

SUMMARY OF PROVISIONS

PART I
PRELIMINARY

Section

- 1 Short title.
- 2 Commencement of Act.
- 3 Arrangement of Act.
- 4 Repeal.
- 5 Interpretation.

PART II
TREASON FELONY

- 6 Repeal.
- 7 Treason felonies.
- 8 Time within which prosecution shall be commenced, and warrant issued.
- 9 More than one overt act may be charged in information, and information for felony under this Act valid though the facts amount to treason.
- 10 Nothing herein to affect 25 Ed. 3, c. 2.

PART III
OFFENCES AGAINST THE PERSON

Homicide

- 11 Murder.
- 12 Conspiring or soliciting to commit murder.
- 13 Manslaughter.
- 14 Causing death by negligent driving.
- 14a Power to convict for careless driving or alternative offence on trial for manslaughter, etc.
- 15 Excusable homicide.
- 16 Petit treason.
- 17 Murder when death happens outside the State.

Attempts to Murder

- 18 Attempts to murder.

Letters Threatening to Murder

- 19 Sending letters threatening to murder.

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

- 20 Impeding a person endeavouring to save himself from shipwreck.
- 21 Wounding, etc., with intent to do grievous bodily harm.
- 22 Interpretation of loaded arms.
- 23 Inflicting bodily injury with or without a weapon.
- 24 Verdict of unlawful wounding when felony charged.
- 25 Choking or stupefying to commit crime.
- 26 Maliciously administering poison, &c., so as to endanger life, or inflict grievous bodily harm.
- 27 Maliciously administering poison, &c., with intent to injure, aggrieve, or annoy any other person.
- 28 Verdict for misdemeanour where felony charged.
- 29 Not providing food, &c., for wives, children, etc., whereby life endangered.
- 30 Exposing children whereby life endangered.
- 31 Causing bodily injury by explosives.
- 32 Using explosives, &c., with intent to do grievous bodily harm.
- 33 Placing gunpowder near a building, ship, &c., with intent to do bodily injury.
- 34 Setting spring-guns, &c., with intent to inflict grievous bodily harm.

SUMMARY OF PROVISIONS—*continued*

Section

- 35 Throwing stones, &c., at railway trains.
- 36 Acts done with intent to endanger persons on railways.
- 37 Doing or omitting anything to endanger passengers by railway.
- 38 Injuring persons by dangerous or negligent riding or driving.
- 38a Power to convict of careless driving on charge of causing bodily harm.

Assaults

- 39 Common assault.
- 40 Assaults occasioning harm.
- 41 Obstructing or assaulting clergyman in discharge of his duties.
- 42 Assaulting a magistrate preserving wreck.
- 43 Assaults with intent.
- 44 Forcibly hindering seaman.
- 45 Assaults arising from combination.
- 46 Summary proceedings for assault.
- 47 Power to commit for trial.

Rape, Defilement and Abduction

- 48 Rape.
- 49 Attempt to commit rape.
- 50 Carnally knowing a person under 12 years.
- 51 Attempting to carnally know a person under 12 years.
- 52 Carnally knowing a person between 12 and 13 years.
- 52a (Repealed.)
- 53 Defilement of child by guardian.
- 54 Consent no defence.
- 55 Defilement of person between 13 and 17 years of age.
- 56 Indecent assault.
- 57 Consent no defence in certain cases.
- 57a Power to take plea of guilty without evidence.
- 57b Indecent interference with persons.
- 58 Acts of gross indecency with children under the age of 16 years.
- 59 Abduction.
- 60 Forcible abduction.
- 61 Abduction of a child under 16 years.
- 62 Procuring the defilement of a person.
- 63 Procuring persons to be prostitutes.
- 64 Procuring defilement of persons by threats or fraud.
- 65 Householder, etc., permitting defilement of person under 17 on his premises.
- 66 Detention of unmarried person and restoration to parents.
- 67 Justice may grant warrant.
- 68 Permitting persons to resort to brothels.

Unnatural Offences

- 68a Abolition of crime of sodomy.
- 69 Offences against animals.
- 70, 71 (Repealed.)
- 72 Incest.

Procedure in Sexual Offences

- 73 Carnal knowledge defined.
- 74 Power to clear the Court.
- 75 Power on information for rape, &c., to convict of indecent assault or common assault.
- 76 Corroborative evidence required in certain cases.
- 76a Limitation of time for laying informations for certain offences.
- 77 Indeterminate sentence where prisoner suffers from venereal disease.
- 77a Detention of persons incapable of controlling sexual instincts.

Bigamy

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

Child Stealing

- 80 Child stealing.

SUMMARY OF PROVISIONS—continued

Attempts to Procure Abortion

Section

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

Concealment of Birth

- 83 Concealment of birth.

PART IV

MALICIOUS INJURIES TO PROPERTY

Injuries by Fire to Buildings and Goods

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

Injuries by Explosives to Buildings, &c.

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

Injuries to Buildings by Rioters

- 95 Injuries to property by rioters.

Injuries to Buildings by Tenants

- 96 Injuries to building by tenants.

Injuries to Manufactures, Machinery, &c.

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

Injuries to Corn, Trees, and Vegetable Productions

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

Injuries to Mines

- 103 Flooding mines, &c.
- 104 Damaging mining machinery.

Injuries to Sea and River Banks, &c.

- 105 Destroying sea bank, wall, dams, wharfs, etc.
- 106 Damaging sea banks and rivers.

Injuries to Ponds, &c.

- 107 Breaking down the dam of any fishery, etc., or mill dam, or poisoning fish.
- 108 Poisoning water in rivers, &c.

SUMMARY OF PROVISIONS—continued

Injuries to Bridges, &c.

- Section
109 Injury to bridges, &c.

Injuries to Railways, Electric Cables, &c.

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

Injuries to Works of Art

- 113 Destroying or damaging works of art.

Injuries to Cattle, &c.

- 114 Killing or injuring cattle.
115 Attempts to kill cattle.
116 Killing, &c., other animals.
117 Saving of rights under Impounding Act, 1920.

Injuries to Ships

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

Sending Letters Threatening to Burn or Destroy

- 125 Sending letters threatening to burn or destroy houses, &c.

Injuries not before provided for

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

Supplementary Provisions

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

PART V

LARCENY AND SIMILAR OFFENCES

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

Larceny of Cattle and other Animals

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

Larceny of Written Instruments

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

SUMMARY OF PROVISIONS—*continued**Larceny of things attached to or growing on land*

Section

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

Larceny from Mines or Mineral Lands

- 152 Ore, metal, &c.
- 152a Precious stones.
- 153 Fraudulently removing ore, etc., from mines.
- 153a Interpretation.
- 154 Stealing electricity.

Larceny from the Person, and other like Offences

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

Sacrilege, Burglary, Housebreaking, &c.

- 167 Sacrilege.
- 168 Burglary.
- 169 Entering a dwelling-house in the night with intent to commit a felony.
- 170 Breaking and entering buildings and committing felony.
- 171 Housebreaking, etc., with intent to commit a felony.
- 172 Being found by night, armed, or in possession of house-breaking implements.
- 173 Larceny in dwelling-houses.
- 174 Stealing goods in process of manufacture.

Larceny from Ships and Wharves, &c.

- 175 Stealing from ships, docks, etc.

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

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

Larceny by Tenants and Lodgers

- 183 Larceny by tenants and lodgers.

Frauds by Trustees, Agents, Bankers, or Factors

- 184 Fraudulent misappropriation.
- 185 Fraudulent sales under powers of attorney.
- 186 Factors obtaining advances on the property of their principals.

SUMMARY OF PROVISIONS—*continued*

Section

- 187 Trustees fraudulently disposing of property.
- 188 Promoters of companies making untrue statements.
- 189 Directors of companies fraudulently appropriating property.
- 190 Directors, &c., keeping fraudulent accounts.
- 191 Directors, &c., wilfully destroying books, &c.
- 192 Directors, &c., publishing fraudulent statements.
- 193 Protection to persons disclosing offences in civil proceedings.
- 194 Civil remedies not affected.

False Pretences

- 195 False pretences.

Receiving

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

Restitution and recovery of stolen property

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

False Personation, &c.

- 204 Personation in order to obtain property.
- 205 Personating the owner of stock.

Piracy

- 206 Piracy.
- 207 Piracy and attempt to murder.
- 208 Robbery or other act of hostility, at sea under colour of a foreign commission.
- 209 Piracy by master or seaman of ship.
- 210 Forcibly boarding a ship, and throwing the goods overboard.
- 211 Trading with pirates.

PART VI

FORGERY

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

Making and Engraving Plates for Bank Notes

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

Forging Bank Notes

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

Forging official and legal documents

- 224 Original documents of Courts of Record.
- 225 Orders of justices.

SUMMARY OF PROVISIONS—*continued*

Section

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

Miscellaneous Matters

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

PART VII

OFFENCES OF A PUBLIC NATURE

Offences against Public Justice

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

Forcible Entry

- 243 Forcible entry.

Riots

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

Defamatory Libels

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

Trafficking in Public Offices

- 253 Trafficking in public offices.

Nuisance by Fireworks

- 254 Nuisance by fireworks.

Offences against Morality, Public Health, &c.

- 255 Lewdness.
- 256 Offences in respect of infectious diseases.

Offences against Religion, &c.

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

SUMMARY OF PROVISIONS—*continued**Conspiracy and protection of property*

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

PART VIII

ACCESSORIES

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

PART IX

MISCELLANEOUS AND PROCEDURE

Punishment for certain common law misdemeanours

270	Punishment for certain offences.
-----	----------------------------------

Apprehension of Offenders

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

Informations

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

Pleas and proceedings on trial

284	Plea of "Not guilty" and refusal to plead.
285	Form of plea of <i>autrefois convict</i> or <i>autrefois acquit</i> .
286	Inspection and copies of depositions.
287	Prisoner's property may be made available for his defence.
288	Defence by counsel and addresses.
289	Postponement of trial.
290	Verdict for attempt where full offence charged.
291	Conviction of persons tried for misdemeanour if felony proved.

Insanity

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

Verdicts

294	Defects cured by verdict.
295	Forfeiture abolished.
296	Conviction to disqualify for office.

SUMMARY OF PROVISIONS—*continued**Costs, witness fees, and compensations*

Section

- 297 Fees for witnesses, compensation and regulations.
298 Persons convicted may be condemned in costs.
299 Compensation to persons injured.

Firearms and Offensive Weapons

- 299a Orders as to firearms and offensive weapons.

Fines and Forfeited Recognizances

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

Sentence and Execution

- 301 Court may abstain from pronouncing sentence of death in certain cases.
301a When death sentence commuted to term of imprisonment, it shall be deemed to be a sentence by the court.
302 Judgment of death by another judge where prisoner reprieved.
303 Sentence for murder.
304 Execution of death sentence.
305 Punishment for making false declaration.
306 Certificates, to be recorded and published.
307, 308 (Repealed.)
309 Abolition of the pillory.
310 Sentence upon person already imprisoned under another sentence.
311 Power to exempt from hard labour.
312 (Repealed.)
313 Fines, and sureties.
313a Persistent offenders.
314 Previous convictions for felony.

Police Supervision of Certain Offenders, and Harboursing Thieves

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

Habitual Criminals

- 319 Judge may declare convicted person an habitual criminal.
320 Proof of previous conviction.
321 Habitual criminal to be detained during pleasure.
322 (Repealed.)
323 Release on licence of habitual criminals.
324-327 (Repealed.)
328 Regulations under Prisons Act, 1936.

Abolition of presumption of marital coercion

- 328a Abolition of presumption of marital coercion.

PART X

PRISONERS' PROPERTY

- 329 Interpretation.
330 Prisoner not to sue.
331 The Governor may appoint curator of prisoner's property.
332 Certain transactions protected.
333 Remuneration of curator.

SUMMARY OF PROVISIONS—*continued*

Section

- 334 Powers of curator.
- 335 Curator to pay costs of prosecution.
- 336 Curator may pay debts of prisoner.
- 337 Curator may make compensation to persons defrauded.
- 338 Curator may make allowances for support of prisoner's family.
- 338a Curator may make allowances for support of prisoner released on probation, etc.
- 339 Curator's power as to priority of payments.
- 340 Property to revert on completion of sentence, pardon, or death.
- 341 Curator when not to be liable.
- 342 Curator to receive costs of suits.
- 343 Execution of judgments.
- 344 Proceedings may be taken to make curator accountable before property reverts.
- 345 Curator and other persons to account when property reverts.
- 346 Curator subject to jurisdiction of Supreme Court.

PART XI

CASES STATED AND APPEALS

- 347 Application of this Part.
- 348 Interpretation.
- 349 Court to decide according to opinion of majority.

Cases Stated

- 350 Questions of law may be reserved.
- 351 Case to be stated by trial judge for Full Court and Powers of Full Court.

Right of Appeal and Determination of Appeals

- 352 Right of appeal in criminal cases.
- 353 Determination of appeals in ordinary cases.
- 354 Powers of Court in special cases.
- 355 Re-vesting and restitution of property on conviction.
- 356 Jurisdiction of full court.

Procedure

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

References on Petitions for Mercy

- 369 References by Chief Secretary.

