CRIMINAL LAW CONSOLIDATION ACT, 1935.

No. 2252 of 1935.

An Act to consolidate certain Acts relating to the Criminal Law.

[*Assented to 21st December*, 1935.]

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.

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 proclamation.

Arrangement of Act. 38, 1876, s. 1.

3. The provisions of this Act are arranged as follows:—

PART I.—Preliminary (Sections 1-5).

PART II.—Treason Felony (Sections 6-10).

PART III.—Offences Against the Person (Sections 11-83).

Homicide (Sections 11-17).

Attempts to Murder (Section 18).

Letters Threatening to Murder (Section 19).

Acts Causing or Intended to Cause Danger to Life or Bodily Harm (Sections 20-38).

Assaults (Sections 39-47).

Rape, Defilement, and Abduction of Women and Girls (Sections 48-68).

Unnatural Offences (Sections 69-72).

Procedure in Sexual Cases (Sections 73-78).

Bigamy (Section 79).

s. 2. This Act was proclaimed to commence on 2nd January, 1936: *Gazette* 2nd January, 1936, p. 1.

Childstealing (Section 80).
Attempts to Procure Abortion (Sections 81, 82).
Concealment of Birth (Section 83).

PART IV.—Malicious Injuries to Property (Sections 84-129).
Injuries by Fire to Buildings and Goods (Sections 84-92).
Injuries by Explosives to Buildings, &c. (Sections 93, 94)
Injuries to Buildings by Rioters (Section 95).
Injuries to Buildings by Tenants (Section 96).
Injuries to Manufactures, Machinery, &c. (Sections 97-99).
Injuries to Corn, Trees, and Vegetable Products (Sections 100-102).
Injuries to Mines (Sections 103, 104).
Injuries to Sea, River Banks, &c. (Sections 105, 106).
Injuries to Ponds, &c. (Sections 107, 108).
Injuries to Bridges, &c. (Section 109).
Injuries to Railways, Electric Cables, &c. (Section 110-112).
Injuries to Works of Art (Section 113).
Injuries to Cattle (Section 114-117).
Injuries to Ships (Section 118-124).
Sending Letters Threatening to Harm or Destroy (Section 125).
Injuries not before Provided for (Sections 126, 127).
Supplementary Provisions (Sections 128, 129).

PART V.—Larceny and Similar Offences (Sections 130-211).
Larceny of Cattle and other Animals (Sections 136-143).
Larceny of written Instruments, things attached to or Growing on Land (Section 144-146).
Larceny of things attached to or Growing on Land (Sections 147-151).
Larceny from Mines or Mineral Lands (Sections 152-154).
Larceny from the Person and other Like Offences (Sections 155-166).
Sacrilege, Burglary, Housebreaking, &c. (Sections 167-174).
Larceny from Ships, Wharves, &c. (Section 175).
Larceny and Embezzlement by Clerks and Servants, and Persons in the Public Service (Sections 176-182).
Larceny by Tenants and Lodgers (Section 183).
Frauds by Trustees, Agents, Bankers or Factors (Sections 184-194).
False Pretences (Section 195).
Receiving (Sections 196-200).

Restitution and Recovery of Stolen Property (Sections 201-203).
False Personation, &c. (Sections 204-205).
Piracy (Sections 206-211).

PART VI.—Forgery (Sections 212-236).
Making and Engraving Plates for Bank Notes (Sections 217, 218).
Forging Bank Notes (Sections 219-223).
Forging Official and Legal Documents (Sections 224-232)
Miscellaneous Matters (Sections 233-236).

PART VII.—Offences of a Public Nature (Sections 237-269).
Offences against Public Justice (Sections 237-242).
Forcible Entry (Section 243).
Riots (Sections 244, 245).
Defamatory Libels (Sections 246-252).
Trafficking in Public Offices (Section 253).
Nuisance by Fireworks (Section 254).
Offences against Morality, Public Health, &c. (Sections 255-256).
Offences against Religion, &c. (Sections 257-259).
Conspiracy and Protection of Property (Sections 260-266).

PART VIII.—Accessories (Sections 267-269).

PART IX.—Miscellaneous and Procedure (Sections 270-328).
Punishment for Certain Common Law Misdemeanours (Section 270).
Apprehension of Offenders (Sections 271-273).
Informations (Sections 274-283).
Pleas and Proceedings on Trial (Sections 284-291).
Insanity (Sections 292-293).
Verdicts (Sections 294-296).
Costs, Witness Fees, and Compensations (Sections 297-299).
Enforcement of Fines and Estreated Recognizances (Section 300).
Sentence and Execution (Sections 301-314).
Police Supervision of Certain Offenders and Harbouring Thieves (Sections 315-318).
Habitual Criminals (Sections 319-328).

PART X.—Convicts' Property (Sections 329-346).

PART XI.—Cases Stated and Appeals (Sections 347-369).
Cases Stated (Sections 350-351).
Right of Appeal and Determination of Appeals (Sections 352-356).
Procedure (Sections 357-368).
References on Petitions for Mercy (Section 369).

Repeal.

4. The following Acts set out in the table hereunder are to the extent therein indicated, hereby repealed :—

No. of Act.	Title or Short Title.	Extent of Repeal.
14 of 1841-2	An act for adopting certain Acts of Parliament passed in the First Year of the Reign of Her Majesty Queen Victoria in the Administration of Justice in South Australia in like manner as other Laws of England are applied therein	The whole
13 of 1866-7	An Act for amending the Law of Evidence and Practice on Criminal Trials	The whole
2 of 1868	The Treason Felony Act, 1868	The whole
9 of 1870	The Habitual Criminals Act, 1870	The whole
25 of 1874	An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the law relating thereto	The whole
38 of 1876	The Criminal Law Consolidation Act, 1876	The whole
109 of 1878	The Conspiracy and Protection of Property Act, 1878....	The whole
358 of 1885	The Criminal Law Consolidation Amendment Act, 1885.	The whole
730 of 1899	The Children's Protection Act, 1899	Section 3
731 of 1902	The Criminal Law Amendment Act, 1902	The whole
927 of 1907	The Habitual Criminals Amendment Act, 1907.....	The whole
1303 of 1917	The Criminal Law Amendment Act, 1917	The whole
1293 of 1917	Fisheries Act, 1917	Section 58
1479 of 1921	The Justices Act, 1921	Sections 156 and 157
1613 of 1924	The Criminal Appeals Act, 1924.....	The whole
1670 of 1925	The Criminal Law Amendment Act, 1925	The whole
1780 of 1926	Maintenance Act, 1926	Section 199
1804 of 1927	The Criminal Law Act, 1927	The whole
1909 of 1929	The Criminal Informations Act, 1929	The whole
1940 of 1929	The Criminal Law Act, 1929	The whole
2139 of 1933	The Bushfires Act, 1933.....	Section 24
2156 of 1934	The Local Government Act, 1934	Section 873

Interpretation.

5. (1) In this Act—

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

"place of divine worship" means any church, chapel, meeting-house, or other place of divine worship:

38, 18 6, s. 175. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 46 (2).

"dwelling-house" does not include a building although within the same curtilage with any dwelling-house, and occupied therewith, unless there is a communication between such building and dwelling-house, either immediate, or by means of a covered and enclosed passage leading from the one to the other:

s. 4. Section 873 of the Local Government Act, 1934, has been revived by Statute Law Revision Act, 1936.

"night" means the interval between nine o'clock in the evening and six o'clock in the morning of the the next succeeding day: 38, 1876, s. 173. U.K., 24 & 25, Vict., c. 96, s. 52. U.K., 6 & 7, Geo. 5, c. 50, s. 46 (1).

"property" includes goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or in respect to which any offence may be committed: 38, 1876, s. 412. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 46.

"liable to be imprisoned for life" means liable to be imprisoned for life or any less term.

(2) Where by any provision of this Act an offence is made punishable more severely by reason of having been committed after a previous conviction for a similar offence, the reference in that provision to a previous conviction shall be taken to include a previous conviction for an offence against the provision of the repealed Act for which the provision of this Act is substituted.

PART II.

TREASON FELONY.

6. The Acts 36 George III C. 7 and 57 George III C. 6, of the Imperial Parliament, except those provisions of those Acts which relate to the compassing, imagining, inventing, devising, or intending death or destruction or any bodily harm tending to death or destruction maim or wounding, imprisonment or restraint of the person of His Majesty, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices or intentions, or any of them, are hereby repealed. Repeal. 2, 1868, s. 1. Cf. U.K., 11 & 12, Vict., c. 12, s. 1.

7. Any person who compasses, imagines, invents, devises, or intends— Treason felonies. 2, 1868, s. 2. Cf. U.K., 11 & 12, Vict., c. 12, s. 3.

(*a*) to deprive or depose His Majesty from the style, honour, or Royal name of the Imperial Crown of the United Kingdom or of any other of His Majesty's dominions and countries:

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

(i.) by force or constraint to compel Him to change His measures or counsels; or

(ii.) to put any force or constraint upon, 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 His Majesty's dominions or countries under the obeisance of His Majesty,

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

Time within which prosecution shall be commenced, and warrant issued.
2, 1868, s. 3.

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

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

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

Cf. U.K., 7 & 8, Will. 3, c. 3, ss. 2, 4.

(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 upon his own confession in open court, or unless the words so spoken are proved by two credible witnesses.

In informations more than one overt act may be charged.
2, 1868, s. 4.

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 such compassings, imaginations, inventions, devices, or intentions, or any of them, were expressed, uttered, or declared.

Information for felony under this Act valid though the facts amount to treason.
2, 1868, s. 6.
Cf. U.K., 11 & 12, Vict., c. 12, s. 7.

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

PART II.

10. The provisions of the last preceding four sections 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."

Nothing herein to affect 25 Ed. 3, c. 2.

2, 1868, s. 5. Cf. U.K., 11 & 12, Vict., c. 12, s. 6.

PART III.

PART III.

OFFENCES AGAINST THE PERSON.

Homicide.

11. Any person who is convicted of murder shall suffer death as a felon.

Murder.

38, 1876, s. 5. U.K., 24 & 25, Vict., c. 100, s. 1.

12. Any person who—

(*a*) conspires, confederates, and agrees with any other person to murder any person, whether he is a subject of His Majesty or not, and whether he is within the King's dominions or not:

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

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

Conspiring or soliciting to commit murder.

38, 1876, s. 15. Cf. U.K., 24 & 25, Vict., c. 100, s. 4.

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. Cf. U.K., 24 & 25, Vict., c. 100, s. 5.

---

s. 11. REGINA v. TOWNSEND (1874) 8 S.A.L.R. 72; 5 Austn. Digest 248. On the trial of an indictment for the murder of an infant the fact that the infant was born alive must be strictly proved.

s. 13. REGINA v. FORREST (1886) 20 S.A.L.R. 78; 8 A.L.T. 120; 5 Austn. Digest 281. Where the death of the deceased was due not directly to the negligence of the accused but to blood poisoning contracted in hospital whilst the deceased was being treated with the proper degree of knowledge and skill for injuries caused by the negligence of the accused, held that the accused had caused the death.

R. v. WATSON (1906) S.A.L.R. 187; 5 Austn. Digest 266. On an indictment for murder, the jury cannot return a verdict of manslaughter unless there is some evidence reducing the crime charged to manslaughter.

R. v. WITTIG (1919) S.A.L.R. 181; special leave to appeal refused by High Court, WITTIG v. THE KING 27 C.L.R. 158; 5 Austn. Digest 642. On a charge of manslaughter, when the prosecutor proves that the act of the accused killed the deceased, it lies on the accused to show that he is excused.

MOORE v. THE KING (1926) S.A.S.R. 52; 5 Austn. Digest 280. Affirmed by MOORE v. THE KING (1926) 39 C.L.R. 602 (note). In a running-down case, once the fact of homicide is proved the onus is on the accused to show lawful justification or excuse. To find a verdict of manslaughter by negligence the jury must find gross or reckless negligence.

Causing death by negligent driving.
1804, 1927, ss. 2, 3, 4, 5. Cf. U.K., 20 & 21, Geo. 5, c. 43, s. 11.

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 any term not exceeding seven years, or to a fine not exceeding two hundred and fifty pounds, or to both such imprisonment and fine as aforesaid.

(2) Subsection (1) shall be deemed to create a single offence, and no objection shall be taken to an information for such offence alleging that the defendant did drive 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) "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 any volatile spirit, steam, or electricity, or by means other than animal power, but does not include any vehicle run upon a railway or tramway.

(4) This section shall 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: Provided that 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 for murder or manslaughter shall not be joined in the same information with a charge for an offence under this section.

(6) If on the holding of any inquest as to the cause of the death of any person it appears that the death of the deceased was caused by any person in such circumstances that such person has been guilty of an offence against this section, the coroner holding such inquest or (as the case may be) the jurors before whom such inquest is held may find that such person has been guilty of an offence against this section, and the inquisition founded upon such inquest may indict such person accordingly.

15. Except as provided in the last preceding section, 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.

Excusable homicide.
38, 1876, s. 18. U.K., 24 & 25, Vict., c. 100, s. 7.

16. Every offence which before the commencement of the Imperial Act of the ninth year of King George the Fourth, chapter thirty-one, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence, and shall be punishable accordingly.

Petit treason.
38, 1876, s. 19. U.K., 24 & 25, Vict., c. 100, s. 8.

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.

Murder when death happens outside the State
38, 1876, s. 20. Cf. U.K., 24 & 25, Vict., c. 100, s. 9.

Attempts to Murder.

18. Any person who by any means attempts to commit murder, shall be guilty of felony, and liable to be imprisoned for life, and may be whipped.

Attempts to murder.
38, 1876, ss. 21, 22, 23, 24, 25. 1670, 1925, s. 13. Cf. U.K., 24 & 25, Vict., c. 100, s. 15.

Letters Threatening to Murder.

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

Sending letters threatening to murder.
38, 1876, s. 26. 1670, 1925, s. 13. Cf. U.K., 24 & 25, Vict., c. 100, s. 16.

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

20. Any person who unlawfully and maliciously—

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

(*b*) prevents or impedes any person in his endeavour to save the life of any person on board of or having quitted any such ship or vessel,

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

Impeding a person endeavouring to save himself from shipwreck.
38, 1876, s. 27. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 100, s. 17.

Wounding, etc., with intent to do grievous bodily harm.
38, 1876, s. 28. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 100, s. 18.

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

(*a*) wounds any person:

(*b*) causes any grievous bodily harm to any person:

(*c*) shoots at any person:

(*d*) by drawing a trigger or in any other manner, attempts to discharge loaded arms of any kind at any person,

with intent in any case to—

(i.) maim, disfigure, disable, or do other grievous bodily harm to any person:

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

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

Interpretation of loaded arms.
38, 1876, s. 29. U.K., 24 & 25, Vict., c. 100, s. 19.

22. Any gun, pistol, or other arms which is loaded in the barrel with gunpowder, or any other explosive substance, and ball, shot, slug, or other destructive material, shall be deemed to be loaded arms within the meaning of this Act, although the attempt to discharge the same may fail from want of proper priming, or from any other cause.

Inflicting bodily injury with or without a weapon.
38, 1876, s. 30. U.K., 24 & 25, Vict., c. 100, s. 20.

23. Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without a weapon or instrument, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding three years.

Verdict of unlawful wounding when felony charged.
38, 1876, s. 31. Cf. U.K., 14 & 15, Vict., c. 19, s. 5.

24. If upon the trial of any person for any felony, except murder or manslaughter, the information alleges that the person accused wounded any person, and the jury is satisfied that the person accused 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 such felony and find him guilty of unlawfully wounding, and thereupon he shall be liable to be imprisoned for any term not exceeding three years.

Choking or stupefying to commit crime.
38, 1876, ss. 32 and 33. 1670, 1925, s. 13. Cf. U.K., 24 & 25, Vict., c. 100, s. 21.

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—

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

s. 21. R. v. McCABE (1904) S.A.L.R. 115; 5 Austn. Digest 317. To prove a charge of shooting with intent to prevent the lawful apprehension of the defendant by police constables who had no warrant, but suspected the defendant of evil designs, it must be shown that the defendant knew that the persons shot at were constables and that they were intending to apprehend him.

(*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,

Ibid., s. 22.

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

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, &c., so as to endanger life, or inflict grievous bodily harm.

38, 1876, s. 34. 1670, 1925, 13. U.K., 24 & 25, Vict., c. 100, s. 23.

(*a*) to endanger the life of such person ; or

(*b*) to inflict upon such person any grievous bodily harm,

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

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

Maliciously administering poison, &c., with intent to injure, aggrieve, or annoy any other person.

38, 1876, s. 35. U.K., 24 & 25, Vict., c. 100, s. 24.

28. If, upon the trial of any person for any felony mentioned in the last but one preceding section, the jury is not satisfied that the accused is guilty thereof, but is satisfied that he is guilty of any misdemeanour mentioned in the last preceding section, 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 upon an information for that misdemeanour.

Verdict for misdemeanour where felony charged.

38, 1876, s. 36 U.K., 24 & 25, Vict., c. 100, s. 25.

29. Any person who being legally liable, either as a husband, parent, guardian, committee, master, mistress, nurse, or otherwise, to provide for any person as a wife, child, ward, lunatic, idiot, apprentice, servant, infant, or otherwise, necessary food, clothing, or lodging—

Not providing food, &c., for wives, children, etc., whereby life endangered.

38, 1876, s. 37. Cf. U.K., 24 & 25, Vict., c. 100, s. 26. Cf. U.K., 23, Geo. 5, c. 12, s. 1 (2).

(*a*) wilfully and without lawful excuse refuses or neglects to provide the same ; or

(*b*) unlawfully and maliciously does, or causes to be done, any bodily harm to any such person as a wife, child, ward, lunatic, idiot, apprentice, servant,

infant, or otherwise, so that the life of such person is endangered, or the health of such person is or is likely to be permanently injured—

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

Exposing children whereby life endangered.
38, 1876, s. 38. U.K., 24 & 25, Vict., c. 100, s. 27. Cf. U.K., 23, Geo. 5, c. 12, s. 1.

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

Causing bodily injury by explosives.
38, 1876, s. 39. U.K., 24 & 25, Vict., c. 100, s. 28.

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 any term not exceeding three years.

Using explosives, &c., with intent to do grievous bodily harm.
38, 1876, s. 40. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 100, s. 29.

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, upon, or to any person,

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

Placing gunpowder near a building, ship, &c., with intent to do bodily injury.
38, 1876, s. 41. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 100, s. 30.

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

Setting spring-guns, &c., with intent to inflict grievous bodily harm.
38, 1876, s. 42. U.K., 24 & 25, Vict., c. 100, s. 31.

34. (1) Any person who sets or places, or causes to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with intent that the same or whereby the same may destroy or

inflict grievous bodily harm upon a trespasser or other person coming into contact therewith, shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding two years.

(2) Any person who knowingly and wilfully permits any such spring-gun, man-trap, 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 so set or placed, shall be deemed to have set and placed such gun, trap, or engine with the intent aforesaid :

(3) Nothing in this section shall make 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, man-trap, or other engine which is set or placed in a dwelling-house for the protection thereof.

Throwing stones, &c., at railway trains.
38, 1876, s. 43.
Cf. U.K., 24 & 25, Vict., c. 100, s. 33.

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.

(2) " Railway vehicle " means any engine, tender, carriage, or truck used on a railway.

Acts done with intent to endanger persons on railways.
38, 1876, s. 44.
1670, 1925, s. 13
Cf. U.K., 24 & 25, Vict., c. 100, s. 32.

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

(*a*) puts or throws upon or across the 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 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 upon 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.

Doing or omitting anything to endanger passengers by railway.
38, 1876, s. 45. U.K., 24 & 25, Vict., c. 100, s. 34.

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

Injuring persons by furious riding or driving.
38, 1876, s. 46. Cf. U.K., 24 & 25, Vict., c. 100, s. 35.

38. Any person who, being the rider of any horse or other animal, or having charge of any carriage or vehicle, by wanton or furious riding, driving, or racing, or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding two years.

Assaults.

Common assault.
38, 1876, s. 48. U.K., 24 & 25, Vict., c. 100, s. 47 (part).

39. Any person convicted of common assault shall be liable to be imprisoned for any term not exceeding one year.

Assaults occasioning harm.
38, 1876, s. 47. U.K., 24 & 25, Vict., c. 100, s. 47 (part).

40. Any person convicted of assault occasioning actual bodily harm shall be liable to be imprisoned for any term not exceeding three years.

Obstructing or assaulting clergyman in discharge of his duties.
38, 1876, s. 49. U.K., 24 & 25, Vict., c. 100, s. 36.

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:

(*b*) strikes or offers any violence to, or upon 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 above-mentioned, or to the knowledge of the offender is going to perform or returning from the performance of those rites or duties,

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

Assaulting a magistrate preserving wreck.
38, 1876, s. 50. U.K., 24 & 25, Vict., c. 100, s. 37.

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, or cast on shore, or lying under water, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

s. 40. REGINA v. KINGSTON (1884) 18 S.A.L.R. 76; 5 Austn. Digest 336. Section 40 extends to a case where the bodily harm is caused by an assault and battery.

Assaults with intent.

