

THE

VICTORIAN STATUTES.

CRIMES ACT 1890.

An Act to consolidate the Law relating to Crimes and Criminal Offenders.

54 VICTORIA,
No. 1079.

[10th July, 1890.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. This Act may be cited as the *Crimes Act 1890*, and shall come into operation on the first day of August One thousand eight hundred and ninety, and is divided into Parts Divisions and Subdivisions as follows:—

Short title com-
mencement and
division.

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				(2) Attempts to Murder ss. 8-12.
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PART I.
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Larceny and
similar Offences.

- (3) Larceny of Written Instruments ss. 92-96.
- (4) Larceny of Things attached to or growing on Land ss. 97-104.
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- (6) Larceny from the Person and like Offences ss. 109-118.
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- (9) Larceny in Manufactories &c. ss. 132-134.
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- (11) Larceny or Embezzlement by Clerks Servants or Persons in the Public Service ss. 139-142.
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- (9) Injuries to Sea and River Banks and to Works on Rivers Canals &c. ss. 201 and 202.
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- (23) No *Certiorari* &c. s. 495.
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- (25) Apprehension of Offenders and Search Warrants ss. 498-507.
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PART IV.—Property of Persons convicted of Treason or Felony
ss. 544-566.

2. The Acts mentioned in the First Schedule to this Act to the extent to which the same are thereby expressed to be repealed are hereby repealed. Provided that such repeal shall not affect any offence Repeal. First Schedule.

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wholly or partly committed, or any disqualification incurred, or any warrant or other instrument duly granted, or any action prosecution or other proceeding commenced, or any appointment order presentment or regulation made, or any school established or approved under the said repealed Acts or any of them before the commencement of this Act.

PART I.—OFFENCES.

DIVISION 1.—OFFENCES AGAINST THE PERSON.

(1) *Homicide.*

Punishment of
murder.

Ib. s. 3.

24 & 25 Vict.
c. 100 s. 1.

Conspiracy to
murder.

Ib. s. 4.

See *ib.* s. 4.

3. Whosoever shall be convicted of murder shall suffer death as a felon.

4. All persons who shall conspire confederate and agree to murder any person, whether he be a subject of Her Majesty or not and whether he be within the Queen's dominions or not, and whosoever shall solicit encourage persuade or endeavour to persuade or shall propose to any person to murder any other person, whether he be a subject of Her Majesty or not and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Punishment of
manslaughter.

Ib. s. 5.

Ib. s. 5.

5. Whosoever shall be convicted of manslaughter shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years or to pay such fine as the court shall award in addition to or without any such other discretionary punishment as aforesaid.

Excusable
homicide.

Ib. s. 6.

Ib. s. 7.

6. No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence or in any other manner without felony.

Petit treason.

Ib. s. 7.

Ib. s. 8.

7. Every offence which before the twenty-seventh day of June in the year of our Lord One thousand eight hundred and twenty-eight would have amounted to petit treason shall be deemed to be murder only and no greater offence; and all persons guilty in respect thereof whether as principals or as accessories shall be dealt with indicted tried and punished as principals and accessories in murder.

(2) *Attempts to Murder.*

Administering
poison or wound-
ing with intent
to murder.

Ib. s. 8.

See *ib.* s. 11.

8. Whosoever shall administer to or cause to be administered to or to be taken by any person any poison or other destructive thing, shall by any means whatsoever wound any person or cause to any person any bodily injury dangerous to life, with intent in any of the cases aforesaid to commit murder shall be guilty of felony; and being convicted thereof shall suffer death.^(a)

(a) Where A. with a loaded pistol went in pursuit of B. to kill him and while in such pursuit with that intent was intercepted by C., and in a struggle between A. and C. the pistol went off accidentally and killed C: *Held*, that A. was guilty of the murder of C.—*Reg. v. Supple*, 1 V.R. (L.), 151.

In a count framed under this section charging the prisoner with wounding one K.R., with intent to murder the said K.R., the felonious intention

against K.R. must be proved; a felonious intention against a third person cannot be transferred.—*Reg. v. Supple (ubi supra)* distinguished. Evidence, that two hours previously on the same day the prisoner had come to the same place and had fired two shots at one F.T. with a felonious intention, was held to be admissible as part of the *res gestæ*, and as explaining the circumstances connected with the commission of the offence.—*Reg. v. Cook*, 12 V.L.R., 650.

9. Whosoever by the explosion of gunpowder or other explosive substance shall unlawfully and maliciously destroy or damage any building with intent to commit murder or whereby the life of any person shall be endangered shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

"The Criminal L. and P. Statute 1864" s. 9.
Destroying or damaging buildings with like intent.
See 24 & 25 Vict. c. 100 s. 12.

10. Whosoever shall unlawfully and maliciously set fire to any ship or vessel or any part thereof or any part of the tackle apparel or furniture thereof or any goods or chattels being therein, or shall cast away or destroy any ship or vessel with intent in any of such cases to commit murder or whereby the life of any person shall be endangered, shall be guilty of felony and being convicted thereof shall suffer death.

Setting fire to or destroying ships with like intent.
Ib. s. 10.
See ib. s. 13.

11. Whosoever shall attempt to administer to or shall attempt to cause to be administered to or to be taken by any person any poison or other destructive thing, or shall shoot at any person or shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person,^(a) or shall attempt to drown suffocate or strangle any person, with intent in any of the cases aforesaid to commit murder shall (whether any bodily injury be effected or not) be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Attempting to poison shoot drown &c. with like intent.
Ib. s. 11.
Ib. s. 14.

12. Whosoever shall by any means other than those specified in any of the preceding sections of this Act attempt to commit murder shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Attempting to murder by other means.
Ib. s. 12.
Ib. s. 15.

(3) *Letters Threatening to Murder.*

13. Whosoever shall maliciously send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing threatening to kill or murder any person shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Sending letter threatening to murder.
Ib. s. 13.
Ib. s. 16.

(4) *Acts causing or tending to cause Danger to Life or Bodily Harm.*

14. Whosoever shall unlawfully and maliciously prevent or impede any person being on board of or having quitted any ship or vessel which shall be in distress or wrecked stranded or cast on shore in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such person as in this section first aforesaid, shall be guilty of felony; and being convicted

Impeding a person endeavouring to save himself from shipwreck.
Ib. s. 14.
Ib. s. 17.

(a) The prisoner drew a loaded revolver from his pocket with intent to shoot the prosecutor, but before he could do anything else in order to discharge the revolver, he was seized and overpowered. *Held*, that there was no evidence to

convict the prisoner under this section, and that the mere drawing from his pocket of a loaded revolver was not an attempt to discharge at another person by drawing a trigger or in any other manner.—*Reg. v. Grogan*, 15 V.L.R., 340.

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thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Shooting &c.
with intent to do
bodily harm.

Ib. s. 15.

24 & 25 Vict.
c. 100 s. 18.

15. Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person or shoot at any person or by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, with intent in any of the cases aforesaid to maim disfigure or disable any person or to do some other grievous bodily harm to any person or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

What are loaded
arms.

Ib. s. 16.

Ib. s. 19.

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

Inflicting bodily
injury.

Ib. s. 17.

Ib. s. 20.

17. Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person either with or without any weapon or instrument shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

Attempting to
choke &c. in
order to commit
an offence.

Ib. s. 18.

Ib. s. 21.

18. Whosoever shall by any means whatsoever attempt to choke suffocate or strangle any other person or shall by any means calculated to choke suffocate or strangle attempt to render any other person insensible unconscious or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit or with intent in any of such cases thereby to assist any other person in committing any indictable offence, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Using chloro-
form &c. for like
purpose.

Ib. s. 19.

See *ib.* s. 22.

19. Whosoever shall unlawfully apply or administer to or cause to be taken by or attempt to apply or administer to or attempt to cause to be administered to or taken by any person any chloroform laudanum or other stupefying or overpowering drug matter or thing, with intent in any of such cases thereby to enable himself or any other person to commit or with intent in any of such cases thereby to assist any other person in committing any indictable offence, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years.

Administering
poison so as to
endanger life.

Ib. s. 20.

Ib. s. 23.

20. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing so as thereby to endanger the life of such person or so as thereby to inflict upon such person any grievous bodily harm shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Administering
poison &c. with
intent to injure
&c.

Ib. s. 21.

Ib. s. 24.

21. Whosoever shall unlawfully and maliciously administer to or cause 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 misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years. "The Criminal L. and P. Statute 1864."

22. Whosoever being legally liable either as a master or mistress to provide for any apprentice or servant necessary food clothing or lodging shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant so that the life of such apprentice or servant shall be endangered or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years. Ill-using apprentices or servants. Ib. s. 22. 24 & 25 Vict. c. 100 s. 26.

23. Whosoever shall unlawfully abandon or expose any child being under the age of two years whereby the life of such child shall be endangered or the health of such child shall have been or shall be likely to be permanently injured shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years. Exposing children. Ib. s. 23. Ib. s. 27.

24. Whosoever by negligently doing or omitting to do any act shall cause grievous bodily injury to any other person shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years. Negligently causing bodily injury. Ib. s. 24.

25. Whosoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance burn maim disfigure disable or do any grievous bodily harm to any person shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. Causing bodily injury by gunpowder &c. Ib. s. 25. Ib. s. 28.

26. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing, or put or lay at any place or cast or throw at or upon or otherwise apply to any person any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn maim disfigure or disable any person or to do some grievous bodily harm to any person, shall (whether any bodily injury be effected or not) be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. Sending gunpowder &c. with intent to do bodily harm. Ib. s. 26. Ib. s. 28.

27. Whosoever shall unlawfully and maliciously place or throw in into upon against or near any building ship or vessel any gunpowder or other explosive substance with intent to do any bodily injury to any person shall (whether or not any explosion take place and whether or not any bodily injury be effected) be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Placing gunpowder &c. near buildings &c. with like intent. Ib. s. 27. Ib. s. 30.

28. Whosoever shall set or place or cause to be set or placed any spring-gun man-trap or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby Setting spring-guns &c. Ib. s. 28. Ib. s. 31.

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Saving of traps
for destroying
vermin and also
spring-guns &c.
in dwelling-
house.

Placing things
on railways
moving the ma-
chinery lights
&c. on same to
endanger
passengers.
Ib. s. 29.
24 & 25 Vict.
c. 100 s. 32.

Casting things at
railway carriages
to endanger
passengers.
Ib. s. 30.
Ib. s. 33.

Doing or omit-
ting anything to
endanger rail-
way passengers.
Ib. s. 31.
Ib. s. 34.

Obstructing &c.
any clergyman
in performing
his duty.
Ib. s. 32.
Ib. s. 36.

the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years. And whosoever shall knowingly and wilfully permit any such spring-gun man-trap or other engine which may have been set or placed in any place then being in or afterwards coming into his possession or occupation by some other person to continue so set or placed shall be deemed to have set and placed such gun trap or engine with such intent as aforesaid. Provided that nothing in this section contained shall extend to make it illegal to set or place any gin or trap such as may have been or may be usually set or placed with the intent of destroying vermin. Provided also that nothing in this section shall be deemed to make it unlawful 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 shall be set or placed or caused or continued to be set or placed in a dwelling-house for the protection thereof.

29. Whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood stone or other matter or thing, or shall unlawfully and maliciously take up remove or displace any rail sleeper or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn move or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show hide or remove any signal or light upon or near to any railway or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent in any of the cases aforesaid to endanger the safety of any person travelling or being upon such railway shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

30. Whosoever shall unlawfully and maliciously throw or cause to fall or strike at against into or upon any engine tender carriage or truck used upon any railway any wood stone or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine tender carriage or truck or in or upon any other engine tender carriage or truck of any train of which such first-mentioned engine tender carriage or truck shall form part, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

31. Whosoever by any unlawful act or by any wilful omission or neglect shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

(5) Assaults.

32. Whosoever shall by threats or force obstruct or prevent or endeavour to obstruct or prevent any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church

chapel meeting-house or other place of divine worship or in or from the performance of his duty in the lawful burial of the dead in any church-yard cemetery or other burial place, or shall strike or offer any violence to, or shall upon any civil process or under the pretence of executing any civil process arrest any clergyman or other minister who is engaged in or to the knowledge of the offender is about to engage in any of the rites or duties in this section aforesaid, or who to the knowledge of the offender shall be going to perform the same or returning from the performance thereof, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

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33. Whosoever shall assault and strike or wound any magistrate officer or other person whatsoever 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 misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Assaulting magistrate &c. in preserving wreck.
Ib. s. 33.
24 & 25 Vict. c. 100 s. 37.

34. Whosoever shall assault any person with intent to commit felony, or shall assault resist or wilfully obstruct any peace officer in the due execution of his duty^(a) or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Assault with intent to commit a felony.
Assaulting officer &c. in execution of duty.
Ib. s. 34.
Ib. s. 38.

35. Whosoever shall beat or use any violence or threat of violence to any person with intent to deter or hinder him from buying selling or otherwise disposing of or to compel him to buy sell or otherwise dispose of any wheat or other grain flour meal malt or potatoes in any market or other place, or shall beat or use any such violence or threat to any person having the care or charge of any wheat or other grain flour meal malt or potatoes whilst on the way to or from any city market town or other place with intent to stop the conveyance of the same, shall on conviction thereof before two justices be liable to be imprisoned for any term not exceeding three months. Provided that no person who shall be punished for any such offence by virtue of this section shall be punished for the same offence by virtue of any other law whatsoever.

Assault with intent to obstruct or compel sale of grain &c.
Ib. s. 35.
Ib. s. 39.

36. Whosoever shall unlawfully and with force hinder or prevent any seaman keelman or caster from working at or exercising his lawful trade business or occupation, or shall beat or use any violence to any such person with intent to hinder or prevent him from working at or exercising the same, shall on conviction thereof before two justices be liable to be imprisoned for any term not exceeding three months. Provided that no person who shall be punished for any such offence by reason of this section shall be punished for the same offence by virtue of any other law whatsoever.

Assaulting seamen &c.
Ib. s. 36.
Ib. s. 40.

(a) When a constable comes up after an assault has been committed, it is his duty, if required by the person assaulted, to take over the offender, and if such offender forcibly resist he may be con-

victed under this section of assaulting a peace officer in the execution of his duty.—*Reg. v. Huxley and Walsh*, 8 V.L.R. (L.), 15; 3 A.L.T., 96.

"The Criminal
L. and P.
Statute 1884"
s. 37.

Assault
arising from
combinations.
24 & 25 Vict.
c. 100 s. 41.

Punishment by
justices of
common assault.
Ib. s. 33.
See ib. s. 42.

Punishment of
aggravated
assault on
children under
fourteen years
or any female.
Ib. s. 39.
See ib. s. 43.

Conviction or
dismissal a bar
to criminal
proceedings.
Ib. s. 40.
See ib. s. 45.

These provisions
not to apply to
certain cases.
Ib. s. 41.
See ib. s. 46.

Punishment of
rape.
Ib. s. 42.
Ib. s. 43.

37. Whosoever in pursuance of any unlawful combination or conspiracy to raise the rate of wages or of any unlawful combination or conspiracy respecting any trade business or manufacture or respecting any person concerned or employed therein shall unlawfully assault any person, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

38. Where any person shall unlawfully assault or beat any other person, any two justices may hear and determine such offence; and the offender shall upon conviction thereof at the discretion of the justices either be imprisoned for any term not exceeding three months; or else shall forfeit and pay such fine as shall appear to such justices to be meet not exceeding the sum of Ten pounds; and if such fine as shall be so awarded shall not be paid either immediately after the conviction or within such period as the said justices shall at the time of the conviction appoint, they may commit the offender to gaol to be imprisoned for any term not exceeding three months, unless such fine be sooner paid.

39. When any person shall be charged before two justices with an assault or battery upon any male child whose age shall not in the opinion of such justices exceed fourteen years or upon any female, the said justices, if the assault or battery is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way and if the same be proved may convict the person accused; and every such offender shall be liable to be imprisoned for any period not exceeding six months or to pay a fine not exceeding together with costs the sum of Twenty pounds, and in default of payment to be imprisoned for any period not exceeding six months unless such fine and costs be sooner paid; and (if the justices shall so think fit in any of the said cases) shall be bound to keep the peace and be of good behaviour for any period not exceeding six months from the expiration of such sentence.

40. If any person against whom any such information for any such offence as in either of the last two preceding sections mentioned shall have been preferred having been convicted shall have paid the whole amount adjudged to be paid or have suffered the imprisonment awarded or the information shall have been dismissed, in every such case he shall be released from all further or other criminal proceedings for the same cause; but shall remain liable to all civil proceedings in like manner as if he had not been so convicted.

41. In case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by information as for an indictable offence, they shall abstain from any adjudication thereupon, and shall commit the person charged with such offence for trial in the usual way.

(6) Rape Abduction and Defilement of Women.

42. Whosoever shall be convicted of the crime of rape shall be guilty of felony and shall suffer death.^(a)

(a) On the trial of a prisoner charged with rape, familiarity between the prosecutrix and the accused.—*Reg. v. Fitzgibbon*, 11 V.L.R., 232.

