a count.
- (2) A count of an information shall commence with a statement of the offence charged, called the statement of offence.
- (3) The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence and, if the penalty for the offence charged is fixed by statute, may contain a reference to the section of the statute fixing the penalty.
- (4) After the statement of the offence, particulars thereof shall be set out in ordinary language in which the use of technical terms shall not be necessary: Provided that where any rule of law or any enactment limits the particulars of an offence which are required to be given in an information, nothing in this rule shall require any more particulars to be given than those so required.
- (5) The forms set out in the appendix to these rules, or forms conforming thereto as nearly as may be, shall be used in cases to which they are applicable and in other cases forms to the like effect, or conforming thereto as nearly as may be, shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case.
- (6) Where an information contains more than one count, the counts shall be numbered consecutively.

5. (1) Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from, or qualification of, the operation of the statute creating the offence.

6. (1) The description of property in a count in an information shall be in ordinary language and such as to indicate with reasonable clearness the property referred to and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person and the owners of the property are referred to in an information, it shall be sufficient to describe the property as owned by one of those persons by name with others and, if the persons owning the property are a body of persons with a collective name, such as "Inhabitants", "Trustees", "Commissioners" or "Club", or other such name, it shall be sufficient to use the collective name without naming any individual.

7. The description or designation in an information of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or the person may be described as "a person unknown".

8. Where it is necessary to refer to any document or instrument in an information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

9. Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any information in ordinary language, in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

10. It shall not be necessary, in stating any intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure any particular person, where the statute creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

11. Any charge of a previous conviction may be made either by a separate information or at the end of the information by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating particulars of that offence.

APPENDIX TO RULES

FORMS OF INFORMATION

1

STATEMENT OF OFFENCE

Murder (C.L.C. Act, 1935, s. 11).

PARTICULARS OF OFFENCE

A.B., on the day of at murdered J.S.

2

STATEMENT OF OFFENCE

Accessory after the fact of murder.

PARTICULARS OF OFFENCE

A.B., well knowing that one, H.C., did, on the day of murder C.C.,
did, on the day of at and on other days thereafter receive,
comfort, harbour, assist and maintain the said H.C.

3

STATEMENT OF OFFENCE

Manslaughter (C.L.C. Act, 1935, s. 13).

PARTICULARS OF OFFENCE

A.B., on the day of at unlawfully killed J.S.

4

STATEMENT OF OFFENCE

Rape (C.L.C. Act, 1935, s. 48).

PARTICULARS OF OFFENCE

A.B., on the day of at had sexual intercourse with E.F.
without her consent.

Form 4 amended
by 50, 1984,
s. 3 (1) (1st
Schd.).

5

STATEMENT OF OFFENCE

1st Count—Wounding with intent (C.L.C. Act, 1935, s. 21).

PARTICULARS OF OFFENCE

A.B., on the day of at wounded C.D. with intent to do him grievous bodily harm or to maim, disfigure or disable him or to resist the lawful apprehension of him the said A.B.

STATEMENT OF OFFENCE

2nd Count—Maliciously wounding (C.L.C. Act, 1935, s. 23).

PARTICULARS OF OFFENCE

A.B., on the day of at maliciously wounded C.D.

6

STATEMENT OF OFFENCE

Larceny by a servant (C.L.C. Act, 1935, s. 176 (1) (a)).

PARTICULARS OF OFFENCE

A.B., on the day of at being clerk or servant to M.N. stole from the said M.N. 10 yards of cloth.

7

STATEMENT OF OFFENCE

Robbery with violence (C.L.C. Act, 1935, s. 158).

PARTICULARS OF OFFENCE

A.B., on the day of at robbed C.D. of a watch and at the time of or immediately before or immediately after such robbery used personal violence to the said C.D.

8

STATEMENT OF OFFENCE

1st Count—Larceny (C.L.C. Act, 1935, s. 131)

PARTICULARS OF OFFENCE

A.B., on the day of at stole \$20 the property of M.N. and others.