38, 1876, s. 51. U.K., 24 & 25, Vict., c. 100, s. 38.

43. Any person who—

(*a*) assaults any person with intent to commit a felony:

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

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

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

Forcibly hindering seaman.

38, 1876, s. 52. U.K., 24 & 25, Vict., c. 100, s. 40.

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:

(*b*) beats or uses any violence to 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 any term not exceeding six months.

Assaults arising from combination.

38, 1876, s. 53. U.K., 24 & 25, Vict., c. 100, s. 41.

45. Any person who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business, or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding two years.

Summary proceedings for assault.

38, 1876, ss. 54, 55, 56, and 57. 1670, 1925, s. 3. Cf. U.K., 24 & 25, Vict., c. 100, s. 42.

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

(2) On the hearing of such a complaint the Special Magistrate or Justices may order the offender to be imprisoned for any term not exceeding two months, or to pay a fine not exceeding twenty-five pounds, and such additional amount by way of compensation to the party aggrieved, as shall appear to the Special Magistrate or Justices to be just.

---

s. 46. LANG v. REUTER (1927) S.A.S.R. 38; 12 Austn. Digest 383. When an offence is in itself of a serious nature, there should be very marked mitigating circumstances to justify its being treated as trifling.

TYLER v. PAYNE (1929) S.A.S.R. 13; 12 Austn. Digest 281. There is no need to allege a claim for compensation in the complaint.

JOHNSON v. NOBLET (1929) S.A.S.R. 385; 12 Austn. Digest 197. On a charge of common assault, if the evidence discloses an indecent assault, a court of summary jurisdiction has no power to adjudicate on or convict for common assault.

LAW v. WRIGHT (1935) S.A.S.R. 20. Section 46 should not be applied without considering s. 47. When an offender is fined under s. 46 the Court must, if required, consider the amount of compensation to be awarded. Principles of compensation discussed.

(3) The term of imprisonment in default of payment of any fine or compensation imposed or ordered under this section shall not exceed two months.

Cf. U.K., 24 & 25, Vict., c. 100, s. 44.

(4) If the Special Magistrate or Justices, upon hearing such a complaint, upon the merits, dismiss the same either because the offence has not been sufficiently proved, or because the assault or battery was justified, or so trifling as not to merit any punishment, he or they shall forthwith make out and deliver to the party charged a written certificate of such dismissal.

(5) No person who has been charged pursuant to this section, and—

(*a*) having been convicted has paid the whole of the fine or compensation, or suffered the imprisonment awarded against him; or

(*b*) has obtained a certificate of dismissal as mentioned in subsection (4),

shall be liable to any further proceedings, either civil or criminal, for the same cause.

Power to commit for trial.

38, 1876, ss. 58 and 59. Cf. U.K., 24 & 25, Vict., c. 100, s. 43.

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 punishable under the last preceding section, 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 authorised by that Act.

Cf. U.K., 24 & 25, Vict., c. 100, s. 46.

(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.

(3) Nothing in this or the preceding section shall authorise 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 of Women and Girls.

Rape.

38, 1876, s. 60. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 100, s. 48.

48. Any person convicted of rape shall be guilty of felony, and liable to be imprisoned for life, and may be whipped.

s. 47. LAW v. WRIGHT (1935) S.A.S.R. 20. Section 47 should be considered by the Court when applying s. 46.

49. Any person convicted of any attempt to commit, or of an assault with intent to commit rape, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Attempt to commit rape.
38, 1876, s. 61.
Cf. U.K., 24 & 25, Vict., c. 100, s. 48.

50. Any person who unlawfully and carnally knows any female under the age of twelve years shall be guilty of felony, and liable to be imprisoned for life, and may be whipped.

Carnally knowing a girl under 12.
38, 1876, s. 63.
1670, 1925, s. 13.
Cf. U.K., 48 & 49, Vict., c. 69, s. 4 (part).

51. Any person who attempts, or assaults with intent, unlawfully and carnally to know any female under the age of twelve years, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years, and may be whipped.

Attempting to carnally know a girl under 12 years.
38, 1876, s. 64.
Cf. U.K., 48 & 49, Vict., c. 69, s. 4 (part).

52. Any person who unlawfully and carnally knows any female of or above the age of twelve years and under the age of thirteen years, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years, and may be whipped.

Carnally knowing a girl between 12 and 13 years.
38, 1876, s. 65.
U.K., 48 & 49, Vict., c. 69, s. 4 (part).

53. Any person who, being the guardian, teacher, or schoolmaster of any female under the age of eighteen years, unlawfully and carnally knows, or attempts to have unlawful and carnal knowledge of such female, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Deflement of female by guardian.
358, 1885, s. 11.
1303, 1917, s. 6.
Cf. U.K., 23, Geo. 5, c. 12, s. 2 (1).

54. It shall be no defence to a charge under any of the last preceding four sections that the carnal knowledge was had, or the attempt or assault was made, with the consent of the female concerned.

Consent no defence.
Cf. U.K., 12 & 13, Geo. 5, c. 56, s. 2; 18 & 19, Geo. 5, c. 42, s. 1.

55. (1) Any person who—

(*a*) unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female of or above the age of thirteen years, and under the age of sixteen years:

(*b*) unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile woman or girl under circumstances which

Deflement of female between thirteen and sixteen years of age.
358, 1885, s. 4.
1303, 1917, s. 6.
Cf. U.K., 48 & 49, Vict., c. 69, s. 5.

s. 50. REGINA v. HOSGOOD (1884) 18 S.A.L.R. 123; 5 Austn. Digest 906. Conviction affirmed where the evidence as to the age of the prosecutrix (who was an orphan) consisted of a statement by her sister.

s. 55. R. v. CHONG YOW, 31st August, 1898; S.A. *Register* (newspr.); 5 Austn. Digest 906. Where evidence was given by a medical man that, judging from her molar teeth, he thought an aboriginal girl was between twelve and a half and sixteen years

do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile,

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

Consent a defence in certain cases.
Cf. U.K., 12 & 13, Geo. 5, c. 56, s. 2; 18 & 19, Geo. 5, c. 42, s. 1.

(2) It shall be no defence to a charge under subsection (1) (*a*) that the carnal knowledge or attempt was had or made with the consent of the female concerned unless the accused proves that at the time of the said carnal knowledge or attempt—

(*a*) he was under the age of sixteen years ; or

(*b*) he believed, on reasonable grounds that the female was of or above the age of sixteen years.

Prosecution must be within six months.
358, 1885, s. 5. 996, 1909, s. 25. U.K., 48 & 49, Vict., c. 69, s. 5, proviso.

(3) No prosecution shall be commenced for an offence under this section more than six months after the commission of the offence.

Indecent assault.
38, 1876, s. 66. 1303, 1917, s. 3. 1670, 1925, s. 4. U.K., 24 & 25, Vict., c. 100, s. 52.

56. Any person who indecently assaults any female shall be guilty of a misdemeanour, and for a first offence, liable to be imprisoned for any term not exceeding five years, and may be whipped, and for any subsequent offence to be imprisoned for any term not exceeding seven years, and may be whipped.

Consent no defence in certain cases.
358, 1885, s. 9. 730, 1899, s. 3. 1303, 1917, s. 3. Cf. U.K., 12 & 13, Geo. 5, c. 56, s. 1.

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

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

Cf. U.K., ibid., s. 2.

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

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

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

---

s. 55. (*contd.*) of age, held that this was not proof that the girl was between thirteen and sixteen years of age. [As to judicial determination of the age of an aboriginal or half-caste see s. 48 of the Aborigines Act, 1934.]

R. v. POPLE (1924) S.A.S.R. 448; 5 Austn. Digest 971. On an information for carnal knowledge laid more than six months after the offence the accused can be convicted of indecent assault.

Acts of gross indecency with girls under the age of sixteen years.
1670, 1925, s. 14.
Cf. Vic., 3025, 1919, s. 2.

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

(*a*) commits any act of gross indecency with or in the presence of any female under the age of sixteen years :

(*b*) incites or procures or attempts to procure the commission by any such female 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 female or by or with any other person in the presence of such female or by any such female with any other person in the presence of the accused—

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

Consent no defence.

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

Abduction.
38, 1876, s. 68.
Cf. U.K., 24 & 25, Vict., c. 100, s. 53.

59. (1) Any person who—

(*a*) from motives of lucre, takes away or detains against her will, any woman of any age who has any interest, whether legal or equitable present or future, absolute, conditional, or contingent in any real or personal estate, or is a presumptive heiress or co-heiress, or presumptive next of kin, or one of the presumptive next of kin to anyone having such interest :

(*b*) fraudulently allures, takes away, or detains, a woman having such an interest or presumptive interest as aforesaid, and who is under the age of eighteen years, out of the possession and against the will of her father or mother or of any person having the lawful care or charge of her,

with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and liable to be imprisoned for any term not exceeding fourteen years.

(2) Any person convicted of any offence against this section shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of the woman concerned, or in which she has any interest, or which comes to her as such heiress or co-heiress or next of kin as aforesaid.

(3) If any such marriage as aforesaid takes place, any such property as aforesaid shall upon the conviction of any person for an offence against this section be settled as the Supreme Court on an action by the Attorney-General appoints.

Forcible abduction.
38, 1876, s. 69. U.K., 24 & 25, Vict., c. 100, s. 54.

60. Any person who by force takes away or detains against her will any woman of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and liable to be imprisoned for any term not exceeding fourteen years.

Abduction of a female under 16.
38, 1876, s. 70. U.K., 24 & 25, Vict., c. 100, s. 55.

61. Any person who unlawfully takes, or causes to be taken, any unmarried female under the age of sixteen years, out of the possession, and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding two years.

Procuring the defilement of a female under 21.
38, 1876, s. 62. Cf. U.K., 48 & 49, Vict., c. 69, s. 3 (2).

62. Any person who by false pretences, false representations, or other fraudulent means, procures any female under the age of twenty-one years to have any illicit carnal connection with any man, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years, and may be whipped.

Procuring females to be prostitutes.
358, 1885, s. 2. 1303, 1917, s. 6. Cf. U.K., 48 & 49, Vict., c. 69, s. 2. Cf. U.K., 23, Geo. 5, c. 12, s. 2 (2).

63. Any person who—

(*a*) procures, or endeavours to procure, any female under twenty-one years of age to become a common prostitute :

(*b*) procures, or endeavours to procure, any female under the age of twenty-one years, not being a common prostitute, to leave the State, or to leave her usual place of abode in the State, and to become the inmate of a brothel, for the purposes of prostitution, either within or without the State,

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

Procuring defilement of females by threats or fraud.
358, 1885, s. 3. 1303, 1917, s. 6. Cf. U.K., 48 & 49, Vict., c. 69, s. 3. Cf. U.K., 23, Geo. 5, c. 12, s. 2 (2).

64. Any person who—

(*a*) by threats or intimidation, procures, or endeavours to procure, any female to have unlawful carnal connection with any male :

(*b*) by false pretences, false representations, or other fraudulent means endeavours to procure any female, not being a common prostitute or of known immoral character, to have unlawful carnal connection with any male :

(c) induces a female under the age of twenty-one years, not being a common prostitute or of known immoral character, with intent that she shall have unlawful carnal connection with any male, to enter a brothel, she not knowing the same to be a brothel, nor being a party to the intent,

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

Householder, etc., permitting defilement of female under seventeen on his premises.
358, 1885, s. 6. 1303, 1917. s. 6. Cf. U.K., 48 & 49, Vict., c. 69, s. 6. Cf. U.K., 23, Geo. 5, c. 12, s. 2 (2).

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 female under the age of seventeen years, to resort to or be in such premises for the purpose of being unlawfully and carnally known by any male, whether such carnal knowledge is intended to be with any particular man or generally, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Detention of unmarried female and restoration to her parents.
358, 1885, s. 7. Cf. U.K., 48 & 49, Vict., c. 69, s. 7.

66. (1) Any person who takes away or detains, or causes to be taken away or detained, any unmarried female under the age of eighteen years, out of the possession of and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent that she shall have unlawful carnal connection with any male, whether such carnal connection be with any particular male or generally, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

(2) It shall be lawful for the justice who commits for trial, or the judge who tries any person charged with an offence against this section, to order that the female be returned to the custody of the parent or other person from whom she was taken or obtained.

Justice may grant warrant.
358, 1885, s. 8. Cf. U.K., 48 & 49, Vict., c. 69, s. 10.

67. (1) Any justice, if satisfied by information given before him on oath by any parent, relative, or guardian, or any other person having the lawful care or charge of any female, or any superintendent, inspector, or sergeant of police, in the case of any female having no lawful guardian, that there is reasonable cause to suspect that any offence under either of the last two preceding sections is being committed upon any premises, may grant a warrant under his hand authorising any superintendent, inspector, or sergeant of police at any time or times within one month of the suspected offence, to enter with such assistance as may be necessary, and, if need be, by force, and make search for, and, when found, to take to and detain such female in a place of safety, until she can be brought before a justice.

(2) The justice before whom such female is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit or require.

Permitting youths to resort to brothels.
358, 1885, s. 10.
1303, 1917, s. 6.
Cf. U.K., 23, Geo. 5, c. 12, s. 3.

68. 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 boy under the age of seventeen years to resort to, or be in or upon such premises for the purpose of unlawfully and carnally knowing any female, whether such carnal knowledge is intended to be with any particular female or generally, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Unnatural Offences

Buggery.
38, 1876, s. 71.
U.K., 24 & 25, Vict., c. 100, s. 61.

69. Any person convicted of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for any term not exceeding ten years, and may be whipped.

Attempts, and indecent assault on males.
38, 1876, s. 72.
Cf. U.K., 24 & 25, Vict., c. 100, s. 62.

70. (1) Any person who—

(*a*) attempts to commit buggery either with mankind or with any animal:

(*b*) assaults any person with intent to commit buggery:

(*c*) indecently assaults any male person:

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

Consent no defence.
358, 1885, s. 9.
730, 1899, s. 3.

(2) No male person under the age of seventeen years shall be deemed capable of consenting to any indecent assault.

Gross indecency.
1670, 1925, s. 15.
U.K., 48 & 49, Vict., c. 69, s. 11.

71. Any male person who, in public or in private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person, of any act of gross indecency with another male person shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding three years.

Incest.
38, 1876, ss. 73 and 74.
Cf. U.K., 8, Edw. 7, c. 45.

72. (1) Any persons being related, either as parent and child or brother and sister, who unlawfully intermarry with each other, or who commit fornication or adultery with each other, shall be deemed to be guilty of incest.

(2) Any person convicted of incest shall be guilty of felony, and liable to be imprisoned for any term not exceeding seven years.

s. 70. R. v. VINCENT (1924) S.A.S.R. 466; 5 Austn. Digest 301. As to age of consent in relation to indecent assaults on males. Rule held to be as enacted in s. 70 (2).

Procedure in Sexual Offences.

73. Whenever upon a trial for any offence punishable under this Act, it is necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

Carnal knowledge defined.
38, 1876, s. 75.
U.K., 24 & 25, Vict., c. 100, s. 63.

74. When any hearing or trial takes place in relation to any offence punishable under this Act, relating to rape or other offences against females, or unnatural offences, it shall be lawful for the Court or justice to direct that all persons not directly interested in the case shall be excluded from the place where such hearing or trial is being heard or conducted.

Power to clear the Court.
358, 1885, s. 13.
Cf. U.K., 23, Geo. 5, c. 12, s. 37.

75. If upon the trial of any information for any felony or misdemeanour mentioned in sections 48, 49, 50, 51, 52, 53, or 55, 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 such 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 upon an information for an indecent assault upon a female, or for common assault, as the case may be.

Power on information for rape, &c., to convict of indecent assault or common assault.
1303, 1917, s. 5.
Cf. U.K., 48 & 49, Vict., c. 69, s. 9.

76. No person shall be convicted of an offence under sections 63, 64, or 68, upon the evidence of one witness only, unless the evidence of such witness is corroborated in some material particular by evidence implicating the accused.

Corroborative evidence required in certain cases.
358, 1885, s. 14.
U.K., 48 & 49, Vict., c. 69, ss. 2, 3, and proviso.

77. (1) In every case where there is reason to suspect that a person guilty of any offence of a sexual nature (not being an offence punishable on summary conviction):

Indeterminate sentences.
1303, 1917, s. 8.

(*a*) is suffering from a venereal disease; or

(*b*) is of such a mental condition that he is incapable of exercising proper control over his sexual instincts,

the Court or Judge shall direct that two or more legally qualified medical practitioners be sworn to inquire whether such person is so suffering, or incapable, and if after due inquiry (which shall be made by personal examination of such person by the said practitioners themselves) they report that he is so suffering or incapable, the Court or Judge shall, as

s. 75. R. v. POPLE (1924) S.A.S.R. 448; 5 Austn. Digest 1204. On an information for carnal knowledge laid more than six months after the offence the accused can be convicted of indecent assault.

part of the sentence of such person, declare that he is suffering from a venereal disease, or is incapable of exercising proper control over his sexual instincts as the case may be.

(2) Every person in respect of whom a declaration is made under subclause (1) shall, at the expiration of his sentence, be detained during His Majesty's pleasure and subject to regulations made for the purposes of this section in some place of confinement set apart by the Governor by proclamation for that purpose.

(3) If the Governor, upon a report by two or more legally qualified medical practitioners, is satisfied that any person so detained is no longer suffering from any venereal disease, or is no longer incapable of exercising proper control over his sexual instincts, as the case may be, the Governor may, by his warrant, direct the release of such person.

(4) In this section "venereal disease" means syphilis or gonorrhoea.

Bigamy.

Bigamy.
38, 1876, s. 77.
1670, 1925, s. 6.
Cf. U.K., 24 & 25, Vict., c. 100, s. 57.

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 any term not exceeding four years, and for any subsequent offence, for any term not exceeding ten years.

Defences in cases of bigamy.
Cf. U.K., 24 & 25, Vict., c. 100, s. 52, proviso.

79. The provisions of the last preceding section shall not extend to any person going through the form or ceremony of marriage as mentioned in that section—

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

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

Child Stealing.

Child stealing.
38, 1876, s. 76.
U.K., 24 & 25, Vict., c. 100, s. 56.

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 fourteen years ;

s. 79. R. v. KENNEDY (1923) S.A.S.R. 183; 5 Austn. Digest 611. A belief of the accused, founded on a mistake of law, that his prior marriage was invalid is no defence on a charge of bigamy.

(*b*) harbours or receives any such child, knowing him or her to have been by force or fraud led, taken, decoyed, enticed away or detained,

with intent—

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

(ii.) to steal any article upon or about the person of such child to whomsoever such article may belong,

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

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

Attempts to Procure Abortion.

Attempts to procure abortion. 38, 1876, s. 78. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 100, s. 58.

81. (*a*) Any woman being with child who, 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 ; or

(*b*) any person who, with intent to procure the miscarriage of any woman, whether she be or be 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, &c., to cause abortion. 38, 1876, s. 79. U.K., 24 & 25, Vict., c. 100, s. 59.

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

s. 81. R. v. CRICHTON (1915) S.A.L.R. 1; 5 Austn. Digest 226. As to the offence of attempting to incite a woman to attempt to procure her own miscarriage. "Incitement" explained.

s. 82. R. v. DE REVOIR, 2nd March, 1895; S.A. *Advertiser* (newspr.); 5 Austn. Digest 882. Where a police agent induced the prisoner to sell him a noxious drug, held that the police agent was an accomplice and that his evidence required corroboration.

Concealment of Birth.

Concealment of birth.
38, 1876, s. 80. Cf. U.K., 24 & 25, Vict., c. 100, s. 60.

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

Verdict on information for murder.

(2) If upon 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.

PART IV.

MALICIOUS INJURIES TO PROPERTY.

Injuries by Fire to Buildings and Goods.

Arson.
38, 1876, ss. 81, 82, 83, 84, and 85. 1670, 1925, s. 13. Cf. U.K., 24 & 25, Vict., c. 97, ss. 1, 2, 3.

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

(*a*) any place of Divine worship :

(*b*) any dwelling-house, any person being therein :

(*c*) any house, tent, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, 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 the same be in the possession of the offender, or of any other person, with intent thereby to injure or defraud any person :

Ibid., s. 4.

(*d*) any station, engine-house, warehouse, or other building belonging or appertaining to any railway, port, dock, or harbour, or to any canal or other navigation :

(*e*) any jetty, wharf, or landing place :

---

s. 83. R. v. JACOB (1932) S.A.S.R. 456; 5 Austn. Digest 307. To constitute an offence under s. 83 there must be an intention and endeavour to hide the birth of the child from the public. An intention and endeavour to hide the birth from particular persons is not enough.

s. 84. R. v. SEIDEL (1923) S.A.S.R. 522; 5 Austn. Digest 539. There may be an intent to defraud an insurance company although no valid policy of insurance exists.

(*f*) any building (other than those mentioned in the preceding paragraphs) belonging to His Majesty, or used by or for any department of the Government, or belonging to any corporation or district council or university, or devoted or dedicated to public use,

Ibid., s. 5.

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 mentioned in the last preceding section, shall be guilty of felony, and liable to be imprisoned for any term not exceeding fourteen years.