43. Whosoever shall be convicted of an attempt to commit or of an assault with intent to commit the crime of rape shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.^(a)

"The Criminal L. and P. Statute 1864"
s. 43.

Punishment for an attempt.

44. Whosoever shall by false pretences false representations or other fraudulent means procure any woman or girl under the age of twenty-one years to have illicit carnal connexion with any man shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Procuring defilement of a girl.
Ib. s. 44.
24 & 25 Vict.
c. 100 s. 49.

45. Whosoever shall unlawfully and carnally know and abuse any girl under the age of ten years shall be guilty of felony; and being convicted thereof shall suffer death.^(b)

Abusing girl under ten.
Ib. s. 45.
See Ib. s. 60.
See 33 & 39 Vict.
c. 94 s. 3.

46. Whosoever shall be convicted of any attempt or assault with intent unlawfully and carnally to know and abuse any girl under the age of ten years shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years; and such verdict of assault may be found, notwithstanding the girl may have consented to the act or acts proved against the person charged.

See 45 & 49 Vict.
c. 69.
Punishment for attempt.
Ib. s. 46.
Notwithstanding consent.

47. Whosoever shall unlawfully and carnally know and abuse any girl being above the age of ten years and under the age of twelve years shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years; and whosoever shall be convicted of an attempt to commit such misdemeanor shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

Abusing a girl between ten and twelve years of age.
Ib. s. 47.
24 & 25 Vict.
c. 100 s. 51.
33 & 39 Vict.
c. 94 s. 3.
45 & 49 Vict. c. 69.
Or attempting.

48. Whosoever shall unlawfully and indecently assault any girl under twelve years of age whether such assault be with or without the consent of such girl, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.^(c)

Indecently assaulting a girl under twelve.
Ib. s. 48.

(a) G. and B. were found guilty of an attempt to commit rape. B. was not in the room when G. made the attempt, and there was no evidence of B.'s own separate assault, but he found the girl tied down and left her so tied after hearing G. express his intention to commit the offence. *Held*, B.'s acts showed intent, though the purpose was not completed, and conviction upheld.—*Reg. v. Branch*, 2 W. & W., 253.

(b) On a trial of a prisoner for carnally abusing a child under ten years of age, a statement extracted from the child by her parents by means of punishment, and a week after the commission of the offence, is not admissible in evidence. But in such case a new trial may be granted, instead of quashing the conviction altogether.—*Reg. v. Nixon*, 8 V.L.R. (L.), 32.

Upon a charge of carnally abusing or indecently assaulting a child under ten years of age, evidence is admissible not merely of the fact that the child made a complaint immediately after the commission of the offence, but also of what the child

said. Such statement is not the less admissible because it was made in answer to questions by the person to whom it was made, and to what was the matter.—*Reg. v. Bates*, 8 V.L.R. (L.), 310.

(c) A prisoner was charged with having indecently assaulted a girl under twelve. The jury found specially that the prisoner while stupefied with drink had entered in the dark, and for an immoral purpose, the house where the girl was, believing it to be a house of ill-fame. *Held*, that even assuming that the prisoner had reasonable grounds for his belief, his ignorance that the person whom he assaulted was under the age of twelve years was in law no answer to the charge.

When an act committed under certain circumstances has been made an offence by Statute, the question whether knowledge or belief of the existence of those circumstances is essential to the offence depends upon the intent of the Legislature.—*Reg. v. Gibson*, 11 V.L.R., 94.

"The Criminal
L. and P.
Statute 1864"
s. 49.
Second conviction a felony.

49. Whosoever having been convicted of such misdemeanor as in the fourth section of the Act passed in the eleventh year of Her Majesty numbered thirty or as in the last preceding section of this Act mentioned shall afterwards commit such misdemeanor shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Abduction of
woman from
motives of lucre
or by fraud.
Ib. s. 50.
24 & 25 Vict.
c. 100 s. 58.

50. Where any woman of any age shall have any interest (whether legal or equitable present or future absolute conditional or contingent) in any real or personal estate, or shall be a presumptive heiress or co-heiress or presumptive next of kin or one of the presumptive next of kin to any one having such interest,^(a) whosoever shall from motives of lucre take away or detain such woman against her will with intent to marry or carnally know her or to cause her to be married or carnally known by any other person, and whosoever shall fraudulently allure take away or detain such woman being under the age of twenty-one years out of the possession and against the will of her father or mother or of any other person having the lawful care or charge of her with intent to marry or carnally know her or to cause her to be married or carnally known by any other person, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. And whosoever shall be 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 such woman or in which she shall have any such interest or which shall come to her as such heiress coheiress or next of kin as aforesaid; and if any such marriage as aforesaid shall have taken place, such property shall upon such conviction be settled in such manner as the Supreme Court shall upon any information at the suit of the Attorney-General appoint.

Forcible abduction of woman.
Ib. s. 51.
Ib. s. 54.

51. Whosoever shall by force take away or detain against her will any woman of any age with intent to marry or carnally know her or to cause her to be married or carnally known by any other person shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Abduction of girl under sixteen.
Ib. s. 52.
Ib. s. 55.

52. Whosoever shall unlawfully take or cause to be taken any unmarried girl being under the age of sixteen years out of the possession and against the will^(b) of her father or mother or of any other person having the lawful care or charge of her shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

(7) Child Stealing.

Child stealing.
Ib. s. 53.
Ib. s. 56.

53. Whosoever shall unlawfully either by force or fraud lead or take away or decoy or entice away or detain any child under the age of fourteen years, with intent to deprive any parent guardian or other

(a) On a charge of abduction of a woman under age and having a future interest in personal estate, the only evidence of such interest was that of the parents who had been informed that she was entitled under her grandfather's will to a thousand pounds when she should come of age; that her sister had received a similar sum under such will on coming of age; and that this had

been told to the prisoner. *Held*, that the evidence was sufficient to sustain the conviction.—*Reg. v. Taylor*, 2 V.L.R. (L.), 95.

(b) A girl taken in the absence of her father will be presumed to have been taken against his will, if the father would have refused his consent had he been asked.—*Reg. v. West*, 5 A.J.R., 19.

person having the lawful care or charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child to whomsoever such article may belong; and who-soever shall with any such intent receive or harbor any such child knowing the same to have been by force or fraud led taken decoyed enticed away or detained as in this section before-mentioned, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years. Provided that no person who shall have claimed any right to the possession of such child, or shall be the mother or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child or taking such child out of the possession of any person having the lawful charge thereof.

"The Criminal L. and P. Statute 1864."

Proviso as to persons claiming right to possession of child.

(8) *Bigamy.*

54. Whosoever being married shall marry any other person during the life of the former husband or wife shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years. Provided that nothing in this section contained shall extend to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past and shall not have been known by such person to be living within that time;^(a) or shall extend to any person who at the time of such second marriage shall have been divorced from the bond of the first marriage; or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

Bigamy.

Ib. s. 54.

See 24 & 25 Vict. c. 100 s. 67.

(9) *Attempts to procure Abortion.*

55. Every woman being with child who with intent to procure her own miscarriage shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever with intent to procure the miscarriage of any woman whether she be or be not with child shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony; and being convicted thereof shall be liable at the discretion

Attempt to procure abortion.

Ib. s. 55.

Ib. s. 58.

(a) *Per Stannell, C.J.*—"Seven years is the limit within which a second marriage is entered into at the risk of the party who ventures to marry again without full knowledge of the death of the first husband or wife." *Per Molesworth, J.*—"Knowledge within seven years is not a necessary ingredient of the offence of bigamy: the act which constitutes the bigamy is the second marriage, and the question as to whether when that second marriage is entered into by the parties their status is such as to make it criminal is one on which they must be informed at their own peril so far as being liable to conviction."—*Reg. v. Smith*, 1 W. & W. (L.), 325.

"On a prosecution for bigamy, when it is proved that prisoner and his first wife have lived apart

for the seven years preceding the second marriage, it is incumbent on the prosecution to show that during that time the prisoner was aware of his first wife's existence. A misstatement as to fact and date of death of first wife, who was shown to be alive at the time of the trial, for the purpose of the second marriage, while unexplained is sufficient evidence of knowledge on prisoner's part of the wife's existence to justify a conviction."—*Per Holroyd and Cope, JJ.* The continuous absence for seven years contemplated by this section is not that of the prisoner from the other party to the first marriage, but the absence of that party from the prisoner.—*Reg. v. Spark*, 11 V.L.R., 405; 7 A.L.J., 57. See on this subject *Reg. v. Tolson*, 23 Q.B.D., 168.

"The Criminal
L. and P.
Statute 1864."

Supplying or
procuring any
thing to be
employed in
abortion.

Ib. s. 58.

24 & 25 Vict.
c. 100 s. 59.

of the court to be imprisoned for any term not exceeding fifteen years.

56. Whosoever shall unlawfully supply or procure 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^(a) whether she be or be not with child, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

(10) *Concealing the Birth of a Child.*

Concealing birth
of a child.

Ib. s. 57.

Ib. s. 60.

57. If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the said child whether such child died before at or after its birth endeavour to conceal the birth thereof shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

(11) *Unnatural Offences.*

Infamous
crimes.

Ib. s. 55.

See Ib. s. 61.

58. Whosoever shall be convicted of the abominable crime of buggery committed either with any person under the age of fourteen years or with or upon any person with violence and without the consent of such person shall suffer death as a felon.^(b) And whosoever shall be convicted of the said abominable crime committed either with mankind or with any animal shall, in any case in which the offence shall not be punishable under the preceding part of this section, be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.^(c)

Attempt to com-
mit infamous
crime.

Ib. s. 59.

See Ib. s. 62.

59. Whosoever shall attempt to commit either with mankind or with any animal the abominable crime of buggery, or shall be guilty of any assault with intent to commit the same or of any indecent assault^(d) upon any male person, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Carnal know-
ledge defined.

Ib. s. 60.

Ib. s. 63.

60. Whenever upon the trial for any offence punishable under this Division of this Part of this Act it may be 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.

(a) To constitute an offence under this section, it is not necessary to prove the existence of a woman for whose use the drug was supplied; it is sufficient to show that the drug was supplied with the intent that it should be used for an unlawful purpose, or with the belief that the person to whom it is supplied intends to use it for such a purpose.—*Reg. v. Drake*, 13 V.L.R., 498.

(b) This section provides for two different classes of offences, and a person charged with an offence against the first part only cannot be found guilty upon the second part.—*Reg. v. O'Connor*, 1 A.J.R., 118.

(c) From the terms of "*The Criminal Law and Practice Statute 1864*" with which this Act corresponds, as well as the corresponding English Act and the cases decided thereon, it appears that in cases of sexual or unnatural offences the mere physical contact with the person alleged to be assaulted may be designated an assault without reference to the consent or absence of consent of the person said to be assaulted.—*Reg. v. Redden and Nicholas*, 11 V.L.R., 501.

(d) Under this section a person cannot be convicted of an indecent assault when the person assaulted has consented.—*Reg. v. Howles*, A.R., 27th March, 1868.

(12) *Making Gunpowder &c. for committing Offences.*

61. Whosoever shall knowingly have in his possession or make or manufacture any gunpowder explosive substance or any dangerous or noxious thing or any machine engine instrument or thing, with intent by means thereof to commit or for the purpose of enabling any other person to commit any of the felonies in this Division of this Part of this Act mentioned, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

"The Criminal L. and P. Statute 1864" s. 41.
Having or making gunpowder &c. with intent to commit any felony against this Division.
24 & 25 Vict. c. 100 s. 64.

(13) *Use of Suffocating Fumes in Mines.*

62. If any person shall unlawfully and maliciously cause to be sent driven or conveyed into or through or to be generated or produced in any mine or any subterraneous passage communicating therewith, whether such mine be claimed by or belong to such person or not, any suffocating stupifying or overpowering fumes gas or vapour with intent to prevent any other person from working remaining or being in the same or any other mine or any such passage communicating therewith, he shall be guilty of a misdemeanor, and shall on conviction be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

Use of suffocating &c. fumes in mines.
"The Criminal L. and P. Amend. Stat. 1871" s. 5.

DIVISION 2.—LARCENY AND SIMILAR OFFENCES.

63. In the interpretation of this Division of this Part of this Act—

"Banker" shall include any director of an incorporated banking company.

Interpretation of terms.
"The Criminal L. and P. Statute 1864" s. 62.

"Cattle" shall include any horse mare gelding colt foal or filly, and any bull cow ox steer heifer or calf, and any ram ewe sheep or lamb, and any mule or ass, and any pig, and any camel alpaca or llama.

See 24 & 25 Vict. c. 96 s. 1.

"Document of title to goods" shall include any bill of lading India warrant dock warrant warehouse-keeper's certificate warrant or order for the delivery or transfer of any goods or valuable thing 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.

"Banker,"
"Cattle."

"Document of title to lands" shall include 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.

"Document of title to goods."

For the purposes of this Division of this Part of this Act the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day.

"Document of title to lands."

"Property" shall include every description of real and personal property money debts and legacies, and all deeds and instruments relating to or evidencing the title or right

"Night."
"The Criminal L. and P. Amend. Stat. 1871" s. 7.

"The Criminal
L. and P.
Amend. Stat.
1871."

to any property or giving a right to recover or receive any money or goods; and shall also include not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

"Trustee" shall mean a trustee on some express trust created by some deed will or instrument in writing, and shall include the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and an administrator and an official agent manager liquidator or other like officer acting or appointed under or by any present or future Act or any decree or order of the Supreme Court, and also a receiver so acting or appointed, and also an assignee or trustee in insolvency.

"Valuable
security."

"The Criminal
L. and P.
Statute 1864."

"Valuable security" shall include any order exchequer acquittance or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom or of Great Britain or of Ireland or of Victoria or any other British colony or of any foreign state, or in any fund of any body corporate company or society whether within the United Kingdom or within Victoria or any other colony or in any foreign state or country, or to any deposit in any bank; and shall also include any debenture deed bond bill note warrant order or other security whatsoever for money or for payment of money whether of the United Kingdom or of Great Britain or of Ireland or of Victoria or any other colony or of any foreign state, and any document of title to lands or goods as herein before defined.

(1) *Larceny in General.*

All larcenies of
the same nature.
Ib. s. 63.
See 24 & 25 Vict
c. 96 s. 2.

64. Every larceny whatever be the value of the property stolen shall be deemed to be of the same nature and shall be subject to the same incidents in all respects as grand larceny was before the first day of April in the year of our Lord One thousand eight hundred and twenty-eight.

Bailees guilty of
larceny.
Ib. s. 64.
Ib. s. 3.

65. Whosoever being a bailee of any property shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny.^(a)

(a) To constitute larceny as a bailee within the meaning of this section, it is necessary to prove the bailment to the accused by the owner of a particular specific chattel or a neglect to obey the mandate which accompanied the bailment of that particular article.—*Reg. v. Hennelly*, 14 V.L.R., 59.

A person to whom a bank note had been entrusted for the purpose of procuring change for it, who did not return either it or the change, but afterwards offered a less sum as a composition, was properly convicted of larceny as a bailee.—*Reg. v. Ah Poo*, 7 V.L.R. (L.), 8.

Where a specific sum of money or instrument representing money, coin, bank notes, cheques, or anything constituting property or representing money is delivered to a person with an express or implied mandate either to return it or apply it in some other way directed by the bailor, and it is accepted by the bailee on those terms and he applies the money or property fraudulently to his own use and not in the way directed, he is guilty of an offence.—*Reg. v. Mason*, 11 A.L.T., 199.

66. Whosoever shall be convicted of simple larceny or of any felony hereby made punishable like simple larceny shall (except in cases otherwise provided for) be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

"The Criminal L. and P. Statute 1864" s. 65.

Punishment of larceny.

24 & 25 Vict. c. 96 s. 4.

Summary jurisdiction in larceny up to age of sixteen. 10. s. 66.

67. Where any person shall be charged before any justices assembled in petty sessions with having committed or having attempted to commit or with having been an aider abettor counsellor or procurer in the commission of any offence which now is or hereafter shall or may be by law deemed or declared to be simple larceny or punishable as simple larceny, if the age of such person at the period of the commission or attempted commission of such offence shall not in the opinion of such justices have exceeded the age of sixteen years, or where any person shall be charged before any justices so assembled as aforesaid with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not in the judgment of such justices exceed the sum of two pounds, or with having attempted to commit larceny from the person or simple larceny, it shall be lawful for such justices to hear and determine every such charge in a summary way; and if the person charged shall confess the same, or if such justices after hearing the whole case for the prosecution and for the defence shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged and commit him to gaol there to be imprisoned for any period not exceeding three calendar months; or in such cases aforesaid where the offender's age in the opinion of the justices shall not as aforesaid have exceeded sixteen years, either in their discretion so to commit him or adjudge him to forfeit and pay any sum not exceeding three pounds; and if they find the offence not proved, they shall dismiss the charge upon the party charged finding surety or sureties for his future good behaviour or without such sureties; and make out and deliver to the person charged a certificate under their hands stating the fact of such dismissal; and every such certificate may be in the form in the Second Schedule or to the like effect. Provided always that if the person charged do not consent, or where the age of the accused shall not in the opinion of the justices have as aforesaid exceeded sixteen years he shall not consent or his parent or guardian shall being present object to have the case heard and determined by such justices, or if such justices be of opinion that the charge is from any circumstance fit to be made the subject of prosecution by information as for an indictable offence rather than to be disposed of summarily, such justices shall instead of summarily adjudicating thereon deal with the case in all respects as if they had no authority finally to hear and determine the same. Provided also that if upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged without proceeding to a conviction upon his finding surety or sureties for his future good behaviour or without such sureties; and every conviction and certificate to be made or given as aforesaid shall contain a statement that the offender consented, and in cases in which the parent or guardian is hereunder entitled to object that the parent or guardian if present did not object, to the charge being decided summarily.