STATEMENT OF OFFENCE

2nd Count—Receiving (C.L.C. Act, 1935, s. 196).

PARTICULARS OF OFFENCE

A.B., on the day of at received (*the money mentioned in the 1st Count*) knowing it to have been stolen.

9

STATEMENT OF OFFENCE

Burglary (C.L.C. Act, 1935, s. 168 (a)).

PARTICULARS OF OFFENCE

A.B., in the night of the day of at broke and entered the dwelling house of C.D. with intent to steal therein.

10

STATEMENT OF OFFENCE

1st Count—Shop breaking and larceny (C.L.C. Act, 1935, s. 170 (1)).

PARTICULARS OF OFFENCE

A.B., on the day of at broke and entered the shop of the Co-operative Grocery Company and stole therein 25 tins of jam.

STATEMENT OF OFFENCE

2nd Count—Receiving (C.L.C. Act, 1935, s. 196).

PARTICULARS OF OFFENCE

A.B., on the day of at received (*the goods mentioned in the 1st Count*) knowing them to have been stolen.

11

STATEMENT OF OFFENCE

Sending threatening letter with intent to extort money (C.L.C. Act, 1935, s. 161).

PARTICULARS OF OFFENCE

A.B., on the day of at sent, delivered or uttered to, or caused to be received by, C.D. a letter accusing or threatening to accuse the said C.D. of an infamous crime with intent to extort money from the said C.D.

12

STATEMENT OF OFFENCE

Obtaining goods by false pretences (C.L.C. Act, 1935, s. 195 (1) (a)).

PARTICULARS OF OFFENCE

A.B., on the day of at with intent to defraud obtained from C.D. 5 yards of cloth by falsely pretending that he the said A.B. was a servant to J.S. and had been sent by the said J.S. to C.D. for the said cloth and was authorised by the said J.S. to receive such cloth on behalf of the said J.S.

13

STATEMENT OF OFFENCE

Conspiracy to defraud (C.L.C. Act, 1935, s. 270).

PARTICULARS OF OFFENCE

A.B. and C.D. on the day of and on divers days between the day of and the day of at conspired together with intent to defraud by means of an advertisement inserted in the H.S. newspaper falsely representing that A.B. and C.D. were carrying on a genuine business as jewellers at and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of \$4.

14

STATEMENT OF OFFENCE

1st Count—Arson (C.L.C. Act, 1935, s. 84 (b)).

PARTICULARS OF OFFENCE

A.B., on the day of at maliciously set fire to a dwelling house one F.G. being therein.

STATEMENT OF OFFENCE

2nd Count—Arson (C.L.C. Act, 1935, s. 84 (c)).

PARTICULARS OF OFFENCE

A.B., on the day of at maliciously set fire to a dwelling house with intent to injure or defraud.

15

STATEMENT OF OFFENCES

A.B.—Arson (C.L.C. Act, 1935, s. 84 (c)).

C.D.—Accessory before the fact to the same offence (*ibid.* s. 267).

PARTICULARS OF OFFENCES

A.B. on the day of at maliciously set fire to a dwelling house with intent to injure or defraud.

C.D. on the same day at counselled, procured and commanded the said A.B. to commit the said offence.

Form 16 amended
by 50, 1984,
s. 3 (1) (1st
Sched.).

16

STATEMENT OF OFFENCE

1st Count—Obstructing railway (C.L.C. Act, 1935, s. 110).

PARTICULARS OF OFFENCE

A.B. on the day of at displaced a rail belonging to the State Transport Authority with intent to obstruct, overthrow, injure or destroy any engine, tender, carriage or truck using the said railway.

STATEMENT OF OFFENCE

2nd Count—Obstructing railway (C.L.C. Act, 1935, s. 111).