Setting fire to other buildings.
38, 1876, s. 86. U.K., 24 & 25, Vict., c. 97, s. 6.

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 any term not exceeding fourteen years.

Setting fire to goods in any building.
38, 1876, s. 87. U.K., 24 & 25, Vict., c. 97, s. 7.

87. Any person who unlawfully and maliciously, by any overt act, attempts to set fire to any building, or any matter or thing in, against, or under any building, under such circumstances that if the building, matter, or thing were thereby set fire to the offender would be guilty of felony, shall be guilty of felony, and liable to be imprisoned for any term not exceeding fourteen years.

Attempting to set fire to buildings.
38, 1876, s. 88. U.K., 24 & 25, Vict., c. 97, s. 8.

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

Setting fire to crops of corn, etc.
38, 1876, ss. 96 and 97. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 97, ss. 16, 17.

(*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, wheresoever the same may be growing or standing :

(*d*) any hedge or fence :

(*e*) any stack of corn, grain, pulse, hay, straw, stubble, or of any cultivated vegetable produce, or of any furze, gorse, heath, fern, coals, charcoal, wood, or bark,

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

89. Any person who unlawfully and maliciously, by any overt act, attempts to set fire to any thing in the preceding section mentioned, under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony

Attempting to set fire to any crops, &c.
38, 1876, s. 98. U.K., 24 & 25, Vict., c. 97, s. 18.

under that section, shall be guilty of felony, and liable to be imprisoned for any term not exceeding seven years, and may be whipped.

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

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—

(*a*) that it may be ignited, exploded, or set on fire, by the sun's rays being focussed 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 any term not exceeding fourteen years.

Setting fire to a coal mine, or timbering of any mine.
38, 1876, s. 103.
U.K., 24 & 25, Vict., c. 97, s. 26.

91. Any person who unlawfully and maliciously sets fire to any mine of coal, cannel coal, anthracite, 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.

Attempting to set fire to a mine, &c.
38, 1876, s. 104.
U.K., 24 & 25, Vict., c. 97, s. 27.

92. Any person who unlawfully and maliciously by any overt act attempts to set fire to any mine or timbering of any mine, under such circumstances that if the mine or timbering were thereby set fire to the offender would be guilty of felony, shall be guilty of felony, and liable to be imprisoned for any term not exceeding eight years.

Injuries by Explosives to Buildings, &c.

Damaging building with explosives.
38, 1876, s. 89.
1670, 1925, s. 13.
U.K., 24 & 25, Vict., c. 97, s. 9.

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, any person being therein, or

(*b*) the whole or any part of any building whereby the life of any person is endangered,

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

Attempting to destroy buildings with explosives.
38, 1876, s. 90.
U.K., 24 & 25, Vict., c. 97, s. 10.

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 any term not exceeding fourteen years.

Injuries to Buildings by Rioters.

Injuries to property by rioters.
38, 1876, ss. 91 and 92. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 97, ss. 11, 12.

95. (1) All persons riotously and tumultuously assembled together to the disturbance of the public peace, who unlawfully and with force, demolish, or pull down, or destroy, or begin to demolish, or pull down, or destroy—

(*a*) any building or erection whatsoever, whether public or private:

(*b*) any machinery, whether fixed or moveable, 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 misdemeanour and liable to be imprisoned for any term not exceeding seven years.

(3) If upon 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 any 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.

Injuries to Buildings by Tenants.

Injuries to building by tenants.
38, 1876, s. 93. U.K., 24 & 25, Vict., c. 97, s. 13.

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—

(*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 said dwelling-house or building, or part thereof,

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

Injuries to Manufactures, Machinery, &c.

Destroying goods in process of manufacture machinery, &c.
38, 1876, s. 94. U.K., 24 & 25, Vict., c. 97, s. 14.

97. Any person who

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

(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 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 moveable, 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 in this section mentioned,

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

Destroying machinery.
38, 1876, s. 95 U.K., 24 & 25, Vict., c. 97, s. 15.

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

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

(*b*) any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture or industry whatsoever (except in the manufacture of those articles mentioned in the last preceding section),

shall be guilty of felony, and liable to be imprisoned for any 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 whatsoever—

(*a*) wilfully and maliciously pulls or throws down, or otherwise destroys, any storehouse or 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 any term not exceeding four years.

Injuries to Corn, Trees, and Vegetable Productions.

Destroying or damaging trees, shrubs, &c., over £1 in value
38, 1876, s. 99.
U.K., 24 & 25, Vict., c. 97, s. 20.

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 hopbinds, 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 (in case the amount of the damage or injury exceeds one pound) shall be guilty of felony, and liable to be imprisoned for any term not exceeding four years, and may be whipped.

Damaging trees, &c.
38, 1876, ss. 100 and 101.
U.K., 24 & 25, Vict., c. 97, s. 21.

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, wheresoever the same may be growing (in case the amount of the damage done is less than one pound):

(*b*) any plant, root, fruit, or vegetable production 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 whatsoever, and wheresoever the same may be growing,

shall be guilty of an offence punishable summarily and liable to be imprisoned for any term not exceeding six months, or to pay the amount of damage done and a fine not exceeding five pounds, and in addition to any other penalty, may be whipped.

(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 any term not exceeding two years and may be whipped.

Destroying fences, &c.
38, 1876, s. 102.
Cf. U.K., 24 & 25, Vict., c. 97, s. 25 (part).

102. Any person who unlawfully and maliciously cuts, breaks, throws down, or in any way destroys any fence of any description whatsoever, 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 injury done and a fine not exceeding five pounds, and for any subsequent offence to be imprisoned for any term not exceeding six months.

Injuries to Mines.

Flooding mines, &c.
38, 1876, s. 105.
U.K., 24 & 25, Vict., c. 97, s. 28.

103. Any person who unlawfully and maliciously—

(*a*) causes any water to be conveyed or run into any mine or into any subterraneous passage communicating therewith :

(*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,

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

Damaging mining machinery.
38, 1876, s. 106.
U.K., 24 & 25, Vict., c. 97, s. 29.

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 in anywise 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, wagon-way, or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, wagon-way, 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 as aforesaid, with intent thereby 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 in and upon any inclined plane, railway, or other way, or other work whatsoever, in anywise belonging or appertaining to, or connected with, or employed in any mine or the working or business thereof,

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

Injuries to Sea and River Banks, &c.

Destroying sea bank, wall, dams, wharfs, etc.
38, 1876, s. 107.
U.K., 24 & 25, Vict., c. 97, s. 30.

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, whereby any land or building is, or is in danger of being, overflowed or damaged :

(b) throws, breaks, or cuts down, 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, harbour, dock, or reservoir, on or belonging to any navigable river or canal,

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

Damaging sea banks and rivers.
38, 1876, 108.
U.K., 24 & 25, Vict., c. 97, s. 31.

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, harbour, 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, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining of the navigation thereof,

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

Injuries to Ponds, &c.

Breaking down the dam of any fishery, etc., or mill dam, or poisoning fish.
38, 1876, s. 109.
U.K., 24 & 25, Vict., c. 97, s. 32.

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 thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the said fish :

(*b*) puts any noxious material in any such pond or water with intent thereby to destroy any of the fish that then are, or may thereafter be put, therein :

(*c*) cuts through, breaks down, or otherwise destroys the dam or floodgate of any mill pond, reservoir, or pool, or other place used for storing water,

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

Poisoning water in rivers, &c.
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.

Injuries to Bridges, &c.

Injury to bridges, &c.
38, 1876, s. 111.
U.K., 24 & 25, Vict., c. 97, s. 33.

109. Any person who unlawfully and maliciously pulls or throws down, or in anywise destroys, any bridge, public or private (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 and so as thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, shall be guilty of felony, and liable to be imprisoned for life.

Injuries to Railways, Electric Cables, &c.

Placing wood, etc., on railway with intent to obstruct or overthrow any engine, &c.
38, 1876, s. 112.
U.K., 24 & 25, Vict., c. 97, s. 35.

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 or shows, hides, or removes, any signal or light upon 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, and may be whipped.

Obstructing engines or carriages on railways.
38, 1876, s. 113.
U.K., 24 & 25, Vict., c. 97, s. 36.

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 any term not exceeding four years.

Injuries to electrical cables.
2156, 1934, s. 872.
U.K., 24 & 25, Vict., c. 97, s. 38.

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 any term not exceeding three years.

Injuries to Works of Art.

Destroying or damaging works of art.
38, 1876, s. 116.
U.K., 24 & 25, Vict., c. 97, s. 39.

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, painted glass, or other ornament or work of art, in any place of Divine worship, or public building, or public place, churchyard, or burial ground ;

(*c*) any statue or monument exposed to public view, of any ornament, railing, or fence surrounding such statue or monument,

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

Injuries to Cattle, &c.

Killing or injuring cattle.
38, 1876, s. 117. U.K., 24 & 25, Vict., c. 97, s. 40.

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 any term not exceeding four years.

Attempts to kill cattle.
38, 1876, s. 118.

115. Any person who unlawfully and maliciously—

(*a*) attempts to kill, maim, poison or injure :

(*b*) 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 any term not exceeding three years.

Killing, &c., other animals.
38, 1876, s. 119. 1679, 1925 s. 7. U.K., 24 & 25, Vict., c. 97, s. 41.

116. Any person who unlawfully and maliciously—

(*a*) kills, maims, wounds, or disfigures :

(*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 any term not exceeding six months, or to pay the amount of the damage done and a fine not exceeding twenty pounds.

Saving of rights under Impounding Act, 1920.
38, 1876, s. 119.

117. Nothing in any of the preceding three sections 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.

Injuries to Ships.

Setting fire to ships, &c.
38, 1876, s. 120. U.K., 24 & 25, Vict., c. 97, s. 42.

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

Attempting to set fire to a ship.
38, 1876, s. 122. U.K., 24 & 25, Vict., c. 97, s. 44.

119. Any person who unlawfully and maliciously, by any overt act, attempts to set fire to, cast away, or destroy any ship or vessel, under such circumstances that if the ship or vessel were set fire to, cast away, or destroyed, the offender would be guilty of felony, shall be guilty of felony, and liable to be imprisoned for any term not exceeding eight years.

s. 116. R. v. NITSCHKE AND ANOTHER (1928) S.A.S.R. 229; 5 Austn. Digest 555. A bee is not an animal within the meaning of s. 116.

120. Any person who unlawfully and maliciously places or throws in, into, or 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 any explosion takes place, and whether or not any injury is effected, be guilty of felony, and liable to be imprisoned for any term not exceeding eight years, and may be whipped.

Placing gunpowder near a vessel with intent to damage it.
38, 1876, s. 123. U.K., 24 & 25, Vict., c. 97, s. 45.

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 the same or render the same useless, shall be guilty of felony, and liable to be imprisoned for any term not exceeding four years.

Damaging ships otherwise than by fire.
38, 1876, s. 124. U.K., 24 & 25, Vict., c. 97, s. 46.

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, and may be whipped

Exhibiting false signals, etc.
38, 1876, s. 125 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 97, s. 47.

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.

Removing or concealing buoys and other sea marks.
38, 1876, s. 126. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 97, s. 48.

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

Destroying wrecks or any articles belonging thereto.
38, 1876, s. 127. U.K., 24 & 25, Vict., c. 97, s. 49.

Sending Letters Threatening to Burn or Destroy.

Sending letters threatening to burn or destroy houses, &c.
38, 1876, s. 128. U.K., 24 & 25, Vict., c. 97, s. 50.

125. Any person who sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, 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 any term not exceeding ten years.

Injuries not before provided for.

Malicious injuries not before provided for.
38, 1876, s. 129. U.K., 24 & 25, Vict., c. 97, s. 51. Cf. U.K., 4 & 5, Geo. 5, c. 58, s. 14.

126. Any person who unlawfully and maliciously commits any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, the damage, injury, or spoil being to an amount exceeding five pounds, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding two years; and in case any such offence is committed in the night shall be liable to be imprisoned for any term not exceeding five years.

Summary proceedings for other malicious injuries.
38, 1876, s. 130. Cf. U.K., 4 & 5, Geo. 5, c. 58, s. 14.

127. (1) Any person who wilfully or maliciously commits any damage, injury, or spoil to or upon any real or personal property whatsoever, whether of a public or private nature, for which no punishment is hereinbefore provided, shall be guilty of an offence punishable summarily before a justice, and liable to be imprisoned for any term not exceeding three months, or to a fine not exceeding five pounds, and to pay such amount by way of compensation to the party aggrieved not exceeding five pounds as the justice may think fit.

(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.

Malice against owner of property unnecessary.
38, 1876, s. 131. Cf. U.K., 24 & 25, Vict., c. 97, s. 58.

128. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same is punishable upon information or upon 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.

PART IV.

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 such act is done.

Provisions of this Act shall apply to persons in possession of the property injured.

38, 1876, s. 132. Cf. U.K., 24 & 25, Vict., c. 97, s. 59.

PART V.

PART V.

LARCENY AND SIMILAR OFFENCES.

130. In this Part—

Interpretation.

38, 1876, s. 133. U.K., 24 & 25, Vict., c. 96, s. 1. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 46.

"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 authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to:

"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:

"valuable security" includes any order or other security whatsoever entitling, or evidencing the title, of any person to any share or interest in any public stock or fund, whether of the State or of any other part of His Majesty's dominions, or of any foreign State, 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 whatsoever for money or for payment of money, whether of the State or elsewhere, and any document of title to lands or goods as hereinbefore defined:

Part V. R. v. WILLIMOTT 6th November, 1895, S.A. *Register* (newspr.); 5 Austn. Digest 386. In a prosecution for stealing the goods of a company, the incorporation of the company may be proved by other evidence than the production of the certificate of incorporation.

"property" includes every description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and 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 the same may have been converted or exchanged, and any thing 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 upon or to whom the duty of such trust shall have 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.

Simple larceny.
38, 1876, s. 135. 1940, 1929, s. 3. Cf. U.K., 24 & 25, Vict., c. 96, s. 4. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 2.

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 any term not exceeding five years.

Larceny by bailee.
38, 1876, s. 134. Cf. U.K., 24 & 25, Vict., c. 96, s. 3. Cf. U.K., 6 & 7, Geo, 5. c. 50, s. 1 (1), proviso.

132. Any person who being a bailee of any chattel, money, or valuable security, fraudently takes or converts the same to his own use or the use of any person other than the owner thereof, although he does not break bulk or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof upon an information for larency and punished accordingly.

s. 131. REGINA v. STONEHAM (1890-91) 24 S.A.L.R. 61; 5 Austn. Digest 394. Where a person finds stolen goods but does not form an intention to appropriate them until after the finding, there is no larceny.

R. v. WESTON (1927) S.A.S.R. 439; 5 Austn. Digest 348. Effect of falsely accounting for possession of goods on charge of larceny discussed. Explanation of "larceny by finding."

DONALDSON v. BUTCHER (1932) S.A.S.R. 16; 5 Austn. Digest 1033. An information charging larceny "contrary to the form of the Statute in such case made and provided" is a good information for common law larceny.

GHYS v. CRAFTER (1935) S.A.S.R. 28. An admission by the accused, two and a half years after theft, that he has been in possession of stolen article for two and one-half years, may be sufficient evidence of recent possession. Where the only charge is larceny, the onus of proof is not discharged by evidence that defendant is guilty of either larceny or receiving.

s 132. REGINA v. TIDEMANN (1871) 5 S.A.L.R. 15; 5 Austn. Digest 412. Held that where under the arrangements of the parties as to the bailment of goods the disposal of the

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.

(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, such 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 such takings.

Joinder of counts for larceny.

38, 1876, ss. 136, 137.
Cf. U.K., 24 & 25, Vict., c. 96, s. 6.
Cf. U.K., 5 & 6, Geo. 5, c. 90, ss. 4, 5.

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

Larceny after a previous conviction for felony.

38, 1876, s. 138.
Cf. U.K., 24 & 25, Vict., c. 96, s. 7.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 37 (1).

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 any term not exceeding seven years.

Larceny after a previous conviction for misdemeanour.

Cf. U.K., 24 & 25, Vict., c. 96, s. 8.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 37 (2).

Larceny of Cattle and other Animals.

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

Stealing cattle.

38, 1876, s. 140.
U.K., 6 & 7, Geo. 5, c. 50, s. 3.

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 any term not exceeding eight years.

Killing animals with intent to steal the carcase.

38, 1876, s. 141.
U.K., 6 & 7, Geo. 5, c. 50, s. 4.

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

Stealing deer etc., in enclosed land.

38, 1876, s. 142.
U.K., 24 & 25, Vict., c. 96, s. 13.

---

s. 132. (*contd.*) goods by the bailee is contemplated, the disposal of the goods could not be made fraudulent by the omission to pay over the proceeds.

THE QUEEN v. HANN (1883) 17 S.A.L.R. 119; 5 Austn. Digest 412. Delivering a bill of exchange (of which the defendant was a bailee) to a third party as security for money owing is a conversion within the meaning of s. 132.

VERCO v. CRAFTER (1935) S.A.S.R. 12. The conductor of tramcar held not to be a bailee of lost property found on tramcar by passenger and handed to conductor.

Stealing dogs.
38, 1876, s. 143. Cf. U.K., 24 & 25, Vict., c. 96, ss. 18, 19. U.K., 6 & 7, Geo. 5, c. 50, s. 5 (1), (2).

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 the said 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 any term not exceeding six months, or to a fine of not more than twenty pounds, and to pay the value of the said dog.

(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 any term not exceeding eighteen months.

Taking reward to restore stolen animals.
38, 1876, s. 144. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 5 (3).

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

Killing pigeons.
38, 1876, s. 147. U.K., 24 & 25, Vict., c. 96, s. 23.

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 two pounds.

Stealing birds and animals not the subject of larceny at common law.
38, 1876, ss. 145 and 146. Cf. U.K., 24 & 25, Vict., c. 96, s. 21.

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 the same or any part thereof,

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

Ibid., s. 22.

(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 twenty pounds, and for any subsequent offence to be imprisoned for any 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. Cf. U.K., 24 & 25, Vict., c. 96, s. 26.

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, 1917, 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 any 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 shall be 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 any term not exceeding three months.

(3) Nothing in this section shall prevent 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, &c.
38, 1876, s. 149. Cf. U.K., 24 & 25, Vict., c. 96, s. 27.

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 any chattel of like value with the share, interest, or deposit to which the security so stolen relates, or with the money due on the security so stolen, or secured thereby, and remaining unsatisfied, or with the value of the goods or other valuable thing, represented, mentioned, or referred to in or by the security.

Stealing deeds, wills, &c.
38, 1876, ss. 150 and 151. U.K., 24 & 25, Vict., c. 96, ss. 28, 29.

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

(*a*) any document of title to lands:

(*b*) any will, codicil, or other testamentary instrument, whether the same 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 any term not exceeding four years.

(2) Nothing in this section, nor any proceeding, conviction, or judgment had or taken thereunder 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.

(3) No person shall be liable to be convicted of any offence against this section by any evidence whatsoever, in respect of any act done by him, if at any time before being charged with the offence he has first disclosed such 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 same in any compulsory examination or deposition before any Court on the hearing of any matter in bankruptcy.

Stealing court records.
38, 1876, s. 152
Cf. U.K., 24 & 25, Vict., c. 96, s. 30.

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 in any way relating to the business of any office or employment under His Majesty 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 any term not exceeding three years.

Larceny of things attached to or growing on land.

Glass wood metal, &c., fixed to houses and land.
38, 1876, s. 153.
Cf. U.K., 24 & 25, Vict., c. 96, s. 31.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 8 (1).

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

(*a*) any glass or woodwork belonging to any building whatsoever :

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

(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, &c., in pleasure grounds.
38, 1876, s. 154. Cf. U.K., 24 & 25, Vict., c. 96, s. 32. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 8 (2).

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, or shrub, or any underwood, respectively growing in any pleasure ground, garden, or other enclosed land, shall (in case the value of the article stolen or the amount of damage done exceeds the sum of one shilling), be guilty of felony, and liable to be punished as in the case of simple larceny.

Other trees.
38, 1876, s. 155. Cf. U.K., 24 & 25, Vict., c. 96, s. 33. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 8 (2) (c).

149. (1) Any person who steals, 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 the last preceding section shall, if the value of the article stolen or the amount of the damage exceeds the sum of one shilling, 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 five pounds, and for a second offence to imprisonment for any 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 any term not exceeding two years.

Fences, gates, etc.
38, 1876, s. 156. U.K., 24 & 25, Vict., c. 96, s. 34. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 8.

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 any part thereof respectively, shall be guilty of felony, and liable to be imprisoned for any term not exceeding two years.

Plants, &c., in gardens, &c.
38, 1876, s. 157. U.K., 24 & 25, Vict., c. 96, ss. 36, 37. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 8 (3).

151. (1) Any person who—

(a) steals, or destroys or damages with intent to steal, any plant, root, fruit, or vegetable production, growing in any garden, orchard, pleasure ground, nursery ground, hothouse, 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 land, open or inclosed,

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

(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 any term not exceeding two years.

Larceny from Mines or Mineral Lands.

Ore, metal, &c.
38, 1876, s. 158.
U.K., 24 & 25, Vict., c. 96, s. 38.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 11.