SCHEDULES

CRIMINAL LAW CONSOLIDATION ACT, 1935-1975

being

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

as amended by

Criminal Law Consolidation Act Amendment Act, 1940, No. 54 of 1940 [Assented to 5th December, 1940];
 Criminal Law Consolidation Act Amendment Act, 1952, No. 27 of 1952 [Assented to 27th November, 1952];
 Coroners Act Amendment Act, 1952, No. 53 of 1952 [Assented to 4th December, 1952];
 Criminal Law Consolidation Act Amendment Act, 1956, No. 54 of 1956 [Assented to 29th November, 1956]
 (as amended by Criminal Law Consolidation Act Amendment Act (No. 2), 1969);
 Statute Law Revision Act, 1957, No. 42 of 1957 [Assented to 14th November, 1957];
 Maintenance Act Amendment Act, 1965, No. 54 of 1965 [Assented to 23rd December, 1965]²;
 Criminal Law Consolidation Act Amendment Act, 1965-1966, No. 7 of 1966 [Assented to 24th February, 1966];
 Criminal Law Consolidation Act Amendment Act (No. 2), 1969, No. 71 of 1969 [Assented to 11th December, 1969]³;
 Criminal Law Consolidation Act Amendment Act (No. 3), 1969, No. 88 of 1969 [Assented to 11th December, 1969]⁴;
 Criminal Law Consolidation Act Amendment Act, 1969, No. 109 of 1969 [Assented to 8th January, 1970];
 Age of Majority (Reduction) Act, 1970-1971, No. 15 of 1971 [Assented to 8th April, 1971]⁵;
 Fisheries Act, 1971, No. 29 of 1971 [Assented to 22nd April, 1971]⁶;
 Corporal Punishment Abolition Act, 1971, No. 58 of 1971 [Assented to 14th October, 1971]⁷;
 Criminal Law Consolidation Act Amendment Act, 1971, No. 96 of 1971 [Assented to 3rd December, 1971];
 Local and District Criminal Courts Act Amendment Act, 1972, No. 54 of 1972 [Assented to 27th April, 1972]⁸;
 Criminal Law Consolidation Act Amendment Act, 1972, No. 74 of 1972 [Assented to 21st September, 1972]⁹;
 Criminal Law Consolidation Act Amendment Act, 1972, No. 94 of 1972 [Assented to 9th November, 1972];
 Criminal Law Consolidation Act Amendment Act (No. 3), 1972, No. 102 of 1972 [Assented to 16th November, 1972]¹⁰;
 Criminal Law Consolidation Act Amendment Act (No. 5), 1972, No. 109 of 1972 [Assented to 23rd November, 1972]¹¹;
 Criminal Law Consolidation Act Amendment Act (No. 6), 1972, No. 122 of 1972 [Assented to 30th November, 1972]¹²;
 Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6th December, 1973];
 Criminal Law Consolidation Act Amendment Act, 1974, No. 13 of 1974 [Assented to 4th April, 1974];
 Criminal Law (Sexual Offences) Amendment Act, 1975, No. 66 of 1975 [Assented to 2nd October, 1975];

and

Statute Law Revision Act (No. 3), 1975, No. 88 of 1975 [Assented to 20th November, 1975].

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

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

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

¹ Came into operation 2nd January, 1936: *Gaz.* 2nd January, 1936, p. 1.
² Came into operation 27th January, 1966: *Gaz.* 27th January, 1966, p. 145.
³ Came into operation 31st August, 1970: *Gaz.* 20th August, 1970, p. 701.
⁴ Came into operation 17th September, 1970: *Gaz.* 17th September, 1970, p. 1198.
⁵ Came into operation 15th April, 1971: *Gaz.* 15th April, 1971, p. 1598.
⁶ Came into operation 1st December, 1971: *Gaz.* 30th November, 1971, p. 2261.
⁷ Came into operation 18th November, 1971: *Gaz.* 18th November, 1971, p. 2070.
⁸ Came into operation 9th November, 1972: *Gaz.* 9th November, 1972, p. 2252.
⁹ Came into operation 2nd November, 1972: *Gaz.* 2nd November, 1972, p. 2132.
¹⁰ Came into operation 1st February, 1973: *Gaz.* 1st February, 1973, p. 377.
¹¹ Came into operation 15th February, 1973: *Gaz.* 15th February, 1973, p. 497.
¹² Came into operation 15th February, 1973: *Gaz.* 15th February, 1973, p. 496.

PART I

PART I

PRELIMINARY

Short title.
38, 1876, s. 1.
Citation
amended by 88,
1975, s. 3 (1)
(2nd Sched.).

Commence-
ment of Act.

Arrangement of
Act.

S. 3 amended by
7, 1966, s. 3;
71, 1969, s. 4
(a), (b), (c), (d);
109, 1969,
s. 2 (a), (b), (c),
(d), (e), (f); 94,
1972, s. 2; 102,
1972, s. 3; 66,
1975, s. 3.

1. This Act may be cited as the "Criminal Law Consolidation Act, 1935-1975".

2. This Act shall come into force on a day to be fixed by proclamation¹.

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 20-38a).

Assaults (Sections 39-47).

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

Unnatural Offences (Sections 68a-72).

Procedure in Sexual Cases (Sections 73-77a).

Bigamy (Sections 78-79).

Childstealing (Section 80).

Attempts to Procure Abortion (Sections 81-82a).

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 Burn or Destroy (Section 125).

Injuries not before Provided for (Sections 126, 127).

Supplementary Provisions (Sections 128, 129).

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

PART V—Larceny and Similar Offences (Sections 130-211).

Larceny of Cattle and other Animals (Sections 136-143).

Larceny of written Instruments (Sections 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 237-266).

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 270-328a).

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).

Firearms and Offensive Weapons (Section 299a).

Criminal Law Consolidation Act, 1935-1975*Fines and Forfeited Recognizances* (Sections 300-300h).*Sentence and Execution* (Sections 301-314).*Police Supervision of Certain Offenders and Harbours Thieves* (Sections 315-318).*Habitual Criminals* (Sections 319-328).*Abolition of presumption of marital coercion* (Section 328a).

PART X—Prisoners' 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.

S. 4 amended by
29, 1971, s. 4 (1)
(Sched.).

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
791 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
* * *	* * * * *	* *
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 ¹

Struck out by
29, 1971, s. 4 (1)
(Sched.).

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, 1876, s. 175.

“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:

¹ 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 next succeeding day: 38, 1876, s. 173.

“the Parole Board” means the Parole Board of South Australia constituted under the Prisons Act, 1936-1969¹: Def. inserted by 88, 1969, s. 3.

“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:

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

“carnal knowledge” includes *penetratio per anum* of a male or female person: Def. inserted by 66, 1975, s. 4.

“common prostitute” includes any male person who prostitutes his body for fee or reward: Def. inserted by 66, 1975, s. 4.

“rape” includes *penetratio per anum* of a male or female person without his or her consent. Def. inserted by 66, 1975, s. 4.

(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

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.

7. Any person who compasses, imagines, invents, devises, or intends— Treason felonies. 2, 1868, s. 2.

(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

¹ Now Prisons Act, 1936-1975.

- (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.

(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.

(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.

Nothing herein to affect 25 Ed. 3, c. 2.
2, 1868, s. 5.

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".

PART III

PART III

OFFENCES AGAINST THE PERSON

Homicide

Murder.
38, 1876, s. 5.

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

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,

Conspiring or
soliciting to
commit murder.
38, 1876, s. 15.

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

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

Manslaughter.
38, 1876, s. 16.

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,

Causing death
by negligent
driving.
1804, 1927,
ss. 2, 3, 4, 5.

shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years, or to a fine not exceeding five hundred dollars¹, 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.

* * * * *

Subsec. (6)
struck out by
53, 1952, s. 14.

¹ Pursuant to s. 8 of the Acts Republishment Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

PART III

Power to convict for careless driving or alternative offence on trial for manslaughter, etc.
S. 14a enacted by 27, 1952, s. 3.

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

Subsec. (2) amended by 71, 1969, s. 5.

(2) If the accused is found guilty of any such offence the court may impose on him either or both of the following penalties, namely:—

(a) a fine not exceeding two hundred dollars¹;

(b) imprisonment for a term not exceeding six months.

In addition the court may make such order under section 168 or section 169 of the Road Traffic Act, 1961-1967, as amended², as the court deems just.

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

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

Petit treason.
38, 1876, s. 19.

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.

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

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

Attempts to Murder

Attempts to murder.
38, 1876, ss. 21, 22, 23, 24, 25.
1670, 1925, s. 13.
S. 18 amended by 58, 1971, s. 6.

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

Letters Threatening to Murder

Sending letters threatening to murder.
38, 1876, s. 26.
1670, 1925, s. 13.

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.

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

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

20. Any person who unlawfully and maliciously—

(a) prevents or impedes any person, being on board 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.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

² Now Road Traffic Act, 1961-1975.

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.

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.

Interpretation of loaded arms.
38, 1876, s. 29.

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.

Inflicting bodily injury with or without a weapon.
38, 1876, s. 30.

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.

Verdict of unlawful wounding when felony charged.
38, 1876, s. 31.

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:
- (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,

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

1670, 1925, s. 22.

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

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

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

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

(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.

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

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

Verdict for misdemeanour where felony charged.
38, 1876, s. 36.

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.

Not providing food, &c., for wives, children, etc., whereby life endangered.
38, 1876, s. 37.

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—

(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.

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.

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.

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.

33. Any person who unlawfully and maliciously places or throws in, into, upon, against, or near any building, ship, or vessel, any gunpowder or other explosive substance with intent to do bodily injury to any person shall, whether or not any explosion takes place, and whether or not any bodily injury be effected, be guilty of felony, and liable to be imprisoned for any term not exceeding fourteen years.

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

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.

Setting spring-guns, &c., with intent to inflict grievous bodily harm.
38, 1876, s. 42.

(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.

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

Throwing stones, &c., at railway trains.
38, 1876, s. 43.

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

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

Acts done with intent to endanger persons on railways.
38, 1876, s. 44.
1670, 1925, s. 13.

(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.

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.

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

PART III

Injuring persons
by dangerous or
negligent riding
or driving.
S. 38 substituted
by 54, 1940,
s. 3.

38. (1) Any person who—

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

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

shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding two years, or to a fine not exceeding four hundred dollars¹, or to both such imprisonment and fine as aforesaid.

(2) Subsection (1) of this section 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 vehicle “in a culpably negligent manner or recklessly, or at a speed, or in a manner, which was dangerous to the public” on the ground of duplicity or uncertainty.

(3) In this section—

“vehicle” includes any motor vehicle as hereinafter defined, any vehicle propelled by animal power, and any bicycle, tricycle, and other like vehicle propelled by human power:

“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 any means other than the animal power, but does not include any vehicle run upon a railway or tramway.

Power to
convict of
careless driving
on charge of
causing bodily
harm.
S. 38a enacted
by 27, 1952,
s. 5.

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

Subsec. (2)
amended by
71, 1969, s. 6.

(2) If the accused is found guilty of any such offence the court may impose on him either or both of the following penalties, namely:—

(a) a fine not exceeding two hundred dollars¹;

(b) imprisonment for a term not exceeding six months.

In addition the court may make such order under section 168 or section 169 of the Road Traffic Act, 1961-1967, as amended², as the court deems just.

(3) In this section “vehicle” has the same meaning as in section 38.

Assaults

Common
assault.
38, 1876, s. 48.

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.

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

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

² Now Road Traffic Act, 1961-1975.

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 abovementioned, or to the knowledge of the offender is going to perform or returning from the performance of those rites or duties,

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

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

42. Any person who assaults and strikes or wounds any magistrate, officer, or other person whomsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, 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.

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

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,

Assaults with intent.
38, 1876, s. 51.

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

44. Any person who—

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

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

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

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.

Assaults arising from combination.
38, 1876, s. 53.

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

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

(2) In any such summary proceedings the court may punish the defendant by a fine not exceeding two hundred dollars¹, or imprisonment for any term not exceeding six months.

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

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

In such a case the application for compensation under this section shall not be a bar to any other proceedings for compensation.

Power to
commit for trial.
38, 1876, ss. 58
and 59.

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, 1921², and thereupon shall have power to award any punishment authorized by that Act.

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

(3) Nothing in this or the preceding section shall authorize 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.

Heading
amended by 66,
1975, s. 5.

Rape, Defilement, and Abduction

Rape.
38, 1876, s. 60.
1670, 1925,
s. 13.
S. 48 amended
by 58, 1971,
s. 6; 66, 1975,
s. 6.

48. Any person who commits rape shall be guilty of felony, and liable to be imprisoned for life.

Attempt to
commit rape.
38, 1876, s. 61.
S. 49 amended
by 66, 1975,
s. 7.

49. Any person who attempts to commit rape, or assaults any person with intent to commit rape, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Carnally
knowing a
person under
12.
38, 1876, s. 63.
1670, 1925,
s. 13.
S. 50 amended
by 54, 1940,
s. 4; 66, 1975,
s. 8.

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

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

² Now Justices Act, 1921-1975.

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

Attempting to carnally know a person under 12 years.
38, 1876, s. 64.
S. 51 amended by 54, 1940, s. 4; 66, 1975, s. 9.

52. Any person who unlawfully and carnally knows any person 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.

Carnally knowing a person between 12 and 13 years.
38, 1876, s. 65.
S. 52 amended by 54, 1940, s. 4; 66, 1975, s. 10.

* * * * *

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

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

Defilement of person by guardian.
358, 1885, s. 11.
1303, 1917, s. 6.
S. 53 amended by 66, 1975, s. 11 (a), (b).

54. It shall be no defence to a charge under section 50, 51, 52 or 53 that the carnal knowledge was had, or the attempt or assault was made, with the consent of the person concerned.