PARTICULARS OF OFFENCE

A.B. on the day of at by unlawfully displacing a sleeper belonging to the State Transport Authority did obstruct or cause to be obstructed an engine or carriage using the said railway.

17

STATEMENT OF OFFENCE

Damaging a tree after previous conviction (C.L.C. Act, 1935, s. 101).

PARTICULARS OF OFFENCE

A.B. on the day of at having been previously summarily convicted on the day of at of maliciously damaging a tree did maliciously destroy or damage certain underwood (the damage being less than \$2).

Form 18 amended
by 50, 1984,
s. 3 (1) (1st
Sched.).

18

STATEMENT OF OFFENCE

1st Count—Forgery (C.L.C. Act, 1935, s. 214 (a) (iv)).

PARTICULARS OF OFFENCE

A.B. on the day of at with intent to defraud forged a cheque for \$20 on the Bank.

STATEMENT OF OFFENCE

2nd Count—Uttering (*ibid.*)

PARTICULARS OF OFFENCE

A.B. on the day of at uttered (*the forged cheque mentioned in the 1st Count*) knowing it to be forged with intent to defraud.

Form 19 amended
by 50, 1984,
s. 3 (1)
(1st Sched.).

19

STATEMENT OF OFFENCE

Perjury (C.L.C. Act, 1935, s. 239).

PARTICULARS OF OFFENCE

A.B. on the day of at being a witness upon the trial of an action in the Local Court of Adelaide in which C.D. was plaintiff and E.F. was defendant knowingly falsely swore that he saw M.N. at Port Adelaide on the day of

20

STATEMENT OF OFFENCE

Libel (C.L.C. Act, 1935, s. 247).

PARTICULARS OF OFFENCE

A.B. on the day of at maliciously published a defamatory libel concerning E.F. in the form of a letter, book, pamphlet [*or as the case may be*]. [*Innuendoes should be set out where necessary.*]

21

STATEMENT OF OFFENCE

1st Count—Fraudulent conversion (C.L.C. Act, 1935, s. 184).

PARTICULARS OF OFFENCE

A.B. on the day of at fraudulently converted to his own use and benefit \$200 entrusted to him by J.S. in order that he the said A.B. might retain the same in safe custody.

STATEMENT OF OFFENCE

2nd Count—Fraudulent conversion (C.L.C. Act, 1935, s. 184).

PARTICULARS OF OFFENCE

A.B. on the day of at fraudulently converted to his own use and benefit \$200 received by him for and on account of L.M.

22

STATEMENT OF OFFENCE

Riot (Common Law).

PARTICULARS OF OFFENCE

A.B. on the day of at participated in a riot.

23

STATEMENT OF OFFENCE

Sexual intercourse with a person of or over 12 and under 17 (C.L.C. Act, 1935, s. 49 (2)).

PARTICULARS OF OFFENCE

A.B. on the day of at had sexual intercourse with C.D. a girl of 15 years.

Form 23 amended by 50, 1984, s. 3 (1) (1st Sched.).

24

PREVIOUS CONVICTIONS

A.B. has been previously convicted of—

- 1. Larceny, at the Supreme Court, Adelaide on the day of
2. Shopbreaking and Larceny, at the Circuit Court, Gladstone, on the day of
3. Receiving, at the Supreme Court, Adelaide on the day of

* * * * *

Scheds. 4-7 repealed by 54, 1956, s. 13.

* * * * *

Scheds. 8 and 9 repealed by 115, 1976, s. 14.

SCHEDULE 10

Whereas at [describe the court] A.B., having been found guilty of and judgment having been given that [state the substance], the court reserved a certain question of law for the consideration of the Full Court and execution was respited in the meantime.

This is to certify that the Full Court having considered the said question of law on the day of has decided that the said judgment should be annulled and you are therefore required forthwith to discharge the said A.B. from your custody.

(Signed)

Clerk of Arraignment.

To the Director of Correctional Services and all others whom it may concern.