152. Any person who steals, or severs with intent to steal, any gold or the ore of any metal, metalliferous stone, or any coal, from any mine, bed, or vein thereof respectively, 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 any term not exceeding two years.

Fraudulently removing ore, etc., from mines.
38, 1876, s. 159.
U.K., 24 & 25, Vict., c. 96, s. 39.

153. Any person who being employed in or about any mine or claim, or any land comprised in such lease as is mentioned in the last preceding section, takes, removes, or conceals any gold, or the ore of any metal, or other mineral 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 any term not exceeding four years.

Stealing electricity.
2156, 1934, s. 873.
U.K., 6 & 7, Geo. 5, c. 50, s. 10.

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

Larceny from the Person, and other like Offences.

Robbery and stealing from the person.
38, 1876, s. 160.
1670 of 1925, s. 13.
Cf. U.K., 24 & 25, Vict., c. 96, s. 40.
U.K., 6 & 7, Geo. 5, c. 50, s. 14.

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

S. 155. R. v. STEWART AND OTHERS (1929) S.A.S.R. 500; 5 Austn. Digest 399. If property is taken from a person openly before his face while he is guarding and protecting it, this may properly be said to be a taking from the person.

156. Any person who assaults any person with intent to rob, shall be guilty of felony, and liable to be imprisoned for any term not exceeding three years, and may be whipped.

Assault with intent to rob.
38, 1876, s. 162.
Cf. U.K., 24 & 25, Vict., c. 96, s. 42.
U.K., 6 & 7, Geo. 5, c. 50, s. 23 (3).

157. If, upon 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 less offence.
38, 1876, s. 161
U.K., 24 & 25, Vict., c. 96, s. 41.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 44.

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 such robbery wounds, beats, strikes, or uses any other personal violence to any person,

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

Robbery with violence.
38, 1876, s. 163.
1670, 1925, s. 13.
1940, 1929, s. 4.
U.K., 24 & 25, Vict., c. 96, s. 43.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 23 (1), (2).

159. Any person who sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, 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.
U.K., 24 & 25, Vict., c. 96, s. 44.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 29.

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 the same, shall be guilty of felony, and liable to be imprisoned for any term not exceeding three years, and may be whipped.

Demanding money, &c., with menaces by force, with intent to steal.
38, 1876, s. 165.
U.K., 24 & 25, Vict., c. 96, s. 45.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 30.

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

(*a*) any crime punishable by law with death, or imprisonment for a longer term than two years :

Letter threatening to accuse of a crime, with intent to extort.
38, 1876, s. 166.
1670, 1925, s. 13.
U.K., 24 & 25, Vict., c. 96, s. 46.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 29.

(*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, and may be whipped.

Accusing or threatening to accuse with intent to extort.
38, 1876, s. 167.
1670, 1925, s. 13.
U.K., 24 & 25, Vict., c. 96, s. 47.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 29.

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 in the last preceding section mentioned, 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
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 29.

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—

(i.) threatens to accuse any person of any offence:

(ii.) offers to refrain from accusing any person of any offence:

(iii.) knowingly sends, posts, 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 any 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 such injury may be legally recovered.

Threatening to publish a libel with intent to extort.
38, 1876, s. 168.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 31.

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 upon 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 any term not exceeding three years.

Obtaining execution of documents by force.

38, 1876, s. 169. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 96, s. 48. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 29 (2).

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 :

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

Interpretation.

38, 1876, ss. 166 and 170. Cf. U.K., 24 & 25, Vict., c. 96, ss. 46, 49. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 29 (4).

166. For the purposes of this Part—

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

(2) "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.

Sacrilege, Burglary, Housebreaking, &c.

Sacrilege.

38, 1876, s. 171. 1670, 1925, s. 13. U.K., 24 & 25, Vict., c. 96, s. 50. U.K., 6 & 7, Geo. 5, c. 50, s. 24.

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,

shall be guilty of felony called "sacrilege", and liable to be imprisoned for life.

Burglary.
38, 1876, ss. 172, 174.
1670, 1925, s. 13.
U.K., 24 & 25, Vict., c. 96, ss. 51, 52.
U.K., 6 & 7, Geo. 5, c. 50, s. 25.

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 the said dwelling-house with intent to commit any felony therein; or

(ii.) committed any felony in the said dwelling-house,

shall be guilty of felony called "burglary", and liable to be imprisoned for life.

Entering a dwelling-house in the night with intent to commit a felony.
38, 1876, s. 176.
U.K., 24 & 25, Vict., c. 96, s. 54.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 27 (1).

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 any term not exceeding seven years.

Housebreaking, shopbreaking, etc.
38, 1876, ss. 177, 178.
U.K., 24 & 25, Vict., c. 96, ss. 55, 56.
U.K., 6 & 7, Geo. 5, c. 50, s. 26.

170. Any person who breaks and enters and commits any felony in, or breaks out of, having committed any felony, in any—

(*a*) dwelling-house:

(*b*) building within the curtilage of a dwelling-house and occupied therewith:

(*c*) school-house, shop, warehouse, counting-house, office, store, garage, pavilion, factory, workshop, or any building belonging to His Majesty, or to any Government Department, or to any municipal or other public authority,

shall be guilty of felony, and liable to be imprisoned for any term not exceeding eight years.

House-breaking, etc., with intent to commit a felony.
38, 1876, s. 179.
1670, 1925, s. 9.
U.K., 24 & 25, Vict., c. 96, s. 57.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 27 (2).

171. Any person who breaks and enters any of the buildings mentioned in the last preceding section or any place of Divine Worship with intent to commit any felony therein shall be guilty of felony, and liable to be imprisoned for any term not exceeding seven years.

172. Any person who is found by night—

Being found by night, armed, or in possession of house-breaking implements.

38, 1876, 180, 181. U.K., 24 & 25, Vict., c. 96, ss. 58, 59. U.K., 6 & 7, Geo. 5, c. 50, s. 28.

(*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 whereof shall lie on such person) any key, picklock, crow, jack, bit, or other implement of house-breaking:

(*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—

(i.) if he has been previously convicted of any such misdemeanour or of any felony, to be imprisoned for any term not exceeding ten years:

(ii.) in all other cases, to be imprisoned for any term not exceeding seven years, and may be whipped.

173. Any person who steals in any dwelling-house any chattel, money, or valuable security shall—

Larceny in dwelling-houses.

38, 1876, ss. 182 and 183. U.K., 24 & 25, Vict., c. 96, ss. 60, 61. U.K., 6 & 7, Geo. 5, c. 50, s. 13.

(*a*) if the value of the property stolen amounts to five pounds or more; or

(*b*) if he by any menace or threat puts any person being in such dwelling-house in bodily fear,

be guilty of felony, and liable to be imprisoned for any term not exceeding eight years.

174. Any person who steals, to the value of ten shillings, 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, whilst 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 any term not exceeding eight years.

Stealing goods in process of manufacture.

38, 1876, s. 184. U.K., 24 & 25, Vict., c. 96, s. 62. U.K., 6 & 7, Geo. 5, c. 50, s. 9.

Larceny from Ships and Wharves, &c.

175. Any person who steals—

Stealing from ships, docks, etc.

38, 1876, ss. 185, 186. U.K., 24 & 25, Vict., c. 96, ss. 63, 64. U.K., 6 & 7, Geo. 5, c. 50, s. 15.

(*a*) any goods or merchandise in any vessel, barge, or boat of any description, or the gear, fittings, or other articles belonging to the same, in any haven or any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin

belonging to, or communicating with any such haven, port, river, or canal:

(*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 of any kind belonging to such vessel,

shall be guilty of felony and liable to be imprisoned for any term not exceeding eight years.

Larceny and embezzlement by clerks, servants, and persons in the public service.

Larceny and embezzlement by clerks and servants.

38, 1876, ss. 188, 189, 190 U.K., 24 & 25, Vict., c. 96, ss. 67, 68. U.K., 6 & 7, Geo. 5, c. 50, s. 17 (1).

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,

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

Larceny and embezzlement in the Public Service.

38, 1876, ss. 192, 193. U.K., 24 & 25, Vict., c. 96, s. 69. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 17 (2).

177. Any person who being employed in the public service of His Majesty—

(*a*) steals any chattel, money, or valuable security belonging to or in the possession or power of His Majesty or entrusted to or received or taken into possession by such person by virtue of his employment:

(*b*) embezzles or in any manner fraudulently applies or disposes of for any purpose whatsoever 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,

shall be guilty of felony and liable to be imprisoned for any term not exceeding eight years.

s. 177. REGINA v. SPOONER (1892) 25 S.A.L.R. 123; 5 Austn. Digest 459. Held that a constable, employed as assistant to a clerk in the detective office who issued hawkers' licences, was employed in the public service, and received the hawkers' fees by virtue of his employment.

Falsification of accounts, &c.
38, 1876, s. 191.
U.K., 38 & 39, Vict., c. 24, s. 1.

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, or any document or account,

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

General deficiency.
38, 1876, s. 194.

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 thereof.

Information for embezzlement.
38, 1876, s. 195
U.K., 24 & 25, Vict., c. 96, s. 71.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 40 (2).

180. (1) Any number of distinct acts of embezzlement, or of fraudulent application or disposition, committed by any person against His Majesty 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 such 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 such 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

s. 179. REGINA v. HANNAH (1892) 25 S.A.L.R. 58; 5 Austn. Digest 461. Section 179 applies to a charge of embezzlement against a person employed in the public service of the Crown.

s. 180. THE QUEEN v. HOWES (1885) 19 S.A.L.R. 60; 7 A.L.T. 80; 5 Austn. Digest 466. An information alleging that the accused was entrusted by virtue of his employment with money, when in fact he was entrusted with a valuable security, is not to be treated as a good information by virtue of subsection (2).

any portion of the value thereof, although such 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 such part was returned accordingly.

Verdict of larceny where embezzlement charged, and *vice versa*.
38, 1876, s. 196.
U.K., 24 & 25, Vict., c. 96, s. 72.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 44 (2).

181. If, upon 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 such 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 such person shall be liable to be punished in the same manner as if he had been convicted upon an information for such larceny; and if, upon 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 such person is guilty of embezzlement, or fraudulent application or disposition, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an information for such embezzlement, fraudulent application, or disposition.

Larceny by partners.
38, 1876, s. 197.
U.K., 31 & 32, Vict., c. 116, s. 1.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 1 (1), proviso.

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 any such co-partnership, or to such 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 such co-partnership, or one of such beneficial owners.

Larceny by Tenants and Lodgers.

Larceny by tenants and lodgers.
38, 1876, s. 198.
U.K., 24 & 25, Vict., c. 96, s. 74.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 16.

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 any term not exceeding four years.

Frauds by Trustees, Agents, Bankers, or Factors:

Fraudulent misappropriation.
791, 1902, s. 2.
U.K., 1, Edw. 7, c. 10, s. 1.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 20 (1), iv.

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 said property or any part thereof, or any proceeds of such property or part thereof, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

(2) Nothing in this section shall apply to or affect any trustee on 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.

Fraudulent sales under powers of attorney.
38, 1876, s. 201
U.K., 24 & 25, Vict., c. 96, s. 77.

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 same 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 any term not exceeding seven years.

Factors obtaining advances on the property of their principals.
38, 1876, ss. 202, 203.
U.K., 24 & 25, Vict., c. 96, ss. 78, 79.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 22.

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 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 any term not exceeding seven years: Provided that no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring, or delivering any such goods or document of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment, deposit, transfer, or delivery, was justly due and owing to such factor or agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal and accepted by such factor or agent.

(2) (*a*) 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 such document of title.

(*b*) Every contract pledging or giving a lien upon any document of title to goods shall be deemed to be a pledge of and lien upon the goods to which the document relates.

(*c*) 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.

(*d*) 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 such goods or document of title and such goods or document of title are actually received by the person making such loan or advance, without notice that such factor or agent was not authorised to make such pledge or security, every such loan or advance shall be deemed to be a loan or advance on the security of such goods or document of title and within the meaning of this section, though such goods or document of title are not actually received by the person making such loan or advance till the period subsequent thereto.

(*e*) 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.

(*f*) 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 such factor or agent.

(*g*) 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 be shown in evidence.

Trustees fraudulently disposing of property.
38, 1876, s. 204.
U.K., 24 & 25, Vict., c. 96, s. 80.
Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 21.

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 same, or any part thereof, to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid or for any purpose other than such public or charitable purpose, as aforesaid, or otherwise disposes of or destroys such property, or any part thereof, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

(2) No prosecution under this section shall be commenced without the sanction of the Attorney-General.

Promoters of companies making untrue statements.
38, 1876, s. 205.
Cf. U.K., 19 & 20, Geo. 5, c. 23, s. 362.

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 such company, whereby such person may be defrauded, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding two years.

Directors of companies fraudulently appropriating property.
38, 1876, s. 206.
U.K., 24 & 25, Vict., c. 96, s. 81.

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 such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Directors, &c., keeping fraudulent accounts.
38, 1876, s. 207.
U.K., 24 & 25, Vict., c. 96, s. 82.

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 such 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 to or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Directors, &c., wilfully destroying books, &c.
38, 1876, s. 208.
U.K., 24 & 25, Vict., c. 96, s. 83.

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 be liable to be imprisoned for any term not exceeding seven years.

Directors, &c., publishing fraudulent statements.
38, 1876, s. 209.
U.K., 24 & 25, Vict., c. 96, s. 84.

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 such 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 such 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 any term not exceeding seven years.

Protection to persons disclosing offences in civil proceedings.
38, 1876, s. 210.
Cf. U.K., 24 & 25, Vict., c. 96, s. 85.

193. (1) Nothing in any of the last nine preceding sections of this Act contained 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 upon the hearing of any matter in bankruptcy.

(2) No person shall be liable to be convicted of any of the misdemeanours in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if at any time previously to his being charged with such offence he has first disclosed such 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 same in a compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy.

Civil remedies not affected.
38, 1876, s. 211.
U.K., 24 & 25, Vict., c. 96, s. 86.

194. (1) Nothing in any of the last ten preceding sections nor any proceeding, conviction, or judgment had or taken thereon, shall prevent, lessen, or impeach any remedy at law or in equity, of any party aggrieved by any offence against any of the said sections ; but no conviction of any such offender shall be received in evidence in any action against him.

(2) Nothing in the said 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 trust property misappropriated.

False Pretences.

195. (1) Any person who by any false pretence— False pretences. 38, 1876, ss. 213, 214, and 215. U.K., 24 & 25, Vict., c. 96, ss. 88, 89, 90. U.K., 6 & 7, Geo. 5, c. 50, s. 32.

(*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, upon any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security,

shall be guilty of a misdemeanour, and liable to be imprisoned for any 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. U.K., 6 & 7, Geo. 5, c. 50, s. 40 (1).

(3) If, on the trial of any information under paragraph (*a*) of subsection (1) it is proved that the accused stole the property in question, he shall not by reason thereof be entitled to be acquitted of obtaining such property by false pretences. U.K., 6 & 7, Geo. 5, c. 50, s. 44 (4).

---

s. 195. REGINA v. ROACH AND SMITH (1882) 16 S.A.L.R. 40; 5 Austn. Digest 498. To prove the offence of obtaining goods by false pretences, it must be shown that there was a handing over with intent to transfer ownership by some person competent to transfer ownership.

REGINA v. WYATT (1888) 22 S.A.L.R. 105; 5 Austn. Digest 494. Where the person to whom the false pretence is made knows of the false pretence, but hands over money to prove the guilt of the person making the pretence, the latter cannot be found guilty of obtaining money by false pretences, but may be found guilty of an attempt to do so.

R. v. REYNOLDS (1927) S.A.S.R. 228; 5 Austn. Digest 1438. Held that evidence of false representation on other occasions than that mentioned in the information were admissible on the question of intent.

Receiving.

Receiving where principal guilty of felony.
38, 1876, ss. 216, 217, and 218. U.K., 24 & 25, Vict., c. 96, ss. 91, 92, 93. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 33.

196. (1) Any person who receives any property knowing the same to have been stolen or obtained or disposed of in any way whatsoever 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 any term not exceeding eight years.

(2) Charges of stealing any property and of feloniously receiving the same property or any part thereof may be included in separate counts of the same information, and such counts may be tried together.

(3) Any person or persons charged in separate counts of the same information with stealing any property, and with feloniously receiving the stolen property or any part thereof may severally be found guilty either of stealing or of receiving the said property or any part thereof.

Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 40 (3).

(4) In an information for feloniously receiving any property any number of persons who have at different times so received such property or any part thereof may be charged and tried together, and either with or without the principal felon.

Receiving where principal guilty of misdemeanour.
38, 1876, s. 220. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 33 (4).

197. Any person who receives any property knowing the same to have been taken, obtained, converted, or disposed of in any way whatever in circumstances which amount to misdemeanour, shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding four years.

Conviction of receivers in absence of principal.
38, 1876, ss. 216 and 220. Cf. U.K., 24 & 25, Vict., c. 96, s. 91. U.K., 6 & 7, Geo. 5, c. 50, s. 33 (3).

198. (1) Any person may be informed against and convicted of any offence against either of the last two preceding sections whether the principal offender has or has not been previously convicted, or is or is not amenable to justice.

Separate convictions on joint charge.
38, 1876, s. 219.

(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 such persons separately received any part of such property, it shall be lawful for the jury to convict such of the persons as are proved to have received any part of such property.

Receiving where principal punishable summarily.
Cf. U.K., 24 & 25, Vict., c. 96, s. 97.

199. Any person who receives any property, the stealing or taking of which is by this act punishable on summary conviction (either for every offence or for the first or second offence only, or for the first offence only), knowing the same

s. 196. GUNDERSEN v. MILLER (1936) S.A.S.R. 206. The fact that a person was willing to sell goods at a great undervalue is some evidence that the goods were stolen. The thief from whom the receiver receives the stolen property, is an accomplice of the receiver.

to have been unlawfully come by, shall be guilty of an offence punishable summarily and liable to be imprisoned for any term not exceeding one year.

Previous convictions may be proved in receiving charges. 9, 1870, s. 5. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 43 (1).

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 upon proof of such 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: Provided that 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 that upon 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.

(2) 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 coin.

Restitution and recovery of stolen property.

Restitution of stolen property. 38, 1876, s. 222. U.K., 24 & 25, Vict., c. 96, s. 100. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 45.

201. (1) If any person guilty of any felony or misdemeanour mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any property, is prosecuted for any offence by or on behalf of the owner of the property, and convicted thereof, 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 said property in a summary manner.

(3) If such property has been expended in the purchase of goods, and the price thereof, or the goods so purchased are in the custody, or under the control of the person so convicted, the said court may order such moneys or goods to be handed over to the person entitled to restitution.

s. 201. In *re* JACOB NEUSTADT, A PRISONER, ETC. (1882) 16 S.A.L.R. 17; 5 A.L.T. 27; 5 Austn Digest 1248. Section 201 does not apply to money obtained by means of forgery.

(4) The court (although the accused has been acquitted), if satisfied that any property as aforesaid 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 such 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.

Corruptly taking reward for recovery of stolen property.
38, 1876, s. 223.
U.K., 24 & 25, Vict., c. 26, s. 101.
U.K., 6 & 7, Geo. 5, c. 50, s. 34.

202. Any person who corruptly takes any money or reward, directly or indirectly, under pretence, or upon 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 in this Act before mentioned, shall (unless he has used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony, and liable to be imprisoned for any term not exceeding four years.

Advertising a reward for the return of stolen property, &c.
38, 1876, s 224.
Cf. U.K., 24 & 25, Vict., c. 96, s. 102.

203. Any person who—

(*a*) publicly advertises a reward for the return of any property which has been stolen and in such 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 such property ; or

(*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 upon any stolen property, the money so paid or advanced, or any other sum of money or reward for the return of such property ; or

(*c*) prints or publishes any such advertisement

shall forfeit the sum of fifty pounds for every such offence, one-half of the said 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 such penalty may be recovered with full costs by action in the Local Court.

False Personation, &c.

204. Any person who falsely and deceitfully personates 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.

Personation in order to obtain property.
38, 1876, s. 225.
1670, 1925, s. 13.
U.K., 37 & 38, Vict., c. 36, s. 1.

205. Any person who—

(*a*) falsely and deceitfully personates 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 as aforesaid; and

(*b*) thereby transfers or endeavours to transfer any share or interest belonging to any such owner or thereby receives or endeavours to receive, any money due to any such owner, as if such offender were the true and lawful owner,

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

Personating the owner of stock.
38, 1876, s. 235.
Cf. U.K., 24 & 25, Vict., c. 98, s. 3.
Cf. U.K., 33 & 34, Vict., c. 58, s. 4.

Piracy.

206. Any person who commits any robbery upon 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.

Piracy.
38, 1876, s. 226.
Cf. U.K., 28, H. 8, c. 15, ss. 1, 4.
Cf. U.K., 7 Will 4 and 1, Vict., c. 88, ss. 1, 3, 5.

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 of, or belonging to, such ship or vessel, or wounds any such person, or unlawfully does any act by which the life of such person may be endangered, shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

Piracy and attempt to murder.
38, 1876, s. 227.
U.K., 7, Will. 4, and 1, Vict., c. 88, s. 2.