Consent no defence.
S. 54 amended by 27, 1952, s. 7; 66, 1975, s. 12.

55. (1) Any person who—

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

Defilement of person between thirteen and seventeen years of age.
358, 1885, s. 4.
1303, 1917, s. 6.
Para. (a) amended by 27, 1952, s. 8 (a); 66, 1975, s. 13 (a).

(b) unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any person who is an idiot or imbecile under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the person was an idiot or imbecile,

Para. (b) amended by 66, 1975, s. 13 (b), (c).

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

(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 person concerned unless the accused proves that at the time of the said carnal knowledge or attempt the said person was of or above the age of sixteen years and—

Consent a defence in certain cases.
Subsec. (2) amended by 27, 1952, s. 8 (b), (c); 66, 1975, s. 13 (d), (e).

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

Para. (a) amended by 27, 1952, s. 8 (c); 66, 1975, s. 13 (e).

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

Para. (b) amended by 27, 1952, s. 8 (c); 66, 1975, s. 13 (d), (e).

PART III

Subsec. (3)
struck out by
27, 1952,
s. 8 (d).

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

Power to take
plea of guilty
without
evidence.
S. 57a enacted
by 27, 1952,
s. 9.
Subsec. (1)
amended by 66,
1975, s. 16.

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

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

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

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

Indecent
interference
with persons.
S. 57b enacted
by 27, 1952, s.
9; amended by
42, 1957,
s. 3 (2nd
Sched.); 66,
1975, s. 17.

57b. (1) Any person who indecently interferes with—

Para. (a)
amended by 66,
1975,
s. 17 (a), (b).

(a) any person under the age of seventeen years, whether with or without the consent of that person; or

- (b) any person of or above the age of seventeen years, without his or her consent,

Para. (b) amended by 66, 1975, s. 17 (c), (d).

shall be guilty of an offence punishable on summary conviction.

Penalty: Imprisonment for not more than one year, or a fine of not more than one hundred dollars¹ or both such imprisonment and fine.

(2) Every complaint for an offence against this section shall be heard by a magistrate.

(3) If at the close of the case for the prosecution it appears to the Magistrate hearing a complaint under this section that the offence includes carnal knowledge or attempted carnal knowledge or is, in his opinion, of such an aggravated nature that it cannot be sufficiently punished under this section, he shall commit the defendant for trial on any charge which, in his opinion, is disclosed by the evidence.

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

Acts of gross indecency with persons under the age of sixteen years. 1670, 1925, s. 14. Subsec. (1) amended by 66, 1975, s. 18 (a), (b).

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

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

- (b) incites or procures or attempts to procure the commission by any such person of any act of gross indecency with the accused or in the presence of the accused, or with any other person in the presence of the accused:

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

- (c) is otherwise a party to the commission of any act of gross indecency by or with or in the presence of any such person or by or with any other person in the presence of such person or by any such person with any other person in the presence of the accused—

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

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

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

Consent no defence. Subsec. (2) amended by 66, 1975, s. 18 (b).

59. (1) Any person who—

Abduction. 38, 1876, s. 68. Subsec. (1) amended by 66, 1975, s. 19 (a) to (e).

- (a) from motives of lucre, takes away or detains against his or her will, any person 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 heir or heiress or co-heir or co-heiress, or presumptive next of kin, or one of the presumptive next of kin to anyone having such interest:

Para. (a) amended by 66, 1975, s. 19 (a), (b), (c).

- (b) fraudulently allures, takes away, or detains, a person 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

Para. (b) amended by 66, 1975, s. 19 (a), (d).

¹ Pursuant to s. 8 of the Acts Reproduction Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

his or her father or mother or of any person having the lawful care or charge of him or her,

with intent to marry or carnally know him or her, or to cause him or 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.

Subsec. (2)
amended by 66,
1975, s. 19 (a),
(c), (f), (g).

(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 person concerned, or in which he or she has any interest, or which comes to him or her as such heir or heiress or co-heir 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.
S. 60 amended
by 66, 1975,
s. 20 (a), (b), (c).

60. Any person who by force takes away or detains against his or her will any person of any age, with intent to marry or carnally know him or her, or to cause him or 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
person under
16.
38, 1876, s. 70.
S. 61 amended
by 66, 1975,
s. 21 (a), (b), (c).

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

Procuring the
defilement of a
person.
38, 1876, s. 62.
S. 62 amended
by 58, 1971,
s. 6; 66, 1975,
s. 22 (a), (b), (c).

62. Any person who by false pretences, false representations, or other fraudulent means, procures any person to have any illicit carnal connection with any other person, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Procuring
persons to be
prostitutes.
358, 1885, s. 2.
1303, 1917, s. 6.
Para. (a)
amended by
54, 1940,
s. 6 (a); 66,
1975, s. 23 (a).

63. Any person who—

(a) procures, or endeavours to procure, any person to become a common prostitute:

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

(b) procures, or endeavours to procure, any person not being a common prostitute, to leave the State, or to leave his or her usual place of abode in the State, and to become the inmate of a brothel, for the purposes of prostitution, either within or without the State,

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

Procuring
defilement of
persons by
threats or fraud.
358, 1885, s. 3.
1303, 1917, s. 6.

64. Any person who—

Para. (a)
amended by 66,
1975,
s. 24 (a), (b).

(a) by threats or intimidation, procures, or endeavours to procure, any person to have unlawful carnal connection with any other person:

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

Para. (b) amended by 66, 1975, s. 24 (a), (b).

(c) induces a person, not being a common prostitute or of known immoral character, with intent that he or she shall have unlawful carnal connection with any other person, to enter a brothel, he or she not knowing the same to be a brothel, nor being a party to the intent,

Para. (c) amended by 15, 1971, s. 4 (1) (Sched. Part IX); 66, 1975, s. 24 (a), (b), (c).

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

65. Any person who, being the owner or occupier of any premises, or having, or acting, or assisting in, the management or control thereof, induces or knowingly suffers any person under the age of seventeen years, to resort to or be in such premises for the purpose of being unlawfully and carnally known by any other person, whether such carnal knowledge is intended to be with any particular person or generally, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Householder, etc., permitting defilement of person under seventeen on his premises. 358, 1885, s. 6. 1303, 1917, s. 6. S. 65 amended by 66, 1975, s. 25 (a), (b), (c).

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

Detention of unmarried person and restoration to parents. 358, 1885, s. 7. Subsec. (1) amended by 66, 1975, s. 26 (a) to (e).

(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 person be returned to the custody of the parent or other person from whom he or she was taken or obtained.

Subsec. (2) amended by 66, 1975, s. 26 (a), (d).

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 person, or any superintendent, inspector, or sergeant of police, in the case of any person 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 authorizing 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 person in a place of safety, until he or she can be brought before a justice.

Justice may grant warrant. 358, 1885, s. 8. Subsec. (1) amended by 66, 1975, s. 27 (a), (b).

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

Subsec. (2) amended by 66, 1975, s. 27 (a), (c).

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 person 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 other person, whether such carnal knowledge is intended to be with any particular person or generally, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding seven years.

Permitting young persons to resort to brothels. 358, 1885, s. 10. 1303, 1917, s. 6. S. 68 amended by 66, 1975, s. 28 (a), (b), (c).

Unnatural Offences

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

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

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

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

(2) Any person who attempts to commit buggery with an animal shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years.

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

* * * * *

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

* * * * *

Incest.
38, 1876, ss. 73
and 74.

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.

Procedure in Sexual Offences

Carnal
knowledge
defined.
38, 1876, s. 75.

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.

Power to clear
the Court.
358, 1885, s. 13.
S. 74 amended
by 66, 1975,
s. 31 (a), (b).

74. When any hearing or trial takes place in relation to any sexual offence punishable under this Act 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 on
information for
rape, &c., to
convict of
indecent assault
or common
assault.
1303, 1917, s. 5.
S. 75 amended
by 66, 1975,
s. 32.

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, or for common assault, as the case may be.

Corroborative
evidence
required in
certain cases.
358, 1885, s. 14.

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.

76a. (1) No information shall be laid for any offence specified in subsection (3) of this section more than three years after the commission of the offence.

Limitation of time for laying informations for certain offences.

S. 76a enacted by 27, 1952, s. 10.

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

(3) The offences to which this section applies are the offences mentioned in sections 48, 49, 50, 51, 52, 53, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, and 72 of this Act.

Subsec. (3) amended by 42, 1957, s. 3 (2nd Sched.); 66, 1975, s. 33.

77. (1) In every case where there is reason to suspect that an offender guilty of any offence mentioned in subsection (8) of this section is suffering from a venereal disease, the court or judge sitting for the trial of that offence shall direct that two or more legally qualified medical practitioners, named by the court or judge, inquire whether the offender is so suffering.

Indeterminate sentence where prisoner suffers from venereal disease.

S. 77 substituted by 54, 1940, s. 7.

Subsec. (1) amended by 54, 1956, s. 3 (a)¹.

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

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

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

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

(6) In this section "court" means the Supreme Court, a District Criminal Court or a court of summary jurisdiction constituted by a special magistrate; and "venereal disease" means syphilis or gonorrhoea.

Subsec. (6) amended by 54, 1956, s. 3 (b)¹; 71, 1969, s. 7.

(7) This section shall apply to offenders under eighteen years of age as well as to other offenders; and an offender who is under eighteen years of age when he is sentenced may be detained pursuant to this section notwithstanding that the detention commences or continues after he attains the age of eighteen years.

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

The period during which an offender is detained in a home as defined in the Community Welfare Act, 1972, as amended², or ordered to be under the control of the Minister of Community Welfare pursuant to that Act or any other Act shall be deemed to be the term of his imprisonment within the meaning of this section.

(8) The offences to which this section applies are the offences mentioned in sections 48, 49, 50, 51, 52, 53, 55, 56, 57b, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 72, and 255 of this Act and in section 23 of the Police Offences Act, 1953³.

Subsec. (8) inserted by 54, 1956, s. 3 (c)¹; amended by 66, 1975, s. 34.

¹ S. 5 of Act No. 54 of 1956 provides as follows:—

5. The amendments made to the principal Act by sections 3 and 4 of this Act shall apply in every case where a person is found guilty after the commencement of this Act of an offence committed whether before or after the said commencement.

² Now Community Welfare Act, 1972-1975.

³ Now Police Offences Act, 1953-1975.

PART III

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

77a. (1) In any case where a person has been found guilty of an offence mentioned in subsection (9) of this section the court or judge sitting for the trial of that offence may at its or his discretion direct that two or more legally qualified medical practitioners named by the court or judge, inquire as to the mental condition of the offender, and in particular whether his mental condition is such that he is incapable of exercising proper control over his sexual instincts.

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

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

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

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

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

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

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

(b) shall not be released unless—

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

or

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

Subsec. (4) amended by 27, 1952, s. 11 (c), (d), (e); 88, 1969, s. 4 (b); 74, 1972, s. 3 (b).

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

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

or

¹ S. 5 of Act No. 54 of 1956 provides as follows:—

5. The amendments made to the principal Act by sections 3 and 4 of this Act shall apply in every case where a person is found guilty after the commencement of this Act of an offence committed whether before or after the said commencement.

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

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

- (a) direct that the offender be detained in an institution either for such period as the court or judge directs or during His Majesty's pleasure; or
- (b) pass sentence on the offender and in addition direct as mentioned in paragraph (a).

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

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

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

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

or

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

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

(6) An offender detained under this section shall be examined at least once in every three months by the Superintendent or deputy superintendent of the Mental Hospital, Parkside¹, or by some other person appointed by the Governor to conduct examinations under this section. The person making an examination under this subsection shall forthwith furnish a report of the examination to the Director-General of Medical Services.

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

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

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

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

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

(7c) Where—

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

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

or

¹ The name of Parkside Mental Hospital has been changed to Glenside Hospital. See *Gaz.* 6th July 1967, p. 2.

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

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

Subsec. (8)
amended by
54, 1956,
s. 4 (b)¹; 54,
1965, s. 150
(Sched.);
71, 1969, s. 8;
88, 1975, s. 3 (1)
(2nd Sched.).

(8) In this section "court" means the Supreme Court, a District Criminal Court or a court of summary jurisdiction constituted by a special magistrate; and "institution" means—

- (a) an institution as defined by the Mental Defectives Act, 1935-1939²;
(b) any gaol or labour prison;
(c) any other institution proclaimed by the Governor for the purpose of this section:

Para. (d)
amended by
54, 1956, s. 150
(Sched.); 88,
1975, s. 3 (1)
(2nd Sched.).

- (d) in the case of an offender under the age of eighteen years, a home as defined in the Community Welfare Act, 1972, as amended³, or any such institution as mentioned in paragraph (a) or (c) of this definition.

Subsec. (9)
inserted by
54, 1956,
s. 4 (c)¹;
amended by 66,
1975, s. 35.

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

Para. (a)
amended by 66,
1975, s. 35.

- (a) the offences mentioned in sections 48, 49, 50, 51, 52, 53, 55, 56, 57b, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 72, and 255 of this Act and in section 23 of the Police Offences Act, 1953⁴; and
(b) any other offence where the evidence indicates that the offender may be incapable of exercising proper control over his sexual instincts.

Bigamy

Bigamy.
38, 1876, s. 77.
1670, 1925, s. 6.

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.

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.

¹ S. 5 of Act No. 54 of 1956 provides as follows:—

5. The amendments made to the principal Act by sections 3 and 4 of this Act shall apply in every case where a person is found guilty after the commencement of this Act of an offence committed whether before or after the said commencement.