Certificate of determination of question reserved. Sched. 10 amended by 88, 1975, s. 3 (1) (2nd Sched.).

APPENDIX

THE TREASON ACT 1351

The Act 25 Edward III Stat. 5, c 2: "A Declaration which Offences shall be adjudged Treason" reads Section 10. as follows:

ITEM, Whereas divers Opinions have been before this Time in what Case Treason shall be said, and in what not; The King, at the Request of the Lords and of the Commons, hath made a Declaration in the Manner as hereafter followeth; that is to say, When a Man doth compass or imagine the Death of our Lord the King, or of our Lady his Queen, or of their eldest Son and Heir; or if a Man do violate the King's Companion, or the King's eldest Daughter unmarried, or the Wife of the King's eldest Son and Heir; or if a Man do levy War against our Lord the King in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort, in the Realm, or elsewhere, and thereof be probably attainted of open Deed by the People of their Condition . . . And if a Man slea the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize and all other Justices assigned to hear and determine, being in their Places, doing their Offices. And it is to be understood, that in the Cases above rehearsed, that ought to be judged Treason which extends to our Lord the King, and his Royal Majesty: And of such Treason the Forfeiture of the Escheats pertaineth to our Sovereign Lord, as well of the Lands and Tenements holden of other, as of himself. . . And because that many other like Cases of Treason may happen in Time to come, which a Man cannot think nor declare at this present Time; it is accorded, That if any other Case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgement of the Treason till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony. And, if percase any Man of this Realm, ride armed covertly or secretly, with Men of Arms against any other, to slay him, or rob him, or take him, or retain him till he hath made Fine or Ransom for to have his Deliverance, it is not the Mind of the King nor his Council, that in such Case it shall be judged Treason, but shall be judged Felony or Trespass, according to the Laws of the Land of old Time used, and according as the Case requireth. And if in such Case, or other like, before this Time any Justices have judged Treason, and for this Cause the Lands and Tenements have come into the King's Hands as Forfeit, the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements be in the King's Hands, or in others, by Gift or in other Manner; saving always to our Lord the King the Year, and the Waste, and the Forfeitures of Chattles, which pertain to him in the Cases above named; and that the Writs of Scire facias be granted in such Case against the Land-Tenants without other Original, and without allowing the Protection of our Lord the King, in the said Suit; and that of the Lands which be in the King's Hands, Writs be granted to the Sheriff of the Counties where the Lands be, to deliver them out of the King's Hands without Delay.