208. Any person who, being a natural born subject of His Majesty, or a denizen of the United Kingdom of Great Britain and Ireland, commits any piracy or robbery, or any act of hostility against any other of His Majesty's subjects, upon 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.

Robbery or other act of hostility: at sea under colour of a foreign commission.
38, 1876, s. 228.
Cf. U.K., 18, Geo. 2, c. 30, s. 1.

PART V.

Piracy by master or seaman of ship.
38, 1876, s. 229.
Cf. U.K., 11, Will. 3, c. 7, s. 8 (part).

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, 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 merchandises, or turn pirate, or go over to pirates; and any person who lays violent hands on his commander, whereby 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.

Forcibly boarding a ship, and throwing the goods overboard.
38, 1876, s. 230.
Cf. U.K., 8, Geo. 1, c. 24, s. 1 (part).

210. Any person who, belonging to any ship or vessel whatsoever, upon meeting any merchant ship or vessel on the sea, or in any port, haven, or creek whatsoever, forcibly boards or enters into such ship or vessel, and although he does not seize and carry off such ship or vessel, throws overboard or destroys any part of the goods or merchandise belonging to such ship or vessel, shall be guilty of felony, and liable to be imprisoned for life.

Trading with pirates.
38, 1876, s. 231.
Cf. U.K., 8, Geo. 1, c. 24, s. 1 (part).

211. Any person who in anywise trades with any pirate, by truck, barter, exchange, or in any other manner, or furnishes any pirate, felon, or robber upon the seas with any ammunition, provision, or stores of any kind, 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 upon the seas, or in any way consults, combines, confederates, or corresponds with any pirate, felon, or robber upon 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.

PART VI.

PART VI.

FORGERY.

Interpretation.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 1.

212. (1) In this part—

"forge" includes "alter" and "counterfeit":

"utter" includes "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:

"resembling" means "made or apparently intended to resemble":

"bank" means "person, firm, or company carrying on the business of banking."

(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.

Place where made or to take effect immaterial.
38, 1876, ss. 256, 257
Cf. U.K., 24 & 25, Vict., c. 98, ss. 39, 40.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 1 (3).

(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.

Possession.
38, 1876, s. 262.
Cf. U.K., 24 & 25, Vict., c. 98, s. 45.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 15.

(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.

Intent to defraud.
38, 1876, s. 261.
Cf. U.K., 24 & 25, Vict., c. 98, s. 44.
U.K., 3 & 4, Geo. 5, c. 27, s. 17 (2).

213. Any person who—

(a) forges or utters the Public Seal of the State:

(b) forges the stamp or impression of the said seal:

(c) utters any document or instrument whatsoever having thereon or affixed thereto—

(i.) the stamp or impression of such forged seal:

(ii.) any forged stamp or impression resembling the stamp or impression of the said seal:

(d) forges or utters any document or instrument having the said stamp or impression thereon or affixed thereto,

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

The Public Seal.
38, 1876, s. 232.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 5.

Deeds, wills, bills of exchange, &c.
38, 1876, s. 233. Cf. U.K., 24 & 25, Vict., c. 98, ss. 20-3. Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 2.

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, &c.
38, 1876, s. 234. Cf. U.K., 24 & 25, Vict., c. 98, s. 2. Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 2 (2), (d).

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;

s. 214. REGINA v. TIDEMANN (1871) 5 S.A.L.R. 48; 5 Austn. Digest 526. Held that a memorandum of mortgage under the Real Property Act of 1861 was not an undertaking for the payment of money.

(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 the same to be forged,

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

Attestation to power of attorney for transfer of stock.
38, 1876, s. 236. Cf. U.K., 24 & 25, Vict., c. 98, s. 4.

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 any term not exceeding seven years.

Making and Engraving Plates for Bank Notes.

Making moulds for bank paper.
38, 1876, s. 237. Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 9 (part).

217. Any person who, without lawful authority, or excuse, the proof whereof 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 upon which the name of such bank is written or printed,

shall be guilty of felony, and liable to be imprisoned for any term not exceeding eight years.

Engraving plates for making bank notes.
38, 1876, s. 238. Cf. U.K., 24 & 25, Vict., c. 98, s. 17. Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 9 (part).

218. Any person who, without lawful authority or excuse, the proof whereof shall lie on the person accused—

(*a*) engraves or makes upon 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 on 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:

(*b*) knowingly has in his custody or possession any plate or other material upon which any such bill or note, or part thereof, or any word or words resembling such subscription is or are engraved or made:

(*c*) knowingly utters or has in his custody or possession any paper upon which any part of such bill or note, or any word or words resembling such subscription is or are made or printed,

shall be guilty of felony, and liable to be imprisoned for any term not exceeding eight years.

Forging Bank Notes.

Forging bank notes.
38, 1876, s. 240. 1670, 1925, s. 13. Cf. U.K., 24 & 25, Vict., c. 98, s. 12. Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 2 (1).

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, a bank bill of exchange, or bank post bill:

(*b*) any indorsement 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. Cf. U.K., 24 & 25, Vict., c. 98, s. 13. Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 8.

220. Any person who without lawful authority or excuse (the proof whereof 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, or blank bill of exchange, or blank bank post bill, knowing the same to be forged, shall be guilty of felony, and liable to be imprisoned for any term not exceeding fourteen years.

Drawing bill without lawful authority.
38, 1876, s. 239.
U.K., 24 & 25, Vict., c. 98, s. 24.

221. Any person who with intent to defraud—

(*a*) by procuration, or otherwise, draws, makes, signs, accepts, or indorses 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 indorsed,

Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 6.

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

Crossings on cheques.
2168, 1934, Second Schedule.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 1 (3) (c).

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 any term not exceeding fourteen years.

Debentures.
38, 1876, s. 243.
U.K., 24 & 25, Vict., c. 98, s. 26.

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 any term not exceeding fourteen years.

Forging official and legal documents.

Original documents of Courts of Record.
38, 1876, ss. 244 and 246.
U.K., 24 & 25, Vict., c. 98, s. 27.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 3 (3).

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,

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

Orders of justices.
38, 1876, s. 248.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 3 (3).

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 authorised to take the same :

(*c*) any examination, deposition, affidavit, affirmation, or declaration taken or made before any justice,

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

Copies of certificates of records and using forged process.
38, 1876, s. 245.
Cf. U.K., 24 & 25, Vict., c. 98, s. 28.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 3 (2).

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 thereon 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 the same 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 the same to be false :

(*h*) acts or professes to act under any false process of any court knowing the same to be false,

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

False copies of record.
38, 1876, s. 249.
Cf. U.K., 24 & 25, Vict., c. 98, s. 28.

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 said court knowing the same to be false in any material part :

(*b*) forges the signature of any officer of the said court for the purpose of forging a certified copy of a record :

(c) forges the seal of the said court,

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

228. Any person who—

False certificates of previous convictions.
38, 1876, s. 250.
Cf. U.K., 7 & 8, Geo. 4, c. 28, s. 11.

(a) being a clerk or officer of any criminal court, and having the custody of the records of such court, or being the deputy of such 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 any term not exceeding four years.

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—

Certificates of judgment.
38, 1876, s. 251.
Cf. U.K., 11 & 12, Vict., c. 78, s. 6.

(a) any certificate of, or copy certified by, any judge, or by any associate or his deputy, or the clerk of any local 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 any term not exceeding six years.

230. Any person who—

Forging official documents and tendering same in evidence.
38, 1876, s. 252.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 3.

(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 of the said forged documents or matters knowing the same 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 the same 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 the same was not printed by the Government Printer,

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

Impounding of forged documents.
38, 1876, s. 252.

231. Any document or matter mentioned in the last preceding section which is put in evidence in any proceeding may be impounded by the judge or other person presiding, until further order.

Documents relating to registration of deeds.
38, 1876, s. 247.
U.K., 24 & 25, Vict., c. 98, s. 31.
Cf. U.K., 3 & 4, Geo. 5, c. 27, s. 2.

232. Any person who—

(*a*) forges or utters any document, writing, or entry made or issued under the provision 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,

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

Miscellaneous Matters.

Falsely acknowledging recognizances etc.
38, 1876, s. 253.
U.K., 24 & 25, Vict., c. 98, s. 34.

233. Any person who, without lawful authority or excuse (the proof whereof 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 authorised in that behalf, shall be guilty of felony, and liable to be imprisoned for any term not exceeding seven years.

Demanding property upon forged instruments.
38, 1876, s. 255.
U.K., 24 & 25, Vict., c. 98, s. 38.
U.K., 3 & 4, Geo. 5, c. 27, s. 7.

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—

(*a*) under, upon, or by virtue of any forged instrument, knowing the same 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 such probate or letters of administration were obtained, to have been forged, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit,

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

Forgeries not already specified.
38, 1876, s. 258.
U.K., 3 & 4, Geo. 5, c. 27, s. 4.

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 any term not exceeding fourteen years.

Search warrants for implements of forgery.
38, 1876, s. 263.
U.K., 24 & 25, Vict., c. 98, s. 46.
U.K., 3 & 4, Geo. 5, c. 27, s. 16.

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 the operations aforesaid:

(*e*) any forged security, document, or instrument whatsoever:

(*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 whatsoever,

the justice may, if he thinks fit, grant a warrant to search for the same ; and if the same is found upon such search, it shall be lawful to seize and carry the same before some justice to be by him disposed of according to law ; and all such matters and things so seized, as aforesaid, shall by order of the court before which the offender is tried, or in case there is no trial, then, by order of a justice, be defaced and destroyed, or otherwise disposed of, as such court or justice directs.

PART VII.

PART VII.

OFFENCES OF A PUBLIC NATURE.

Offences against Public Justice.

Compounding penal actions.
38, 1876, s. 289.
Cf. U.K., 18, Eliz., c. 5, s. 4.

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 said action without the order or consent of the Supreme Court, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding three years.

Rescuing murderers.
38, 1876, s. 290.
Cf. U.K., 25, Geo. 2, c. 37, s. 9.

238. Any person who by force sets at liberty, or rescues, or attempts to rescue or set at liberty out of prison, any person committed for or found guilty of murder, or rescues, or attempts to rescue, any person convicted of murder, going to execution, or during execution, shall be guilty of felony, and liable to be imprisoned for life.

Perjury or subornation.
38, 1876, ss. 291, 295, 376.
Cf. U.K., 1 & 2, Geo. 5, c. 6, s. 1.
Cf. U.K., 14 & 15, Vict., c. 100, s. 19.

239. (1) Any person convicted of wilful and corrupt perjury or of subornation of perjury, shall be liable to be imprisoned for any term not exceeding four years.

U.K., 1 & 2, Geo. 5, c. 6, s. 15 (1).

(2) In all cases in which an oath may lawfully be and is administered to any person, that person is bound by an oath administered in such form and with such ceremonies as he declares to be binding, and may be convicted of perjury in case of wilfully false swearing, in the same manner as if the oath had been administered in the forms and with the ceremonies usually adopted.

(3) On the trial of an information for perjury or subornation of perjury, where it is necessary to prove any information and trial for any felony or misdemeanour, a certificate containing the substance and effect and omitting the formal parts of such information and trial, and purporting to be signed by an associate or other officer having the custody of the records of the Court where the said trial took place, or by the deputy of such associate or other officer, shall be sufficient evidence of such information and trial without proof of the signature or official character of the person appearing to have signed the same.

Cf U.K., 1 & 2, Geo. 5, c. 6, s. 14.

(4) It shall be lawful for any judge, special magistrate, justice, or officer of the Supreme Court before whom any inquiry is conducted, in case it appears to him that any person has been guilty of wilful and corrupt perjury, and that there is reasonable cause for a prosecution therefor, in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him, to direct such person to be prosecuted for perjury, and thereupon such person shall be immediately taken before a justice to be dealt with according to law.

Cf. U.K., 1 & 2, Geo. 5, c. 6, s. 9.

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, and who on his trial is acquitted, or discharged in any other way, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding one year.

Exacting fees from prisoners.
38, 1876. s. 297
Cf. U.K., 55, Geo. 3, c. 50, s. 9.

241. Any person who, being a gaoler, exacts from any prisoner any fee or gratuity on account of the entrance, commitment, or discharge of such 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 any term not exceeding one year.

Gaoler exacting fees from prisoners.
38, 1876, s. 298.
Cf. U.K., 55, Geo. 3, c. 50, s. 9.

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 any term not exceeding one year.

Unlawfully administering oaths.
38, 1876, s. 296.
Cf. U.K., 37, Geo. 3, c. 123.

(2) The provisions of this section shall 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 such foreign country.

Forcible Entry.

Forcible entry
2168, 1934, Second Schedule. U.K., 5, Rich. 2, st. 1, c. 7 (c. 8 in Ruffhead); 8, Henry 6, c. 9; 31, Eliz., c. 11.

243. Any person who, by force or threats, or by collecting together an unusual number of people, enters upon 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 any term not exceeding three years.

Riots.

Rioters remaining after proclamation.
38, 1876, ss. 300, 301. Cf. U.K., 1, Geo. 1, stat. 2, c. 5, ss. 1, 2, 8.

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 such assembly is, and all special magistrates and justices, on notice or knowledge of the said assembly, to resort to the place where the said assembly is, 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 Lord the King 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 King."

(2) All persons who—

(*a*) wilfully and knowingly oppose, obstruct, hinder, or hurt any person who begins to make, or goes to make, the said proclamation, whereby such 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 said 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 as aforesaid,

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

245. (1) All persons who being riotously assembled together to the number of three or more, unlawfully and with force—

Riotously preventing loading of ships.
38, 1876, ss. 302, 303
Cf. U.K., 33, Geo. 3, c. 67, ss. 1, 3.

(*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 such ship or other vessel,

shall be guilty of a misdemeanour and liable to be imprisoned for any 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 any 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 said offence.

Ibid., s. 8.

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 any term not exceeding two years or to pay a fine not exceeding one thousand pounds, or to both such imprisonment and fine.

Publishing defamatory libel knowing it to be false.
38, 1876, s. 305.
Cf. U.K., 6 & 7, Vict., c. 96, s. 4.

247. Any person who maliciously publishes any defamatory libel, shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding one year, or to pay a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

Defamatory libel.
38, 1876, s. 304.
Cf. U.K., 6 & 7, Vict., c. 96, s. 5.

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.
U.K., 6 & 7, Vict., c. 96, s. 6.

(*a*) the publication of the said 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 such matters were true.

(3) The prosecutor may reply generally to a plea of justification, denying the whole thereof.

(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.

Publishing parliamentary reports.
38, 1876, ss. 307, 308. Cf. U.K., 3, Vict., c. 9, s. 1; U.K., 6 & 7, Vict., c. 96, s. 7.

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 deems fit and necessary, and has authorised to be published, to bring before the Court, after giving twenty-four hours notice to the plaintiff or prosecutor of his 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 said certificate, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein, shall thereupon be put an end to and superseded, by virtue of this Act.

(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 said report, paper, votes, or proceedings, and the said copy together with an affidavit verifying the same and the correctness of the said copy, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein shall thereupon 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 such report, paper, votes, or proceedings if the defendant proves that the said extract or abstract was published in good faith and without malice.

Evidence of publication.
38, 1876, s. 308. Cf. U.K., 6 & 7, Vict., c. 96, s. 7.

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 such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

Verdict.
38, 1876, s. 309.
U.K., 32, Geo. 3, c. 60, s. 1.

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 upon 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 the same in the information: Provided that nothing in this section contained shall extend to prevent the jury from finding a special verdict in their discretion as in other criminal cases: Provided also that on every such trial the Court or Judge shall give their 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.
U.K., 6 & 7, Vict., c. 96, s. 8;
8, Edw. 7, c. 15.

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 said information, and upon a plea of justification to such 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 the said plea; such costs in either case to be taxed by the Master of the Supreme Court.

Trafficking in Public Offices.

Trafficking in public offices.
38, 1876, ss. 312, 313, 314.
Cf. U.K., 49, Geo. 3, c. 126, ss. 3, 4, 5.

253. (1) Any person who—

(*a*) sells or agrees to sell, or takes or agrees to take, any reward or profit from the sale; 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 any 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

s. 252. CULLEN AND WIGLEY v. THE KING (1877) 11 S.A.L.R. 88; 5 Austn. Digest 568. Where persons procure a preliminary investigation and committal before Justices for defamatory libel and in consequence an information is laid by the Attorney-General, these persons are private prosecutors within the meaning of s. 252.

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 of, 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 of, offices,

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

U.K., 49, Geo. 3, c. 126, s. 10.

(3) The provisions of this section shall 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 such principal or deputy respectively, out of the fees or profits of such office.

(4) " 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.

Nuisance by Fireworks.

Nuisance by fireworks. 38, 1876, s. 319.

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 any term not exceeding six months.

Offences against Morality, Public Health, &c.

Lewdness. 38, 1876, s. 315. 1303, 1917, s. 4.

255. Any person who lewdly exposes his person in any street, road, or public place, or within view thereof, shall be guilty of a misdemeanour, and liable for a first offence to be imprisoned for any term not exceeding two years, and may be whipped ; and for any subsequent offence shall be liable to be imprisoned for any term not exceeding four years, and may be whipped.

Offences in respect of infectious diseases.

38, 1876, s.s. 316, 317, 318. U.K., 29 & 30, Vict., c. 90, s. 38.

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 :

(ii.) wilfully exposes himself without proper precaution against spreading the said disorder in any street, road, public place, railway carriage, or public conveyance :

(*b*) being in charge of any person so suffering wilfully exposes that person as aforesaid :

(*c*) being the owner or driver of a public conveyance does not immediately provide for the disinfection of such 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 disorders :

U.K., 29 & 30, Vict., c. 90, s. 39.

(*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 such 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 fifty pounds.

(2) For the purpose 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, &c.

Interrupting religious worship.

38, 1876, s.320. Cf. U.K., 52, Geo. 3, c. 155, s. 12.

257. Any person who wilfully interrupts or disturbs any congregation, meeting, or assembly of persons assembled for religious worship, by noise, profane discourse, rude, or indecent behaviour, or by any unnecessary noise, either within the place

where such congregation or such meeting is held, or so near thereto as to disturb the order and solemnity of the said congregation, meeting, or assembly, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding two years.

Molesting preachers.
38, 1876, s. 321. Cf. U.K., 1, Mar., sess. 2, c. 3.

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 congregation, meeting, or assembly, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding two years.

Pretending to witchcraft.
38, 1876, s. 322. U.K., 9, Geo. 2, c. 5, s. 4.

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 any term not exceeding two years.

Conspiracy and protection of property.

Conspiracy in relation to trade disputes.
109, 1878, s. 3. 38, 1876, s. 324. Cf. U.K., 38 & 39, Vict., c. 86, 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 a trade dispute between master and servant, shall be punishable as a conspiracy, if such 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 as aforesaid 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 such act when committed by one person.

(3) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, sedition, or any offence against the Sovereign, or exempt from punishment any person guilty of a conspiracy for which any punishment is awarded 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 such act restrains or tends to restrain the free course of trade, unless such act amounts to an offence against this Act.

Breach of contract by railway and other employees.

109, 1878, s. 4. Cf. U.K., 38 & 39, Vict., c. 86, s. 4.

261. (1) Any servant in the employ of the Government, or of any person upon 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 such railway or tramway or the supply of gas or water, shall be guilty of an offence and liable to a fine not exceeding twenty pounds, or to be imprisoned for any term not exceeding three months.

(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.

Breach of contract by servant involving probable injury to persons or property.

109, 1878, s. 5. Cf. U.K., 38 & 39, Vict., c. 86, s. 5.

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 either to fine not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months.

Neglect by master to provide food, clothing, &c., for servant.

109, 1878 s. 6. U.K., 38 & 39, Vict., c. 86, s. 6.

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 the same, whereby the health of such servant is or is likely to be seriously or permanently injured, shall be guilty of an offence and liable to a fine not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months.

Penalty for intimidation or annoyance by violence or otherwise.

109, 1878, s. 7. U.K., 38 & 39, Vict., c. 86, s. 7.

264. Any person who, with a view to compel any other person to do or abstain from doing any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

(*a*) uses violence to or intimidates such other person or his wife or children, or injures his property,

(*b*) persistently follows such other person about from place to place:

(*c*) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof:

(*d*) watches or besets the house or other place where such other person resides or works or carries on business, or happens to be on the approach to such house or place :

(*e*) follows such 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 twenty pounds, or be imprisoned for any term not exceeding three months : Provided, that for the purposes of this section, attending at or near the house or place where a person resides or works or carries on business, or happens to be on the approach to such 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. Cf. U.K., 38 & 39, Vict., c. 86, ss. 9, 10.

265. All proceedings for offences against the last preceding four sections shall be disposed of summarily: Provided that if any person accused objects to being tried summarily, the Court shall treat the proceedings as though they were for an indictable offence, and the person accused may be informed against and tried in the Supreme Court.

Interpretation.
109, 1878, s. 10. Cf. U.K., 38 & 39, Vict., c. 86, s. 16.

266. In the last preceding five sections the following provisions shall apply—

I. Nothing in the said sections shall apply to seamen or apprentices to the sea service :

II. Nothing in the said sections shall in any way affect the provisions of the Industrial Code, 1920 :

109, 1878, s. 2.