See 18 & 19 Vict. c. 120 s. 1.

Same in larceny of two pounds or less.

Punishment in such cases.

Second Schedule. Option as to trial by jury.

"The Criminal
L. and P.
Statute 1864"
s. 67.

Mode of proce-
dure by justices
in dealing with
case summarily.

See 18 & 19 Vict.
c. 126 s. 2.

68. Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provisions, one of such justices, after the examination of all the witnesses for the prosecution have been completed and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him and shall then say to him these words or words to the like effect—

"Do you consent that the charge against you shall be tried by us or do you desire that it shall be sent for trial by a jury" and if the person charged shall consent, or (in cases in which the parent or guardian is entitled to object as aforesaid) if such parent or guardian being present shall not object, to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing and read the same to such person and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the justices shall then proceed to pass such sentence upon him as may by the last preceding section be passed in respect of such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person whether he has any defence to make to such charge; and if he shall state that he has a defence, the justices shall hear such defence and then proceed to dispose of the case summarily.

Plea of guilty
before justices
in other cases of
larceny &c.
Ib. s. 68.
See Ib. s. 3.

69. Where any person is charged before any two justices at such petty sessions as aforesaid with simple larceny and the age of the accused may in the opinion of the justices have exceeded sixteen years or the value of the property alleged to have been stolen may exceed two pounds, or with stealing from the person or larceny as a clerk or servant, and the evidence when the case on the part of the prosecution has been completed is in the opinion of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appear to them to be one which may properly be disposed of in a summary way and may be adequately punished by virtue of the powers given by this section, shall reduce the charge into writing and shall read it to the said person and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty, such justices shall thereupon cause a plea of guilty to be entered upon the proceedings and shall convict him of such offence and commit him to gaol there to be imprisoned for any term not exceeding twelve calendar months. Provided always that the said justices before they ask such person whether he is guilty or not shall explain to him that he is not obliged to plead or answer before them at all; and that if he do not plead or answer before them, he will be committed for trial in the usual course.

Remand in such
cases to petty
sessions.

Ib. s. 69.

Ib. s. 6.

70. Where any person is charged before any justice with any offence mentioned in any of the three preceding sections of this Act and in the opinion of such justice the case may be such as is required to be or may be proper to be disposed of by justices in petty sessions under the said sections, the justice before whom such person is so charged may if he see fit remand such person for further examination to the next petty sessions having jurisdiction to be holden nearest to the place at which such justice shall then be, in like manner in all respects as a justice is by law authorized to remand a party accused of an indictable offence.

71. Every conviction by justices in petty sessions under the four last preceding sections shall have the same effect as a conviction upon an information for the same offence as for an indictable offence would have had, save that no conviction under the said sections or any of them shall be attended with any forfeiture.

"The Criminal L. and P. Statute 1884" s. 70.
No forfeiture upon conviction.
18 & 19 Vict. c. 126 s. 11.

72. Every person who obtains a certificate of dismissal or is convicted under the five last preceding sections or any of them shall be released from all further or other criminal proceedings for the same cause.

Conviction or dismissal a bar to further proceedings.
Ib. s. 71.
Ib. s. 12.

(2) *Larceny of Cattle or other Animals.*

73. Whosoever shall steal any cattle shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Larceny of cattle.
Ib. s. 72.
24 & 25 Vict. c. 96 s. 10.

74. Whosoever shall take use or in any manner work any cattle or any goat the property of any other person without the consent of the owner or other person in lawful possession thereof shall be guilty of a misdemeanor; and being convicted thereof either as an indictable offence or before two justices in petty sessions in a summary manner shall be liable at the discretion of the court or justices to be imprisoned for any term not exceeding one year or to pay a fine not exceeding Twenty pounds in respect of every head of cattle or of goats so taken used or worked.^(a)

Penalty for working or using another person's cattle.
Ib. s. 73.

75. In case the justices before whom any person shall be charged with any such misdemeanor as lastly hereinbefore mentioned shall find that the offence charged ought to be dealt with as a charge of felony or shall be of opinion that the same is a fit subject for prosecution by information as for an indictable offence, they shall abstain from any adjudication thereupon and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same, but may commit the offender for trial for the felony or misdemeanor as they may see fit.

Cases of indictable offence.
Ib. s. 74.

76. Whosoever shall wilfully kill any animal with intent to steal the carcass skin or any part of the animal so killed shall be guilty of felony; and being convicted thereof shall be liable to the same punishment as if he had been convicted of feloniously stealing the same, provided the offence of stealing the animal so killed would have amounted to felony.

Killing cattle &c. with intent to steal.
Ib. s. 75.
Ib. s. 11.

77. If the skin or carcass or any part of the skin or carcass of any cattle or goat stolen from any person shall be found in the possession of any other person or on the premises of any other person with his knowledge, and such person being taken or summoned before two justices shall not satisfy the justices that he came lawfully by such skin carcass or part thereof respectively, he shall on conviction by the justices forfeit and pay any sum not exceeding Fifty pounds.

Penalty for possession of skin or carcass of stolen cattle.
Ib. s. 76.

78. Whosoever shall unlawfully and wilfully course hunt snare or carry away or kill or wound or attempt to kill or wound any deer kept or being in or upon any unenclosed land, shall for every such offence

Unlawfully hunting &c. deer in unenclosed land.
Ib. s. 77.

(a) If a person, without the consent of the owner or some other person in possession, uses or works any cattle which have strayed on to his

premises, he is guilty of a misdemeanor and may be convicted under this section.—*McLeod v. Hanrahan*, 12 V.L.R., 587.

"The Criminal
L. and P.
Statute 1864."
See 24 & 25 Vict.
c. 96 s. 12.

Penalty for
second offence.

Unlawfully
hunting &c. deer
in enclosed land.
Ib. s. 78.
See ib. s. 13.

Suspected per-
sons in possession
of venison &c.
and not satisfac-
torily account-
ing for it.
Ib. s. 79.
Ib. s. 14.

Penalty.

How justice to
proceed in case
they cannot be
convicted.

Setting snares or
engines for deer.
Ib. s. 80.
See ib. s. 15.

Killing hares
and rabbits in
night time.
Ib. s. 81.
Ib. s. 17.

on conviction thereof before a justice forfeit and pay such sum not exceeding Fifty pounds as to the justice shall seem meet. And whosoever having been previously convicted of any offence relating to deer for which a pecuniary penalty shall have been imposed by this or by any former Act shall afterwards commit any of the offences hereinbefore in this section enumerated, whether such second offence be of the same description as the first or not, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be punished in the same manner as in the case of simple larceny.

79. Whosoever shall unlawfully and wilfully course hunt snare or carry away or kill or wound or attempt to kill or wound any deer kept or being in or upon any enclosed land shall be guilty of felony and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

80. If any deer or the head skin or other part thereof or any snare or engine for the taking of deer shall be found in the possession of any person or on the premises of any person with his knowledge, and such person being taken or summoned before a justice shall not satisfy the justice that he came lawfully by such deer or the head skin or other part thereof or had a lawful occasion for such snare or engine and did not keep the same for any unlawful purpose, he shall on conviction by the justice forfeit and pay any sum not exceeding Twenty pounds. And if any such person shall not under the provisions of this section be liable to conviction, then for the discovery of the party who actually killed or stole such deer, the justice (at his discretion as the evidence given and the circumstances of the case shall require) may summon before him every person through whose hands such deer or the head skin or other part thereof shall appear to have passed; and if the person from whom the same shall have been first received or who shall have had possession thereof shall not satisfy the justice that he came lawfully by the same, he shall on conviction by the justice be liable to the payment of such sum of money as is hereinbefore last mentioned.

81. Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever for the purpose of taking or killing deer in or upon any enclosed land where deer shall usually be kept, or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall then be kept, shall on conviction thereof before a justice forfeit and pay such sum of money not exceeding Twenty pounds as to the justice shall seem meet.

82. Whosoever shall unlawfully and wilfully between the expiration of the first hour after sunset and the beginning of the last hour before sunrise take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be enclosed or not, shall be guilty of a misdemeanor. And whosoever shall unlawfully and wilfully between the beginning of the last hour before sunrise and the expiration of the first hour after sunset take or kill any hare or rabbit in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, shall on conviction thereof before a justice forfeit and pay such sum of money not exceeding Five pounds as to the justice shall seem meet.

83. Whosoever shall steal any dog shall on conviction thereof before two justices either be imprisoned for any term not exceeding six months or forfeit and pay over and above the value of the said dog such sum of money not exceeding Twenty pounds as to the said justices shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards steal any dog, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding eighteen months.

"The Criminal L. and P. Statute 1864"
s. 82.
Stealing dogs.
24 & 25 Vict.
c. 96 s. 13.
Second offence.

84. Whosoever shall unlawfully have in his possession or on his premises any stolen dog or the skin of any stolen dog knowing such dog to have been stolen or such skin to be the skin of a stolen dog, shall on conviction thereof before two justices be liable to pay such sum of money not exceeding Twenty pounds as to such justices shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards be guilty of any such offence as in this section before mentioned shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Possession of stolen dogs.
Ib. s. 83.
Ib. s. 19.
Second offence.

85. Whosoever shall corruptly take any money or reward directly or indirectly under pretence or upon account of aiding any person to recover any dog which shall have been stolen or which shall be in the possession of any person not being the owner thereof shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Taking money to restore dogs.
Ib. s. 84.
Ib. s. 20.

86. Whosoever shall steal any bird beast or other animal ordinarily kept in a state of confinement or for any domestic purpose not being the subject of larceny at common law, or shall wilfully kill any such bird beast or animal with intent to steal the same or any part thereof, shall on conviction thereof before a justice at the discretion of the justice either be imprisoned for any term not exceeding six months, or else shall forfeit and pay over and above the value of the bird beast or other animal such sum of money not exceeding Twenty pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any offence in this section before mentioned and shall be convicted thereof in like manner shall be imprisoned for such term not exceeding twelve months as the convicting justice shall think fit.

Stealing beasts or birds ordinarily kept in confinement and not the subjects of larceny.
Ib. s. 85.
Ib. s. 21.

Second offence.

87. If any such bird or any of the plumage thereof or any dog or any such beast or the skin thereof or any such animal or any part thereof shall be found in the possession or on the premises of any person, any justice may restore the same respectively to the owner thereof. And any person in whose possession or on whose premises such bird or the plumage thereof or such beast or the skin thereof or such animal or any part thereof shall be so found (such person knowing that the bird beast or animal has been stolen or that the plumage is the plumage of a stolen bird or that the skin is the skin of a stolen beast or that the part is a part of a stolen animal) shall on conviction before a justice be liable for the first offence to such forfeiture, and for every subsequent offence to such punishment, as any person convicted of stealing any beast or bird is made liable to by the last preceding section.

Penalties for possession of stolen beasts &c.
Ib. s. 86.
Ib. s. 22.

*"The Criminal
L. and P.
Statute 1894"*
s. 87.

Killing pigeons
&c.

24 & 25 Vict.
c. 96 s. 28.

Taking fish
in any water
situate in land
belonging to a
dwelling-house
or in a private
fishery else-
where.

Ib. s. 88.

Ib. s. 4.

88. Whosoever shall unlawfully and wilfully kill wound or take any house-dove or pigeon under such circumstances as shall not amount to larceny at common law, shall on conviction before a justice forfeit and pay over and above the value of the bird any sum not exceeding Two pounds.

89. Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water or having a right of fishery therein, shall be guilty of a misdemeanor. And whosoever shall unlawfully and wilfully take or destroy or attempt to take or destroy any fish in any water not being such as hereinbefore mentioned but which shall be private property or in which there shall be any private right of fishery, shall on conviction thereof before a justice forfeit and pay over and above the value of the fish taken or destroyed (if any) such sum of money not exceeding Five pounds as to the justice shall seem meet. Provided that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset; but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy or attempt to take or destroy any fish in any such water as first mentioned, shall on conviction before a justice forfeit and pay any sum not exceeding Five pounds; and if in any such water as last mentioned he shall on the like conviction forfeit and pay any sum not exceeding Two pounds as to the justice shall seem meet.

Tackle of fishers
may be seized.

Ib. s. 89.

Ib. s. 25.

90. If any person shall at any time be found fishing against the provisions of this Division of this Part of this Act, the owner of the ground water or fishery where such offender shall be so found his servant or any person authorized by him may demand from such offender any rod line hook net or other implement for taking or destroying fish which shall then be in his possession; and in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner. Provided always that any person angling against the said provisions between the beginning of the last hour before sunrise and the expiration of the first hour after sunset from whom any implements used by anglers shall be taken or by whom the same shall be delivered up as aforesaid, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling.

Stealing oysters
&c.

Ib. s. 90.

Ib. s. 26.

91. Whosoever shall steal any oysters or oyster brood from any oyster bed laying or fishery being the property of any other person and sufficiently marked out or known as such shall be guilty of felony; and being convicted thereof shall be liable to be punished as in the case of simple larceny. And whosoever shall unlawfully and wilfully use any dredge or any net instrument or engine whatsoever 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, or shall unlawfully and wilfully with any net instrument or engine drag upon

the ground or soil of any such fishery, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three months or to pay a fine not exceeding Twenty pounds. Provided that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net instrument or engine adapted for taking floating fish only.

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L. and P.
Statute 1864."*

Provide as to
floating fish.

(3) *Larceny of Written Instruments.*

92. Whosoever shall steal, or shall for any fraudulent purpose destroy cancel or obliterate 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 may relate, 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 valuable
securities.
Ib. s. 91.
24 & 25 Vict.
c. 96 s. 27.

93. Whosoever shall steal, or shall for any fraudulent purpose destroy cancel obliterate or conceal the whole or any part of any document of title to lands, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Stealing deeds
&c.
Ib. s. 92.
See ib. s. 28.

94. Whosoever shall either during the life of the testator or after his death steal, or for any fraudulent purpose destroy cancel obliterate or conceal the whole or any part of any will codicil or other testamentary instrument (whether the same shall relate to real or personal estate or to both) shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Stealing &c.
wills.
Ib. s. 93.
Ib. s. 29.

95. Nothing in either of the two last preceding sections mentioned nor any preceding conviction or judgment to be had or taken thereupon shall prevent lessen or impeach any remedy which any party aggrieved by any such offence as therein mentioned might or would have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action against him; and no person shall be liable to be convicted of any of the felonies in either of the two last preceding sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of any compulsory process of any court in any action or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in insolvency.

Other remedies
not to be
affected.
Ib. s. 94.
Ib. s. 29.

96. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being or from any person having the lawful custody thereof, or shall unlawfully and maliciously cancel obliterate injure or destroy, the whole or any part of any record writ return panel process bill petition answer interrogatory deposition affidavit rule order decree or warrant of attorney or of any original

Stealing records.
Ib. s. 95.
See ib. s. 30.

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Statute 1884."

document whatsoever of or belonging to the Supreme Court or any court of record or relating to any matter or cause civil or criminal begun depending or terminated in any such court, or of any original document in anywise relating to the business of any office or employment under Her Majesty and being or remaining in any office appertaining to any court of justice or in any Government or public office, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

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

Stealing fixtures.

Ib. s. 96.

Sec 24 & 25 Vict.
c. 96 s. 31.

97. Whosoever shall steal, or shall rip cut sever or break with intent to steal, any glass or wood-work belonging to any building whatsoever or any lead iron copper brass or other metal or any utensil or fixture whether made of metal or other material or of both respectively fixed in or to any building whatsoever, or anything made of metal fixed in any land being private property or for a fence to a dwelling-house garden or area 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 being convicted thereof shall be liable to be punished as in the case of simple larceny.

Stealing trees
&c. in parks.

Ib. s. 97.

Ib. s. 32.