² Now Mental Health Act, 1935-1974.

³ Now Community Welfare Act, 1972-1975.

⁴ Now Police Offences Act, 1953-1975.

Child Stealing

80. (1) Any person who—

Child stealing.
38, 1876, s. 76.

(a) unlawfully, either by force or fraud, leads, takes, decoys, or entices away or detains any child under the age of fourteen years;

(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

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

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

(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.

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.

Procuring drugs, &c., to cause abortion.
38, 1876, s. 79.

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

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

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

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

or

- (ii) that there is a substantial risk that, if the pregnancy were not terminated and the child were born to the pregnant woman, the child would suffer from such physical or mental abnormalities as to be seriously handicapped,

and where the treatment for the termination of the pregnancy is carried out in a hospital or a hospital of a class declared by regulation to be a prescribed hospital or a hospital of a prescribed class for the purposes of this section;

or

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

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

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

(4) The Governor may make regulations—

- (a) for requiring any such opinion as is referred to in subsection (1) of this section to be certified by the legally qualified medical practitioners or practitioner concerned in such form and at or within such time as may be prescribed, and for requiring the preservation and disposal of any such certificate made for the purposes of this Act;
- (b) for requiring any legally qualified medical practitioner who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be prescribed to the Director-General of Medical Services;
- (c) for prohibiting the disclosure, except to such persons or for such purposes as may be prescribed, of notices or information given pursuant to the regulations;
- (d) declaring a particular hospital or a class of hospitals to be a prescribed hospital or a prescribed class of hospital for the purposes of this section;

and

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

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

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

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

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

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

(10) In this section and in sections 81 and 82 of this Act, "woman" means any female person of any age.

Concealment of Birth

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.

Concealment of birth.
38, 1876, s. 80.

(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).

Verdict on information for murder.

PART IV

PART IV

MALICIOUS INJURIES TO PROPERTY

Injuries by Fire to Buildings and Goods

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:

(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:

Arson.
38, 1876,
ss. 81, 82, 83,
84, and 85.
1670, 1925,
s. 13.

1670, 1925, s. 4.

1670, 1925, s. 5.

(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,

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

Setting fire to other buildings.
38, 1876, s. 86.

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 goods in any building.
38, 1876, s. 87.

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.

Attempting to set fire to buildings.
38, 1876, s. 88.

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.

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

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

- (a) any crop of hay, corn, grain, pulse, or any cultivated vegetable produce, whether standing or cut down:
- (b) any part of any wood, coppice, or plantation of trees:
- (c) any grass, stubble, scrub, heath, gorse, furze, or fern, 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.

Attempting to set fire to any crops, &c.
38, 1876, s. 98.
S. 89 amended by 58, 1971, s. 6.

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

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.

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.

Setting fire to a coal mine, or timbering of any mine.
38, 1876, s. 103.

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.

Attempting to set fire to a mine, &c.
38, 1876, s. 104.

Injuries by Explosives to Buildings, &c

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

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

(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.

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.

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

Injuries to Buildings by Rioters

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—

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

(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.

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.

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.

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, woolpressing 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.

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—

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

- (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

100. Any person who unlawfully and maliciously cuts, breaks, barks, roots up, or otherwise destroys or damages, the whole or any part of any tree, sapling, shrub, or hopbonds, or any underwood, growing in any park, plantation, pleasure grounds, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house (in case the amount of the damage or injury exceeds two dollars¹) shall be guilty of felony, and liable to be imprisoned for any term not exceeding four years.

Destroying or damaging trees, shrubs, &c., over \$2¹ in value.
38, 1876, s. 99.
s. 100 amended by 58, 1971, s. 6.

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

Damaging trees, &c.
38, 1876, ss. 100 and 101.
Subsec. (1) amended by 58, 1971, s. 9 (a).

- (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 two dollars¹):
- (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 ten dollars¹.

(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.

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

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 ten dollars¹, and for any subsequent offence to be imprisoned for any term not exceeding six months.

Destroying fences, &c.
38, 1876, s. 102.

¹ Pursuant to s. 8 of the Acts Republiation Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

Injuries to Mines

Flooding mines,
&c.
38, 1876, s. 105.

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.

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.

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.

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,

Damaging sea banks and rivers.
38, 1876, s. 108.

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

*Injuries to Ponds, &c***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,

Breaking down the dam of any fishery, etc., or mill dam, or poisoning fish.
38, 1876, s. 109.

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

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.

Poisoning water in rivers, &c.
38, 1876, s. 110.

Injuries to Bridges, &c

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.

Injury to bridges, &c.
38, 1876, s. 111.

*Injuries to Railways, Electric Cables, &c***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:

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

(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.

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

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. 873.

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.
S. 113 amended
by 58, 1971,
s. 6.

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.

Injuries to Cattle, &c

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

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.

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 forty dollars¹.

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, 1920².

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

Injuries to Ships

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.

Setting fire to ships, &c.
38, 1876, s. 120.

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.

Attempting to set fire to a ship.
38, 1876, s. 122.

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.

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

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.

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:

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

(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.

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

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

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

² Now Impounding Act, 1920-1975.

guidance of seamen, or for the purpose of navigation, shall be guilty of felony, and liable to be imprisoned for life.

Destroying wrecks or any articles belonging thereto.
38, 1876, s. 127.

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.

Sending Letters Threatening to Burn or Destroy

Sending letters threatening to burn or destroy houses, &c.
38, 1876, s. 128.

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.

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 ten dollars¹, 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.

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 ten dollars¹, and to pay such amount by way of compensation to the party aggrieved not exceeding ten dollars¹ 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.

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.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

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.

PART V

PART V

LARCENY AND SIMILAR OFFENCES

130. In this Part—

Interpretation.
38, 1876, s. 133.

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

“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.

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.

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

Larceny by
bailee.
38, 1876, s. 134.

132. Any person who being a bailee of any chattel, money, or valuable security, fraudulently 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 larceny and punished accordingly.

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

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.

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

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
misdemeanour.
Cf. U.K., 24 &
25, Vict., c. 96,
s. 8.

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 of Cattle and other Animals

Stealing cattle.
38, 1876, s. 140.

136. Any person who steals any cattle, 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.

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.

Stealing deer
etc., in enclosed
land.
38, 1876, s. 142.

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 dogs.
38, 1876, s. 143.

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 forty dollars¹, 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.

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

¹ Pursuant to s. 8 of the Acts Reproduction Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

being the owner thereof, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding eighteen months.

141. Any person who unlawfully and wilfully kills, wounds, or takes any house dove or pigeon under circumstances which do not amount to larceny at common law, shall be guilty of an offence punishable summarily and liable to pay the value of the bird, and a fine not exceeding four dollars¹.

Killing pigeons.
38, 1876, s. 147.

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:

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

(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 forty dollars¹; and for any subsequent offence to be imprisoned for any term not exceeding twelve months.

(2) Any person who has in his possession or on his premises any such bird, beast, fish, or other animal or any part thereof knowing it to be stolen, or to be part of a stolen bird, beast, fish, or other animal, shall be guilty of an offence punishable summarily, and liable for a first offence to pay the value of the bird, beast, fish, or other animal, and a fine not exceeding forty dollars¹, 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.

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, 1917², 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.

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

(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.

¹ Pursuant to s. 8 of the Acts Reproduction Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

² The Fisheries Act, 1917, and its amendments have been repealed and superseded by the Fisheries Act, 1971 (now Fisheries Act, 1971-1975).

Larceny of Written Instruments

Stealing bonds,
bills, notes, &c.
38, 1876, s. 149.

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

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.

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.

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.

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 ten cents¹), 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.

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 ten cents¹, be guilty of an offence punishable summarily and liable, for a first offence to pay the value of the article stolen and a fine of not more than ten dollars¹, and for a second offence to imprisonment for any term not exceeding twelve months.

Other trees.
38, 1876, s. 155.

(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.

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.

Fences, gates, etc.
38, 1876, s. 156.

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,

Plants, &c., in gardens, &c.
38, 1876, s. 157.

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 forty dollars¹.

(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

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

Ore, metal, &c.
38, 1876, s. 158.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

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

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

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

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

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

Interpretation.
S. 153a enacted
by 122, 1972,
s. 5.

153a. For the purposes of sections 152, 152a and 153 of this Act "mine" and "precious stones" bear the respective meanings assigned to them by the Mining Act, 1971¹, or the regulations made thereunder.

Stealing
electricity.
2156, 1934,
s. 873.

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.

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.

Assault with
intent to rob.
38, 1876, s. 162.
S. 156 amended
by 58, 1971,
s. 6.

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.

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

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.

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

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.

Letters
demanding
money by
menaces.
38, 1876, s. 164.
1670, 1925,
s. 13.

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.

¹ Now Mining Act, 1971-1975.

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.

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

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—

Letter threatening to accuse of a crime, with intent to extort. 38, 1876, s. 166. 1670, 1925, s. 13. S. 161 amended by 58, 1971, s. 6.

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

(b) any assault with intent to commit rape, or any attempt to commit rape:

(c) any infamous crime,

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

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.

Accusing or threatening to accuse with intent to extort. 38, 1876, s. 167. 1670, 1925, s. 13.

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,

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

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.

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

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

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.

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, endorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or co-partnership, or the seal of any body corporate, company, or society, 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.

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.

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.

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.

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.

Breaking and
entering
buildings and
committing
felony.
S. 170
substituted by
54, 1940, s. 8.

170. (1) Any person who breaks and enters and commits any felony in any building, or breaks out of any building, having committed any felony therein, shall be guilty of felony and liable to be imprisoned for any term not exceeding eight years.

(2) In this section "building" includes any dwelling-house, building within the curtilage of a dwelling-house, schoolhouse, shop, warehouse, counting-house, office, store, garage, pavilion, factory, workshop, dancing hall, place of public entertainment, billiard saloon, dressing-room, and any other building whether of the same class as those previously mentioned in this subsection or not.

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.

Housebreaking,
etc., with intent
to commit a
felony.
38, 1876, s. 179.
1670, 1925, s. 9.

172. Any person who is found by night—

(a) armed with any dangerous or offensive weapon or instrument, with intent to break or enter into any building and to commit any felony therein:

Being found by
night, armed, or
in possession of
house-breaking
implements.
38, 1876,
ss. 180, 181.

(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.

Para. (ii)
amended by
58, 1971, s. 6.

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

(a) if the value of the property stolen amounts to ten dollars¹ 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.

Larceny in
dwelling-
houses.
38, 1876, ss. 182
and 183.

174. Any person who steals, to the value of one dollar¹, 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.

Larceny from Ships and Wharves, &c

175. Any person who steals—

(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

Stealing from
ships, docks,
etc.
38, 1876,
ss. 185, 186.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

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.

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.

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.

Falsification of
accounts, &c.
38, 1876, s. 191.

178. Any person who, being a clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, wilfully and with intent to defraud—

(a) destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, or account which belongs to, or is in the possession of, his employer, or has been received by him for or on behalf of his employer:

(b) makes, or concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in, any such book, or any document or account,

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

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.

General deficiency.
38, 1876, s. 194.

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.

Information for embezzlement.
38, 1876, s. 195.

(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 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.

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.

Verdict of larceny where embezzlement charged, and vice versa.
38, 1876, s. 196.

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 partners.
38, 1876, s. 197.

Larceny by Tenants and Lodgers

Larceny by
tenants and
lodgers.
38, 1876, s. 198.

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 mis-
appropriation.
791, 1902, s. 2.

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.

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.

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 authorized 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.

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.

Trustees fraudulently disposing of property.
38, 1876, s. 204.

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

188. Any person who, being the promoter of a public company, registered or incorporated, or intended to be registered or incorporated, knowingly makes, circulates, or publishes, or causes to be made, circulated, or published, any untrue statement or advertisement, with intent to defraud, or to induce any person to become a shareholder or partner in 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.

Promoters of companies making untrue statements.
38, 1876, s. 205.

PART V

Directors of companies fraudulently appropriating property.
38, 1876, s. 206.

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.

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.

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.

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.

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.

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.

(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.

(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.

Receiving

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.

Receiving
where principal
guilty of felony.
38, 1876,
ss. 216, 217, and
218.

(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.

(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.

PART V

Receiving where principal guilty of misdemeanour.
38, 1876, s. 220.

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.

Receiving goods stolen outside the State.
S. 197a enacted by 54, 1940, s. 9.

197a. (1) Any person who receives any property knowing the same to have been taken obtained converted or disposed of outside the State under such circumstances that, if the act of taking, obtaining, converting or disposing had been done in the State the person doing it would have been guilty of an offence triable on information in the Supreme Court, shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding eight years.

(2) No person shall be liable to conviction under this section if the act of taking, obtaining, converting or disposing was not an offence in the place in which that act was done.

(3) In an information for receiving any property in contravention of this section any number of persons who have at different times so received such property or any part thereof may be charged and tried together, notwithstanding that the principal has not been charged or tried.

(4) If on the trial of any two or more persons prosecuted jointly for receiving any property in contravention of this section it is proved that one or more of 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.

Conviction of receivers in absence of principal.
38, 1876, ss. 216 and 220.
Subsec. (1) amended by 71, 1969, s. 9.

198. (1) Any person may be informed against and convicted of any offence against section 196, 197 or 197a of this Act 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.
S. 199 amended by 54, 1940, s. 10.