III. 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 any 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.

PART VIII.

PART VIII.

ACCESSORIES.

Accessories before the fact.

38, 1876, ss. 325, 326, 327. Cf. U.K., 11 & 12, Vict., c. 12, s. 8. U.K., 24 & 25, Vict., c. 94, ss. 1, 2, 7.

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 without the State the offence of the accessory was committed.

Accessories after the fact.

38, 1876, ss. 328, 329. Cf. U.K., 24 & 25, Vict., c. 94, ss. 3, 4, 5, 7.

268. (1) Any person who becomes an accessory after the fact to any felony, whether a felony at common law or under any Act, shall be guilty of felony and liable to be imprisoned for any term not exceeding two years, and may in addition be ordered to find sureties for keeping the peace: Provided that no person shall be imprisoned for any period exceeding one year for not finding sureties.

(2) An accessory after the fact may be informed against, tried, and convicted 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 without the State, the offence of the accessory was committed.

Abettors in misdemeanours.

38, 1876, s. 331. Cf. U.K., 24 & 25, Vict., c. 94, s. 8.

269. Any person who aids, abets, counsels, or procures the commission of any misdemeanour, whether the same is a misdemeanour at common law or under any Act, shall be liable to be prosecuted and punished as a principal offender.

s. 267. R. v. CRICHTON (1915) S.A.L.R. 1; 5 Austn. Digest 226. As to the nature of "incitement" to commit crime. There may be incitement although the person incited desires to commit the crime, and invites the help of the person inciting.

R. v. WEBBE AND BROWN (1926) S.A.S.R. 108; 5 Austn. Digest 880. Explanation of the meaning of "accomplice" and "accessory before the fact."

PART IX.

PART IX.

MISCELLANEOUS AND PROCEDURE.

Punishment for certain common law misdemeanours.

Punishment for certain offences.
38, 1876, s. 389. 1670, 1925 s. 10. Cf. U.K., 3, Geo. 4, c. 114, s. 1. Cf. U.K., 14 & 15, Vict., c. 100, s. 29.

270. (1) Any person convicted of any of the following common law misdemeanours, that is to say—

(*a*) any attempt to commit a felony:

(*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 any 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 any term not exceeding seven years.

Apprehension of Offenders.

Persons committing offences may be arrested by any person.
38, 1876, s. 402. Cf. U.K., 24 & 25, Vict., c. 96, s. 103.

271. Any person found committing any offence, punishable either upon information or upon 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 such person either committed such felony or misdemeanour, or unlawfully received such property, knowing such felony or misdemeanour to have been committed, may be immediately apprehended, without a warrant, by any person, and forthwith taken, together with such property (if any), before a justice to be dealt with according to law.

Persons loitering at night and suspected of any felony, &c., may be apprehended.
38, 1876, s. 403. Cf. U.K., 24 & 25, Vict., c. 97, s. 57. Cf. U.K., 24 & 25, Vict., c. 100, s. 66.

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 in this Act mentioned, and shall take such 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 hereinbefore authorised 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 any term not exceeding three years.

Judge's warrant for arrest of person charged.
38, 1876, s. 364. U.K., 48, Geo. 3, c. 58, s. 1 (part).

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 such 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 in the said warrant expressed, with condition to appear in the said court at the time mentioned in the warrant, and to answer the said information.

(2) In case any such person neglects or refuses to become bound as aforesaid 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.

Informations.

Interpretation.
1909, 1929, s. 2.

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.

(2) In this Part (except in the next succeeding two sections) "information" means any criminal information presented to the Supreme Court or a Circuit Court.

Informations may be presented in the name of the Attorney-General.
38, 1876, s. 334. Cf. U.K., 23 & 24, Geo. 5, c. 36, ss. 1, 2.

275. (1) Any person may be put upon his trial at any criminal sessions of the Supreme Court for any offence, upon an information presented to the said 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 presented as aforesaid.

Attorney-General may decline to prosecute.
38, 1876, ss. 334, 335.

276. 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 such person.

(2) If upon examining the depositions taken in any case the Attorney-General is of opinion that there is no reasonable ground for putting the person committed for trial upon

his trial for any offence whatsoever, 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 person accused is in prison, thereupon, by warrant in the form contained in Schedule 2, direct the Comptroller of Prisons or gaoler in whose custody such person is, immediately to discharge him from imprisonment, in respect of the offence mentioned in the said warrant, and in case the person mentioned in such 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. U.K., 5 & 6, Geo. 5, c. 90, 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. U.K., 5 & 6, Geo. 5, c. 90, s. 4.

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 opinion that a person accused 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 the 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 such information.

(3) This section shall not affect any other provision of this Act or any other enactment permitting more than one charge to be joined in the same information.

Joint trial of accessories.
38, 1876, s. 332. U.K., 24 & 25, Vict., c. 94, s. 6.

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

s. 277. R. v. MULLET (1901-3) S.A.L.R. 101; 5 Austn. Digest 507, 508. An information for false pretences charging the defendant with "unlawfully knowingly and falsely" pretending, but containing no other allegation that he knew his statement to be untrue, held sufficient. Where the charge was falsely pretending that a document was a good banknote, held there was no need to allege in the information in what particulars the document was not a valid banknote.

R. v. KONRAD (1906) S.A.L.R. 1; 5 Austn. Digest 381. In an information for larceny, goods, the property of a son living with and employed by his father, cannot be described as goods of the father.

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.

Coin and bank notes may be described simply as money.

38, 1876, s. 349. U.K., 14 & 15, Vict., c. 100, s. 18.

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 shall be sufficient to describe such money or bank-note simply as money, without specifying any particular coin or banknote.

Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 40 (2).

(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 such amount was composed, or the particular nature of the bank-note, is not proved, and in cases of embezzlement and obtaining money or banknotes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any bank-note, or any portion of the value thereof, although such piece of coin or bank-note was delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to some other person, and such part has been returned accordingly.

Objections to informations, amendments and postponement of trial.

1909, 1929, s. 4. 38, 1876, ss. 337, 338, 341. Cf. U.K., 14 & 15, Vict., c. 100, ss. 1, 2, 25. Cf. U.K., 5 & 6, Geo. 5, c. 90, s. 5.

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 such information, before the jury is empanelled, and not afterwards.

(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 indorsed 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 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.

Saving provisions. 1909, 1929, s. 5. U.K., 5 & 6, Geo. 5, c. 90, s. 8.

282. Nothing in this Part or the rules under this Part, shall affect the law or practice relating to the jurisdiction of any court or the place where an accused person can be tried, nor (except where expressly provided) prejudice or diminish 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 person accused is charged, nor otherwise affect the laws of evidence in criminal cases.

Rules of Court. 1909, 1929, s. 6. U.K., 5 & 6, Geo. 5, c. 90, s. 1.

283. (1) Subject to subsection (2) of this section 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.

(2) Rules of Court made under the Supreme Court Act, 1878, may revoke, vary, or add to the rules contained in the said Schedule or any other rules for the time being in force under this Part.

Pleas and proceedings on trial.

Plea of "No guilty" and refusal to plead. 38. 1876, s. 368. Cf. U.K., 7 & 8, Geo. 4, c. 28, s. 1.

284. (1) Any person arraigned upon any information who pleads "Not guilty" thereto shall, by such 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 such person accordingly.

s. 283. The Supreme Court Act, 1878, has been repealed and superseded by the Supreme Court Act, 1935. No rules of court had been made under section 283 up to 19th April, 1937.

(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 the same.

285. In any plea of *autrefois convict* or of *autrefois acquit*, it shall be sufficient for the accused to allege that he has been lawfully convicted or acquitted, as the case may be, of the said offence charged in the information, without specifying the time or place of such previous conviction or acquittal.

Form of plea of *autrefois convict* or *autrefois acquit*.
38, 1876, s. 369. U.K., 14 & 15, Vict., c. 100, s. 28.

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, upon payment of a reasonable sum not exceeding fourpence per folio, or by order of a judge, without fee.

Inspection and copies of depositions.
38, 1876, ss. 374, 375. Cf. U.K., 6 & 7, Will. 4, c. 114, s. 4. U.K., 11 & 12, Vict., c. 42, s. 27.

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 such prisoner, for the purposes of his defence, except where in the opinion of the judge the same is required for the purposes of identification or otherwise at the trial, or where the said 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.

(2) If any accused person is defended by counsel, but not otherwise, it shall be the duty of the judge, at the close of the

Defence by counsel and addresses.
38, 1876, s. 372. 13, 1866-7, s. 2. U.K., 6 & 7, Will. 4, c. 114, s. 1.

s. 288. R. v. CLARKE, 9th December, 1893, S.A. *Register* (newspr.); 5 Austn. Digest 1027. A private prosecutor has the right to be represented in the Supreme Court by counsel, and it is not necessary to obtain the consent of the Attorney-General.

R. v. MYLES FLYNN (1901-3) S.A.L.R. 57; 5 Austn. Digest 1153. An accused person defended by counsel cannot make an unsworn statement after the close of the Crown's case in rebuttal.

R. v. GILLEN (SLATER'S CASE) (1914) S.A.L.R. 195; 5 Austn. Digest 1153. Any unsworn statement of an accused who is defended by counsel and calls witnesses for the defence must be made after his counsel's opening and before witnesses are called. If the accused is defended by counsel but calls no witnesses, his unsworn statement must be made before counsel sum up to the jury.

R. v. RICHARDS, MCDONALD AND AUNGER (1918) S.A.L.R. 315; 5 Austn. Digest 1153. An accused person may give evidence in defence after other witnesses for the defence; but it is desirable that he should be the first witness, especially where witnesses are ordered out of court. Any unsworn statement of the accused should be made before the evidence of witnesses for the defence is taken.

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 such opening, or of all such openings if more than one, to examine such witnesses as he thinks fit, and when all the evidence is concluded, to sum up such 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.

Postponement of trial.
38, 1876, s. 370. U.K., 14 & 15, Vict., c. 100, s. 27.

289. (1) No person shall be entitled to traverse or postpone the trial of any information presented against him at any court of criminal jurisdiction, but if the court is of opinion that any trial should, for any reason, be adjourned, it may adjourn the same to any day during the current sessions or to the next sessions upon 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;

(2) Nothing in this section shall extend to any prosecution by information in the nature of a *quo warranto*.

Verdict for attempt where full offence charged.
38, 1876, s. 345. U.K., 14 & 15, Vict., c. 100, s. 6.

290. If upon the trial of any person charged with any felony or misdemeanour, it appears to the jury upon the evidence that the accused did not complete the offence charged, but that he was guilty only of an attempt to commit the same, the jury shall be at liberty to 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 upon an information for such an attempt.

Conviction of persons tried for misdemeanour if felony proved.
38, 1876, s. 347. U.K., 14 & 15, Vict., c. 100, s. 12. Cf. U.K., 4 & 5, Geo. 5, c. 58, s. 39.

291. (1) If upon the trial of any person for any misdemeanour it appears that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour.

(2) No person tried for such 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 upon such 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 such misdemeanour.

Insanity.

Verdict of not guilty on ground of insanity.
38, 1876, s 381. Cf. U.K., 46 & 47, Vict., c. 38, s. 2.

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 be 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. U.K., 39 & 40, Geo. 3, c. 94, s. 2.

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 be 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 such 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 be 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.

Verdicts.

Defects cured by verdict.
38, 1876, s. 383. U.K., 7, Geo. 4, c. 64, s. 21.

294. No judgment after verdict for any indictable offence shall be stayed or reversed for want of a similiter, 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.

Forfeiture abolished.
25, 1874, ss. 1 and 5.
38, 1876, s. 371. U.K., 33 & 34, Vict., c. 23, ss. 1, 5.

295. (1) After the passing of this Act, no confession, verdict, inquest, conviction, or judgment of or for any treason or felony, shall cause any attainder, forfeiture or escheat.

(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 such treason or felony.

(3) "Forfeiture" does not include any fine or penalty imposed by way of sentence.

Conviction to disqualify for office.
25, 1874, s. 2. U.K., 33 & 34, Vict., c. 23, s. 2.

296. (1) If any person hereafter convicted of treason or felony, for which he is sentenced to death, or to any term of imprisonment exceeding twelve months, with hard labour, at the time of such conviction, holds any civil office under the Crown, or other public employment, or is entitled to any superannuation allowance, payable by the public or out of any public fund, such office or employment shall forthwith become vacant, and such superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such person receives a free pardon from His Majesty, or the Governor on behalf of His Majesty.

(2) Any person so convicted shall become, and (until he has suffered the punishment ordered or by competent authority substituted for that ordered, or receives a free pardon from His Majesty, or the Governor on behalf of His Majesty) shall continue thenceforth, incapable of holding any civil office under the Crown, or other public employment.

Costs, witness fees, and compensations.

Fees for witnesses for the prosecution.
38, 1876, s. 391 Cf. U.K., 8, Edw. 7, c. 15, s. 1.

297. (1) The Court before which any person is tried, or for trial before which he is committed or bailed to appear, 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 in case there is no trial, in attending the court in good faith in obedience to a recognizance or subpoena.

s. 297. R. v. CAVE, 26th August, 1896, S.A. *Register* (newspr.); 5 Austn. Digest 1252. The Court may order payment of an amount to the prosecutor for his costs and expenses, although the prisoner is found not guilty.

(2) The examining magistrate or justice may certify the amount which he considers reasonable for the compensation of such witness for his attendance at the preliminary inquiry, and shall forward his certificate to the said court.

Fees for witnesses for defence.
1479, 1921, s. 157.

(3) The said court may, at the request of any witness for the defence, certify that the said witness ought to be paid his expenses, and in that case the amount to be paid to the said 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.

Compensation for activity in arrest of felons.
38, 1876, s. 393.
U.K., 7, Geo. 4, c. 64, s. 28 (part).

(4) Any court or judge may, in addition to any fees ordered as aforesaid, order the payment of such sum of money as it or he considers reasonable to compensate any person, who appears to such 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.

Compensation to family of person killed in endeavouring to effect arrest.
38, 1876, s. 395.
U.K., 7, Geo. 4, c. 64, s. 30.

(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, in case he was married, or to his child or children, in case his wife was dead, or to his father or mother, in case he left neither wife nor child, such sum of money as the court in its descretion thinks fit.

Payment by sheriff.
1479, 1921, s. 156.
Cf. U.K., 7, Geo. 4, c. 64, s. 29.

(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 person entitled to receive the same, and the sheriff shall pay the amounts mentioned in the said orders, to the persons named therein respectively, 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 said order or any person claiming by, through or under him.

Regulations.
38, 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 for 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 shewn 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. Cf. U.K., 8, Edw. 7, c. 15, s. 6.

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 such person to pay the whole or any part of the costs or expenses incurred in and about the prosecution and conviction of such person.

(2) The payment of the said costs and expenses, or any part thereof, may be ordered by the court to be made out of any moneys taken from such person on his arrest, or may be enforced at the instance of any person liable to pay, or who has paid the same, 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 said costs and expenses from the person convicted, or from his estate, the same 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 applicable to the reimbursement of any person or fund by whom or out of which the said costs and expenses were paid or defrayed.

Compensation to persons injured.
25, 1874, s. 4 U.K., 33 & 34, Vict., c. 23, s. 4.

299. It shall be lawful for any court before which any person is convicted of felony, upon 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 said felony, and the amount so awarded shall be deemed a judgment debt due to the person entitled to receive the same from the person convicted, and the order for payment of such amount may be enforced in the same manner as in the case of any costs ordered by the court to be paid under the last preceding section.

s. 298. R. v. WHALLAND AND OTHERS (1928) S.A.S.R. 18; 5 Austn. Digest 1251. Costs will not be ordered against a person convicted of treason or felony unless the prosecution shows that the prisoner has adequate means to pay them, having regard to his debts, and his liabilities which should take priority over the costs of the prosecution.

Enforcement of fines and estreated recognizances.

Schedule of fines and forfeitures. 38, 1876, s. 365. Cf. U.K., 3 & 4, Will. 4. c. 99, ss. 26, 27, 28.

300. (1) The Associate, or Clerk of Arraigns, shall, at the end of every criminal sessions, prepare a schedule of all fines imposed and recognizances forfeited during such sessions, which schedule shall contain the names, residences, and descriptions of the parties, the amount of the sum imposed upon or forfeited by each respectively, and the reason of such fine or forfeiture, and shall be certified by the declaration of the associate or clerk of arraigns made before a judge, and shall be filed on record in the Supreme Court, and the associate or clerk of arraigns shall thereupon deliver to the sheriff a precept under the seal of the said court, in the form in Schedule 4 requiring him to summon the persons named in the schedule aforesaid.

Sheriff to issue summons 38, 1876, s. 366.

(2) The sheriff shall thereupon issue a written demand and summons in the form in Schedule 5, and shall cause the same to be served upon each person named in the said schedule, either personally or by causing the same to be left at his usual or last known place of abode, fourteen days at least before the first day of the then ensuing term, and shall duly return the said precept into the said court, according to the exigency thereof, with an account of all sums collected and received by him thereunder.

Enforcement. 38, 1876, s. 367.

(3) On the first day of every term every such schedule shall, by the associate or clerk of arraigns, be brought into court, and the sheriff shall also attend the said court and answer such questions as are put to him respecting such fines and forfeitures, and the names of the several parties against whom any fines or recognizances shall therein be set, which shall not have been paid to the sheriff, shall be called; and unless such parties respectively shall show good and sufficient cause why the said fines and forfeited recognizances should not be paid for the purposes of the general revenue, the court shall direct the Master or chief clerk to issue and deliver to the sheriff a writ of *fieri facias*, in the form in Schedule 6, for levying the same; and in like manner, on a return by the sheriff of the writ of *fieri facias*, certifying that any of the parties therein mentioned have no effects whereon the sums set against their respective names can be levied, a writ of *capias*, in the form in Schedule 7, shall issue against the parties in default,

s. 300. McKINNON v. THE KING (1927) 40 C.L.R. 217; 1 A.L.J. 321; 5 Austn. Digest 1234. Notwithstanding s. 300 the Court may direct that a defendant upon whom a fine has been imposed, shall be imprisoned until the fine is paid.

R. v. McGRATH (1928) S.A.S.R. 496; 5 Austn. Digest 967. Discussion of practice on application by a party for relief from his estreated recognizance. The practice set out in r. 109 of the rules in the Supreme Court Procedure Act, 1866, should be followed.

and such writs shall be executed by the sheriff according to the exigency thereof respectively.

Termination of imprisonment under writ of *capias*.
1940, 1929, s. 2.

(4) For the purpose of removing doubts it is hereby declared that notwithstanding anything contained in any other Act, any party in default as mentioned in this section, may be imprisoned pursuant to a writ of *capias*, but no such party shall be so imprisoned for more than six months.

(5) When a writ of *capias* is issued under this section against a party then serving a sentence of imprisonment, the writ of *capias* shall be effective to keep him in custody for not more than six months after the termination of his sentence, unless the Supreme Court otherwise directs.

(6) The Sheriff shall discharge any party imprisoned pursuant to a writ of *capias* after the expiration of six months from the commencement of his imprisonment pursuant to the said writ of *capias*.

This section not to apply to fines on jurors.
1290, 1917, s. 2.

(7) The provisions of this section shall not apply to fines imposed on jurors.

Sentence and Execution.

Court may abstain from pronouncing sentence of death in certain cases.
38, 1876, ss. 385, 386. U.K., 4, Geo. 4, c. 48, s. 1. Cf. U.K., 21 & 22, Geo. 5, c. 27, s. 1. Cf. U.K., 23, Geo. 5, c. 12, s. 53.

301. (1) Where any person is convicted of any treason or felony punishable by death, except murder, and the court before which the offender is convicted, is of opinion that under the particular circumstances of the case the offender is a fit and proper subject to be recommended for the Royal mercy, it shall be lawful for the court, if it thinks fit so to do, to direct the proper officer to ask if the offender has anything to say why judgment of death should not be recorded against him; and in case the offender does not allege any matter or thing sufficient in law to arrest or bar such judgment, the court may abstain from pronouncing judgment of death upon such offender, and instead of pronouncing such judgment may order the same to be entered of record, and thereupon the proper officer shall enter judgment of death on record against the offender in the same manner as if judgment of death had actually been pronounced in open court against the offender.

Ibid., s. 2.

(2) A record of every such judgment so entered shall have the like effect, and be followed by the same consequences, as if such judgment had actually been pronounced in open court, and the offender had been reprieved by the court.

Judgment of death by another judge where prisoner reprieved.
38, 1876, s. 384. U.K., 1, Edw. 6, c. 7, s. 5.

302. Where any person is found guilty of treason or felony for which he may be sentenced to death, and is reprieved without being so sentenced, any judge who is thereafter authorised to deliver the gaol where that person is detained, may give judgment of death against him as if he had been convicted as aforesaid before that judge.

Sentence for murder.
38, 1876, s. 6.
Cf. U.K., 24 & 25, Vict., c. 100, s. 2.

303. Upon every conviction for murder the Court shall pronounce sentence of death, but it shall not be necessary to express the time for the execution thereof. If no time for the execution is expressed in the sentence, it shall take place on the twenty-eighth day after the day on which the sentence was pronounced.