98. Whosoever shall steal, or shall cut break root up or otherwise destroy or damage with intent to steal, the whole or any part of any tree sapling or shrub or any underwood respectively growing in any park pleasure ground garden orchard or avenue or in any ground adjoining or belonging to any dwelling-house, shall (in case the value of the article or articles stolen or the amount of the injury done shall exceed the sum of one pound) be guilty of felony; and being convicted thereof shall be liable to be punished as in the case of simple larceny. And whosoever shall steal, or shall cut break root up or otherwise destroy or damage with intent to steal, the whole or any part of any tree sapling or shrub or any underwood respectively growing elsewhere than in any of the situations in this section before mentioned, shall (in case the value of the article or articles stolen or the amount of the injury done shall exceed the sum of five pounds) be guilty of felony; and being convicted thereof shall be liable to be punished as in the case of simple larceny.

Stealing trees
&c. elsewhere.

Ib. s. 98.

Ib. s. 33.

99. Whosoever shall steal, or shall cut break root up or otherwise destroy or damage with intent to steal, the whole or any part of any tree sapling or shrub or any underwood wheresoever the same may be respectively growing, the stealing of such article or articles or the injury done being to the amount of one shilling at the least, shall on conviction thereof before a justice forfeit and pay, over and above the value of the article or articles stolen or the amount of the injury done, such sum of money not exceeding Five pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof, in like manner shall for such second offence be imprisoned for such term not exceeding twelve months as the convicting justice shall think fit. And whosoever having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after

the coming into operation of this Act) shall afterwards commit any of the offences in this section before mentioned, shall be guilty of felony; and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

100. Whosoever shall steal, or cut break up or otherwise damage or destroy with intent to steal, any dead wood lying on land in the occupation of another person, the stealing of such wood or the injury done being to the amount of one shilling at the least, shall on conviction thereof before a justice forfeit and pay, over and above the value of the wood stolen or the amount of injury done, such sum of money not exceeding Five pounds as to the justices shall seem meet. And whosoever having been convicted of any such offence against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof, in like manner shall for such second offence forfeit and pay over and above the value of the wood stolen or the amount of injury done such sum of money not exceeding Ten pounds as to the justice shall seem meet. And whosoever having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the coming into operation of this Act) shall afterwards commit any of the offences in this section before mentioned shall be guilty of felony; and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

*Stealing &c.
dead wood.
Ib. s. 99.*

101. Whosoever shall steal, or shall cut break or throw down with intent to steal, any part of any live or dead fence or any wooden post pale wire or rail set up or used as a fence or any stile or gate or any part thereof respectively, shall on conviction thereof before a justice forfeit and pay over and above the value of the article or articles so stolen or the amount of the injury done such sum of money not exceeding Five pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof, in like manner shall be imprisoned for such term not exceeding twelve months as the convicting justice shall think fit.

*Stealing fences.
Ib. s. 100.
24 & 25 Vict.
c. 96 s. 34.*

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

*Possession of
stolen wood.
Ib. s. 101.
Ib. s. 35.*

103. Whosoever shall steal, or shall destroy or damage with intent to steal, any plant root fruit or vegetable production growing in any garden orchard pleasure-ground nursery-ground hot-house green-house or conservatory, shall on conviction thereof before a justice at the discretion of the justice either be imprisoned for any term not exceeding six months or else shall forfeit and pay over and above the value of the article or articles so stolen or the amount of the injury done such

*Stealing fruit
&c. in garden
&c.
Ib. s. 102.
Ib. s. 36.*

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L. and P.
Statute 1864."

sum of money not exceeding Twenty pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the offences in this section before mentioned shall be guilty of felony; and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

Stealing vege-
tables &c. else-
where.

Ib. s. 103.

24 & 25 Vict.
c. 96 s. 37.

104. Whosoever shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast or for medicine or for distilling or for dyeing or for or in the course of any manufacture and growing in any land open or enclosed not being a garden orchard pleasure ground or nursery-ground, shall on conviction thereof before a justice at the discretion of the justice either be imprisoned for any term not exceeding one month or else shall forfeit and pay over and above the value of the article or articles so stolen or the amount of the injury done such sum of money not exceeding Twenty shillings as to the justice shall seem meet; and in default of payment thereof together with the costs (if ordered) shall be imprisoned for any term not exceeding one month unless payment be sooner made. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof, in like manner shall be imprisoned for such term not exceeding six months as the convicting justice shall think fit.

(5) *Larceny from Mines.*

Stealing from
mines.

Ib. s. 104.

See *ib.* s. 38.

105. Whosoever shall steal or sever with intent to steal any gold^(a) or the ore of any metal or any lapis calaminaris manganese or mundic or any wad black cawke or black lead or any coal or cannel coal from any mine^(b) bed or vein thereof respectively or from any claim or from any land comprised in any lease for mining purposes granted or to be granted by or on behalf of the Crown or the Governor or the Governor in Council, shall be guilty of felony; and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

Fraudulently
removing ore in
mines.

Ib. s. 105.

See *ib.* s. 39.

106. Whosoever being employed in or about any mine or claim or any land comprised in any such lease as aforesaid shall take remove or conceal any gold or the ore of any metal or any lapis calaminaris manganese mundic or other mineral found or being in such mine claim or land, with intent to defraud any proprietor of or any adventurer in such mine claim or land or any workman or miner employed therein, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Penalty for
concealing
royalty.

Ib. s. 106.

107. Whosoever being the holder of any lease issued under the provisions of any Act relating to the gold fields shall by any fraudulent device or contrivance defraud or attempt to defraud Her Majesty of any

(a) Gold may be considered as taken from a vein or bed within this section, though the gold may be in separate grains, separated by particles of earth, provided it be in its natural position *in situ*.—*Reg. v. Davies*, 6 W.W. & a'B. (L.), 246; N.C. 64.

(b) To constitute a place where mining operations are carried on a mine, there must be a shaft or something analogous to a shaft; but the distance of the shaft from the spot where the operations are being carried on makes no difference.—*Ibid.*

gold or money payable or reserved by such lease, or shall with such intent as aforesaid conceal or make a false statement as to the amount of any gold procured by him shall be guilty of a misdemeanor. "The Criminal L. and P. Statute 1804."

108. Whosoever with intent to defraud his co-partner co-adventurer joint tenant or tenant in common in any claim^(a) or in any share or interest in any claim shall secretly keep back or conceal any gold found in or upon or taken from such claim, shall be deemed to have been guilty of felony; and being convicted of the same shall be liable to be punished in the same manner as in the case of simple larceny. Punishment of fraud on partners. Ib. s. 107.

(6) *Larceny from the Person and like Offences.*

109. Whosoever shall rob any person or shall steal any chattel money or valuable security from the person of another shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Robbery. Ib. s. 108. 24 & 25 Vict. c. 96 s. 40.

110. Whosoever shall assault any person with intent to rob shall be guilty of felony; and being convicted thereof shall (save and except in the cases where a greater punishment is provided by this Act) be liable at the discretion of the court to be imprisoned for any term not exceeding three years. Assault with intent to rob. Ib. s. 109. Ib. s. 42.

111. Whosoever shall rob any person and at the time of or immediately before or immediately after such robbery shall wound any person, shall be guilty of felony; and being convicted thereof shall suffer death.^(b) Robbery with violence &c. Ib. s. 110. See ib. s. 43.

112. Whosoever shall being armed with any offensive weapon or instrument rob or assault with intent to rob any person, or shall together with one or more other person or persons rob or assault with intent to rob any person, or shall rob any person and at the time of or immediately before or immediately after such robbery shall beat strike or use any other personal violence to any person, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.^(c) Robbery under arms. Ib. s. 111. See ib. s. 43.

113. Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing demanding of any person with menaces and without any reasonable or probable cause any property chattel money valuable security or other valuable thing, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. Letter demanding money with menaces. Ib. s. 112. Ib. s. 44.

(a) A person was convicted under this section of keeping gold taken from a "claim." The evidence showed that the ground from which the gold was taken was held by the co-adventurers under lease from the Crown. *Held*, that the word "claim" did not include leased ground, and conviction quashed.—*Reg. v. Davies*, 2 V.R. (L.), 117.

(b) When a prisoner is charged under this section with an offence consisting of a felony and of a misdemeanor, the jury may convict him of the felony though they acquit him of the misdemeanor.—*Reg. v. Stewart and Sullivan*, 12 V.L.R., 567.

The prosecutor was station-master at O., and whilst he was standing at the door of the booking office of the station the prisoner came up and struck him a violent blow on the head, which

rendered him unconscious; while the prosecutor was on the ground, and before he became insensible, he heard the prisoner say, "Here goes for the cash-box." The prisoner took the money from the box, which was kept in a drawer inside the office. The jury convicted the prisoner of robbery and wounding under this section. *Held*, that the money was sufficiently within the custody of the prosecutor, and that the conviction was good.—*Reg. v. Grocock*, 14 V.L.R., 51.

(c) A presentment for robbery under arms from a servant of the property of his master, in the absence of the latter, is good, even before plea. Robbery under arms is merely robbery with an aggravation.—*Reg. v. De Theuvers*, 6 V.L.R. (L.), 23; 1 A.L.T., 134.

"The Criminal
L. and P.
Statute 1864"
s. 113.

Demanding
money with
menaces.

24 & 25 Vict.
c. 96 s. 45.

Letter threaten-
ing to accuse.

Ib. s. 114.

Ib. s. 46.

114. Whosoever shall with menaces or by force demand 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 being convicted thereof shall be liable to be imprisoned for any term not exceeding three years.

115. Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or imprisonment for five years or upwards or of any assault with intent to commit any rape or of any attempt or endeavour to commit any rape or of any infamous crime as hereinafter defined, with a view or intent in any of such cases to extort or gain by means of such letter or writing any property chattel money valuable security or other valuable thing from any person, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. And the abominable crime of buggery committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation persuasion promise or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act.

Accusing with
intent to extort.

Ib. s. 115.

Ib. s. 47.

116. Whosoever shall accuse or threaten to accuse either the person to whom such accusation or threat shall be made or any other person of any of the infamous or other crimes lastly hereinbefore mentioned, with a view or intent in any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused or from any other person any property chattel money valuable security or other valuable thing, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Inducing per-
sons by force to
execute deeds,
&c.

Ib. s. 116.

Ib. s. 48.

117. Whosoever with intent to defraud or injure any other person shall, by any unlawful violence to or restraint of or threat of violence to or restraint of the person of another or by accusing or threatening to accuse any person of any treason felony or infamous crime as hereinbefore defined, compel or induce 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Immaterial
whence menaces
proceed.

Ib. s. 117.

Ib. s. 49.

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

(7) *Sacrilige Burglary and Housebreaking.*

Sacrilige.

Ib. s. 118.

Ib. s. 50.

119. Whosoever shall break and enter any church chapel meeting-house or other place of divine worship and commit any felony therein, or being in any church chapel meeting-house or other place of divine

worship shall commit any felony therein and break out of the same, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. *"The Criminal L. and P. Statute 1864."*

120. Whosoever shall enter the dwelling-house of another with intent to commit any felony therein or being in such dwelling-house shall commit any felony therein and shall in either case break out of the said dwelling-house in the night, shall be deemed guilty of burglary. *Burglary by breaking out. Ib. s. 119. 24 & 25 Vict. c. 96 s. 51.*

121. Whosoever shall be convicted of the crime of burglary^(a) shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. *Punishment of burglary. Ib. s. 120. Ib. s. 52.*

122. Whosoever shall burglariously break and enter into any dwelling-house and shall assault with intent to murder any person being therein or shall wound beat or strike any such person shall be guilty of felony; and being convicted thereof shall suffer death. *Burglary with wounding. Ib. s. 121.*

123. No building although within the same curtilage with any dwelling-house and occupied therewith shall be deemed to be part of such dwelling-house for any of the purposes of this Division of this Part of this Act, unless there shall be 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. *What is part of a house. Ib. s. 122. Ib. s. 53.*

124. Whosoever shall enter any dwelling-house in the night with intent to commit any felony therein shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years. *Entering house at night with intent &c. Ib. s. 123. Ib. s. 54.*

125. Whosoever shall break and enter any building and commit any felony therein (such building being within the curtilage of a dwelling-house and occupied therewith but not being part thereof according to the provision hereinbefore mentioned) or being in any such building shall commit any felony therein and break out of the same shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. *Breaking into &c. building within curtilage. Ib. s. 124. Ib. s. 55.*

126. Whosoever shall break and enter any dwelling-house school-house shop warehouse or counting-house and commit any felony therein or being in any dwelling-house school-house shop warehouse or counting-house shall commit any felony therein and break out of the same shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. *Housebreaking &c. Ib. s. 125. Ib. s. 56.*

127. Whosoever shall break and enter any church chapel meeting-house or other place of divine worship or any dwelling-house or any building within the curtilage school-house shop warehouse or counting-house with intent to commit any felony therein shall be guilty of felony; *Housebreaking &c. with intent &c. Ib. s. 126. Ib. s. 57.*

(a) Breaking being an essential element in the crime of burglary, a conviction cannot stand unless there is some evidence that the prisoner entered the house by means of an actual or constructive breaking. A jury is not at liberty to infer—from the fact that the prisoner was seen in the house leaving by a window through which he must have entered, and that the stolen property was found upon him on fresh pursuit—that

the window had been opened by him.—*Reg. v. Payne*, 13 V.L.R., 359.

A prisoner and his wife were presented together on a charge of burglary. Both pleaded guilty and were convicted. On the question being afterwards raised whether the wife, as being presumed to have acted under the coercion of her husband, was rightly convicted. *Held*, that she was.—*Reg. v. Bolton*, 11 V.L.R., 776; 7 A.L.T., 95.

"The Criminal
L. and P.
Statute 1884."

Armed by night
with intent &c.
Ib. s. 127.
24 & 25 Vict.
c. 96 s. 68.

and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years.

128. Whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling-house or other building whatsoever and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key crow jack bit or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, or within any enclosed yard garden or area without lawful excuse (the proof of which excuse shall lie on such person) shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

Subsequent
offence of like
nature.
Ib. s. 128.
Ib. s. 69.

129. Whosoever shall be convicted of any such misdemeanor as in the last preceding section mentioned committed after a previous conviction either for felony or such misdemeanor shall on such subsequent conviction be liable at the discretion of the court to be imprisoned for any term not exceeding seven years.

(8) *Larceny in the House.*

Larceny in the
house.
Ib. s. 129.
Ib. s. 60.

130. Whosoever shall steal in any dwelling-house any chattel money or valuable security to the value in whole of five pounds or more shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Larceny with
menaces.
Ib. s. 130.
Ib. s. 61.

131. Whosoever shall steal any chattel money or valuable security in any dwelling-house and shall by any menace or threat put any one being therein in bodily fear shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

(9) *Larcenies in Manufactories &c.*

Stealing goods in
process of manu-
facture.
Ib. s. 131.
Ib. s. 62.

132. Whosoever shall steal to the value of ten shillings any woollen linen hempen or cotton yarn or any goods or article of silk woollen 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Selling pawning
&c. goods
entrusted for
manufacture.
Ib. s. 132.

133. Whosoever having been entrusted for the purpose of manufacture or for a special purpose connected with manufacture or who shall be employed to make any felt or hat or to prepare or work up any woollen linen fustian cotton iron leather fur hemp flax cotton silk or any such materials mixed one with another or having been so entrusted as aforesaid with any other article materials fabric or thing or with any tools or apparatus for manufacturing the same shall sell pawn purloin secrete embezzle exchange or otherwise fraudulently dispose of the same or any

part thereof, shall (where the case shall not fall within the last preceding section hereof) be guilty of a misdemeanor.

"The Criminal L. and P. Statute 1864."

134. Whosoever having been entrusted or employed as in the last preceding section mentioned shall not use all the articles materials or things with or in respect of which he shall have been so as aforesaid entrusted or employed and shall neglect or delay for the space of thirty days after the work for or in respect of which he shall have been so entrusted or employed has been completed to return (if required in writing by the owner of such articles materials or things so to do) so much thereof as shall not be used as aforesaid to the person or persons entrusting him therewith, such neglect or delay shall be deemed to be a fraudulent disposition of such articles materials or things so not used as aforesaid within the meaning of the said section. But no offender against either this or the last preceding section shall be liable to prosecution unless proceedings be commenced against such offender within six calendar months next after the offence shall have been committed.

Neglecting to return unused materials.
Ib. s. 133.

(10) *Larceny in Ships Wharfs &c.*

135. Whosoever shall steal any goods or merchandise in any vessel barge or boat of any description whatsoever in any haven or in any port of entry or discharge or upon any navigable river or canal or in any creek or basin belonging to or communicating with any such haven port river or canal or shall steal any goods or merchandise from any dock wharf or quay adjacent to any such haven port river canal creek or basin, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Stealing from ships &c.
Ib. s. 134.
24 & 25 Vict. c. 96 s. 63.

136. Whosoever shall plunder or steal any part of any ship or vessel which shall be 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Stealing from ships in distress.
Ib. s. 135.
Ib. s. 64.