A Uxint pur ceo qe diverses opinions ount este einz ces heures qen cas quant il avient doit estre dit treson & en quel cas noun le Roi a la requeste des Seignurs & de la Communalte ad fait declarissement qe ensuit cest assavoir Quant homme fait compasser ou imaginer la mort nostre Seigneur le Roi ma dame sa compaigne ou de leur fitz primer & heir ou si homme violast la compaigne le Roi ou leisnesce fill le Roi nient marie ou la compaigne leisne fitz & heir du Roi & si homme leve de guerre contre nostre dit Seigneur le Roi en son Roialme ou soit aherdant as enemys nostre Seigneur le Roi en le Roialme donant a eux eid ou confort en son Roialme ou par aillours & de ceo provablement soit atteint de overt faite par gentz de leur condition. . . & si homme tuast Chancellor Tresorer ou Justice nostre Seigneur le Roi del un Baunk ou del autre Justice en Eir & des assises & toutes autres Justices assignez a oier & terminer esteiantz en leurs places en fesantz leurs offices. Et fait a entendre qen les cases suisnomez doit estre ajugge treson qe sestent a nostre Seigneur le Roi & a sa roial majeste & de tiele manere de treson la forfeiture des eschetes appartient a nostre Seigneur le Roi sibien des terres & tenemenz tenuz des autres come de lui meismes. . . Et pur ceo qe plusurs autres cases de semblable treson purront escheer en temps a venir queux homme ne purra penser ne declarer en present Assentu est qe si autre cas supposee treson qe nest especifie paramount aviegne de novel devant ascunes Justices demoeрге la Justices saunz aler au jugement de treson tanqe par devant nostre Seigneur le Roi en son parlement soit le cas monstree & desclarre le que ceo doit estre ajugge treson ou autre felonie. Et si par cas ascun homme de cest roialme chivache arme descovert ou secrement od gerre armees contre ascun autre pur lui tuer ou derober ou pur lui prendre & retenir tanqil face fyn ou raunceon pur sa deliverance avoir nest pas lentent du Roi & de son conseil qe en tiel cas soit ajugge treson einz soit ajugge felonie ou trespass solonc la lei de la terre auncienement usee & solonc ceo qe le cas demand. Et si en tiel cas ou autre semblable devant ces heures ascune Justice eit ajugge treson & par celle cause les terres & tenemenz soient devenuz en la main nostre Seigneur le Roi come forfaitz eient les chiefs Seignurs de fee leurs eschetes des tenemenz de eux tenuz le quel qe les tenemenz soient en la main nostre Seigneur le Roi ou en la main des autres par donn ou en autre manere Sauvant totefoitz a nostre Seigneur le Roi lan & le wast & autres forfaitures des chateux qe a lui attenent en les cases suisnommes & qe briefs de Scire facias vers les terres tenantz soient grantez en tiel cas saunz autre originale & saunz allower la protection nostre Seigneur le Roi en la dite seute & qe de les terres qe sont en la main le Roi soit grante brief as viscontes des countees la ou les terres serront de ostier la main le Roi saunz outre delais.

Repealed by 1
Will. IV (1830)
c. 66, s. 31; 2 & 3
Will. IV (1831-2).
c. 34, s. 1.

Repealed by 9
Geo. IV (1828).
c. 31, s. 1.

THE TREASON ACT 1795

The Act 36 George III C. 7 reads as follows:

Section 6.

An Act for the Safety and Preservation of His Majesty's Person and Government against treasonable and seditious Practices and Attempts.—[18th December 1795.]

WE, your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons, of Great Britain, in this present Parliament assembled, duly considering the daring Outrages offered to your Majesty's most Sacred Person, in your Passage to and from your Parliament at the Opening of this present Session, and also the continued Attempts of wicked and evil-disposed Persons

to disturb the Tranquility of this your Majesty's Kingdom, particularly by the Multitude of seditious Pamphlets and Speeches daily printed, published, and dispersed, with unremitting Industry, and with a transcendent boldness, in Contempt of your Majesty's Royal Person and Dignity, and tending to the Overthrow of the Laws, Government, and happy Constitution of these Realms, have judged that it is become necessary to provide a further Remedy against all such treasonable and seditious Practices and Attempts: We, therefore, calling to Mind the good and wholesome Provisions which have at different Times been made by the Wisdom of Parliament for the averting such Dangers, and more especially for the Security and Preservation of the Persons of the Sovereigns of these Realms, do most humbly beseech your Majesty that it may be enacted; and be it enacted by the King's most Excellency Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons whatsoever, after the Day of the passing of this Act, during the natural Life of our most Gracious Sovereign Lord the King, (whom Almighty God preserve and bless with a long and prosperous Reign,) and until the End of the next Session of Parliament after a Demise of the Crown, shall, within the Realm or without, compass, imagine, invent, devise, or intend Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint, of the person of the same our Sovereign Lord the King, his Heirs and Successors, or to deprive or depose him or them from the Style, Honour, or Kingly Name of the Imperial Crown of this Realm, or of any other of his Majesty's Dominions or Countries; or to levy War against his Majesty, his Heirs and Successors, within this Realm, in order, by Force or Constraint, to compel him or them to change his or their Measures or Counsels, or in order to put any Force or Constraint upon, or to intimidate, or overawe, both Houses, or either House of Parliament; or to move or stir any Foreigner or Stranger with Force to invade this Realm, or any other his Majesty's Dominions or Countries, under the Obedience of his Majesty, his Heirs and Successors; and such Compassings, Imaginations, Inventions, Devices, or Intentions, or any of them, shall express, utter or declare, by publishing any Printing or Writing, or by any overt Act or Deed; being legally convicted thereof, upon the Oaths of two lawful and credible Witnesses, upon Trial, or otherwise convicted or attainted by due Course of Law, then every such Person and Persons, so as aforesaid offending, shall be deemed, declared, and adjudged to be a Traitor and Traitors, and shall suffer Pains of Death, and also lose and forfeit as in Cases of High Treason.