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

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 the following—

(a) any indictable offence against the laws of the Commonwealth or any Territory of the Commonwealth or any State, whether such offence was tried on indictment or summarily; and

Proof of previous convictions on charges for receiving.
Subsec. (2) substituted by 54, 1940, s. 11; amended by 71, 1969, s. 10.

(b) any offence against section 39 or section 41 of the Police Offences Act, 1953-1967, as amended¹, or any offence against any enactment of another State or of any Territory of the Commonwealth, corresponding with either of those sections.

Para. (b) amended by 71, 1969, s. 10 (a).

Restitution and recovery of stolen property

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.

Restitution of stolen property.
38, 1876, s. 222.

(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.

(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.

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

Corruptly taking reward for recovery of stolen property.
38, 1876, s. 223.

¹ Now Police Offences Act, 1953-1975.

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.

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 one hundred dollars¹ 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

Personation in order to obtain property.
38, 1876, s. 225.
1670, 1925,
s. 13.

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.

Personating the owner of stock.
38, 1876, s. 235.

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.

Piracy

Piracy.
38, 1876, s. 226.

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 and attempt to murder.
38, 1876, s. 227.

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.

¹ Pursuant to s. 8 of the Acts Republishing Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

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.

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.

Piracy by master or seaman of ship.
38, 1876, s. 229.

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.

Forcibly boarding a ship, and throwing the goods overboard.
38, 1876, s. 230.

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.

Trading with pirates.
38, 1876, s. 231.

PART VI

PART VI

FORGERY

212. (1) In this part—

Interpretation.

“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”.

PART VI

Place where
made or to take
effect
immaterial.
38, 1876,
ss. 256, 257.

(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.

Possession.
38, 1876, s. 262.

(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.

Intent to
defraud.
38, 1876, s. 261.

(4) On the trial of any information for the forgery or uttering of any instrument, when it is necessary to prove an intent to defraud it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the accused did the act charged with an intent to defraud.

The Public
Seal.
38, 1876, s. 232.

213. Any person who—

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

(b) forges the stamp or impression of 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.

Deeds, wills,
bills of
exchange, &c.
38, 1876, s. 233.

214. Any person who, with intent to defraud—

(a) forges or utters—

(i) any deed, bond, or writing obligatory:

(ii) any assignment at law or in equity of any bond or writing obligatory:

(iii) any will, testament, codicil, or testamentary instrument:

(iv) any bill of exchange, or any acceptance, endorsement, or assignment of any bill of exchange:

(v) any promissory note for the payment of money, or any endorsement or assignment of any such promissory note:

(vi) any undertaking, warrant, order, authority, or request for the payment of money or for the delivery or transfer of any goods or chattels or of any note, bill, or other security for the payment of money or for procuring or giving credit:

(vii) any endorsement on or assignment of any such undertaking, warrant, order, authority or request:

(viii) any accountable receipt, acquittance or receipt for money or goods, or for any note, bill, or other security for the payment of money:

(ix) any endorsement on or assignment of any such accountable receipt:

(b) forges any name, handwriting, or signature purporting to be the name, handwriting, or signature of a witness attesting the execution of any deed, bond, or writing obligatory;

(c) utters any deed, bond, or writing obligatory, having thereon any such forged name, handwriting, or signature,

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

215. Any person who, with intent to defraud—

Transfers of
stock, &c.
38, 1876, s. 234.

(a) forges or utters:—

(i) any transfer of any share or interest of or in the capital stock of any body corporate, company, or society;

(ii) any power of attorney, or other authority to transfer any share or interest of or in any such capital stock, or to receive any dividend or money payable in respect of any such share or interest:

(b) demands, or endeavours to have any such share or interest transferred, or to receive any dividend or money payable in respect thereof, by virtue of any such forged power of attorney or other authority, knowing the same to be forged,

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

216. Any person who—

Attestation to
power of
attorney for
transfer of
stock.
38, 1876, s. 236.

(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

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

Making moulds
for bank paper,
&c.
38, 1876, s. 237.

(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.

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.

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 endorsement on, or assignment of, any bank note, bank bill of exchange, or bank post bill,

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

Receiving
forged bank
notes.
38, 1876, s. 241.

220. Any person who without lawful authority or excuse (the proof 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.

221. Any person who with intent to defraud—

(a) by procuration, or otherwise, draws, makes, signs, accepts, or endorses any bill of exchange, promissory note, undertaking, warrant, order, authority, or request, for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill,

note, or other security for money, for, in the name, or on the account of any other person, without lawful authority or excuse:

- (b) utters any such document knowing it to have been so drawn, made, signed, accepted, or endorsed,

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

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.

Crossings on
cheques.
2168, 1934,
Second
Schedule.

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.

Debentures.
38, 1876, s. 243.

Forging official and legal documents

224. Any person who forges or utters—

- (a) any original document of or belonging to any court of record:
(b) any document or writing or any copy of any document or writing used or intended to be used as evidence in any court of record:
(c) any instrument made evidence by any Act of Parliament in respect of the forging or uttering of which, no other penalty is provided in this Act,

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

Original
documents of
Courts of
Record.
38, 1876, ss. 244
and 246.

225. Any person who with intent to defraud forges or utters—

- (a) any summons, conviction, order, or warrant of any justice:
(b) any recognizance purporting to have been entered into before any justice or any other officer authorized to take 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.

Orders of
justices.
38, 1876, s. 248.

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:

Copies of
certificates of
records and
using forged
process.
38, 1876, s. 245.

(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.

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.

False
certificates of
previous
convictions.
38, 1876, s. 250.

228. Any person who—

(a) being a clerk or officer of any criminal court, and having the custody of the records of 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.

Certificates of
judgment.
38, 1876, s. 251.

229. Any person who, with intent to cause any person to be discharged from custody, or otherwise to prevent the due course of justice, forges or utters—

(a) any certificate of, or copy certified by, any judge, or by any associate or his deputy, or 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.

Forging official
documents and
tendering same
in evidence.
38, 1876, s. 252.

230. Any person who—

(a) forges—

(i) any certificate, official or public document, or document or proceeding of any corporation or company:

(ii) any certified copy of any document, by-law, or entry in any register or other book:

- (iii) any proceeding receivable in evidence before any legal tribunal, or either House of Parliament, or any committee of either House, or in any judicial proceeding under any Act:
- (b) tenders in evidence any 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.

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.

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

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,

Documents
relating to
registration of
deeds.
38, 1876, s. 247.

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

Miscellaneous Matters

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

Falsely
acknowledging
recognizances
etc.
38, 1876, s. 253.

234. Any person who, with intent to defraud, demands, receives, or obtains, or causes or procures to be delivered or paid to any person, or endeavours to receive or obtain, or to cause or procure to be delivered or paid to any person, any chattel, money, security for money, or other property whatsoever—

Demanding
property upon
forged
instruments.
38, 1876, s. 255.

- (a) under, upon, or by virtue of any forged instrument, knowing the 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.

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.

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.

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.

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.

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.

Perjury or subornation.
38, 1876,
ss. 291, 295,
376.

(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.

(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.

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.

Exactng fees from prisoners.
38, 1876, s. 297.

241. Any person who, being a gaoler, exacts from any prisoner any fee or gratuity on account of the entrance, commitment, or discharge of 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.

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.

(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.

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.

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.

Riotously
preventing
loading of ships.
38, 1876,
ss. 302, 303.

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

- (a) prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating of any ship or other vessel:
- (b) board any ship or other vessel with intent to prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating of 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.

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 two thousand dollars¹, or to both such imprisonment and fine.

Publishing defamatory libel knowing it to be false.
38, 1876, s. 305.

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 one thousand dollars¹, or to both such imprisonment and fine.

Defamatory libel.
38, 1876, s. 304.

248. (1) On the trial of an information for publishing a defamatory libel the truth of the matters charged in the alleged libel shall not amount to a defence or be inquired into unless—

Plea of justification.
38, 1876, s. 306.

(a) the publication of 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.

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 authorized 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.

Publishing parliamentary reports.
38, 1876, ss. 307, 308.

(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.

¹ Pursuant to s. 8 of the Acts Reproduction Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

(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.

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.

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.

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.

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 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.

(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

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.

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

Offences against Morality, Public Health, &c

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 for any subsequent offence shall be liable to be imprisoned for any term not exceeding four years.

Lewdness.
38, 1876, s. 315.
1303, 1917, s. 4.
S. 255 amended by 58, 1971, s. 6.

256. (1) Any person who—

- (a) suffering from any dangerous infectious disease—

(i) enters any railway carriage or public conveyance without notifying the fact that he is so suffering to the guard of the railway carriage or the owner or driver of the conveyance:

(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:

(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

Offences in respect of infectious diseases.
38, 1876, ss. 316, 317, 318.

qualified medical practitioner as testified by a certificate to be given by the inspector or medical practitioner,

shall be guilty of an offence punishable summarily, and liable to a fine not exceeding one hundred dollars¹.

(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.

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.

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.

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
industrial
disputes.
109, 1878, s. 3.
38, 1876, s. 324.
S. 260 amended
by 109, 1972,
s. 3.

260. (1) No agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of an industrial dispute as defined in the Industrial Conciliation and Arbitration Act, 1972², 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.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

² Now Industrial Conciliation and Arbitration Act, 1972-1975.

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 forty dollars¹, or to be imprisoned for any term not exceeding three months.

Breach of contract by railway and other employees.
109, 1878, s. 4.

(2) No person shall be convicted of an offence against this section unless there is posted up at his place of employment a printed copy of this section, in a conspicuous place where it may conveniently be read by the persons employed.

262. Any servant who wilfully and maliciously breaks his contract of service, or hiring, knowing, or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, shall be guilty of an offence and liable either to fine not exceeding forty dollars¹, or to be imprisoned for a term not exceeding three months.

Breach of contract by servant involving probable injury to persons or property.
109, 1878, s. 5.

263. Any master who being legally liable to provide for his servant necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide 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 forty dollars¹, or to be imprisoned for a term not exceeding six months.

Neglect by master to provide food, clothing, &c., for servant.
109, 1878, s. 6.

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—

Penalty for intimidation or annoyance by violence or otherwise.
109, 1878, s. 7.

- (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 forty dollars¹, 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.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

PART VII

Offences triable
summarily.
109, 1878, s. 8.

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.

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:

Para. II
amended by
71, 1969, s. 11;
109, 1972, s. 4.

II. Nothing in the said sections shall in any way affect the provisions of the Industrial Conciliation and Arbitration Act, 1972¹:

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.

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.

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.

¹ Now Industrial Conciliation and Arbitration Act, 1972-1975.

(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.

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.

Abettors in misdemeanours.
38, 1876, s. 331.

PART IX

PART IX

MISCELLANEOUS AND PROCEDURE

Punishment for certain common law misdemeanours

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

Punishment for certain offences.
38, 1876, s. 389.
1670, 1925, s. 10.

- (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

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 committing offences may be arrested by any person.
38, 1876, s. 402.

272. Any person may take into custody without a warrant any person whom he finds lying or loitering in any highway, yard, or other place during the night, and whom he has good cause to suspect of having committed, or being about to commit, any felony 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 authorized 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.

Persons loitering at night and suspected of any felony, &c., may be apprehended.
38, 1876, s. 403.

PART IX

Judge's warrant
for arrest of
person charged.
38, 1876, s. 364.

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.

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. (1) Subject to subsection (2) in every case in which any person has been lawfully committed for trial at any criminal sessions, it shall be the duty of the Attorney-General to present or cause to be presented, an information against such person.

Subsec. (2)
amended by 88,
1975, s. 3 (1)
(2nd Sched.).

(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 Director of Correctional Services 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.

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.

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.

Joinder of charges.
1670, 1925, s. 12.

(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.

279. Any number of accessories at different times, to any felony and any number of receivers at different times, of property which has been stolen at one time, may be charged with substantive felonies in the same information, and may be tried together, notwithstanding that the principal felon is not included in the same information, or is not amenable to justice.

Joint trial of accessories.
38, 1876, s. 332.

280. (1) In every information in which it is necessary to mention or make any allegation as to any money or any note of any Bank, it shall be sufficient to describe such money or bank-note simply as money, without specifying any particular coin or banknote.

Coin and bank notes may be described simply as money.
38, 1876, s. 349.

(2) Any such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank-note, although the particular species of coin of which 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.

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.

Objections to informations, amendments and postponement of trial.
1909, 1929, s. 4.
38, 1876, ss. 337, 338, 341.

(2) When, before trial or at any stage of a trial, it appears to the court that any information is defective, or that there is any variation between any particular stated therein and the evidence offered in proof thereof, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case the required amendment cannot be made without injustice.

(3) When an information is so amended a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the purposes of the trial and all proceedings in connection therewith as having been presented in the amended form.

(4) When, before trial or at any stage of a trial, the court is of 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.

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.

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.

Subsec. (2) amended by
71, 1969, s. 12.

(2) Rules of Court made under the Supreme Court Act, 1935-1969, as amended¹, or any corresponding previous enactment, 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 "Not guilty" and refusal to plead.
38, 1876, s. 368.

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.

(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.

Form of plea of *autrefois convict* or *autrefois acquit*
38, 1876, s. 369.

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.

¹ Now Supreme Court Act, 1935-1975.

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:

Inspection and copies of depositions.
38, 1876, ss. 374, 375.

(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 such fee as the court or a judge may direct.

Para. (b) amended by 71, 1969, s. 13.

287. Any judge may order any money or property in the hands of the police taken from any prisoner, to be paid out on the order of 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.