137. If any goods merchandise or articles of any kind belonging to any ship or vessel in distress or wrecked stranded or cast on shore shall be found in the possession of any person or on the premises of any person with his knowledge and such person being taken or summoned before a justice shall not satisfy the justice that he came lawfully by the same, then the same shall by order of the justice be forthwith delivered over to or for the use of the rightful owner thereof; and the offender shall on conviction of such offence before the justice at the discretion of the justice either be imprisoned for any term not exceeding six months, or else shall forfeit and pay over and above the value of the goods merchandise or articles such sum of money not exceeding Twenty pounds as to the justice shall seem meet.

Possession of wrecked property.
Ib. s. 136.
Ib. s. 65.

138. If any person shall offer or expose for sale any goods merchandise or articles whatsoever which shall have been unlawfully taken or shall be reasonably suspected so to have been taken from any ship or vessel in distress or wrecked stranded or cast on shore, in every such case any person to whom the same shall be offered for sale or any officer of the customs or excise or peace officer may lawfully seize the same and

Offering wrecked property for sale.
Ib. s. 137.
Ib. s. 66.

^a *The Criminal L. and P. Statute 1864.*

shall with all convenient speed carry the same or give notice of such seizure to some justice. And if the person who shall have offered or exposed the same for sale being summoned by such justice shall not appear and satisfy the justice that he came lawfully by such goods merchandise or articles, then the same shall by order of the justice be forthwith delivered over to or for the use of the rightful owner thereof upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender shall on conviction of such offence by the justice at the discretion of the justice either be imprisoned for any term not exceeding six months or else shall forfeit and pay over and above the value of the goods merchandise or articles such sum of money not exceeding Twenty pounds as to the justice shall seem meet.

(11) *Larceny or Embezzlement by Clerks Servants or Persons in the Public Service.*

Larceny by clerks or servants.

Id. s. 139.

24 & 25 Vict. c. 96 s. 67.

139. Whosoever being a clerk or servant or being employed for the purpose or in the capacity of a clerk or servant shall steal any chattel money or valuable security belonging to or in the possession or power of his master or employer shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Embezzlement by clerks or servants.

Id. s. 139.

Id. s. 68.

140. Whosoever being a clerk or servant^(a) or being employed for the purpose or in the capacity of a clerk or servant shall fraudulently embezzle^(b) any chattel money or valuable security which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer or any part thereof,^(c) shall be deemed to have feloniously stolen the same from his master or employer, although such chattel money or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk servant or other person so employed; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

(a) The prisoner was convicted of embezzling the moneys of a friendly society. He was treasurer of the society, and its rules provided that the treasurer should be paid in accordance with a resolution of the society. He had been acting for some time, but no resolution for paying him had been passed. *Held*, that the prisoner was "a clerk or servant" of the society, as he might under the rule enforce some payment. *Seem*, that even if he were to receive no remuneration the conviction could be sustained. — *Reg. v. Cantlon*, 5 W.W. & A.B. (L.), 24.

(b) S., being clerk and traveller of N.B. and Co., became indebted to P. and J., who were indebted to N.B. and Co. S. fraudulently gave P. and J. credit for moneys due from them to N.B. and Co., and P. and J. thereupon gave S. credit and a receipt for the money due from him to them. *Held*, that S. could not be convicted of embezzling the money which S. had thus purloined. — *Reg. v. Sydenham*, 2 W. & W. (L.), 16.

Evidence of a general deficiency held sufficient to support a conviction for embezzlement. — *Reg. v. Monckton*, 3 W.W. & A.B. (L.), 25, affirming *Reg. v. Ashford*, 2 W. & W. (L.), 171.

Proof of a general deficiency without proof of the embezzlement of a specific sum is sufficient evidence of embezzlement. — *Reg. v. Macey*, 1 A.J.R., 151.

Embezzlement is an act of the mind as distinguished from larceny; but the evidence of the act consists of overt acts contemporaneous with, or happening long after the appropriation; and in an indictment for embezzlement, *Seem*, it is a question for the jury (*Williams, J., dubitante*), and not for the judge, to decide what is the fair conclusion to be drawn from the overt act and the rest of the evidence. Where a cheque is passed by a clerk in a bank into the coffers of the bank to his own credit and not according to the direction with which it was accompanied when received by the clerk in the course of his duty, and his subsequent acts are not inconsistent with a felonious intention, there is evidence to go to a jury of embezzlement. — *Reg. v. Draper*, 1 V.R. (L.), 39.

(c) It is not necessary that the taking should be in the course of the accused's duty. — *Reg. v. Turner*, 2 V.R. (L.), 84.

141. Whosoever being employed in the public service of Her Majesty in Victoria shall steal any chattel money or valuable security belonging to or in the possession or power of Her Majesty or entrusted to or received or taken into possession by him by virtue of his employment, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

"The Criminal L. and P. Statute 1864." s. 140.
Larceny by persons in Her Majesty's service.
24 & 25 Vict. c. 96 s. 69.

142. Whosoever, being employed in the public service^(a) of Her Majesty in Victoria and entrusted by virtue of such employment with the receipt custody management or control of any chattel money or valuable security shall embezzle any chattel money or valuable security which shall be entrusted to or received or taken into possession by him by virtue of his employment or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit or for any purpose whatsoever except for the public service or the use or benefit of the person for or on whose account or for whose use or benefit the same shall have been entrusted to or received by him or have come to his possession or control, shall be deemed to have feloniously stolen the same from Her Majesty; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Embezzlement by persons in Her Majesty's service.
Ib. s. 141.
See ib. s. 70.
7 & 8 Geo. IV c. 129.

(12) *Falsification of Accounts by Clerk Servant &c.*

143. If any clerk officer or servant, or any person employed or acting in the capacity of a clerk officer or servant, shall wilfully and with intent to defraud destroy alter mutilate or falsify 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, or shall wilfully and with intent to defraud make or concur in making any false entry in or omit or alter or concur in omitting or altering any material particular from or in any such book or any document or account, then in every such case the person so offending shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding seven years.

Punishment for falsification of accounts &c.
"The Falsification of Accounts Act 1880" s. 3.
38 & 39 Vict. c. 24 s. 1.

144. It shall be sufficient in any indictment or presentment under the last preceding section to allege a general intent to defraud without naming any particular person intended to be defrauded.

Intention to defraud sufficient indictment.
Ib. s. 4.
Ib. s. 2.

(13) *Larceny by Tenants or Lodgers.*

145. Whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her or by her husband or by any person on behalf of him or her or her husband, shall be guilty of felony; and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

Stealing by tenants and lodgers.
"The Criminal L. and P. Statute 1864" s. 142.
24 & 25 Vict. c. 96 s. 74.

(a) Where a person in the *de facto* employment of the Government receives money by virtue of such employment and appropriates it to his own use, he is guilty of embezzlement within this section; and it is immaterial whether the duty to receive such money was cast upon him by virtue

of his appointment by the Governor in Council, or by departmental practice or orders; or whether the regulations or instructions under which he received them were *ultra vires*.—*Reg. v. O'Ferrall*, 1 V.L.R. (L.), 81.

(14) *Frauds by Agents Bankers or Factors.*

"The Criminal
L. and P.
Statute 1864"
s. 143.
Agents bankers
&c. embezzling
property.
24 & 25 Vict.
c. 96 s. 76.

146. Whosoever having been entrusted either solely or jointly with any other person as a banker merchant broker attorney or other agent with any money or security for the payment of money with any direction in writing^(a) to apply pay or deliver such money or security or any part thereof respectively or the proceeds or any part of the proceeds of such security for any purpose or to any person specified in such direction, shall in violation of good faith and contrary to the terms of such direction in anywise convert to his own use or benefit or the use or benefit of any person other than the person by whom he shall have been so entrusted such money security or proceeds or any part thereof respectively; and whosoever, having been entrusted either solely or jointly with any other person as a banker merchant broker attorney or other agent with any chattel or valuable security or any power of attorney for the sale or transfer of any share or interest in any public stock or fund whether of the United Kingdom or any part thereof or of Victoria or any other British colony or of any foreign State or in any stock or fund in any body corporate company or society for safe custody or for any special purpose without any authority to sell negotiate transfer or pledge, shall in violation of good faith and contrary to the object or purpose for which such chattel security or power of attorney shall have been entrusted to him sell negotiate transfer pledge or in any manner convert to his own use or benefit or the use or benefit of any person other than the person by whom he shall have been so entrusted such chattel or security or the proceeds of the same or any part thereof or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years. But nothing in this section contained relating to agents shall affect any trustee in or under any instrument whatsoever or any mortgagee of any property real or personal in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker merchant broker attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security according to the tenor and effect thereof in such manner as he might have done if this Act had not been passed nor from selling transferring or otherwise disposing of any securities or effects in his possession upon which he shall have any lien claim or demand entitling him by law so to do, unless such sale transfer or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien claim or demand.

(a) A general direction in writing for the appropriation of all moneys to be received is sufficient to support a conviction for the misappropriation of one sum.—*Reg. v. Spencer*, 3 V.L.R. (L.), 280.

A conviction for the conversion by an agent of money contrary to the direction in writing of his employer may be sustained though the direction in writing provided for the payment by the prisoner of a fixed rate (called interest, but independent of time) for all moneys which should be unpaid by the prisoner on the expiration of a time

limited by the direction.—*Reg. v. Watson*, 4 V.L.R. (L.), 174.

The offence of embezzlement may be committed in respect of debts due to the employer, collected by his authority by the servant and paid into a banking account opened by the employer for the purpose of being operated upon by the servant in his master's business; though the servant charged himself with the sums misappropriated in accounts furnished to his employer.—*Reg. v. Church*, 9 V.L.R. (L.), 153.

147. Whosoever, 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, shall 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 make any consignment deposit transfer or delivery of any goods or document of title so entrusted to him as in this section before mentioned as and by way of a pledge lien or security for any money or valuable security borrowed or received by such factor or agent at or before the time of making such consignment deposit transfer or delivery or intended to be thereafter borrowed or received, or shall contrary to or without such authority 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 accept 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 misdemeanor; and being convicted thereof shall be liable at the discretion of the court to such punishment as in the last preceding section mentioned. And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to the like punishment. Provided that no such factor or agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents 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 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.

"The Criminal
L. and P.
Statute 1864"
s. 144.

Factors fraudu-
lently obtaining
advances on
property.
24 & 25 Vict
c. 96 s. 73

148. Any factor or agent entrusted as aforesaid and possessed of any such document of title, whether derived immediately from the owner of such goods or obtained by reason of such factor or agent having been entrusted with the possession of the goods or of any other document of title thereto, shall be deemed to have been entrusted with the possession of the goods represented by such document of title; and every contract pledging or giving a lien upon such document of title as aforesaid shall be deemed to be a pledge of and lien upon the goods to which the same relates; and such factor or agent shall be deemed to be possessed of such goods or document whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf; and where any loan or advance shall be *bonâ fide* made 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 shall actually be 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 within the meaning of the last preceding section, though such goods or document of title shall not actually

Definition of
terms relating to
factor.

7b. s. 145.

7b. s. 79.

"The Criminal
L. and P.
Statute 1864."

be received by the person making such loan or advance till the period subsequent thereto: and any contract or agreement whether made direct with such factor or agent or with any clerk or other person on his behalf shall be deemed a contract or agreement with such factor or agent; and 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 the last preceding section; and a factor or agent in possession as aforesaid of such goods or document shall be taken, for the purposes of the last preceding section, to have been entrusted therewith by the owner thereof, unless the contrary be shown in evidence.

All questions
must be
answered.
Ib. s. 146.
24 & 25 Vict.
c. 36 s. 85.

149. Nothing in any of the last three preceding sections of this Act contained shall enable or entitle any person to refuse to make a full and complete discovery in any civil proceeding in any court or to answer any question or interrogatory in any such proceeding or upon the hearing of any matter in insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of any compulsory process of any court of law or equity in any action suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in insolvency.

Nothing to im-
peach remedies
of others.

Ib. s. 147.
See ib. s. 86.

150. Nothing in any of the last four preceding sections of this Act contained nor any proceeding conviction or judgment to be had or taken thereon against any person under any of the said sections shall prevent lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him.

General sessions
jurisdiction.
Ib. s. 148.
Ib. s. 87.

151. No misdemeanor against any of the last five preceding sections of this Act shall be prosecuted or tried at any court of general sessions of the peace.

(15) *Frauds by Bankers Trustees &c.*

Bankers &c.
fraudulently
selling &c. pro-
perty entrusted
to their care.

"The Criminal
L. and P.
Amend. Stat.
1871" s. 8.
Ib. s. 76.

152. Whosoever being a banker merchant broker attorney or agent, and being entrusted either solely or jointly with any other person with the property of any other person for safe custody shall with intent to defraud sell negotiate transfer pledge or in any manner convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so entrusted, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years.

Persons under
powers of
attorney fraudu-
lently selling
property.
Ib. s. 9.
Ib. s. 77.

153. Whosoever being entrusted either solely or jointly with any other person with any power of attorney for the sale or transfer of any property shall fraudulently sell or transfer or otherwise convert the same or any part thereof to his own use or benefit or to the use or benefit of any person other than the person by whom he was so entrusted shall be guilty of a misdemeanor, and being convicted thereof

shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years. "The Criminal L. and P. Amend. Stat. 1871."

154. Whosoever being a trustee^(a) of any property for the use or benefit either wholly or partially of some other person or for any public or charitable purpose shall with intent to defraud convert or appropriate the same or any part thereof to or for his own use or benefit or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years. Provided that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of a law officer.^(b) Provided also that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the court or judge before whom such civil proceeding shall have been had or shall be pending. Trustees fraudulently disposing of property. *Ib.* s. 10. 24 & 25 Vict. c. 96 s. 80.

155. Whosoever being a member of any co-partnership or being one of two or more beneficial owners of any property shall steal or embezzle any such property of or belonging to any such co-partnership or such joint beneficial owners shall be liable to be dealt with tried convicted and punished for the same as if such person had not been or was not a member of such co-partnership or one of such beneficial owners. Partner guilty of converting to his own use &c. property of partnership liable to be tried as if not partner. *Ib.* s. 11. 31 & 32 Vict. c. 116.

(16) *Frauds by Directors Officers &c. of Companies.*

156. Whosoever being a director member manager or officer of any body corporate or public company shall fraudulently take or apply 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 misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years. Directors &c. of body corporate or public company fraudulently appropriating property. *Ib.* s. 12. 24 & 25 Vict. c. 96 s. 81.

157. Whosoever being a director manager or officer of any body corporate or public company shall as such receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall with intent to defraud omit to make or to cause 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 misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding seven years. Or keeping fraudulent accounts. *Ib.* s. 13. *Ib.* s. 82.

158. Whosoever being a director member manager or officer^(c) of any body corporate or public company shall with intent to defraud destroy alter mutilate or falsify any book paper writing or valuable Or wilfully destroying books &c. *Ib.* s. 14. *Ib.* s. 83.

(a) An executor is within this section, although there be no express trust created by the will.—*Reg. v. Taylor*, 1 V.R. (L.), 84; 1 A.J.R., 80.

(b) The sanction of a law officer is sufficiently proved by a document signed, but not *quid* law officer, by a person admitted to have been a law

officer at the time he so signed.—*Reg. v. Taylor*, 1 V.R. (L.), 84; 1 A.J.R., 80.

(c) The word "officer" in this section must be popularly interpreted, and includes an assistant-manager of a bank.—*Reg. v. Draper*, 1 V.R. (L.), 118; 1 A.J.R., 94.

"The Criminal
L. and P.
Amend. Stat.
1871."

security belonging to the body corporate or public company or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of account or other document, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding seven years.

Or publishing
fraudulent
statements.
Ib. s. 15.
24 & 25 Vict.
c. 96 s. 84.

159. Whosoever being a director manager or officer of any body corporate or public company shall make circulate or publish or concur in making circulating or publishing any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member shareholder or creditor of such body corporate or 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 misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years.

No person to be
exempt from
answering
questions in any
court, but no
person making
a disclosure in
any compulsory
proceeding to
be liable to
prosecution.
Ib. s. 16.
Ib. s. 85.

160. Nothing in any of the last eight preceding sections of this Act contained shall enable or entitle any person to refuse to make a full and complete discovery in any civil proceeding in any court, or to answer any question or interrogatory in any such proceeding, or upon the hearing of any matter in insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of any compulsory process of any court of law or equity in any action suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in insolvency.

No remedy at
law or in equity
shall be affected.
Ib. s. 17.
Ib. s. 86.

Convictions shall
not be received
in evidence in
civil suits.

161. Nothing in any of the last nine preceding sections of this Act contained nor any proceeding conviction or judgment to be had or taken thereon against any person under any of the said sections shall prevent lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained 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.

Neglecting to
call meetings of
company.
Ib. s. 18.

162. Whosoever being a director manager or officer of any body corporate or public company shall wilfully neglect or refuse to convene any meeting of the body corporate or public company in accordance with the provisions of any Act now or hereafter to be in force or any by-laws rules regulations articles or memorandum of association or deed of partnership relating to such body corporate or public company shall be guilty of a misdemeanor, and being convicted thereof shall be imprisoned for any term not exceeding three years.