II. And be it further enacted by the Authority aforesaid, That if any Person or Persons within that Part of *Great Britain*, called *England*, at any Time from and after the Day of the passing of this Act, during three Years from the Day of passing this Act, and until the End of the then next Session of Parliament, shall maliciously and advisedly, by Writing, Printing, Preaching, or other Speaking, express, publish, utter, or declare any Words or Sentences to incite or stir up the People to Hatred or Contempt of the Person of his Majesty, his Heirs or Successors, or the Government and Constitution of this Realm, as by Law established, then every such Person and Persons, being thereof legally convicted, shall be liable to such Punishment as may by Law be inflicted in Cases of High Misdemeanors; and if any Person or Persons shall, after being so convicted, offend a second Time, and be thereupon convicted, before any Commission of Oyer and Terminer, or Gaol Delivery, or in his Majesty's Court of King's Bench, such Person or Persons may, on such second Conviction, be adjudged, at the Discretion of the Court, either to suffer such Punishment as may now by Law be inflicted in Cases of High Misdemeanors, or to be banished this Realm, or to be transported to such Place as shall be appointed by his Majesty for the Transportation of Offenders; which Banishment or Transportation shall be for such Term as the Court may appoint, not exceeding seven Years.

III. And be it further enacted, That if any Offender or Offenders, who shall be so ordered by any such Court as aforesaid to be banished the Realm, or transported beyond the Seas, in Manner aforesaid, shall be afterwards at large within any Part of the Kingdom of *Great Britain*, without some lawful Cause, before the Expiration of the Term for which such Offender or Offenders shall have been ordered to be banished or transported beyond the Seas as aforesaid, every such Offender being so at large as aforesaid, being thereof lawfully convicted, shall suffer Death, as in Cases of Felony without Benefit of Clergy; and such Offender or Offenders may be tried, either before Justices of Assize, Oyer and Terminer, Great Sessions, or Gaol Delivery, for the County, City, Liberty, Borough, or Place, where such Offender or Offenders shall be apprehended and taken, or from whence he, she, or they was or were ordered to be banished or transported; and the Clerk of Assize, Clerk of the Peace, or other Clerk or Officer of the Court, having the Custody of the Records where such Orders of Banishment or Transportation shall be made, shall, at the Request of the Prosecutor, or any other Person on his Majesty's Behalf, make out and give a Certificate, in Writing, signed by him, containing the Effect and Substance only (omitting the formal Part) of every Indictment and Conviction of such Offender or Offenders, and of the Order for his, her, or their Banishment or Transportation, to the Justices of Assize, Oyer and Terminer, Great Sessions, or Gaol Delivery, where such Offender or Offenders shall be indicted (not taking for the same more than two Shillings and six Pence); which Certificate shall be sufficient Proof of the Conviction and Order for Banishment or Transportation of such Offender or Offenders.