Execution of death sentence.
38, 1876, ss. 7, 8, 9, 10, 11.
Cf. U.K., 24 & 25, Vict., c. 100, s. 3.
Cf. U.K., 31 & 32, Vict., c. 24, s. 6.

304. (1) Sentence of death passed on any person by the Supreme Court, or by any Judge thereof, shall be carried into execution by the sheriff, within the walls or within the enclosed yard of the Adelaide Gaol, or of such other prison as the Governor by writing under his hand directs.

(2) The body of every person executed as aforesaid shall be buried within the precints of the prison in which the execution took place.

(3) The sheriff, and such of the officers of the prison as the sheriff may require, including the medical officer in attendance on the occasion, shall be present at every such execution, together with any justices, ministers of religion, and officers of the police who may desire to attend, and such guard and adult spectators as the sheriff may think fit to admit.

(4) Each of the persons aforesaid who attend at any such execution shall remain within the walls or enclosed yard of the prison until the sentence has been carried into execution according to law, and until the said medical officer has signed a certificate in the form set out in schedule 8; and the sheriff, officers of the prison, and such other persons present shall before their departure from the prison subscribe a declaration according to the form set out in schedule 9.

(5) The coroner or a special magistrate of the district in which the prison is situate, or in the absence of such coroner or special magistrate, a justice, shall, as soon as conveniently may be, hold an inquest upon the body of the person executed, and shall inquire and find whether the sentence was duly carried into execution.

Punishment for making false declaration.
38, 1876, s. 12.

305. Any person who—

(*a*) subscribes any certificate or declaration mentioned in the last preceding section, knowing the same to be false, or to contain any false statement:

(*b*) buries or removes from the prison the body of a person executed until after the said inquest has been duly held,

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

Certificates, to be recorded and published.
38, 1876, s. 13. Cf. U.K., 31 & 32, Vict., c. 24, s. 1.

306. Every such certificate and declaration shall be forthwith transmitted by the sheriff to the Master of the Supreme Court, and shall be entered and kept as a record of the said Court, and shall be published in the *Government Gazette* on three separate occasions.

Aboriginal natives may be executed where the crime was committed.
38, 1876, s. 14.

307. The Governor may, by writing under his hand, order that any sentence of death lawfully passed on any aboriginal native of the State, be publicly carried into execution at the place at which the crime was committed, or as near thereto as may be convenient, and that the body of the said aboriginal native be buried at the place of execution, or at such other place as the Governor may deem expedient, and upon such an order being made the provisions contained in the last three preceding sections regulating the execution of criminals shall not apply.

Whipping.
38, 1876, ss. 406, 407, 408, 409. Cf. U.K., 24 & 25, Vict., c. 96, s. 119.

308. (1) Whenever whipping is authorised by this Act, the court may, if the offender is a male person above the age of sixteen years, in addition to any other punishment awarded, order the offender to be once, twice, or thrice privately whipped, and the number of strokes, not to exceed fifty at each whipping, shall be specified in the sentence.

Males under sixteen.

(2) When any male person under the age of sixteen years is convicted of any offence against this Act, the court before which he is convicted, may, instead of or in addition to any other punishment, order him to be once, twice, or thrice privately whipped, and the number of strokes, not to exceed twenty-five at each whipping, shall be specified in the sentence.

(3) All whipping ordered by virtue of this Act shall take place within six months of the passing of the sentence.

(4) The sheriff may, with the approval of the Governor, prescribe the form and kind of instrument to be used in the whipping of offenders sentenced as aforesaid.

Abolition of the pillory.
14, 1841-2 Vict., c. 23,

309. No punishment by means of the pillory shall be awarded.

Sentence upon person already imprisoned under another sentence.
38, 1876, s. 388. Cf. U.K., 7 & 8, Geo. 4, c. 28, s. 10.

310. Wherever sentence is passed for felony on a person already imprisoned under sentence for another offence, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person has been previously sentenced.

Power to exempt from hard labour.
38, 1876, s. 404.

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.

Solitary confinement.
38, 1876, s. 405.

312. Whenever imprisonment may by law be awarded for any offence under this Act, the court in its discretion may direct that the offender be kept in solitary confinement for any portion of his imprisonment, not exceeding one month at any one time, and not exceeding three months in any one year.

Fine and sureties for keeping the peace.
38, 1876, s. 411.
Cf. U.K., 24 & 25, Vict., c. 96, s. 117.

313. (1) When any person is convicted of any misdemeanour punishable under this Act, the court may, in addition to or in lieu of any punishment by this Act authorised, fine the offender, and require him to enter into his own recognizance and to find sureties for keeping the peace and being of good behaviour, or for either of those purposes.

(2) When any person is convicted of any felony punishable under this Act, the court may require the offender to enter into his own recognizance and to find sureties, both or either for keeping the peace and being of good behaviour, in addition to any punishment by this Act authorised.

(3) No person shall be imprisoned for not finding sureties under this section for more than one year.

Previous convictions for felony.
38, 1876, ss. 379 and 380, 791, 1902, s. 3.
Cf. U.K., 7 & 8, Geo. 4, c. 28, s. 11.

314. (1) Any person who is convicted of any felony not punishable with death, 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: Provided that 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.

Cf. U.K., 14 & 15, Vict., c. 99, s. 13.
Cf. U.K., 34 & 35, Vict., c. 112, s. 18.

(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 upon 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) shall 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 same 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 Harbouring Thieves.

Interpretation. 9, 1870, s. 2.

315. In the next succeeding three sections—

" 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.

Persons twice guilty of felony to be subject to police supervision. 9, 1879, s. 3. Cf. U.K., 34 & 35, Vict., c. 112, s. 8.

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 less 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.

(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 such 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 upon any dwelling-house or building, yard or premises, being parcel of or attached to such building or dwelling-house, 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 found.

shall be guilty of an offence punishable summarily, and liable to be imprisoned for any 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 paragraph (c) of subsection (3) may be arrested by the owner or occupier of the premises, or any person authorised by him, but no person shall be arrested for an offence against paragraph (a) of subsection (3) 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. U.K., 34 & 35. Vict., c. 112, s. 10.

317. (1) Any person who occupies or keeps any lodging-house, public house, wine shop, or other place where spirituous liquors are sold, or 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 ten pounds, and in addition to or instead of such fine, may be ordered to enter into a recognizance, with or without sureties, in any sum not exceeding twenty pounds, to keep the peace or to be of good behaviour for twelve months: Provided that 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 said 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 the said premises, and any licence purported to be granted during the currency of such an order, shall be void.

Authority to search for stolen property.

9, 1870, s. 5. Cf. U.K., 6 & 7, Geo. 5, c. 50, s. 42.

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, authorise any police officer to enter such premises in search of stolen goods.

(2) It shall not be necessary in such authority for the inspector to specify any particular property.

(3) Any police officer so authorised may enter such 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 such possession, be summoned within three days before a magistrate or justice to account for his possession of such property, and the magistrate or justice may make such order respecting the disposal of such property as the justice of the case may require.

Habitual Criminals.

Judge may declare convicted person an habitual criminal.

927, 1907, s. 3. Cf. U.K., 8, Edw. 7, c. 59, s. 10.

319. (1) When any person is convicted on information of an offence of one of the classes of offences mentioned in subsection (3), the following provisions of this section shall take effect :—

(*a*) Where such person is so convicted of an offence included in classes I., II., III., or IV. of the offences mentioned in subsection (3), and has been previously so convicted on at least two occasions of an offence of the same class, the judge before whom such person is so convicted, may, in his discretion, declare as part of the sentence of such person that he is an habitual criminal :

(*b*) Where such person is so convicted of an offence included in any of the classes V., VI., VII., or VIII. mentioned

in subsection (3), and has been previously convicted on at least three occasions of an offence mentioned or included in any of the said classes V., VI., VII., or VIII., such judge may, in his discretion, declare as aforesaid that such person is an habitual criminal.

(2) This section shall apply whether the previous convictions took place within or without 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 of this Act set out below, namely:—

Class I. Sections 21 to 25 inclusive—Wounding.

Class II. Sections 26 and 27—Poisoning.

Class III. Sections 48, 49, 50, 51, 52, 56, 59, 60, 61, 62, 69, 70, and 72—Sexual offences.

Class IV. Sections 80 and 81—Abortion.

Class V. Sections 155 to 158 inclusive—Robbery.
Sections 159, 160, 161, 162, 164, and 165—Extortion.
Sections 167 to 172 inclusive—Burglary, &c.
Sections 131, 132, and 173—Larceny.
Sections 176 to 178 inclusive and 182 to 192 inclusive—Embezzlement, etc.
Sections 195, 193, 197, and 199—False pretences and Receiving.

Class VI. Sections 84 to 87 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 Crimes Act, 1914" (Commonwealth)—Coinage.

Proof of previous conviction. 927, 1907, s. 4.

320. (1) For the purposes of the last preceding section a previous conviction against any person may be proved by producing a record or extract of such conviction, and by giving proof of the identity of such 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 said 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 such conviction was made.

(3) Such record or extract shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(4) The mode of proving a previous conviction authorised by this section shall be in addition to, and not in exclusion of, any other authorised mode of proving such conviction.

Habitual criminal to be detained during pleasure.
927, 1907, ss. 5 and 13.
Cf. U.K., 8, Edw. 7, c. 59, s. 13.

321. Every habitual criminal shall, at the expiration of his sentence, be detained during His Majesty's pleasure, and, subject to the regulations, in some place of confinement set apart by the Governor, by proclamation in the *Gazette* for that purpose, which place of confinement shall be deemed to be a "prison" within the meaning of the Acts regulating prisons.

Habitual criminal to work at some trade.
927, 1907, s. 6.

322. (1) Every person confined as an habitual criminal shall, subject to the regulations, be required to work at some trade or avocation, and shall be offered facilities for selling or otherwise disposing of the products of his labour.

(2) The manner of dealing with the proceeds arising from the sale or disposal of such products shall be as prescribed; but the habitual criminal shall receive not less than one-half of the net proceeds so arising.

Governor may direct release.
927, 1907, s. 7.
Cf. U.K., 8, Edw. 7, c. 59, s. 14.

323. (1) If the Governor determines that an habitual criminal is sufficiently reformed, or for other good cause, he may, by his warrant, direct his release.

(2) Every habitual criminal so released while he remains within South Australia shall, once at least in every three months during the period of two years next after such release, report his address and occupation to the Commissioner of Police.

(3) Such report may be made either by the habitual criminal personally, or by letter signed by him, and posted to the Commissioner of Police at Adelaide.

Conditions under which offender may be recommitted.
927, 1907, s. 8.

324. If during the period of two years specified in the last preceding section an habitual criminal so discharged—

(*a*) is proved to any court presided over by a magistrate or two justices, to have failed without reasonable excuse to report his address and occupation to the Commissioner of Police at the times and in the manner prescribed by the last preceding section; or

(*b*) on being charged with an offence punishable on indictment, or summary conviction, and on being required by the magistrate or the justices before whom he is

s. 321. Yatala Labour Prison has been proclaimed a place of confinement within the meaning of section 321: Proclamation, *Gazette* 6th April, 1911, p. 603.

charged to give his name and address, refuses to do so, or gives a false name, or a false address ; or

(c) is convicted of any one of the offences mentioned in sections 66, 67, and 68 of the Police Act, 1916, of any indictable offence, or of any offence punishable on summary conviction, for which imprisonment for a period exceeding three months may be imposed,

the judge, magistrate, or justices before whom such proof is given, or before whom the habitual criminal is so charged, or convicted, may direct him, in addition to any fine or on the completion of any term of imprisonment then imposed upon him, to be recommitted to the place of confinement, and he shall be so recommitted accordingly, and the judge, magistrate, or justices may grant any necessary warrant for his recommittal.

When ceases to be an habitual criminal.
927, 1907, s. 9.

325. If during the period of two years, specified in the last but one preceding section, none of the events aforesaid happen, the offender shall cease to be an habitual criminal.

Males and females to be kept apart.
927, 1907, s. 10.

326. No female shall be allowed to enter the place of confinement set apart for male habitual criminals, nor shall any male be allowed to enter the place of confinement set apart for female habitual criminals, except in accordance with the regulations.

Alcoholic liquor prohibited.
927, 1907, s. 11.

327. No person shall bring into the place of confinement for the use of the confinees any alcoholic liquor, nor shall any confinee be allowed such liquor. Any person contravening the provisions of this section shall be liable to a penalty not exceeding one hundred pounds: Provided that such liquor may be given to and used by the confinees in cases of illness for medicinal purposes, if the liquor is prescribed by the surgeon of such place of confinement.

Regulations.
927, 1907, s. 12

328. (1) The Governor may make regulations—

(a) prescribing the mode of sale and disposal of the products of the labour of habitual criminals :

(b) prescribing the disposal of the net proceeds of such sale :

(c) empowering a visiting magistrate to inflict fines not exceeding ten shillings on confinees for breaches of discipline :

(d) as to such other matters as may be necessary for the good order, discipline, and health of the confinees and for the control and management of the place of confinement.

s. 324. (c) The Police Act, 1916, is repealed and superseded by the Police Act, 1936; ss. 85, 86, and 87 of the Police Act, 1936, correspond respectively to ss. 66, 67, and 68 of the Police Act, 1916.

(2) All such regulations shall be laid before both Houses of Parliament within one month after the making thereof, if Parliament is then sitting, and if not, then within one month after the commencement of the next ensuing session, and shall be published in the *Gazette*.

(3) On such publication the regulations shall be valid in law, but no regulation which is disapproved of by either House of Parliament within thirty days after such regulations have been laid before such House if Parliament be so long in session, or which, if such Parliament be not so long in session, is so disapproved of within thirty days after the commencement of the next session of Parliament, shall continue to have any force or effect, notwithstanding any publication as aforesaid.

PART X.

PART X.

CONVICTS' PROPERTY.

Interpretation. 25, 1874, ss. 6 and 7.

329. (1) In this Part "convict" means any person against whom judgment of death or of imprisonment with hard labour has been pronounced or recorded by a court of competent jurisdiction for treason or felony.

(2) When a convict dies, or is adjudicated bankrupt, or has suffered the punishment ordered against him or that lawfully substituted therefor, or is pardoned, he shall cease to be subject to the provisions of this Part.

Convict not to sue. 25, 1874, s. 8. U.K., 33 & 34, Vict., c. 23, s. 8.

330. No action for the recovery of any property, debt, or damage whatsoever, shall be brought by any convict against any person during the time while the convict is subject to the operation of this Part; and every convict shall be incapable, during such time as aforesaid, of alienating or charging any property, or of making any contract, save as hereinafter provided,

The Governor may appoint curator of convict's property. 25, 1874, s. 9. U.K., 33 & 34, Vict., c. 23, s. 9.

331. (1) It shall be lawful for the Governor, either generally or with reference to any particular case, to commit the custody and management of the property of any convict during the Governor's pleasure to a curator, to be by writing appointed in that behalf.

(2) Every such appointment may be revoked by the same or the like authority by which it is made, and upon any determination thereof, either by revocation thereof or by the death of any such curator, a new curator may be appointed by the same or the like authority from time to time, and every such new curator shall upon his appointment be and be deemed to be the successor in law of the former curator; and all property vested in, and all powers given to the former curator

by virtue of this Act, shall thereupon devolve to and become vested in such successor, who shall be bound by all acts lawfully done by the former curator during the continuance of his office.

(3) The provisions of this Part with reference to any curator shall, in the case of the appointment of more than one person, apply to such curators jointly.

(4) Upon the appointment of any such curator in manner aforesaid, all the real and personal property, including choses in action to which the convict named in such appointment was at the time of his conviction, or afterwards while he continues subject to the operation of this Part becomes or is entitled, shall be vested in such curator for all the estate and interest of such convict therein, and all deeds, conveyances, and assignments of the convict's property which would but for this Act be void against the Crown, shall be void against such curator, save as hereinafter provided. U.K., 33 & 34, Vict., c. 23, s. 10.

332. All payments *bona fide* made by any convict, or by any person on his behalf, before his conviction, as the case may be, to any creditor of such convict, and all payments *bona fide* made to any convict before his conviction, and all conveyances, deeds, and assignments, by any convict *bona fide* made and executed before such conviction, and all petitions, contracts, dealings, and transactions by and with any convict *bona fide* entered into before conviction shall be deemed valid. Certain transactions protected. 25, 1874, s. 10.

333. The curator shall be entitled to the like remuneration in respect of his administration of the property of a convict as that to which the Public Trustee is entitled in respect of the administration of the intestate estates of deceased persons and subject to the terms of his appointment he may receive and retain for his own benefit such remuneration accordingly, and may apply to the Supreme Court for judicial advice in like manner and with the same protection in acting thereupon as trustees may apply and be protected. Remuneration of curator. 25, 1874, s. 11.

334. The curator shall have absolute power to let, mortgage, sell, convey, and transfer any part of such property as to him shall seem fit, and also to carry into effect any *bona fide* contract or agreement lawfully made by or with any convict before his conviction. Powers of curator. 25, 1874, s. 12. Cf. U.K., 33 & 34, Vict., c. 23, s. 12.

335. It shall be lawful for the curator to pay or cause to be paid out of such property, or the proceeds thereof, all costs and expenses which the convict may have been condemned to pay; and also all costs, charges and expenses incurred by the convict in and about his defence; and also all such costs, charges, and expenses as the curator may incur or be put to in or about the same. Curator to pay costs of prosecution. 25, 1874, s. 13. Cf. U.K., 33 & 34, Vict., c. 23, s. 13.

Curator may pay debts of convict.

25, 1874, s. 14. U.K., 33 & 34, Vict., c. 23, s. 14.

336. The curator may cause payment or satisfaction whether in full or *pro rata*, to be made out of such property, of any debt or liability of the convict which may be established in due course of law, or may otherwise be proved to his satisfaction, and may also cause any property which comes to his hands to be delivered to any person claiming to be justly entitled thereto, upon the right of such person being established in due course of law, or otherwise to his satisfaction.

Curator may make compensation to persons defrauded.

25, 1874, s. 15. U.K., 33 & 34, Vict., c. 23, s. 15.

337. The curator may, with the consent of a judge, cause to be paid or satisfied out of such property such sum of money by way of satisfaction or compensation for any loss of property or other injury alleged to have been suffered by any person through or by means of any alleged criminal or fraudulent act of the convict, as to him or such judge shall seem just, although no proof of such alleged criminal or fraudulent act may have been made in any court; and all claims to any such satisfaction or compensation may be investigated in such manner as the curator with such consent shall think fit, and the decision of the curator thereon shall be binding: Provided that nothing in this Part shall take away or prejudice any right, title, or remedy to which any person alleging himself to have suffered any such loss or injury would have been entitled by law if this Part had not enacted.

Curator may make allowances for support of convict's family.

25, 1874, s. 16. U.K., 33 & 34, Vict., c. 23, s. 16.

338. The curator may cause such payments and allowances for the support or maintenance of any wife or child, or reputed child of the convict, or of any other relative or reputed relative of the convict dependent upon him for support as to the Curator shall seem fit, to be made from time to time out of such property, or the income thereof.

Curator's power as to priority of payments.

25, 1874, s. 17 U.K., 33 & 34, Vict., c. 23, s. 17.

339. (1) The several powers given to the curator by this Part may be exercised by him in such order and course, as to the priority of payments, or otherwise, as he thinks fit.

(2) All contracts of letting or sale, mortgages, conveyances, or transfers of property, *bona fide* made by the curator, under this Part, and all payments, or deliveries over of property *bona fide* made by or under the authority of the curator, for any of the purposes hereinbefore mentioned, shall be binding; and the propriety thereof, and the sufficiency of the grounds on which the curator has exercised his judgment or discretion in respect thereof, shall not be in any manner called in question by the convict, or by any person claiming an interest in such property by virtue of this Part.

Property to revert on completion of sentence, pardon, or death.

25, 1874, s. 18 U.K., 33 & 34, Vict., c. 23, s. 18.

340. (1) Subject to the preceding sections of this Part contained, all such property, and the income thereof, shall be preserved and held in trust by the curator, and the surplus income thereof shall be invested and accumulated in such

Government securities as he shall, from time to time, think fit, for the use and benefit of any convict, and his heirs, or legal personal representatives, or of such other persons as may be lawfully entitled thereto, according to the nature thereof.

(2) Such property and income, and the possession, administration, and management thereof, shall revest in, and be restored to the convict, upon his ceasing to be subject to the operation of this Part, or in and to his heirs, or legal personal representatives, or such other persons as may be lawfully entitled thereto; and all the powers and authorities by this Part given to the curator shall from thenceforth cease and determine, except so far as the continuance thereof may be necessary for the care and preservation of such property, or any part thereof, until the same shall be claimed by some person lawfully entitled thereto, or for obtaining payment out of such property, or of the proceeds thereof, of any liabilities, or any costs, charges, or expenses for which provision is made by this Part, for which purposes such powers and authorities shall continue to be in force until possession of such property shall be delivered up by the curator to some person being lawfully entitled thereto.

Curator when not to be liable.
25, 1874, s. 19. Cf. U.K., 33 & 34, Vict., c. 23, s. 19.