Defence by counsel and addresses.
38, 1876, s. 372.
13, 1866-7, s. 2.

(2) If any accused person is defended by counsel, but not otherwise, it shall be the duty of the judge, at the close of the case for the prosecution, to ask the counsel for each accused so defended whether he or they intend to adduce evidence, and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time for the purpose of summing up the evidence.

(3) Every accused person, whether defended by counsel or not, shall be allowed to open his case, and after the conclusion of 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, 1929¹), no right of reply shall be allowed to counsel for the prosecution unless the accused or some of them have called evidence.

289. (1) No person 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.

Postponement of trial.
38, 1876, s. 370.

(2) Nothing in this section shall extend to any prosecution by information in the nature of a *quo warranto*.

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.

Verdict for attempt where full offence charged.
38, 1876, s. 345.

¹ Now Evidence Act, 1929-1974.

PART IX

Conviction of persons tried for misdemeanour if felony proved.
38, 1876, s. 347.

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.

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.

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.

Release upon licence.
S. 293a enacted by 74, 1972, s. 4.

293a. (1) Where the Governor has ordered the safe custody, during his pleasure, of any person found to be insane, he may, upon the recommendation of the Parole Board, release that person upon licence.

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

(3) Where—

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

or

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

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

Verdicts

294. No judgment after verdict for any indictable offence shall be stayed or reversed for want of a 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.

Defects cured
by verdict.
38, 1876, s. 383.

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.

Forfeiture
abolished.
25, 1874, ss. 1
and 5.
38, 1876, s. 371.

(2) When any person is charged with treason or felony, the jury shall not be charged to inquire concerning his lands, tenements, or goods, or whether he fled for such treason or felony.

(3) "Forfeiture" does not include any fine or penalty imposed by way of sentence.

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.

Conviction to
disqualify for
office.
25, 1874, s. 2.

(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

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.

Fees for
witnesses for
the prosecution.
38, 1876, s. 391.

(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 examination, and shall forward his certificate to the said court.

Subsec. (2)
amended by
102, 1972,
s. 4 (a).

Subsec. (2a)
inserted by
102, 1972,
s. 4 (b).

(2a) This section does not derogate from the powers conferred on an examining magistrate or justice under the Justices Act, 1921-1971¹, to order payment of any fees or compensation to witnesses in the course, or at the conclusion, of a preliminary examination.

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.

(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.

(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 discretion thinks fit.

Payment by
sheriff.
1479, 1921,
s. 156.
Subsec. (6)
amended by
102, 1972,
s. 4 (c).

(6) Orders for witness fees and other amounts directed to be paid, pursuant to this section, shall be forthwith made out and delivered by the proper officer, to the sheriff who shall pay the 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.

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,

¹ Now Justices Act, 1921-1975.

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.

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.

Compensation
to persons
injured.
25, 1874, s. 4.

Firearms and Offensive Weapons

Heading
inserted by
102, 1972, s. 5.

299a. (1) Where a court is satisfied by evidence adduced before it that—

- (a) a firearm or other offensive weapon was used in the commission of an offence;
- (b) the commission of an offence was facilitated by the use of a firearm or other offensive weapon;

or

- (c) in the circumstances it is expedient that an order or orders be made under this section,

the court may make any one or more of the following orders:—

- (d) an order that the firearm or other weapon be forfeited to the Crown;
- (e) an order that the firearm or other weapon be delivered into the custody of the Commissioner of Police for a period specified in the order, or until further order;
- (f) any other order as to the custody or disposition of the firearm;
- (g) an order prohibiting any person or persons specified in the order from using or possessing a firearm or offensive weapon of any kind, or of a kind specified in the order, for a period specified in the order, or until further order.

(2) Upon application by a person with a proper interest in the matter, the court may vary or revoke an order under paragraph (e), (f) or (g) of subsection (1) of this section.

(3) Where an application is made under subsection (2) of this section, the court shall not vary or revoke the order in respect of which the application is made unless it is satisfied that it is not inimical to the safety of the community to do so.

(4) A person who contravenes or fails to comply with an order under this section shall be guilty of an offence cognizable by the court by which the order was made and liable to a penalty not exceeding five hundred dollars or imprisonment for twelve months.

Orders as to
firearms and
offensive
weapons.
S. 299a enacted
by 102, 1972,
s. 5.

(5) Subsection (4) of this section shall not derogate from the power of a court to punish for contempt.

(6) In this section "court" means the Supreme Court, the District Criminal Court, or a court of summary jurisdiction, and includes any judge or special magistrate, or justices entitled to preside over, or constitute the court.

Heading substituted by 54, 1956, s. 6.

Fines and Forfeited Recognizances

Interpretation of ss. 300a-300h. S. 300 substituted by 54, 1956, s. 6.

300. (1) In sections 300a to 300h, unless the context otherwise requires, or some other meaning is clearly intended—

"fine" means a fine imposed by the Supreme Court in its criminal jurisdiction as a penalty for an offence, and includes an instalment or part of any such fine, but does not include a fine imposed on a juror:

"forfeiture" means—

(a) the amount due under a recognizance forfeited by the Supreme Court in its criminal jurisdiction; and

(b) if the amount due is reduced by the Court or a judge, the amount as so reduced,

and includes an instalment or part of any such amount:

"Master of the Supreme Court" includes the Deputy Master of the Supreme Court:

"paid" includes recovered by execution of a writ of *feri facias*, and "payment" has a corresponding meaning:

"writ of *capias*" means a writ of *capias ad satisfaciendum*.

(2) References in sections 300a to 300h to the forfeiting of a recognizance shall be deemed to refer to the forfeiting of a recognizance by the Supreme Court in its criminal jurisdiction.

(3) Sections 300a to 300h shall apply notwithstanding anything contained in the Debtors Act, 1936.

Powers in relation to fines and forfeited recognizances. S. 300a enacted by 54, 1956, s. 6.

300a. (1) Where a fine is imposed or a recognizance forfeited by the Supreme Court, the Court or any judge thereof may make any one or more of the following orders, namely—

(a) an order fixing a term of imprisonment which the person liable to pay the fine or forfeiture is to undergo if any sum which he is liable to pay is not duly paid;

(b) an order allowing time for payment of the fine or forfeiture;

(c) an order directing payment of the fine or forfeiture by instalments of such amounts and on such days respectively as are specified in the order;

(d) an order discharging the recognizance or reducing the amount due thereunder.

(2) A term of imprisonment fixed under subsection (1) of this section—

(a) shall, if the Court or judge so directs, be imprisonment with hard labour; and

(b) shall not exceed twelve months.

(3) An order under this section—

(a) may be made either at the time when the fine is imposed or the recognizance forfeited, or subsequently, and either by the Court or judge imposing the fine or forfeiting the recognizance, or by any other judge; and

(b) may amend any previous order under this section.

300b. If default is made in payment of any instalment of a fine or forfeiture, the whole of that fine or forfeiture, or as the case may be, the whole of the balance thereof remaining unpaid, shall immediately become payable.

Default in payment of instalments.
S. 300b enacted by 54, 1956, s. 6.

300c. Where an order fixing a term of imprisonment to be served in default of payment of a fine or forfeiture is made against a person present before the Court or judge, and the Court or judge does not allow time for payment, and the fine or forfeiture is not immediately paid, that person may while the default continues be detained in custody without the issue of any writ for the term so fixed subject to any reduction thereof under section 300g.

Imprisonment under order of Court when no time allowed for payment.
S. 300c enacted by 54, 1956, s. 6.

300d. (1) The Sheriff shall recover all fines and forfeitures and whenever he deems it necessary apply for and execute writs for that purpose.

Recovery and payment of fines and forfeitures.
S. 300d enacted by 54, 1956, s. 6.

(2) Payment of a fine or forfeiture may be made—

Subsec. (2) amended by 71, 1969, s. 14 (a), (b).

(a) to the Sheriff or Deputy Sheriff or some other person appointed by the Sheriff to receive such payments:

Para. (a) amended by 71, 1969, s. 14 (b).

(b) where the person liable to make payment is in prison, to the keeper of the prison.

(3) The keeper of a prison shall on receiving payment of a fine or forfeiture forthwith pay the amount received to the Sheriff.

(4) If rules of court are made providing for the costs of execution of a writ of *feri facias* issued under section 300e to be recovered, the Sheriff shall recover such costs, and for that purpose sections 300a to 300h shall apply as though the fine or forfeiture were increased by the amount of the costs.

300e. (1) Subject to this section, a judge of the Supreme Court or the Master thereof shall have power to issue writs of *feri facias* and *capias* for the purpose of enforcing payment of fines and forfeitures.

Issue of writs.
S. 300e enacted by 54, 1956, s. 6.

(2) No such writ shall be issued except upon application made by the Sheriff and proof of default.

The application may be dealt with *ex parte*.

(3) A writ of *feri facias*—

(a) may be issued notwithstanding that a term of imprisonment to be served in default of payment has been fixed by order of the Court or a judge; but

(b) shall not be issued or executed after the person in default has been lodged in prison for such default, whether under a writ of *capias* or otherwise.

(4) A writ of *capias* may be issued—

- (a) without the previous issue of a writ of *feri facias* against the person in default; or
- (b) after the issue of a writ of *feri facias* against the person in default, if the Sheriff certifies that he could find no goods, chattels, lands or tenements or insufficient goods, chattels, lands and tenements of such person, whereof he could cause to be made the amount mentioned in the writ, or so much thereof as had not previously been paid.

(5) A writ of *capias* issued under this section shall specify the term of imprisonment of the person in default, and such term shall be as follows—

- (a) if an order has been made under section 300a fixing a term of imprisonment, the term of imprisonment so fixed, subject to any reduction thereof under section 300g; or
- (b) if no order is in force under section 300a fixing a term of imprisonment, such term of imprisonment, with or without hard labour, as the judge or Master issuing the writ thinks fit, but not exceeding twelve months.

(6) A writ issued under this section shall remain in force until executed or returned by the Sheriff.

(7) A writ issued under this section shall be in the prescribed form or, if no form is prescribed, in such form as the judge or Master issuing the writ thinks fit.

Term of imprisonment may run from termination of a sentence.
S. 300f enacted by 54, 1956, s. 6.

300f. The Court, judge or Master, when fixing, or specifying in a writ, the term of imprisonment which a person in default is liable to serve, may order that such term shall not begin to run until after the end of any other term of imprisonment which the person is serving or is liable to serve.

Reduction of imprisonment on part payment of a fine or forfeiture.
S. 300g enacted by 54, 1956, s. 6.

300g. (1) A term of imprisonment which a person is serving or liable to serve on default in payment of a fine or forfeiture shall, on payment of a part of the fine or forfeiture, be reduced by such number of days as bears to the total number of days of the term less one, the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the amount of the fine or forfeiture.

(2) When application is made to a judge or the Master to issue a writ of *capias* in respect of a fine or forfeiture, and it is made to appear to him that any part of the fine or forfeiture has been paid, he shall issue the writ accordingly for the term as reduced under this section.

(3) Where a writ of *capias* has been issued against any person pursuant to section 300e, and payment is made of any part of the fine or forfeiture, the Sheriff shall endorse a memorandum of such payment, and the reduction thereby effected, upon the writ, which shall thereupon be deemed to have been amended accordingly.

Proof of orders and defaults.
S. 300h enacted by 54, 1956, s. 6.

300h. On the hearing of any application in which it is necessary to prove the making of an order under section 300a or default in payment of a fine or forfeiture—

- (a) a certificate signed by the judge or one of the judges who made the order, or by the Associate of such judge, or by the Master or Chief Clerk of the Supreme Court, and purporting to certify the

terms of any such order, shall be sufficient proof of the making and terms of the order:

- (b) a certificate signed by the Sheriff (whether endorsed on a writ or otherwise) and purporting to certify that default has been made in such payment shall be sufficient proof of the matters mentioned in the certificate:
- (c) judicial notice shall be taken of the signature of any judge or any of the officers mentioned in this section.

Sentence and Execution

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.

Court may abstain from pronouncing sentence of death in certain cases.
38, 1876, ss. 385, 386.

(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.

301a. Where sentence or judgment of death has been pronounced by a court or recorded by order of a court upon or against a person and the Governor, acting with the advice and consent of Executive Council—

- (a) has granted or grants a pardon to that person in respect of that sentence or judgment;

or

- (b) has made or makes an order or direction commuting or purporting to commute that sentence or judgment to a sentence of imprisonment,

When death sentence commuted to term of imprisonment, it shall be deemed to be a sentence by the court.
S. 301a enacted by 96, 1971, s. 2.

and, at the time of granting the pardon or making that order or direction commuting the sentence or judgment, has made or makes an order or a direction that that person shall serve a sentence of imprisonment for life or for a specified term, that last mentioned order or direction shall, for all purposes, be deemed to have been lawfully made by the court and to be the sentence of the court and shall have full effect as such as from the day on which the sentence or judgment of death was pronounced or recorded, as if the court had, by operation of this Act, full power and authority to impose and, by virtue of that power and authority, did impose on that person that sentence of imprisonment in lieu of the sentence or judgment of death.

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.

Judgment of death by another judge where prisoner reprieved.
38, 1876, s. 384.

PART IX

Sentence for murder.
38, 1876, s. 6.
S. 303 amended by 96, 1971, s. 3 (a), (b); redesignated as subsec. (1) by 96, 1971, s. 3 (c).