IV. Provided always, That no Person or Persons, by virtue of this present Act, shall for any Misdemeanor incur any the Penalties hereinbefore mentioned, unless he, she, or they be prosecuted within six Calendar Months next after the Offence committed, and the Prosecution brought to Trial or Judgment within the first Term, Sittings, Assizes, or Sessions in which, by the Course of the Court wherein such Prosecution shall be depending, the Prosecutor could bring on such Trial, or cause such Judgment to be entered, or in the Term, Sittings, Assizes, or Session which shall next ensue, unless the Court in which such Prosecution shall be depending, or before which such Trial ought to be had, shall, on special Ground stated by Motion in open Court, think fit to enlarge the Time for the Trial thereof, or unless the Defendant shall be prosecuted to or towards an Outlawry; and that no Person shall, upon Trial, be convicted by virtue of this Act, for any Misdemeanor, but by the Oaths of two credible Witnesses.

V. Provided always, and be it further enacted, That all and every Person or Persons that shall at any Time be accused, or indicted, or prosecuted, for any Offence made or declared to be Treason by this Act, shall be entitled to the Benefit of the Act of Parliament, made in the seventh Year of his late Majesty King *William* the Third, intituled, *An Act for regulating of Trials in Cases of Treason and Misprision of Treason*; and also to the Provisions made by another Act of Parliament, passed in the seventh Year of her late Majesty Queen *Anne*, intituled, *An Act for improving the Union of the two Kingdoms*.

VI. Provided also, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to prevent or affect any Prosecution by Information or Indictment at the Common Law, for any Offence within the Provisions of this Act, unless the Party shall have been first prosecuted under this Act.

THE TREASON ACT 1817

The Act 57 George III C. 6 reads as follows:

Section 6.

An Act to make perpetual certain Parts of an Act of the Thirty-sixth Year of His present Majesty, for the Safety and Preservation of His Majesty's Person and Government against Treasonable and Seditious Practices and Attempts; and for the Safety and Preservation of the Person of His Royal Highness The Prince Regent against Treasonable Practices and Attempts.—[17th March 1817.]

WHEREAS by an Act passed in the Thirty sixth Year of His present Majesty's Reign, intituled *An Act for the Safety and Preservation of His Majesty's Person and Government against Treasonable and Seditious Practices and Attempts*, it was amongst other Things enacted, that if any Person or Persons whatsoever, after the Day of the passing of that Act, during the natural Life of His Majesty, and until the End of the next Session of Parliament after the Demise of the Crown, should, within the Realm or without, compass, imagine, invent, devise or intend Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint of the Person of His Majesty, His Heirs and Successors, or to deprive or depose Him or them from the Stile, Honour or Kingly Name of the Imperial Crown of this Realm, or of any other of His Majesty's Dominions or Countries, or to levy War against His Majesty, His Heirs and Successors, within this Realm, in order by Force or Constraint to compel Him or them to change His or their Measures or Counsels, or in order to put any Force or Constraint upon or to intimidate or overawe both Houses or either House of Parliament, or to move or stir any Foreigner or Stranger with Force to invade this Realm or any other His Majesty's Dominions or Countries under the Obeisance of His Majesty, His Heirs and Successors, and such Compassings, Imaginations, Inventions, Devices or Intentions, or any of them, should express, utter or declare, by publishing any Printing or Writing, or by any overt Act or Deed, being legally convicted thereof upon the Oaths of Two lawful and credible Witnesses upon Trial, or otherwise convicted or attained by due Course of Law, then every such Person and Persons so as aforesaid offending should be deemed, declared and adjudged to be a Traitor and Traitors, and should suffer Pains of Death, and also lose and forfeit as in cases of High Treason: And Whereas it is necessary and expedient that such of the Provisions of the said Act as would expire at the End of the next Session of Parliament after the Demise of the Crown should be further continued and made perpetual: Be it therefore enacted by The King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every the hereinbefore recited Provisions which relate to the Heirs and Successors of His Majesty, the Sovereigns of these Realms, shall be and the same are hereby made perpetual.