163. Every person who with intent to defraud shall make any false entry or shall falsely alter any entry made in any book of accounts kept by any corporation or in any book of accounts or pass-book kept by any such corporation or its officers and delivered or intended to be delivered to any firm or person dealing with such corporation by which any pecuniary obligation claim or credit shall be or shall purport to be discharged diminished increased created or in any manner affected shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding five years.

"The Criminal L. and P. Amend. Stat. 1871" s. 19.
Falsifying account or pass book.

164. No misdemeanor against any of the last twelve preceding sections shall be prosecuted or tried at any court of general sessions of the peace.

Certain misdemeanors not triable at sessions.
Ib. s. 20.
24 & 25 Vict. c. 96 s. 87.

(17) *Obtaining Money &c. by False Pretences.*

165. Whosoever shall by any false pretence^(a) obtain from any other person any chattel money or valuable security with intent to defraud shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

False pretences.
"The Criminal L. and P. Statute 1864" s. 149.
See *ib.* s. 88.

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

Where property delivered to another.
Ib. s. 159.
Ib. s. 89.

167. Whosoever with intent to defraud or injure any other person shall by any false pretence fraudulently cause or induce any other person to execute make accept endorse 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 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 misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Inducing persons by fraud to execute deeds.
Ib. s. 151.
Ib. s. 90.

(a) On a charge of obtaining money by false pretences, it is not necessary either to allege or prove whose the property was; it is sufficient to show that it did not belong to the prisoner.—*Reg. v. Halliday*, 5 W.W. & A.B. (L.), 33.

A person who obtains a loan upon the security of a deposit of deeds which he represents to be the true and only title deeds of the land conveyed by them, after he has himself brought that land under the "Transfer of Land Act" and obtained a certificate of title thereto, is rightly convicted of having obtained money or valuable securities by means of false pretences.—*Reg. v. Thompson*, 3 V.L.R. (L.), 12.

S. sold an hotel to W., representing that it would be free from incumbrances. At the time of the sale there was a bill of sale over the hotel, and immediately after possession was given the assignee, under the bill entered upon the hotel. Held, that there was no false pretence, for if the

acceptance for which the bill of sale was security had been paid there would have been no incumbrances on the hotel, and therefore there was no misrepresentation as to an existing fact; the representation was as to what S. would do in the future, and conviction quashed.—*Reg. v. Savage*, 4 A.J.R., 165.

In obtaining money by false pretences by means of a cheque it makes no difference that the cheque is post-dated. The false pretence must relate to an existing fact; and if the fact exist that the prisoner when he gave the cheque had no funds or any reasonable expectation of having funds to meet it, it makes no difference that the cheque is post-dated.—*Reg. v. Bathurst*, 1 A.J.R., 40.

A pretence of an existing fact is sufficient to support a conviction, although it is accompanied with promises to do an act at a future time.—*Reg. v. Apfel*, 3 V.R. (L.), 172.

"The Criminal
L. and P.
Statute 1894"
s. 152.

Taking a reward
for restoring
stolen property.
24 & 25 Vict.
c. 96 s. 161.

Advertising a
reward for
restoring such
property.
Ib. s. 153.
Ib. s. 102.

168. Whosoever shall corruptly take any money or reward directly or indirectly under pretence or upon account of helping any person to any chattel money valuable security or other property whatsoever which shall by any felony or misdemeanor have been stolen taken obtained extorted embezzled converted or disposed of as in this Act before mentioned, shall (unless he shall have used all due diligence to cause the offender to be brought to justice for the same) be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

169. Whosoever shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost without seizing or making any inquiry after the person producing such property, or shall promise or offer 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 property stolen or lost the money so paid or advanced or any other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of Fifty pounds for every such offence to any person who will sue for the same by action to be recovered with full costs of suit.

DIVISION 3.—MALICIOUS INJURIES TO PROPERTY.

(1) *Injuries by Fire to Buildings and Goods therein.*

Setting fire to
church &c.
Ib. s. 154.
24 & 25 Vict.
c. 97 s. 1.

170. Whosoever shall unlawfully and maliciously set fire to any church chapel meeting-house or other place of divine worship, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Setting fire to
house any one
being in it.
Ib. s. 155.
See ib. s. 2.

171. Whosoever shall unlawfully and maliciously set fire to any dwelling-house any person being therein, shall be guilty of felony; and being convicted thereof shall suffer death.

Setting fire to
house shop
warehouse &c.
Ib. s. 156.
Ib. s. 3.

172. Whosoever shall unlawfully and maliciously set fire to any house stable coach-house outhouse warehouse office shop mill malt-house hop-oast barn store-house granary hovel^(a) 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 shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Setting fire to
railway
buildings.
Ib. s. 157.
Ib. s. 4.

173. Whosoever shall unlawfully and maliciously set fire to any station engine-house warehouse or other building belonging or appertaining to any railway port dock or harbor or to any canal or other navigation, shall be guilty of felony; and being convicted thereof shall

(a) A bark hut which has been used as a dwelling may be the subject of the offence of arson, though there be no evidence of any con-

veyance, and though the land on which it stood be Crown land.—*Reg. v. Rowden*, 2 V.L.R. (L.), 230.

be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. *"The Criminal L. and P. Statute 1864."*

174. Whosoever shall unlawfully and maliciously set fire to any building other than such as are in this Division of this Part of this Act before mentioned belonging to the Queen or to the Government of Victoria or to the council or body corporate of any city town borough or shire or belonging to any university or devoted or dedicated to public use or ornament or erected or maintained by public subscription or contribution, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. Setting fire to public buildings.
Ib. s. 158.
24 & 25 Vict.
c. 97 s. 5.

175. Whosoever shall unlawfully and maliciously set fire to any building other than such as are in this Division of this Part of this Act before mentioned, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Setting fire to other buildings.
Ib. s. 159.
Ib. s. 6.

176. Whosoever shall unlawfully and maliciously set fire to any matter or thing being in against or under any building, under such circumstances that if the building were thereby set fire to the offence would amount to felony, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Setting fire to goods in buildings.
Ib. s. 160.
Ib. s. 7.

177. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any building or any matter or thing being such as in the last preceding section mentioned, under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Attempting to set fire to buildings.
Ib. s. 161.
Ib. s. 3.

(2) *Injuries by Explosive Substances to Buildings and Goods therein.*

178. Whosoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance destroy throw down or damage the whole or any part of any dwelling-house any person being therein, and whosoever shall unlawfully and maliciously by such explosion destroy throw down or damage the whole or any part of any building so that the life of any person shall be thereby endangered, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years. Destroying &c. houses by gunpowder &c.
Ib. s. 162.
Ib. s. 9.

179. Whosoever shall unlawfully and maliciously place or throw 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 take place and whether or not any damage be caused) be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Attempting so to do.
Ib. s. 163.
Ib. s. 10.

(3) *Injuries to Buildings &c. by Rioters.*

"The Criminal
L. and P.
Statute 1864"
s. 164.
Rioters
demolishing
buildings.
24 & 25 Vict.
c. 97 s. 11.

180. If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force demolish or pull down or destroy or begin to demolish pull down or destroy any church chapel meeting-house or other place of divine worship, or any house stable coach-house outhouse warehouse office shop mill malthouse hop-oast barn granary shed hovel or fold, or any building or erection used in farming land or in carrying on any trade or manufacture or any branch thereof, or any building other than such as are in this section before mentioned belonging to the Queen or the Government of Victoria or to the council or body corporate of any city town borough or shire or belonging to any university, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery (whether fixed or movable) prepared for or employed in any manufacture or in any branch thereof, or any steam-engine or other engine for sinking working ventilating or draining any mine, or any staith building or erection used in conducting the business of any mine or any bridge waggon-way tramway trunk or shoot for conveying minerals from any mine, every such offender shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Rioters injuring
buildings.
Ib. s. 165.
See ib. s. 12.

181. If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force injure or damage any such church chapel meeting-house place of divine worship house stable coach-house out-house warehouse office shop mill malthouse hop-oast barn granary shed hovel fold building erection machinery engine staith bridge waggon-way tramway trunk or shoot as in the last preceding section mentioned, every such offender shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

(4) *Injuries to Buildings by Tenants.*

Tenants injuring
buildings.
Ib. s. 166.
Ib. s. 13.

182. Whosoever 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 less term or at will or held over after the termination of any tenancy shall unlawfully and maliciously pull down or demolish, or begin to pull down or demolish the same or any part thereof, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling-house or building or part of such dwelling-house or building, shall be guilty of a misdemeanor.

(5) *Injuries to Manufactures Machinery &c.*

Injuries to
manufactures.
Ib. s. 167.
Ib. s. 14.

183. Whosoever shall unlawfully and maliciously cut break or destroy or damage with intent to destroy or to render useless any goods or article of silk woollen 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, or 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, or shall unlawfully and maliciously cut break or destroy or damage with intent to destroy or to render useless any warp or shute of silk woollen linen cotton hair mohair or alpaca or of any one or more of these materials mixed with each other or mixed with any other material, or shall unlawfully and maliciously cut break or destroy or damage with intent to destroy or render useless any loom frame machine engine rack tackle tool or implement (whether fixed or moveable) prepared for and employed in carding spinning throwing weaving fulling shearing or otherwise manufacturing or preparing any such goods or articles, or shall by force enter 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

184. Whosoever shall unlawfully and maliciously cut break or destroy or damage with intent to destroy or to render useless any machine or engine (whether fixed or moveable) used or intended to be used for sowing reaping mowing threshing ploughing or draining or for performing any other agricultural operation, or any machine or engine or any tool or implement (whether fixed or moveable) prepared for or employed in any manufacture whatsoever (except the manufacture of silk woollen linen cotton hair mohair or alpaca goods or goods of any one or more of those materials mixed with each other or mixed with any other material or any framework-knitted piece stocking hose or lace) shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

*"The Criminal
I., and P.
Statute 1864."*

*Injuries to
machinery.
Ib. s. 168.
24 & 25 Vict
c. 97 s. 15.*

(6) *Injuries to Corn Trees and Vegetable Productions.*

185. Whosoever shall unlawfully and maliciously set fire to any crop of hay grass corn grain or pulse or of any cultivated vegetable produce whether standing or cut down, or to any part of any wood coppice or plantation of trees, or to any heath gorse furze or fern wheresoever the same may be growing, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding five years.

*Setting fire to
crops of corn &c.
Ib. s. 169.
Ib. s. 16.*

186. Whosoever shall unlawfully and maliciously set fire to any stack of corn grain pulse tares hay straw haulm stubble, or of any cultivated vegetable produce or of furze gorse heath fern turf peat coals, charcoal wood or bark, or to any steer of wood or bark, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

*Setting fire to
stacks of corn
&c.
Ib. s. 170.
Ib. s. 17.*

187. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any such matter or thing as in either of the last two preceding sections mentioned, under such circumstances that if the same were thereby set fire to the offender would be under either of such sections guilty of felony, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

*Attempts &c.
Ib. s. 171.
Ib. s. 18.*

"The Criminal
L. and P.
Statute 1804"
s. 172.

Destroying hop-
binds &c.

24 & 25 Vict.
c. 97 s. 19.

Destroying trees
in gardens &c.

Ib. s. 173.

Ib. s. 20.

188. Whosoever shall unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

189. Whosoever shall unlawfully and maliciously cut break bark root up or otherwise destroy or damage the whole or any part of any tree sapling or shrub or any underwood growing in any park pleasure-ground garden orchard or avenue or in any ground adjoining or belonging to any dwelling-house (in case the amount of the injury done shall exceed the sum of One pound), shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Destroying trees
elsewhere.

Ib. s. 174.

Ib. s. 21.

190. Whosoever shall unlawfully and maliciously cut break bark root up or otherwise destroy or damage the whole or any part of any tree sapling or shrub or any underwood growing elsewhere than in any park pleasure-ground garden orchard or avenue or in any ground adjoining to or belonging to any dwelling-house (in case the amount of injury done shall exceed the sum of Five pounds), shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Damaging &c.
any tree where-
soever growing.

Ib. s. 175.

Ib. s. 22.

191. Whosoever shall unlawfully and maliciously cut break bark root up or otherwise destroy or damage the whole or any part of any tree sapling or shrub or any underwood wheresoever the same may be growing, the injury done being to the amount of One shilling at the least, shall on conviction thereof before a justice at the discretion of the justice either be imprisoned for any term not exceeding three months; or else shall forfeit and pay over and above the amount of injury done such sum of money not exceeding Five pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof in like manner, shall for such second offence be imprisoned for such term not exceeding twelve months as the convicting justice shall think fit; and whosoever having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the passing of this Act) shall afterwards commit any of the said offences in this section before mentioned, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Destroying &c.
fruit or vego-
tables in garden.

Ib. s. 176.

Ib. s. 23.

192. Whosoever shall unlawfully and maliciously destroy or damage with intent to destroy any plant root fruit or vegetable production growing in any garden orchard nursery-ground hothouse greenhouse or conservatory, shall on conviction thereof before a justice at the discretion of the justice either be imprisoned for any term not exceeding six months; or else shall forfeit and pay over and above the amount of the injury done such sum of money not exceeding Twenty pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before

mentioned, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

193. Whosoever shall unlawfully and maliciously destroy or damage with intent to destroy any cultivated root or plant used for the food of man or beast or for medicine or for distilling or for dyeing or for or in the course of any manufacture and growing in any land open or enclosed not being a garden orchard or nursery ground, shall on conviction thereof before a justice at the discretion of the justice either be imprisoned for any term not exceeding one month; or else shall forfeit and pay over and above the amount of the injury done such sum of money not exceeding Twenty shillings as to the justice shall seem meet; and in default of payment thereof together with the costs (if ordered) shall be imprisoned for any term not exceeding one month, unless payment be sooner made. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof, in like manner shall be imprisoned for such term not exceeding six months as the convicting justice shall think fit.

Destroying &c.
plants else-
where.
Ib. s. 177.
24 & 25 Vict.
c. 97 s. 24.

(7) *Injuries to Fences.*

194. Whosoever shall unlawfully and maliciously cut break throw down or in anywise destroy any fence of any description whatsoever or any wall stile or gate or any part thereof respectively, shall on conviction thereof before any justice for the first offence forfeit and pay over and above the amount of the injury done such sum of money not exceeding Five pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner shall be imprisoned for such term not exceeding twelve months as the convicting justice shall think fit. Provided that no claim of right or title shall oust the jurisdiction of the said justice, but the said justice may and shall inquire into the whole circumstances of the case, and may convict any person offending notwithstanding that such person claims to be or is in fact jointly interested with some other person in the property alleged to have been injured.^(a)

Destroying &c.
fences.
Ib. s. 178.
Ib. s. 25.

"The Criminal
L. and P.
Amend. Stat.
1871" s. 23.

(a) Though this proviso provides that no claim of right or title shall oust the jurisdiction of justices upon an information laid under this section for destroying fences, yet it may be shown that the defendant was removing a fence which obstructed him in the exercise of his right of passage.—*Reg. v. Guthridge and Brennan, ex parte Campbell*, 4 V.L.R. (L.), 77.

On an information for unlawfully and maliciously cutting or breaking down a fence, a *bonâ fide* claim of right or title to the fence by defendant ousts the jurisdiction of the justices unless such right or title is jointly with the person in whom the property is laid in the information. The proviso applies only to such a case of joint ownership.—*Williams v. Clausen*, 6 V.L.R. (L.), 29; 1 A.L.T., 149.

Upon a charge of maliciously destroying a fence, the jurisdiction of justices is ousted by a *bonâ fide*

claim of right or title on the part of the defendant, unless he claims to be or is jointly interested with some other person in the property injured.—*Daniell v. Robotham*, 9 V.L.R. (L.), 215; 5 A.L.T., 15.

The defendant's solicitor at the outset of proceedings informed the justices that the informant was only in adverse possession, that the defendant also claimed possession. The informant did not contradict this statement, but admitted he had no title, and stated that he was in possession and paid rates. The justices considering a question of title was involved refused to proceed. *Held*, they were right. *Per Cur.*—"The mere assertion of claim of title by a defendant undoubtedly does not deprive justices of their jurisdiction. It is the duty of justices to proceed with and hear the case, notwithstanding an intimation of the intention of any party to raise this objection to their

"*The Criminal L. and P. Amend. Stat. 1871*" s. 24.
Persons setting fire to fence not to be convicted under last preceding section

Setting fire to fences.
Ib. s. 22.

195. If any person shall be charged before any justice with any offence against the last preceding section of this Act, and such justice shall find that the offence amounts to a felony within the meaning of the next following section of this Act or to an attempt to commit such felony, the justice shall abstain from any adjudication, and shall commit the person so charged for trial for the indictable offence.

196. Whosoever shall unlawfully and maliciously set fire to any fence of any description whatsoever shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years.

(8) *Injuries to Mines.*

Setting fire to coal mines.
"*The Criminal L. and P. Statute 1864*" s. 179.
24 & 25 Vict. c. 97 s. 26.
Attempting to do so.
Ib. s. 180.
Ib. s. 27.