303. (1) Upon every conviction for murder the Court shall pronounce sentence of death or, instead of pronouncing sentence of death, order sentence of death to be entered of record, 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 or ordered to be entered of record under this section.

Subsec. (2) inserted by 96, 1971, s. 3 (c).

(2) The making of an order under this section that sentence of death be entered of record shall have the same effect and be followed by the same consequences as if the sentence had actually been pronounced in open court.

Execution of death sentence.
38, 1876, ss. 7, 8, 9, 10, 11.

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 precincts 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.

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.

* * * * *

S. 307 repealed
by 96, 1971,
s. 4.

* * * * *

S. 308 repealed
by 58, 1971,
s. 10.

309. No punishment by means of the pillory shall be awarded.

Abolition of the
pillory.
14, 1841-2.
Adopting 1
Vict., c. 23.

310. 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.

Sentence upon
person already
imprisoned
under another
sentence.
38, 1876, s. 388.

311. Whenever imprisonment may by law be awarded for any offence under this Act, the court may direct that the offender shall not be kept to hard labour or to any labour, any law or regulation to the contrary notwithstanding.

Power to
exempt from
hard labour.
38, 1876, s. 404.

* * * * *

S. 312 repealed
by 58, 1971,
s. 10.

313. (1) Where any person is convicted in the Supreme Court of any felony (other than treason or murder) or of any misdemeanour the court may, in addition to or in lieu of imposing any other punishment which may lawfully be imposed, exercise all or any of the following powers, namely—

Fines, and
sureties.
S. 313
substituted by
27, 1952, s. 12.

(a) fine the offender such amount as the court deems just;

* * * * *

Para. (b) struck
out by 54, 1956,
s. 7.

(c) require the offender to enter into his own recognizance with or without sureties for keeping the peace or being of good behaviour, or for both of those purposes, and for complying with such other conditions as the court may impose.

(2) A person shall not be imprisoned for more than one year for not finding sureties under this section.

(3) Notwithstanding any other enactment any power conferred by subsection (1) of this section may be exercised in relation to any offence punishable in the Supreme Court, other than—

(a) treason and murder; and

(b) any offence in respect of which it is expressly provided by any enactment that the said power shall not be used.

313a. Where any person apparently of, or above, the age of twenty-five years—

Persistent
offenders.
S. 313a enacted
by 88, 1969,
s. 5.

(a) is convicted of an offence punishable by imprisonment for a term of two years or more;

and

(b) has been convicted on at least two previous occasions since he attained the age of eighteen years of an offence punishable by imprisonment for a term of two years or more,

and the court is satisfied that in the interests of the public or in his own interests he should be detained in prison for a substantial period, the court may impose, in lieu of any other sentence, a sentence of imprisonment for a term of not more than ten years.

PART IX

Previous convictions for felony.
38, 1876, ss. 379 and 380, 791, 1902, s. 3.

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.

(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 Harbours 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.

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 authorized 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.

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—

Harbouring
thieves.
9, 1870, s. 4.

(a) knowingly lodges or harbours thieves or reputed thieves, or knowingly permits or suffers them to meet or assemble therein:

(b) allows the deposit of goods therein having reasonable cause to believe them to be stolen,

shall be guilty of an offence punishable summarily and liable to a fine of not more than twenty dollars¹, 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 forty dollars¹, 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.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

PART IX

Authority to
search for
stolen property.
9, 1870, s. 5.

318. (1) When any inspector of police has reason to believe that any premises which—

(a) are, or at any time within the preceding eighteen months, have been in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves; or

(b) are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty and punishable by imprisonment,

are being made a receptacle for stolen goods, he may, by writing, authorize any police officer to enter 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 authorized 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.

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.

Subsec. (3)
amended by
42, 1957, s. 3
(2nd. Sched.);
71, 1969, s. 15.

(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 81 and 82—Attempts to procure Abortion.

- Class v Sections 155 to 158 inclusive—Robbery.
 Sections 159, 160, 161, 162, 164, and 165—Extortion.
 Sections 167 to 172 inclusive—Burglary, &c.
 Sections 131, 132, and 173—Larceny.
 Sections 176 to 178 inclusive and 182 to 192 inclusive—
 Embezzlement, etc.
 Sections 195, 196, 197, and 199—False pretences and
 Receiving.
- Class vi Sections 84 to 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.

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.

Proof of
previous
conviction.
927, 1907, s. 4.

(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 authorized by this section shall be in addition to, and not in exclusion of, any other authorized mode of proving such conviction.

321. (1) Subject to this Act, every habitual criminal shall, at the expiration of his sentence, be detained during Her Majesty's pleasure in some place of confinement set apart for that purpose by proclamation.

Habitual
criminal to be
detained during
pleasure.
S. 321
substituted by
54, 1956,
s. 8 (1)¹.

(2) A place of confinement so proclaimed shall be a prison within the meaning of the Prisons Act, 1936-1954², and the detention of a habitual criminal therein shall be subject to that Act and the regulations thereunder.

(3) The Governor may by proclamation vary or revoke any proclamation made under subsection (1) of this section.

¹ Subsec. (2) of s. 8 of Act No. 54 of 1956 provides as follows:—

(2) A proclamation made under the power contained in section 321 of the principal Act before the commencement of this Act shall, unless revoked, have effect as if made under section 321 of the principal Act as enacted by this Act.

² Now Prisons Act, 1936-1975.

PART IX

S. 322 repealed
by 54, 1956,
s. 9.

* * * * *

Release on
licence of
habitual
criminals.
S. 323
substituted by
54, 1956, s. 10.
Subsec. (1)
amended by
88, 1969, s. 6.

323. (1) The Governor may at any time on the recommendation of the Parole Board release an habitual criminal on licence subject to compliance with such conditions, if any, as the Governor may from time to time determine.

(2) The Governor may at any time by order recall to a place of confinement an habitual criminal released on licence under this section, but without prejudice to the power of the Governor to release him on licence again, and when any habitual criminal is so recalled, his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

(3) If, during the period of three years following the release of an habitual criminal on licence under this section, he is not recalled by the Governor, he shall cease to be an habitual criminal at the expiration of that period unless the Governor orders to the contrary.

S. 324 repealed
by 54, 1956,
s. 10.

* * * * *

S. 325 repealed
by 54, 1956,
s. 10.

* * * * *

S. 326 repealed
by 54, 1956,
s. 11.

* * * * *

S. 327 repealed
by 54, 1956,
s. 11.

* * * * *

Regulations
under Prisons
Act, 1936.
S. 328
substituted by
54, 1956,
s. 12 (1)¹.

328.¹ Regulations, not inconsistent with this Act, may be made under the Prisons Act, 1936-1954², for the purposes of the provisions of this Act relating to habitual criminals and for prescribing the duties, liabilities, privileges and conditions of detention of an habitual criminal in a place of confinement, and without limiting the generality of the foregoing—

(a) with respect to the control and management of a place of confinement of habitual criminals;

Para. (b) struck
out by 88, 1969,
s. 7.

* * * * *

Para. (c) struck
out by 88, 1969,
s. 7.

* * * * *

(d) for the application to habitual criminals of any provision of the Prisons Act, 1936-1954², or the regulations thereunder.

Heading
inserted by
54, 1940, s. 12.

Abolition of presumption of marital coercion

Abolition of
presumption of
marital
coercion.
S. 328a enacted
by 54, 1940,
s. 12.

328a. Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished; but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of and under the coercion of the husband.

¹ Subsec. (2) of s. 12 of Act No. 54 of 1956 provides as follows:

(2) Any regulation made under the powers contained in section 328 of the principal Act and in force at the commencement of this Act, not being a regulation for the crediting or payment of earnings to habitual criminals, shall be deemed to have been made pursuant to section 328 of the principal Act as enacted by this Act, and shall have effect accordingly.

² Now Prisons Act, 1936-1975.

PART X

PART X

PRISONERS' PROPERTY

329. (1) In this Part—

“prisoner” means a person undergoing imprisonment pursuant to an order of a court but does not include a person remanded for trial or for sentence.

Heading amended by 7, 1966, s. 4.

Interpretation. 25, 1874, ss. 6 and 7.

Subsec. (1) substituted by 7, 1966, s. 5 (a).

(2) When a prisoner 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.

Subsec. (2) amended by 7, 1966, s. 5 (b).

330. No action for the recovery of any property, debt, or damage whatsoever, shall be brought by any prisoner against any person during the time while the prisoner is subject to the operation of this Part; and every prisoner shall be incapable, during such time as aforesaid, of alienating or charging any property, or of making any contract, save as hereinafter provided.

Prisoner not to sue. 25, 1874, s. 8. S. 330 amended by 7, 1966, 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 prisoner during the Governor's pleasure to a curator, to be by writing appointed in that behalf.

The Governor may appoint curator of prisoner's property. 25, 1874, s. 9. Subsec. (1) amended by 7, 1966, s. 6 (a).

(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 prisoner 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, but not including any earnings of the prisoner while he is in prison, shall be vested in such curator for all the estate and interest of such prisoner therein, and all deeds, conveyances, and assignments of the prisoner's property which would but for this Act be void against the Crown, shall be void against such curator, save as hereinafter provided.

Subsec. (4) amended by 7, 1966, s. 6 (a), (b), (c).

(5) The Curator may institute and carry through any legal proceedings on behalf of a prisoner, or may continue on behalf of a prisoner any legal proceedings instituted by him before he became subject to the operation of this Part.

Subsec. (5) inserted by 102, 1972, s. 6.

(6) If any legal proceedings instituted under this section have not been finally disposed of when the person on whose behalf the proceedings were brought ceases to be subject to the operation of this Part, that person may

Subsec. (6) inserted by 102, 1972, s. 6.

continue the proceedings in his own name and right in all respects as if they had been originally commenced in his own name and right.

Certain transactions protected.
25, 1874, s. 10.
S. 332 amended by 7, 1966, s. 9.

332. All payments *bona fide* made by any prisoner, or by any person on his behalf, before his conviction, as the case may be, to any creditor of such prisoner, and all payments *bona fide* made to any prisoner before his conviction, and all conveyances, deeds, and assignments, by any prisoner *bona fide* made and executed before such conviction, and all petitions, contracts, dealings, and transactions by and with any prisoner *bona fide* entered into before conviction shall be deemed valid.

Remuneration of curator.
25, 1874, s. 11.
S. 333 amended by 7, 1966, s. 7 (a), (b).

333. Unless the Governor otherwise directs, the curator shall be entitled to the like remuneration in respect of his administration of the property of a prisoner 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.

Powers of curator.
25, 1874, s. 12.
S. 334 amended by 7, 1966, s. 9.

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 prisoner before his conviction.

Curator to pay costs of prosecution.
25, 1874, s. 13.
S. 335 amended by 7, 1966, s. 9.

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 prisoner may have been condemned to pay; and also all costs, charges and expenses incurred by the prisoner 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 may pay debts of prisoner.
25, 1874, s. 14.
S. 336 amended by 7, 1966, s. 9.

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 prisoner 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.
S. 337 amended by 7, 1966, s. 9; 77, 1973, s. 3 (1) (2nd sched.).

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 prisoner, 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 been enacted.

338. The curator may cause such payments and allowances for the support or maintenance of any wife or child, or reputed child of the prisoner, or of any other relative or reputed relative of the prisoner 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 may make allowances for support of prisoner's family.
25, 1874, s. 16.
S. 338 amended by 7, 1966, s. 9.

338a. (1) Where a prisoner is released on probation or on licence pursuant to section 42 or 42a of the Prisons Act, 1936-1963¹, the curator may, from time to time while the prisoner is lawfully at large, subject to subsection (2) of this section, cause to be made out of such property or the income thereof any payments and allowances for the support or maintenance of the prisoner which the curator thinks fit and any payments and allowances for any other purpose which in the opinion of the curator will aid in the rehabilitation of the prisoner.

Curator may make allowances for support of prisoner released on probation, etc.
S. 338a enacted by 7, 1966, s. 8.

(2) Where the prisoner is released subject to the supervision of a probation officer, the curator shall not cause any such payments or allowances to be made except upon the recommendation of the chief probation officer.

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.

Curator's power as to priority of payments.
25, 1874, s. 17.
S. 339 amended by 7, 1966, s. 9.

(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 prisoner, or by any person claiming an interest in such property by virtue of this Part.

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 prisoner, and his heirs, or legal personal representatives, or of such other persons as may be lawfully entitled thereto, according to the nature thereof.

Property to revert on completion of sentence, pardon, or death.
25, 1874, s. 18.
S. 340 amended by 7, 1966, s. 9.

(2) Such property and income, and the possession, administration, and management thereof, shall revert in, and be restored to the prisoner, 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.

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 when not to be liable.
25, 1874, s. 19.

¹ Now Prisons Act, 1936-1975.

PART X

Curator to
receive costs of
suits.
25, 1874, 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.
S. 343 amended
by 7, 1966, s. 9.

343. All judgments or orders for the payment of money of any court against the prisoner, which have been duly recovered or made, either before or after his conviction, may be executed against any property of the prisoner 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 prisoner; 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.
S. 344 amended
by 7, 1966, s. 9.

344. (1) It shall be competent for the Attorney-General, or for any person who if any prisoner were dead intestate would be entitled to the personal estate of such prisoner, or any share thereof, under the Statutes of Distribution or otherwise, or for any person authorized by the Attorney-General in that behalf, to apply in a summary way to any court which if such prisoner 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 prisoner, to account for his receipts and payments in respect of the property of the prisoner, 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 prisoner, 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.
S. 345 amended
by 7, 1966, s. 9.