341. The curator shall not be answerable to any person for any property which has not actually come to his hands by virtue of this Act, nor for any loss or damage which may happen through any mere omission or nonfeasance on his part, to any property vested in him by virtue hereof.

Curator to receive costs of suits.
25, 1874, s. 20. U.K., 33 & 34, Vict., c. 23, s. 20.

342. The costs as between solicitor and client of every action which is brought against the curator with reference to such property as aforesaid, whether during the time the same continues vested in him under this Act or after the same ceases to be so vested, and all charges and expenses properly incurred by him with reference thereto shall be a first charge upon, and shall be paid out of, such property, unless the court before which such action is tried thinks fit otherwise to order.

Execution of judgments.
25, 1874, s. 21. U.K., 33 & 34, Vict., c. 23, s. 27.

343. All judgments or orders for the payment of money of any court against the convict, which have been duly recovered or made, either before or after his conviction, may be executed against any property of the convict under the care and management of any curator as aforesaid, or in the hands of any person who may have taken upon himself the possession or management thereof without legal authority, in the same manner as if such property were in the possession or power of the convict; and all such judgments or orders may likewise be executed,

according to the practice of the court, against any such property which may be vested in the curator under the authority of this Act.

Proceedings may be taken to make curator accountable before property reverts.
25, 1874, s 22. U.K., 33 & 34, Vict., c. 23, s. 28.

344. (1) It shall be competent for the Attorney-General, or for any person who if any convict were dead intestate would be entitled to the personal estate of such convict, or any share thereof, under the Statutes of Distribution or otherwise, or for any person authorised by the Attorney-General in that behalf, to apply in a summary way to any court which if such convict were dead would have jurisdiction to entertain an action for the administration of his real or personal estate, to issue a writ of summons, calling upon the curator, or on any person who without legal authority has possessed himself of any part of the property of the convict, to account for his receipts and payments in respect of the property of the convict, in such manner as such court directs.

(2) It shall be lawful for such court thereupon to issue such writ, rule, or other process, and to enforce obedience thereto, and to all judgments, rules, orders, and proceedings of such court consequent thereon, in the same manner as in any other case of process lawfully issuing out of such court.

(3) Such court shall thereupon have full power, jurisdiction, and authority to take all such accounts, and to make and give all such orders and directions as to it shall seem proper or necessary for the purpose of securing the due and proper care, administration, and management of the property of the convict, and the due and proper application of the same, and of the income thereof, and the accumulation and investment of such balances, if any, as may from time to time remain in the hands of the curator, or such other person as aforesaid, in respect of such property.

(4) So long as any such proceedings are pending in any such court, the curator, or other person, as the case may be, shall act in the exercise of all powers vested in him under this part, or otherwise in all respects as such court shall direct.

Curator and other persons to account when property reverts.
25, 1874, s. 23. U.K., 33 & 34, Vict., c. 23, s. 29.

345. Subject to the provisions of this Act, the curator and other person as aforesaid shall, from and after the time when the convict ceases to be subject to the operation of this Part, be accountable to the convict for all property of the convict which has been by him possessed or received and not duly administered, in the same manner in which any guardian or trustee is now accountable to his ward or *cestui que* trust, but subject nevertheless and without prejudice to the administration and application of such property under and according to the powers of this Part.

346. The curator, in respect of the exercise of the powers hereby given to him, shall be and shall be deemed to be an officer of the Supreme Court, and shall be liable to the summary jurisdiction thereof, and to be removed for misconduct in his office; and upon any such removal all estate and interest vested in him by virtue hereof shall vest in the master of the said Court until a new curator is appointed by the Governor in manner hereinbefore provided.

Curator subject to jurisdiction of Supreme Court. 25, 1874, s. 24.

PART XI.

CASES STATED AND APPEALS.

347. This Part shall apply to all persons convicted after the first day of October, nineteen hundred and twenty-five, but shall not affect the rights, as respects appeal, of any persons convicted on or before that date.

Application of this Part. 1613, 1924, s. 2.

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:

"full Court" means the Supreme Court constituted of an uneven number of judges, not being less than three;

"information" means information whereby any 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:

"judge" means judge of the Supreme Court:

"Master" means the Master of the Supreme Court; and

"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 person convicted or any property, or with reference to any moneys to be paid by him.

349. (1) 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.

Court to decide according to opinion of majority. 1613, 1924, s. 4. U.K., 7, Edw. 7, c. 23, s. 1 (5).

(2) Unless the court directs to the contrary in cases where, in the opinion of the court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the court, the judgment of the Court shall be pronounced by the Chief Justice,

if present, or in his absence by the senior member of the Court, or by such other member of the court hearing the case as the Chief Justice or senior member directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the court.

Cases Stated.

Questions of law may be reserved.
38, 1876, s. 397. U.K., 11 & 12, Vict., c. 78, s. 1.

350. (1) If upon the trial of any person convicted on information, any question of difficulty in point of law has arisen, it shall be lawful for the presiding judge in his discretion to reserve the said question for the consideration and determination of the Full Court, and to respite execution of the judgment, or postpone judgment until the said question has been considered and decided.

(2) A case shall be stated as provided in the next succeeding section—

(*a*) if the Full Court, on motion, makes a rule or order for that purpose, which rule or order the Full Court is hereby authorised to make :

(*b*) if the Full Court, on an appeal involving a question of law alone, so requires, as hereinafter mentioned.

(3) When a question of law has been reserved, or the Full Court on motion orders a case to be stated, the said presiding judge may in his discretion commit the person convicted to gaol, or release him on recognizance of bail with one or two sufficient sureties, and in such sum as the said 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.

Case to be stated by trial judge.
38, 1876, s. 398, U.K., 11 & 12, Vict., c. 78, s. 2.

351. (1) In any of the cases mentioned in the last preceding section, the presiding judge shall state a case setting forth the question reserved, with the circumstances on which it has arisen, and shall sign the same and transmit it within a reasonable time to the Full Court.

s. 350. REGINA v. TIDEMANN (1871) 5 S.A.L.R. 48; 5 Austn. Digest 1412. Held (under Act 6 of 1859) that questions to be reserved by a judge under section 66 of that Act had to be reserved before the close of the criminal session and that the judge had no power to reserve a case after.

REGINA v. FINDLEY (1878) 12 S.A.L.R. 56; 5 Austn. Digest 1412. Held that the discretion of the Judge in determining whether to state a case cannot be reviewed by the Full Court.

REGINA v. DELAVAUX (1879) 13 S.A.L.R. 43; 5 Austn. Digest 1412. A judge may, under s. 350, state a case of his own motion without being required by rule or order to do so.

Powers of Full Court.

38, 1876, s. 398, 401. U.K., 11 & 12, Vict., c. 78, ss. 2, 4. Cf. U.K., 7, Edw. 7, c. 23 s. 4.

(2) The Full Court shall have authority to hear and finally determine the said question, and may—

(*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; or

(*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:

Provided that—

I. no judgment shall be reversed, avoided, or arrested upon the ground of the improper admission of evidence, if it appears to the said court that the evidence was merely of a formal character and not material, nor upon the improper admission of evidence adduced for the defence;

II. where any judgment has been reversed, avoided, or arrested, the said court may order a new trial; and

III. the said court may, notwithstanding that it is of opinion that the question or questions so reserved might be decided in favor of the person convicted, affirm the judgment, if it considers that no substantial miscarriage of justice has actually occurred.

(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 the same on the orginal record in proper form, and a certificate of such entry in, or to the effect of, the form contained in Schedule 10 shall be transmitted to the Comptroller of Prisons, and shall be a sufficient warrant to all persons—

(*a*) to execute the said judgment as affirmed or amended; or

(*b*) to discharge the person convicted 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.

Right of Appeal and Determination of Appeals.

Right of appeal in criminal cases.
1613, 1924, s. 5.
U.K., 7, Edw. 7, c. 23, s. 3.

352. A person convicted on information may appeal under this Act to the Full Court—

(*a*) against his conviction on any ground of appeal which involves a question of law alone: Provided that 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;

(*b*) upon the certificate of the judge of the Supreme 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;

(*c*) with the leave of the Full Court, upon any such ground as is mentioned in subdivision (*b*) hereof or any other ground which appears to the Full Court to be a sufficient ground of appeal; and

(*d*) with the leave of the Full Court, against the sentence passed on his conviction, unless the sentence is one fixed by law.

Determination of appeals in ordinary cases.
1613, 1924, s. 6.
U.K., 7, Edw. 7, c. 23, s. 4.

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 of any question of law, or that on any ground there

s. 352. R. v. EDWARDS (No. 2) (1931) S.A.S.R. 376; 5 Austn. Digest 1436. Except where the first appeal was not dealt with on the merits, there is no jurisdiction in the Court of Criminal Appeal to entertain a subsequent appeal in the same case.

s. 353. R. v. REYNOLDS (1927) S.A.S.R. 228; 5 Austn. Digest 1438. Observations as to the conduct of an argument on a criminal appeal. The specific objections to the summing up should be stated at the outset of the argument.

R. v. BAXTER (1927) S.A.S.R. 321. Observations on the manner in which, on an appeal, the trial judge's summing up should be dealt with.

R. v. PAUL (1928) S.A.S.R. 16; 5 Austn. Digest 1359. Where the accused pleaded guilty and assisted the police, the Court ordered his sentence to be reduced although there was no evidence of restitution or repentance. Cases on reduction of sentence discussed.

R. v. LAWSON (1928) S.A.S.R. 99; 5 Austn. Digest 1365. Observations on standardisation of sentences. The appellate court should not interfere with the trial judge's sentence unless it is manifestly wrong.

EDWARDS v. THE KING (1931) S.A.S.R. 121; 5 Austn. Digest 1215, 1366. Matters to be considered in fixing sentence for sodomy.

was a miscarriage of justice, and in any other case shall dismiss the appeal: Provided that the Full Court may, notwithstanding that it is of 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 occured.

(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 to be had.

(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) 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.

Powers of Court in special cases
1613, 1924, s. 7. U.K., 7, Edw. 7, c. 23, s. 5.

354. (1) If it appears to the Full Court that an appellant, though 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

s. 354. R. v. THIELE (1928) S.A.S.R. 361; 5 Austn. Digest 1438. Verdict of manslaughter substituted on appeal for verdict of murder.

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 such 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 shall be 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.

Re-vesting and restitution of property on conviction.
1613, 1924, s. 8. U.K., 7, Edw. 7, c. 23, s. 6.

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 subsection (1) of section 24 of the Sale of Goods Act, 1895, as to the re-vesting 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 the operation of the said 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 of the said 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.

Jurisdiction of full court. 1613, 1924, s. 9.

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, 1878, shall be vested in the Full Court for the purposes of this Act.

Procedure.

Time for appealing. 1613, 1924, s. 10. U.K., 7, Edw. 7, c. 23, s. 7.

357. (1) Where a person convicted 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.

Except in the case of a conviction involving sentence of death 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.

(2) In the case of a conviction involving sentence of death or corporal punishment—

(*a*) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and

(*b*) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable and the sentence shall not be executed until after the determination of the appeal or, in cases where an application for leave to appeal is finally refused, until after the determination of the application

Judge's notes and report to be furnished on appeal. 1613, 1924, s. 11. U.K. 7, Edw. 7, c. 23, s. 8.

358. The judge of the Supreme 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 master in accordance with rules of court his notes of the

s. 357. R. v. McLEAN (1926) S.A.S.R. 155; 5 Austn. Digest 1437. Extension of time refused where there were no substantial grounds for appeal and no extenuating circumstances.

HARTNETT v. THE KING (1929) S.A.S.R. 98; 5 Austn. Digest 1344, 1348, 1437. Explanation of principles on which extension of time will be granted for appealing on the ground that fresh evidence is available. There should be some proof that the fresh evidence is admissible, and would be likely to lead the jury to a different conclusion, and was not available to the prisoner at the time of trial.

trial and shall also furnish to the master in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

Supplemental powers of court.
1613, 1924, s. 12.
U.K., 7, Edw. 7, c. 23, s. 9.

359. For the purposes of this Act the Full Court may, if it thinks it necessary or expedient in the interests of justice—

(*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 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 manner provided by rules of court for inquiry and report to a special commissioner appointed by the court and act upon 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:

Provided that 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. U.K., 7, Edw. 7, c. 23, s. 10.

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. U.K., 7, Edw. 7, c. 23, s. 11.

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 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. U.K., 7, Edw. 7, c. 23, s. 12.

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 purpose of his duties under this section.

Costs of appeal. 1613, 1924, s. 16. U.K., 7, Edw. 7, c. 23, s. 13.

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.

(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 the 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.

Admission of appellant to bail and custody when attending Court.

1613, 1924, s. 17. U.K., 7, Edw. 7, c. 23, s. 14.

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 rules and regulations under the Acts regulating prisons.

(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 as aforesaid, 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 by rules and regulations 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 purpose 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 the purpose, and an appellant whilst in custody in accordance with those rules and regulations shall be deemed to be in legal custody.

s. 364. R. v. RYAN (1930) S.A.S.R. 125; 5 Austn. Digest 963. Exposition of principles governing release of appellant on bail.

Duties of Master with respect to notices of appeal, etc.
1613, 1924, s. 18.
U.K., 7, Edw. 7, c. 23, s. 15.

365. (1) The Master 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.

(2) If it appears to the Master that any notice of an appeal against a conviction does not show any substantial ground of appeal the Master 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 the same for a full hearing, dismiss the appeal summarily without calling on any persons to attend the hearing or to appear for the Crown thereon.

(3) Any documents, exhibits, or other things connected with the proceedings on 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.

(4) The Master 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 the same 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 Master.

Notes of evidence on trial.
1613, 1924, s. 19.
U.K., 7, Edw. 7, c. 23, s. 16.

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 such judge, a transcript of such notes or any part thereof shall be made if the Master so requests, and furnished to the Master for the use of the Full Court or any judge thereof: Provided that a transcript shall be furnished to any party interested upon 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.

(3) The cost of making any such transcript, where a transcript is requested to be made by the Master 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.
U.K., 7, Edw. 7, c. 23, s. 17.

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, and to admit an appellant to bail, 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.

Rules of court.
1613, 1924, s. 21.
U.K., 7, Edw. 7, c. 23, s. 18.

368. (1) Rules of court for the purposes of this Part shall be made by the judges of the Supreme Court.

(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) The officers of any court before which an appellant has been convicted on information, and the keeper or other officers of any gaol or other officer having the custody of an appellant, and any other officers or persons, shall comply with any requirements of those rules so far as they affect those officers or persons, and compliance with those rules may be enforced by order of the Full Court or of any judge of the Supreme Court.

(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.

References on Petitions for Mercy.

References by Chief Secretary.
1613, 1924, s. 22.
Cf. U.K., 7, Edw. 7, c. 23, s. 19.

369. Nothing in this Part shall affect the prerogative of mercy, but the Chief Secretary on the consideration of any petition for the exercise of His Majesty's mercy having reference to the conviction of a person on information or to the sentence

(other than sentence of death) passed on a person so convicted may, if he thinks fit, with the concurrence of the Attorney-General, at any time either—

(*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 such judges for their opinion thereon, and such judges or any three of them shall consider the point so referred and furnish the Chief Secretary with their opinion thereon 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 Honors the Judges of the Supreme Court.

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 Comptroller of Prisons and to the Keeper of His Majesty's Prison at

SCHEDULE 3.

RULES.

Cf. U.K., 5 & 6, Geo. 5, c. 90, First Sch.

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 indorsed 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:—

SOUTH AUSTRALIA.

The King *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 requred.

(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 doing 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 n 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 IN SCHEDULE 3.

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 carnal knowledge of E.F. without her consent.

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 £10 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 (*c*)).

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 £2.

14

STATEMENT OF OFFENCE.

1*st 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.

2*nd 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 OFFENCE.

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.

16

STATEMENT OF OFFENCE.

1*st 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 S.A. Railways Commissioner 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 S.A. Railways Commissioner 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 injury done being less than £1).

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 £10 on the Bank of Adelaide.

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.

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 one was plaintiff and was defendant knowingly falsely swore that he saw one 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.—Faudulent 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 £100 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 £100 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.

Carnal knowledge of a girl over 13 and under 16 (C.L.C. Act, 1935, s. 55 (1) (*a*)).

PARTICULARS OF OFFENCE.

A.B. on the day of at had carnal knowledge of C.D. a girl of 15 years.

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

---

SCHEDULE 4.

Form of summons to show cause why fines, &c., should not be levied by process of the Court.

George V. by the Grace of God, &c.

To the Sheriff.

You are hereby commanded to demand of the several persons named in the Schedule hereunder written [*or* annexed hereto, *as the case may be*] the several fines, forfeitures, and sums of money set against their respective names as due for the several causes specified in the said schedule, and that you summon such of them as make default in payment thereof to appear before the Supreme Court, at Adelaide, on the day of (*the first day of Term*) at o'clock in the forenoon, then and there to show cause why the same should not be levied by process of the Court, and to have there then this writ, and all sums of money received by you in pursuance thereof. Witness, &c.

(Seal).

(Signed)

Chief Clerk of the Supreme Court.

Schedule Referred to.

Names of Persons of whom Fines and Forfeitures are to be demanded.	Amount of sums to be deducted.	Cause of Fines and Forfeitures.
A.B.	Forty Pounds.	For so much money acknowledged by him to be due by recognizance entered into by on the day of under a condition that should appear at the then next Criminal Sessions of the Supreme Court to answer to an information for a certain felony and forfeited by reason of the non-appearance of the said according to the said condition.
C.D.	Ten Pounds.	For fine imposed upon the said C.D., on his conviction for manslaughter on the day of 19 .

(Signed)

Chief Clerk of the Supreme Court.

SCHEDULE 5.

Form of the demand and summons by the Sheriff.

TO of

On behalf of His Majesty, I hereby demand of you the payment of the sum of [*set out the cause of the fine or forfeiture as in the Schedule to the Writ of Summons*], and in default of your paying the same to me before the day of (*the return of the writ*) at ten of the clock in the forenoon, then and there to show cause why the same should not be levied by process of the Court.

Given under my hand and seal of office the day of 19 .

Sheriff.

SCHEDULE 6.

Form of writ of *fieri facias* to levy fines, etc.

George V., etc.

To the Sheriff.

You are hereby commanded that of the goods and chattels, lands and tenements, of the several persons named in the schedule hereto, you cause to be made the several sums of money set against their respective names as due for the several causes mentioned in the said schedule, and whereof they are severally convicted, as appears of record and have the said several sums of money in the said Supreme Court on the day of to be rendered to us and have there then this writ. Witness, &c.

(Signed)

Chief Clerk of the Supreme Court.

Schedule referred to

(*Same as in Writ of Summons.*)

SCHEDULE 7.

Form of writ of *capias ad satisfaciendum* for the recovery of fines.

George V., etc.

To the Sheriff.

Whereas by writ you were commanded that of the goods and chattels, lands and tenements, of the several persons named in the schedule hereto, you should cause to be made the several sums of money set against their respective names as due for the several causes mentioned in the said schedule, and you the said Sheriff, at a certain day now past, returned that the said several persons had no effects whereof you could cause to be made the several sums of money or any part thereof. Therefore you are hereby commanded to take the said several persons and safely keep them so that you may have their bodies before the Supreme Court at Adelaide, on the day of to satisfy the said several sums of money aforesaid, and to have there then this writ.

(Signed)

Chief Clerk of the Supreme Court.

Schedule referred to

(*Same as in the Writ of Summons.*)

SCHEDULE 8.

I, , being the Medical Officer in attendance on the execution of , at the prison at , do hereby certify and declare that the said was, in pursuance of the sentence of the Court, hanged by the neck until his body was dead.

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

Medical Officer.

SCHEDULE 9.

We, the undersigned, do hereby testify and declare that we have this day been present at the prison when the extreme penalty of the law was carried into execution on the body of convicted at the Criminal Sessions the Supreme Court [*or* the Circuit Court, *as the case may be*], held on the day of , and sentenced to death, and that the said was, in pursuance of the said sentence, hanged by his neck until his body was dead.

Dated this day of , at the said prison.

Sheriff.
Gaoler.
Turnkey.
Constables.
Justice of the Peace.
Other Spectators.

SCHEDULE 10.

Certificate of determination of question reserved.

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 Arraigns.

To the Comptroller of Prisons and all others whom it may concern.

Rules of Court and Regulations.

The following rules of court and regulations were in force under this Act on 22nd March, 1937:—

RULES OF COURT AS TO CRIMINAL APPEALS—

General Rules, 1st September, 1925 (not published).

Rules as to Costs and Treatment of Appellant, Gazette 5th November, 1925, p. 1231.

Rules as to Payment for Transcripts and Documents, Gazette 19th November, 1925, p. 1358.

REGULATIONS AS TO HABITUAL CRIMINALS (pp. 319-328)—

Gazette—6th April, 1911, p. 606.
23rd November, 1916, p. 997.

REGULATIONS AS TO PAYMENT TO WITNESSES AND OTHERS FOR ATTENDANCE AT CRIMINAL PROSECUTIONS—

Gazette—13th January, 1931, p. 53.
22nd October, 1931, p. 776.

REGULATION AS TO PLACES OF CONFINEMENT UNDER SECTION 77 (2)—

Gazette—6th March, 1924, p. 596.