197. Whosoever shall unlawfully and maliciously set fire to any mine of coal cannel coal anthracite or other mineral fuel shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

198. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any mine, under such circumstances that if the mine were thereby set fire to the offender would be guilty of felony, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Conveying water into a mine.
Ib. s. 181.
Ib. s. 28.

199. Whosoever shall unlawfully and maliciously cause any water to be conveyed or run into any mine or into any subterraneous passage communicating therewith with intent thereby to destroy or damage such mine or to hinder or delay the working thereof, or shall with the like intent unlawfully and maliciously pull down fill up or obstruct or damage with intent to destroy obstruct or render useless any airway waterway drain pit level shaft or drive of or belonging to any mine, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years. Provided that this provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same or by any person duly employed in such working.

Damaging engines &c. in mines.
Ib. s. 182.
Ib. s. 29.

200. Whosoever shall unlawfully and maliciously pull down or destroy or damage 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 connexion with any such steam or other engine or any staith building or erection used in conducting the business of any mine, or any bridge waggon-way tramway trunk or shoot for conveying minerals from any mine (whether such engine staith building erection bridge waggon-way tramway trunk or shoot be completed or in an unfinished state) or shall unlawfully and maliciously stop obstruct or hinder the working of any such steam or other engine

jurisdiction, until they are satisfied that the nature of the claim of title set up is *bonâ fide* and real."—*Avery v. Byrne*, 15 V.L.R., 519.

Under this section actual malice is an essential element in the offence of destroying a fence.

Semble, that the proviso does not frustrate a defence on the ground of title, but merely preserves the jurisdiction of justices when such a question is raised.—*Trotman v. Shankland*, 7 V.L.R. L., 16.

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, or shall unlawfully and maliciously wholly or partially cut through sever break or unfasten or damage with intent to destroy or render useless any rope chain or tackle (of whatsoever material the same shall be made) used in any mine or in or 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding seven years.

*"The Criminal
L. and P.
Statute 1864."*

(9) *Injuries to Sea and River Banks and to Works on Rivers Canals &c.*

201. Whosoever shall unlawfully and maliciously break down or cut down or otherwise damage or destroy any sea bank or sea wall or the bank dam or wall of or belonging to any river canal drain reservoir pool or marsh whereby any land or building shall be or shall be in danger of being overflowed or damaged, or shall unlawfully and maliciously throw break or cut down level undermine or otherwise destroy any quay wharf jetty lock sluice floodgate weir tunnel towingpath drain watercourse or other work belonging to any port harbor dock or reservoir or on or belonging to any navigable river or canal, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

*Destroying sea
banks &c.
Ib. s. 183.
24 & 25 Vict.
c. 97 s. 30.*

202. Whosoever shall unlawfully and maliciously cut off draw up or remove any piles chalk or other materials fixed in the ground and used for securing any sea bank or sea wall or the bank dam or wall of any river canal drain aqueduct marsh reservoir pool port harbor dock quay wharf jetty or lock, or shall unlawfully and maliciously open or draw up any floodgate or sluice or do 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 the navigation thereof, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

*Removing &c.
piles of sea
banks.
Ib. s. 184.
Ib. s. 31.*

(10) *Injuries to Ponds.*

203. Whosoever shall unlawfully and maliciously cut through break down or otherwise destroy the dam floodgate or sluice of any fishpond or of any water which shall be private property or in which there shall be any private 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 fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein, or shall unlawfully and maliciously cut through break down or otherwise destroy the dam or floodgate of any millpond reservoir or pool, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

*Breaking down
dam of fish
ponds.
Ib. s. 185.
Ib. s. 32.*

*Or mill pond
reservoir &c.*

(11) *Injuries to Bridges Viaducts and Toll Bars.*

"The Criminal
L. and P.
Statute 1864"
s. 156.

Injuring public
bridges.

24 & 25 Vict.
c. 97 s. 33.

204. Whosoever shall unlawfully and maliciously pull or throw down or in anywise destroy any bridge (whether over any stream of water or not) or any viaduct or aqueduct over or under which bridge viaduct or aqueduct any highway railway or canal shall pass, or do 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Injuring turn-
pike gates.

Ib. s. 187.

Ib. s. 34.

205. Whosoever shall unlawfully and maliciously throw down level or otherwise destroy in whole or in part any turnpike-gate or toll-bar, or any wall chain rail post bar or other fence belonging to any turnpike-gate or toll-bar or set up or erected to prevent passengers passing by without paying any toll payable by or under any Act relating thereto, or any house building or weighing engine erected for the better collection ascertainment or security of any such toll, or any mile-stone or mile-post, shall be guilty of a misdemeanor.

(12) *Injuries to Railway Carriages and Telegraphs.*

Placing things
on railways to
obstruct or over-
turn engine &c.

Ib. s. 188.

Ib. s. 35.

206. Whosoever shall unlawfully and maliciously put place cast or throw upon or across any railway any wood stone or other matter or thing, or shall unlawfully and maliciously take up remove or displace any rail sleeper or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn move or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show hide or remove any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing with intent in any of the cases aforesaid to obstruct upset overthrow injure or destroy any engine tender carriage or truck using such railway, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Obstructing
carriage &c. on
railway.

Ib. s. 189.

Ib. s. 96.

207. Whosoever by any unlawful act or by any wilful omission or neglect shall obstruct or cause to be obstructed any engine or carriage using any railway, or shall aid or assist therein, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Injuries to
telegraphs.

"The Post Office
Act 1883" s. 138.

Ib. s. 37.

208. If any person unlawfully and maliciously cuts breaks throws down destroys injures or removes any battery machinery wire cable post or other matter or thing whatsoever being part of or being used or employed in or about any electric or magnetic telegraph or in the working thereof or unlawfully and maliciously prevents or obstructs in any manner whatsoever the sending conveyance or delivery of any communication by any such telegraph he shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years. Provided that if it appear to any justice on the examination of any person charged with any offence against this section that it is not expedient to the ends of justice that the same should be prosecuted as an indictable offence,

the justice may proceed summarily to hear and determine the same; "The Post Office Act 1883." and the offender shall on conviction thereof at the discretion of the justice either be imprisoned for any term not exceeding three months or else shall forfeit and pay such sum of money not exceeding Ten pounds as to the justice seems meet.

209. If any person unlawfully and maliciously by any overt act attempt to commit any of the offences in the last preceding section mentioned, he shall be liable to imprisonment for any term not exceeding three months or at the discretion of the justices to a penalty not exceeding Ten pounds. Attempt to injure telegraphs. Ib. s. 139. 24 & 25 Vict. c. 97 s. 33.

If any person be found offending against any of the provisions of this or of the last preceding section, any other person may with or without warrant apprehend such offender and may deliver him to some constable or convey him before some justice to be dealt with according to law. Ib. s. 140.

(13) *Injuries to Works of Art.*

210. Whosoever shall unlawfully and maliciously destroy or damage any book manuscript picture print statue bust or vase or any other article or thing kept for the purposes of art science or literature or as an object of curiosity in any museum gallery cabinet library or other repository which museum gallery cabinet library or other repository is either at all times or from time to time open for the admission of the public or of any considerable number of persons to view the same either by the permission of the proprietor thereof or by the payment of money before entering the same, or any picture statue monument or other memorial of the dead painted glass or other ornament or work of art in any church chapel meeting-house or other place of divine worship or in any building belonging to the Queen or to the Government of Victoria or to the council or body corporate of any city town borough or shire or to any university or in any street square churchyard cemetery burial-ground public garden or ground, or any statue or monument exposed to public view, or any ornament railing or fence surrounding such statue or monument, shall be guilty of a misdemeanor; and being convicted thereof shall be liable to be imprisoned for any term not exceeding six months. Provided that nothing herein contained shall be deemed to affect the right of any person to recover by action at law damages for the injury so committed. Injuries to works of art. "The Criminal L. and P. Statute 1864" s. 132. Ib. s. 39. Penalty not to bar right to recover by civil action.

(14) *Injuries to Cattle and other Animals.*

211. Whosoever shall unlawfully and maliciously kill maim or wound any animals being cattle within the meaning of the Second Division of this Part of this Act shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Killing or maiming cattle. Ib. s. 193. Ib. s. 40.

212. Whosoever shall unlawfully and maliciously kill maim or wound any dog^(a) bird beast or other animal, not being cattle within the meaning of the last preceding section 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 on conviction thereof before a Killing or maiming other animals. Ib. s. 194. Ib. s. 41.

(a) The defendants placed poisoned meat on their land to destroy any dogs that might go there to worry their sheep. The complainant's dog was poisoned by it. *Held*, that to constitute an offence

under this section malice against the particular animal killed must be shown.—*Reg. v. Puckle, ex parte White*, 2 V.R. (L.), 63.

*'The Criminal
L. and P.
Statute 1864.'*

justice at the discretion of the justice either be imprisoned for any term not exceeding six months; or else shall forfeit and pay over and above the amount of injury done such sum of money not exceeding Twenty pounds as to the justice shall seem meet. And whosoever having been convicted of any such offence shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner shall be imprisoned for such term not exceeding twelve months as the convicting justice shall think fit.

(15) *Injuries to Ships.*

Setting fire to
ships.
*Ib. s. 195.
24 & 25 Vict.
c. 97 s. 42.*

213. Whosoever shall unlawfully and maliciously set fire to cast away or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

With intent to
injure owner.
*Ib. s. 196.
Ib. s. 43.*

214. Whosoever shall unlawfully and maliciously set fire to or cast away or in anywise destroy any ship or vessel with intent thereby to prejudice any owner or part owner of such ship or vessel or of any goods on board the same or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel or on the freight thereof or upon any goods on board the same, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Attempt to set
fire to or destroy
ships.
*Ib. s. 197.
Ib. s. 44.*

215. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to cast away or destroy any ship or vessel under such circumstances that if the ship or vessel were thereby set fire to cast away or destroyed the offender would be guilty of felony, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Placing gun-
powder with
intent to destroy
&c. ships.
*Ib. s. 198.
Ib. s. 45.*

216. Whosoever shall unlawfully and maliciously place or throw in into upon against or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel or any machinery working tools goods or chattels, shall (whether or not any explosion take place and whether or not any injury be effected) be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Otherwise
damaging ships.
*Ib. s. 199.
Ib. s. 46.*

217. Whosoever shall unlawfully and maliciously damage otherwise than by fire gunpowder or other explosive substance any ship or vessel whether complete or in an unfinished state with intent to destroy the same or render the same useless, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Altering signals
or exhibiting
false ones.
*Ib. s. 200.
Ib. s. 47.*

218. Whosoever shall unlawfully mask alter or remove any light or signal or unlawfully exhibit any false light or signal with intent to bring any ship vessel or boat into danger, or shall unlawfully and maliciously do 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

219. Whosoever shall unlawfully and maliciously cut away cast adrift remove alter deface sink or destroy, or shall unlawfully and maliciously do any act with intent to cut away cast adrift remove alter deface sink or destroy, or shall in any other manner unlawfully and maliciously injure or conceal, any boat buoy buoy rope perch or mark used or intended for the guidance of seamen or the purpose of navigation shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

"The Criminal L. and P. Statute 1864" s. 201.
Removing buoys &c.
24 & 25 Vict. c. 97 s. 43.

220. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Destroying wreck.
Ib. s. 202.
Ib. s. 49.

(16) *Sending Letters threatening to burn or destroy.*

221. Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing, threatening to burn or destroy any house barn or other building or any rick or stack of grain hay or straw or other agricultural produce or any grain hay or straw or other agricultural produce in or under any building or any ship or vessel, or to kill maim or wound any cattle, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Letters threatening to burn houses &c.
Ib. s. 203.
Ib. s. 50.

(17) *Injuries not before provided for.*

222. Whosoever shall unlawfully and maliciously commit any damage injury or spoil to or upon any real or personal property whatsoever either of a public or private nature for which no punishment is hereinbefore provided, the damage injury or spoil being to an amount exceeding five pounds, shall be guilty of a misdemeanor;^(a) and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years: and in case any such offence shall be committed between the hours of nine of the clock in the evening and six of the clock in the next morning, shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Committing injury to amount of five pounds.
Ib. s. 204.
Ib. s. 51.

The same at night.

(18) *Making Gunpowder for committing Offences—Searching for the same.*

223. Whosoever shall make or manufacture or knowingly have in his possession any gunpowder or other explosive substance or any dangerous or noxious thing or any machine engine instrument or thing with intent thereby or by means thereof to commit or for the purpose of enabling any other person to commit any of the felonies in this Division of this Part of this Act mentioned, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Making gunpowder for committing offences.
Ib. s. 205.
Ib. s. 54.

(a) Where one man, after using malicious expressions to another, sows the seeds of noxious weeds in his cultivated lands which germinate and do

damage to an amount exceeding £5, he can be convicted under this section.—*Reg. v. Maud,* 3 W.W. & a'B. (L.), 96.

(19) *Miscellaneous Provisions.*

"The Criminal
L. and P.
Statute 1864"
s. 206.
Malice against
owner not
necessary.
24 & 25 Vict.
c. 97 s. 68.

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

All provisions to
apply to persons
in possession of
property
injured.
Ib. s. 207.
Ib. s. 59.

225. Every provision of this Division of this Part of this Act not hereinbefore so applied shall apply to every person who with intent to injure or defraud any other person shall do any of the acts hereinbefore made penal, although the offender shall be in possession of the property against or in respect of which such act shall be done.

DIVISION 4.—FORGERY.

(1) *Forging Her Majesty's Seals and other Seals.*

Forging great
seal &c.
Ib. s. 208.
24 & 25 Vict.
c. 93 s. 1.

226. Whosoever shall forge or counterfeit or shall utter knowing the same to be forged or counterfeited the great seal of the United Kingdom, Her Majesty's privy seal, any privy signet of Her Majesty, Her Majesty's royal sign manual, any of Her Majesty's seals appointed by the twenty-fourth article of the union between England and Scotland to be kept used and continued in Scotland, the great seal of Ireland, the privy seal of Ireland, or the seal of the colony of Victoria, or shall forge or counterfeit the stamp or impression of any of the seals aforesaid, or shall utter any document or instrument whatsoever having thereon or affixed thereto the stamp or impression of any such forged or counterfeited seal knowing the same to be the stamp or impression of such forged or counterfeited seal, or any forged or counterfeited stamp or impression made or apparently intended to resemble the stamp or impression of any of the seals aforesaid knowing the same to be forged or counterfeited, or shall forge or alter or utter knowing the same to be forged or altered any document or instrument having any of the said stamps or impressions thereon or affixed thereto, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging signa-
ture of Governor
&c.
Ib. s. 209.

227. Whosoever shall forge or fraudulently alter any document bearing or purporting to bear the signature of the Governor, or of any of Her Majesty's Principal or Under Secretaries of State, or shall offer utter dispose of or put off any such forged or fraudulently altered document as aforesaid knowing the same to be so forged or altered, shall be guilty of felony; and being convicted thereof shall be liable to be imprisoned for any term not exceeding ten years.

(2) *Forging Municipal Seals and Petitions.*

Forgery of
common seal of
municipality.
"Local Govern-
ment Act 1874"
s. 522.

228. Whosoever shall forge or counterfeit or shall utter knowing the same to be forged or counterfeited the common seal of any municipality including the city of Melbourne and the town of Geelong, or shall forge or counterfeit the stamp or impression of any such seal, or shall utter any document or instrument having thereon any forged or counterfeited stamp or impression of any such seal knowing the same to be

forged or counterfeited or shall forge or alter or utter knowing the same to be forged or altered any document or instrument having any of the said stamps or impressions thereon or affixed thereto shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

229. Whosoever shall forge or counterfeit or utter or present knowing the same to be forged or counterfeited any petition or representation in writing purporting to be under the provisions or relating to the administration of the *Local Government Act 1890*, or any signature to any such petition or representation, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Forgery of petition or representation.
Ib. s. 523.

(3) *Forging Transfers of Stocks &c.*

230. Whosoever shall forge or alter or shall offer utter dispose of or put off knowing the same to be forged or altered any transfer of any share or interest of or in the capital stock of any body corporate company or society which now is or hereafter may be established by charter or by under or by virtue of any Act, or shall forge or alter or shall offer utter dispose of or put off knowing the same to be forged or altered 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, or shall demand or endeavour to have any such share or interest transferred or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered power of attorney, or other authority knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.^(a)

Forging transfer of stock &c.
"The Criminal L. and P. Statute 1864"
s. 210.
24 & 25 Vict. c. 98 s. 2.

231. Whosoever shall falsely and deceitfully personate any owner of any share or interest of or in the capital stock of any body corporate company or society which now is or hereafter may be established by charter or by under or by virtue of any Act or any owner of any dividend or money payable in respect of any such share or interest as aforesaid and shall thereby transfer or endeavor to transfer any share or interest belonging to any such owner or thereby receive or endeavor 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Personating owners of stock.
Ib. s. 211.
Ib. s. 3.