345. Subject to the provisions of this Act, the curator and other person as aforesaid shall, from and after the time when the prisoner ceases to be subject to the operation of this Part, be accountable to the prisoner for all property of the prisoner 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

PART XI

CASES STATED AND APPEALS

347. This Part shall apply to all persons convicted after the first day of October, 1925¹, 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—
“appellant” includes a person who has been convicted and desires to appeal under this Act:

Interpretation.
1613, 1924, s. 3.

“District Criminal Court” means a court constituted of a person appointed to and holding judicial office under the Local and District Criminal Courts Act, 1926-1969³, when sitting in exercise of the jurisdiction conferred on him by the district criminal court provisions as defined in that Act:

Def. inserted by 71, 1969, s. 16 (a); amended by 54, 1972, s. 36 (1) (a)².

“full Court” means the Supreme Court constituted of an uneven number of judges, not being less than three:

“information” means information whereby a person is put upon his trial for any crime or offence at any Criminal Session of the Supreme Court or before any court of oyer and terminer and general gaol delivery or at any sitting of a District Criminal Court, as the case may be:

Def. substituted by 71, 1969, s. 16 (b).

“judge” means a judge of the Supreme Court or the District Criminal Court:

Def. substituted by 54, 1972, s. 36 (1) (b).

“Master” means the Master of the Supreme Court:

Amended by 71, 1969, s. 16 (c).

* * * * *

Def. of “Recorder” inserted by 71, 1969, s. 16 (d); struck out by 54, 1972, s. 36 (1) (c).

“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.

Def. amended by 71, 1969, s. 16 (e); 54, 1972, s. 36 (1) (d).

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.

* * * * *

Subsec. (2) struck out by 13, 1974, s. 2.

¹ Reference to the year nineteen hundred and twenty-five altered to 1925 pursuant to s. 7 (1) of the Acts Republication Act, 1967, as amended.

² The amendment made by para. (a) of subsec. (1) of s. 36 of Act No. 54 of 1972, has been incorporated in the definition of “District Criminal Court” upon the assumption that the passage struck out from that definition has been correctly quoted.

³ Now Local and District Criminal Courts Act, 1926-1975.

Cases Stated

Questions of law may be reserved.
38, 1876, s. 397.
Subsec. (1) amended by 71, 1969, s. 17 (a), (b), (c); 54, 1972, s. 36 (1) (e).

350. (1) If upon the trial or sentencing of any person convicted on information, any question of difficulty in point of law or concerning the sentencing has arisen, it shall be lawful for the presiding judge in his discretion to reserve the 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 authorized to make:

(b) if the Full Court, on an appeal involving a question of law alone, so requires, as hereinafter mentioned.

Subsec. (3) amended by 71, 1969, s. 17 (c); 54, 1972, s. 36 (1) (e).

(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.
Subsec. (1) amended by 71, 1969, s. 18; 54, 1972, s. 36 (1) (f).

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.

Powers of Full Court.
38, 1876, s. 398, 401.

(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.

Subsec. (3) amended by 88, 1975, s. 3 (1) (2nd Sched.).

(3) The judgment and order (if any) of the Full Court shall be certified under the hand of the Chief Justice or senior member of the court to the associate or clerk of arraigns, who shall enter the same on the original 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 Director of Correctional Services, 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

352. A person convicted on information may appeal under this Act to the Full Court—

Right of appeal in criminal cases.
1613, 1924, s. 5.

(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 or District Criminal Court before whom he was tried that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact;

Para. (b) amended by 71, 1969, s. 19; 54, 1972, s. 36 (1) (g).

(c) with the leave of the Full Court, 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.

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 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 occurred.

Determination of appeals in ordinary cases.
1613, 1924, s. 6.

(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.

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 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.

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, 1895¹, 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

¹ Now Sale of Goods Act, 1895-1971.

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.

356. All jurisdiction and authority under any other Act in relation to questions of law arising in criminal trials which are vested in the judges of the Supreme Court or the Full Court of the Supreme Court as constituted by the Supreme Court Act, 1935-1969, as amended¹, shall be vested in the Full Court for the purposes of this Act.

Jurisdiction of full court.
1613, 1924, s. 9.
S. 356 amended by 71, 1969, s. 20.

Procedure

357. (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.

Time for appealing.
1613, 1924, s. 10.

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—

Subsec. (2) amended by 58, 1971, s. 11.

- (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.

358. The judge of the Supreme Court or District Criminal Court before whom a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence or in the case of an application for leave to appeal under this Act, furnish to the Master in accordance with rules of court his notes of the 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.

Judge's notes and report to be furnished on appeal.
1613, 1924, s. 11.
S. 358 amended by 71, 1969, s. 21; 54, 1972, s. 36 (1) (h).

359. For the purposes of this Act the Full Court may, if it thinks it necessary or expedient in the interests of justice—

Supplemental powers of court.
1613, 1924, s. 12.

- (a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to it necessary for the determination of the case;
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they

¹ Now Supreme Court Act, 1935-1975.

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.
S. 360 amended
by 71, 1969,
s. 22; 54, 1972,
s. 36 (1) (i).

360. A judge may assign to an appellant a solicitor and counsel or counsel only in any appeal or new trial, or proceedings preliminary or incidental to any appeal or new trial, in which, in the opinion of the judge, it appears desirable in the interests of justice that the appellant should have legal aid and when, in the opinion of the judge, he has not sufficient means to enable him to obtain that aid.

Right of
appellant to be
present.
1613, 1924,
s. 14.

361. (1) An appellant if he so desires shall, notwithstanding that he is in custody, be entitled to be present on the hearing of his appeal except where the appeal is on some ground involving a question of law alone, but in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall not be entitled to be present except where rules of court provide that he shall have the right to be present or where the Full Court gives him leave to be present.

(2) The power of the Full Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

Attorney-
General to be
represented.
1613, 1924,
s. 15.

362. The Attorney-General or counsel on his behalf shall appear for the Crown on every appeal to the Full Court under this Act, unless a private prosecutor in the case of a private prosecution undertakes the defence of the appeal, and provision shall be made by rules of court for the transmission to

the Attorney-General of all such documents, exhibits, and other things connected with the proceedings as he may require for the purpose of his duties under this section.

363. (1) On the hearing and determination of an appeal or new trial or any proceedings preliminary or incidental thereto under this Act no costs shall be allowed on either side. Costs of appeal.
1613, 1924,
s. 16.

(2) The expenses of any solicitor or counsel assigned to an appellant under this Act, and the expenses of any witnesses attending on the order of the Full Court or examined in any proceedings incidental to the appeal or new trial and of the appearance of an appellant on the hearing of his appeal or new trial or on any proceedings preliminary or incidental to the appeal or new trial, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Full Court for the purpose of any reference of a question to a special commissioner appointed by the Full Court or of any person appointed as assessor to the Full Court, shall be defrayed, up to an amount allowed by 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.

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. Admission of
appellant to bail
and custody
when attending
Court.
1613, 1924,
s. 17.

(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.

Duties of Master with respect to notices of appeal, etc. 1613, 1924, s. 18.

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. Subsec. (1) amended by 71, 1969, s. 23; 54, 1972, s. 36 (1) (j).

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.

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.

368. (1) Rules of court for the purposes of this Part shall be made by the judges of the Supreme Court.

Rules of court.
1613, 1924,
s. 21.

(2) Rules so made may make provision with respect to any matter for which provision is to be made under this Act by rules of court, and may regulate generally the practice and procedure under this Part.

(3) The officers of any court 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.

Subsec. (3)
amended by
71, 1969,
s. 24 (a).

(4) The provisions which relate to making rules of court, and are contained in the Acts regulating the general practice and procedure of the Supreme Court, shall, so far as applicable, apply to rules made under this section.

(5) All rules of court, and all regulations and rules made, before or after the commencement of the Criminal Law Consolidation Act Amendment Act (No. 2), 1969, under this Act or any other Act, for the purposes of this Act or of any provision of this Act, that apply to or in relation to the Supreme Court, or a judge of the Supreme Court, in the exercise of its criminal jurisdiction shall, until other provision is duly made, have effect and be construed, with such adaptations and modifications as may be necessary, so as to extend and apply to and in relation to District Criminal Courts and District Criminal Court Judges, respectively, in the exercise of the criminal jurisdiction conferred by the district criminal court provisions within the meaning of the Local and District Criminal Courts Act, 1926-1969¹, and to and in relation to appeals from and cases stated by, District Criminal Courts to the Full Court.

Subsec. (5)
inserted by
71, 1969,
s. 24 (b);
amended by
54, 1972,
s. 36 (1) (k), (l).

References on Petitions for Mercy

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—

References by
Chief Secretary.
1613, 1924,
s. 22.

- (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.

¹ Now Local and District Criminal Courts Act, 1926-1975.

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

Sched. 2
amended by 88,
1975, s. 3 (1)
(2nd Sched.).

In the Supreme Court. }
Criminal Jurisdiction. }

Whereas A.B. is detained in your custody under a warrant upon a charge of [*as in the certificate*], and it has been certified to the Judges of this Court by the Attorney-General that he declines to file any information against the said A.B. for the said offence, you are therefore hereby required forthwith to discharge the said A.B. from your custody under the said warrant. Given under my hand this _____ day of _____ 19 ____.

A Judge of the Supreme Court.

To the Director of Correctional Services and to the Keeper of
His Majesty's Prison at _____

SCHEDULE 3

RULES

1. (1) Informations and other criminal pleadings may be written or printed or partly written and partly printed, and shall be on white folio foolscap paper on one side only with a quarter margin, and shall be folded lengthwise.

(2) Figures and abbreviations may be used in informations for expressing anything which is commonly expressed thereby.

(3) There shall be endorsed on the back of every information the names of the witnesses intended to be called at the trial.

(4) An information shall not be open to objection by reason only of any failure to comply with this rule.

2. The commencement of an information shall be in the following form:—

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 required.

SCHEDULE 3—continued

(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 in the alternative in the enactment, may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from or qualification of the operation of the statute creating the offence.

6. (1) The description of property in a count in an information shall be in ordinary language, and such as to indicate with reasonable clearness the property referred to, and if the property is so described it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person, and the owners of the property are referred to in an information, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as "Inhabitants," "Trustees," "Commissioners," or "Club", or other such name, it shall be sufficient to use the collective name without naming any individual.

7. The description or designation in an information of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree, or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or the person may be described as "a person unknown".

8. Where it is necessary to refer to any document or instrument in an information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

9. Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act, or omission whatsoever to which it is necessary to refer in any information, in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

10. It shall not be necessary in stating any intent to defraud, deceive, or injure, to state an intent to defraud, deceive, or injure any particular person where the statute creating the offence does not make an intent to defraud, deceive, or injure a particular person an essential ingredient of the offence.

11. Any charge of a previous conviction may be made either by a separate information or at the end of the information by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating particulars of that offence.

APPENDIX TO RULES 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.

APPENDIX TO RULES IN SCHEDULE 3—*continued*

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.

APPENDIX TO RULES IN SCHEDULE 3—continued

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 \$20¹ 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 authorized by the said J.S. to receive such cloth on behalf of the said J.S.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

APPENDIX TO RULES IN SCHEDULE 3—continued

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 \$4¹.

14

STATEMENT OF OFFENCE

1st Count—Arson (C.L.C. Act, 1935, s. 84 (b)).

PARTICULARS OF OFFENCE

A.B., on the day of at maliciously set fire to a
 dwelling-house one F.G. being therein.

STATEMENT OF OFFENCE

2nd Count—Arson (C.L.C. Act, 1935, s. 84 (c)).

PARTICULARS OF OFFENCE

A.B. on the day of at maliciously set fire to a
 dwelling-house with intent to injure or defraud.

15

STATEMENT OF OFFENCES

A.B.—Arson (C.L.C. Act, 1935, s. 84 (c)).

C.D.—Accessory before the fact to the same offence (ibid. s. 267).

PARTICULARS OF 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

1st Count—Obstructing Railway (C.L.C. Act, 1935, s. 110).

PARTICULARS OF OFFENCE

A.B. on the day of at displaced a rail belonging to
 the S.A. Railways Commissioner² 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 Commissioner² did obstruct or cause to be obstructed an
 engine or carriage using the said railway.

¹ Pursuant to s. 8 of the Acts Reproduction Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

² For interpretation of references in Acts to the South Australian Railways Commissioner see now s. 6 (4) and (5) of Railways Act, 1936-1975.

APPENDIX TO RULES IN SCHEDULE 3—*continued*

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 \$2¹).

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 \$20¹ 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 the _____ 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—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 \$200¹ 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 \$200¹ received by him for and on account of L.M.

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

APPENDIX TO RULES IN SCHEDULE 3—*continued*

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

Sched. 4 struck out by 54, 1956, s. 13.	*	*	*	*	*	*	*	*	*	*	*
Sched. 5 struck out by 54, 1956, s. 13.	*	*	*	*	*	*	*	*	*	*	*
Sched. 6 struck out by 54, 1956, s. 13.	*	*	*	*	*	*	*	*	*	*	*
Sched. 7 struck out by 54, 1956, s. 13.	*	*	*	*	*	*	*	*	*	*	*

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.

**Sched. 10
amended by 88,
1975, s. 3 (1)
(2nd Sched.).**

**Certificate of
determination
of question
reserved.**

(Signed)

Clerk of Arraignment.

To the Director of Correctional Services and all others whom it may concern.