II. And Whereas, in consequence of the daring Outrages offered to the Person of His Royal Highness the Prince Regent of the United Kingdom of *Great Britain and Ireland*, in the Exercise and Administration of the Royal Power and Authority to the Crown of these Realms belonging, in His Passage to and from the Parliament, at the Opening of this present Session, it is expedient, for the Security and Preservation of the Person of the same His Royal Highness The Prince Regent, to extend certain of the Provisions of the said Act; Be it therefore enacted, That if any Person or Persons whatsoever, after the Day of passing this Act, during the Period in which His Royal Highness The Prince Regent shall remain in the Personal Exercise of the Royal Authority, shall, within the Realm or without, compass, imagine, invent, devise or intend Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint, of the Person of the same His Royal Highness The Prince Regent, and such Compassings, Imaginations, Inventions, Devices or Intentions, or any of them, shall express, utter or declare, by publishing any Printing or Writing, or by any overt Act or Deed, being legally convicted thereof upon the Oaths of Two lawful and credible Witnesses upon Trial, or otherwise convicted or attained by due Course of Law, then every such Person and Persons so as aforesaid offending shall be deemed, declared and adjudged to be a Traitor and Traitors, and shall suffer Pains of Death, and also lose and forfeit as in cases of High Treason.

III. And Whereas it is expedient to extend the Provisions of a certain Act passed in the Thirty ninth and Fortieth Years of the Reign of His present Majesty, intituled *An Act for regulating Trials for High Treason and Misprision of Treason in certain cases*; Be it therefore enacted, That from and after the passing of this Act, all and every the Clauses, Provisions and Regulations in the said Act contained shall extend and be deemed, taken and construed to extend, to all and every case of High Treason in compassing or imagining the Death of His Royal Highness The Prince Regent, and Misprision of such Treason, where the overt Act or overt Acts which shall be alleged in the Indictment for such Offence shall be Assassination or Killing of His Royal Highness The Prince Regent, or any direct Attempt against His Life, or any direct Attempt against His Person whereby His Life may be endangered or His Person may suffer bodily Harm.

IV. Provided, and be it further enacted, That all and every Person and Persons that shall at any Time be accused, or indicted or prosecuted for any Offence made or declared to be High Treason by this Act, shall be entitled to the Benefit of the Act made in the Seventh Year of His late Majesty King *William the Third*, intituled *An Act for regulating of Trials in Cases of Treason and Misprision of Treason*; and also to the Provisions made by another Act, passed in the Seventh Year of Her late Majesty Queen *Anne*, intituled *An Act for improving the Union of the Two Kingdoms*; save and except in Cases of High Treason in compassing or imagining the Death of any Heir or Successor of His Majesty, or the Death of His Royal Highness The Prince Regent, and of Misprision of such Treason, where the overt Act or overt Acts of such Treason which shall be alleged in the Indictment for such Offence shall be Assassination or Killing of any Heir or Successor of His Majesty, or Assassination or Killing of His Royal Highness The Prince Regent, or any direct Attempt against the Life of any Heir or Successor of His Majesty, or any such Attempt against the Life of the Prince Regent, or any direct Attempt against the Person of any Heir or Successor of His Majesty, or against the Person of The

Criminal Law Consolidation Act, 1935

Prince Regent, whereby the Life of such Heir or Successor, or the Life of The Prince Regent, may be endangered, or the Person of such Heir or Successor, or of The Prince Regent, may suffer bodily Harm.

V. Provided also, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to prevent or affect any Prosecution, by Information or Indictment, to which any Person or Persons would have been or would be liable if this Act had not been enacted, for any Offence within the Provisions of this Act, unless the Party shall have been first prosecuted under this Act.

VI. Provided also, and be it enacted, That the Statute of the Fifty fourth Year of His Majesty's Reign, intituled *An Act to alter the Punishment in certain Cases of High Treason*, shall have the same Effect as to Sentences and Judgments to be pronounced and awarded under this Act, as if this Act had been made and passed before the said Act of the Fifty fourth Year of His Majesty's Reign.

Section 6.