232. Whosoever shall forge 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 any such capital stock as is in either of the

Forging power of attorney for transfer of stock.
Ib. s. 212.
Ib. s. 4.

(a) A forged transfer upon sham scrip of shares in a mining company is within this section. The handing out by the prisoner's banker, in pursuance of his directions, of scrip for shares in a mining company, which were not genuine, and had forged

transfers upon them: Held to be an uttering by the prisoner, without proof of the time or manner in which, or of the person by whom, it had been lodged to his account.—*Reg. v. Roberts*, 12 V.L.R., 135.

"The Criminal
L. and P.
Statute 1864."

last two preceding sections mentioned or to receive any dividend or money payable in respect of any such share or interest, or shall offer utter dispose of or put off any such power of attorney or other authority with any such forged name handwriting or signature thereon knowing the same to be forged, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

(4) *Forging Victorian Treasury Documents.*

Punishment for
forgery of Treas-
ury documents.
Act No. 86 s. 50.

233. If any person shall knowingly and wilfully forge or counterfeit or cause or procure to be forged or counterfeited or knowingly and wilfully act or assist in forging or counterfeiting the name initials mark or handwriting of any other person to any writing whatsoever for or in order to the receiving or obtaining any part of the consolidated revenue or any money out of the public account or any stores belonging to Her Majesty, or shall forge or counterfeit or cause or procure to be forged or counterfeited or knowingly or wilfully act or assist in the forging or counterfeiting any writing made by any such person as aforesaid, or shall utter or publish any such writing knowing the same to be forged or counterfeited with an intention to defraud Her Majesty or any person whomsoever, every person so offending shall be guilty of felony and being convicted thereof shall be kept to hard labour on the roads or other public works of Victoria for a period of not less than seven nor more than fifteen years.

(5) *Forging India Bonds.*

Forging Indian
bonds.
"The Criminal
L. and P.
Statute 1864"
s. 213.
24 & 25 Vict.
c. 98 s. 7.

234. Whosoever shall forge or alter or shall offer utter dispose of or put off knowing the same to be forged or altered any bond commonly called an East India bond or any bond debenture or security issued or made under the authority of any Act passed or to be passed relating to the East Indies or any endorsement on or assignment of any such bond debenture or security, with intent to defraud, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

(6) *Forging Exchequer Bills &c.*

Forging
Exchequer bills.
Id. s. 214.
Id. s. 8.

235. Whosoever shall forge or alter or shall offer utter dispose of or put off knowing the same to be forged or altered any Exchequer bill or Exchequer bond or Exchequer debenture or any endorsement on or assignment of any Exchequer bill or Exchequer bond or Exchequer debenture or any receipt or certificate for interest accruing thereon, with intent to defraud, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

(7) *Forging Stamps of the United Kingdom.*

Forging stamps
of the United
Kingdom.
Id. s. 215.

236. Whosoever shall forge or counterfeit any stamp or die or any part of any stamp or die which has been or shall be provided made or used under any Act now or hereafter to be in force by the Commissioners of Inland Revenue of the United Kingdom for expressing or noting any stamp duty, or shall forge or counterfeit the impression or any part of the impression of any such stamp or die upon any vellum parchment or paper, or shall knowingly stamp or mark any vellum

parchment or paper with any such forged or counterfeited stamp or die or any part of such stamp or die with intent to defraud Her Majesty, or shall offer utter dispose of or put off or expose for sale any vellum parchment or paper having thereupon the impression of any such forged or counterfeited stamp or die or part of any stamp or die or any such forged or counterfeited impression or part of impression as aforesaid knowing the same respectively to be forged or counterfeited, and whosoever shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any forged or counterfeited stamp or die or part of any such stamp or die resembling or intended to resemble either wholly or in part any stamp or die provided made or used as aforesaid, and whosoever shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum parchment or paper having thereon the impression or any part of the impression of any such forged or counterfeited stamp or die or part of any such stamp or die as aforesaid or having thereon any forged or counterfeit mark or impression resembling or apparently intended to resemble the impression of any such stamp or die so provided made or used as aforesaid, or shall fraudulently use join fix or place for with or upon any vellum parchment or paper any mark or impression which shall have been cut torn or gotten off or removed from any other vellum parchment or paper, or shall fraudulently erase cut scrape discharge or get out of or from any vellum parchment or paper stamped respectively under any Act of the Parliament of Great Britain and Ireland relating to stamp duties any name sum date or other matter or thing thereon written printed or expressed with intent to use any stamp or mark then impressed or being upon such vellum parchment or paper or that the same may be used for any deed instrument matter or thing in respect whereof any stamp duty is or shall or may be or become payable, or shall knowingly use utter sell or expose to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum parchment or paper stamped respectively under any such Act as last aforesaid from or off or out of which any such name sum date or other matter or thing as aforesaid shall have been fraudulently erased cut scraped discharged or gotten as aforesaid, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

*"The Criminal
L. and P.
Statute 1864."*

Forged dies or
stamps in
possession.

Affixing stamps
&c.

Erasing names
dates &c.

Using any
stamped vellum
&c. which shall
have been sub-
ject to erasure.

(8) *Forging Bank Notes.*

237. Whosoever shall forge or alter or shall offer utter dispose of or put off knowing the same to be forged or altered any note or bill of the exchange of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland or of any other body corporate company or person carrying on whether within Victoria or elsewhere within the dominions of Her Majesty the business of bankers commonly called a bank note a bank bill of exchange or a bank post bill, or any endorsement on or assignment of any bank note bank bill of exchange or bank post bill, with intent to defraud, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging bank
notes.
fb. s. 216.
24 & 25 Vict.
c. 98 s. 12.

"The Criminal
L. and P.
Statute 1884"
s. 217.

Receiving forged
bank notes.
24 & 25 Vict.
c. 98 s. 18.

238. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall purchase or receive from any other person, or have in his custody or possession, any forged bank note bank bill of exchange or bank post bill or blank bank note or blank bank bill of exchange or blank bank post bill knowing the same to be forged, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

(9) *Making and engraving Plates &c. for Bank Notes &c.*

Having moulds
with "Bank of
England" or
"Ireland" on
them.

17. s. 218.
1b. s. 14.

239. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall make or use or knowingly have in his custody or possession any frame mould or instrument for the making of paper with the words "Bank of England" or "Bank of Ireland" or any part of such words intended to resemble and pass for the same visible in the substance of the paper or for the making of paper with curved or waving bar lines or with the laying wire lines thereof in a waving or curved shape or with any number sum or amount expressed in a word or words in roman letters visible in the substance of the paper or with any device or distinction peculiar to and appearing in the substance of the paper used by the Governor and Company of the Banks of England and Ireland respectively for any notes bills of exchange or bank post bills of such banks respectively, or shall make use sell expose to sale utter or dispose of or knowingly have in his custody or possession any paper whatsoever with the words "Bank of England" or "Bank of Ireland" or any part of such words intended to resemble and pass for the same visible in the substance of the paper or any paper with curved or waving bar lines or with the laying wire lines thereof in a waving or curved shape or with any number sum or amount expressed in a word or words in roman letters appearing visible in the substance of the paper or with any device or distinction peculiar to and appearing in the substance of the paper used by the Governor and Company of the Banks of England and Ireland respectively for any notes bills of exchange or bank post bills of such banks respectively, or shall by any art or contrivance cause the words "Bank of England" or "Bank of Ireland" or any part of such words intended to resemble and pass for the same or any device or distinction peculiar to and appearing in the substance of the paper used by the Governor and Company of the Banks of England and Ireland respectively for any notes bills of exchange or bank post bills of such banks respectively to appear visible in the substance of any paper, or shall cause the numerical sum or amount of any bank note bank bill of exchange or bank post bill blank bank note blank bank bill of exchange or blank bank post bill in a word or words in roman letters to appear visible in the substance of the paper whereon the same shall be written or printed, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Proviso as to
bills of
exchange.
17. s. 219.
1b. s. 15.

240. Nothing in the last preceding section contained shall prevent any person from issuing any bill of exchange or promissory note having the amount thereof expressed in guineas or in a numerical figure or figures denoting the amount thereof in pounds sterling appearing visible in the substance of the paper upon which the same shall be written or

printed, or shall prevent any person from making using or selling any paper having waving or curved lines or any other devices in the nature of water marks visible in the substance of the paper not being bar lines or laying wire lines, provided the same are not so contrived as to form the groundwork or texture of the paper, or to resemble the waving or curved laying wire lines or bar lines or the watermarks of the paper used by the Governor and Company of the Banks of England and Ireland respectively.

241. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall engrave or in anywise make upon any plate whatsoever or upon any wood stone or other material any promissory note bill of exchange or bank post bill or part of a promissory note bill of exchange or bank post bill, purporting to be a bank note bank bill of exchange or bank post bill of the Governor and Company of the Bank of England or the Governor and Company of the Bank of Ireland or of any other body corporate company or person carrying on whether within Victoria or elsewhere within the dominions of Her Majesty the business of bankers, or to be a blank bank note blank promissory note blank bank bill of exchange or blank bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland or of any such other body corporate company or person as aforesaid, or to be a part of a bank note promissory note bank bill of exchange or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland or of any such other body corporate company or person as aforesaid or any name word or character resembling or apparently intended to resemble any subscription to any bill of exchange or promissory note issued by the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland or by any such other body corporate company or person as aforesaid, or shall use any such plate wood stone or other material or any other instrument or device for the making or printing any bank note bank bill of exchange or bank post bill or blank bank note blank bank bill of exchange or blank bank post bill or part of a bank note bank bill of exchange or bank post bill, or knowingly have in his custody or possession any such plate wood stone or other material or any such instrument or device, or shall knowingly offer utter dispose of or put off or have in his custody or possession any paper upon which any blank bank note blank bank bill of exchange or blank bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland or of any such other body corporate company or person as aforesaid or part of a bank note bank bill of exchange or bank post bill or any name word or character resembling or apparently intended to resemble any such subscription shall be made or printed, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

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*Engraving plates
for making bank
notes.*

Ib. s. 220.

*24 & 25 Vict.
c. 98 s. 16.*

242. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall engrave or in anywise make upon any plate whatsoever or upon any wood stone or other material any word number figure device character or ornament the impression taken from which shall resemble or apparently be intended to resemble

*Engraving words
&c. on plates.*

Ib. s. 221.

Ib. s. 17.

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any part of a bank note bank bill of exchange or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland or of any other body corporate company or person carrying on whether within Victoria or elsewhere within the dominions of Her Majesty the business of bankers, or shall use or knowingly have in his custody or possession any such plate wood stone or other material or any other instrument or device for the impressing or making upon any paper or other material any word number figure character or ornament which shall resemble or apparently be intended to resemble any part of a bank note bank bill of exchange or bank post bill of the Governor and Company of the Bank of England or of the Governor and Company of the Bank of Ireland or of any such other body corporate company or person as aforesaid, or shall knowingly offer utter dispose of or put off or have in his custody or possession any paper or other material upon which there shall be an impression of any such matter as aforesaid, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Having moulds
with bankers'
names.
Ib. s. 222.
See 24 & 25 Vict.
c. 98 s. 18.

243. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall make or use any frame mould or instrument for the manufacture of paper with the name or firm of any such body corporate company or person carrying on the business of bankers as in the last preceding section mentioned (other than and except the Banks of England and Ireland respectively) appearing visible in the substance of the paper, or knowingly have in his custody or possession any such frame mould or instrument, or make use sell expose to sale utter or dispose of, or knowingly have in his custody or possession, any paper in the substance of which the name or firm of any such body corporate company or person shall appear visible, or cause the name or firm of any such body corporate company or person to appear visible in the substance of the paper upon which the same shall be written or printed, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Engraving plates
for foreign
notes.
Ib. s. 223.
Ib. s. 19.

244. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall engrave or in anywise make upon any plate whatsoever or upon any wood stone or other material any bill of exchange promissory note undertaking or order for payment of money, or any part of any bill of exchange promissory note undertaking or order for payment of money, in whatsoever language the same may be expressed and whether the same shall or shall not be or be intended to be under seal, purporting to be the bill note undertaking or order or part of the bill note undertaking or order of any foreign prince or state or of any minister or officer in the service of any foreign prince or state or of any body corporate or body of the like nature constituted or recognised by any foreign prince or state or of any person or company of persons resident in any country not under the dominion of Her Majesty, or shall use or knowingly have in his custody or possession any plate stone wood or other material upon which any such foreign bill note undertaking or order or any part thereof shall be engraved or made, or shall knowingly offer utter dispose of or put off or have in his custody or possession any paper upon which any part of any such foreign

bill note undertaking or order shall be made or printed, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

"The Criminal L. and P. Statute 1864."

(10) *Forging Deeds Wills Bills of Exchange &c.*

245. Whosoever with intent to defraud shall forge or alter or shall offer utter dispose of or put off knowing the same to be forged or altered any deed or any bond or writing obligatory or any assignment at law or in equity of any such bond or writing obligatory^(a) or any lease issued under any Act relating to the goldfields, or shall forge 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 or shall offer utter dispose of or put off any deed bond or writing obligatory or any such lease as aforesaid having thereon any such forged name handwriting or signature knowing the same to be forged shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging deeds and certain leases.

Ib. s. 224.

24 & 25 Vict. c. 98 s. 20.

246. Whosoever with intent to defraud shall forge or alter or shall offer utter dispose of or put off knowing the same to be forged or altered any will testament codicil or testamentary instrument, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging wills.

Ib. s. 225.

Ib. s. 21.

247. Whosoever with intent to defraud shall forge or alter, or shall offer utter dispose of or put off knowing the same to be forged or altered, any bill of exchange or any acceptance endorsement or assignment of any bill of exchange or any promissory note for the payment of money or any endorsement or assignment of any such promissory note, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging bills of exchange &c.

Ib. s. 226.

See ib. s. 22.

248. Whosoever shall forge or alter, or shall offer utter dispose of or put off knowing the same to be forged or altered, any undertaking warrant order authority or request for the payment of money or for the delivery or transfer of any goods^(b) or chattels or of any note bill or other security for the payment of money or for procuring or giving credit or any endorsement on or assignment of any such undertaking warrant order authority or request or any accountable receipt^(c) acquittance or receipt for money or for goods or for any note bill or other security for the payment of money or any endorsement on or assignment of any such accountable receipt, with intent in any of the cases aforesaid to defraud, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging orders receipts &c.

Ib. s. 227.

Ib. s. 23.

(a) The words "writing obligatory" do not include an equitable mortgage not under seal. The words are to be taken as words of art, and to imply sealing.—*Reg. v. Duffy*, A.R., 28th Nov., 1860.

(b) A bill of lading is "an authority for the delivery of goods" within the meaning of this section.—*Reg. v. Wright*, 2 V.R. (L.), 204.

(c) Where a person employed by the prosecutrix to make a payment obtained from her a larger sum than was necessary; and finding that it was not all required retained the difference, and increased the amount named in a receipt given by the payee: *Held*, that the alteration was committed to complete a fraud, and that a conviction for forgery was good.—*Reg. v. Kille*, 3 V.L.R. (L.), 10.

"The Criminal
L. and P.
Statute 1884"
s. 228.
Drawing bills
"per procura-
tion."
24 & 25 Vict.
c. 98 s. 24.

249. Whosoever with intent to defraud shall draw make sign accept or endorse any bill of exchange or promissory note or any 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 by procuration or otherwise for in the name or on the account of any other person without lawful authority or excuse, or shall offer utter dispose of or put off any such bill note undertaking warrant order authority or request so drawn made signed accepted or endorsed by procuration or otherwise without lawful authority or excuse as aforesaid knowing the same to have been so drawn made signed accepted or endorsed as aforesaid, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Forging debentures.
Ib. s. 229.
Ib. s. 28.

250. Whosoever shall forge or fraudulently alter, or shall offer utter dispose of or put off knowing the same to be forged or fraudulently altered, any debenture issued or purporting to be issued under any lawful authority whatsoever either within Her Majesty's dominions or elsewhere, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

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

Forging proceedings in courts of record.
Ib. s. 230.
Ib. s. 27.

251. Whosoever shall forge or fraudulently alter or shall offer utter dispose of or put off knowing the same to be forged or fraudulently altered any record writ return panel process notice bill petition answer pleading rule order decree report warrant interrogatory deposition affidavit affirmation recognizance *cognovit actionem* or warrant of attorney or any original document whatsoever of or belonging to the Supreme Court or any court of record, or any document or writing or any copy of any document or writing used or intended to be used as evidence in any court in this section mentioned, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Forged or false certificates of record.
Ib. s. 231.
Ib. s. 28.

252. Whosoever being the clerk of any court or other officer having the custody of the records of any court or being the deputy of any such clerk or officer shall utter any false copy or certificate of any record knowing the same to be false, and whosoever other than such clerk officer or deputy shall sign or certify any copy or certificate of any record as such clerk officer or deputy, and whosoever shall forge or fraudulently alter or offer utter dispose of or put off knowing the same to be forged or fraudulently altered any copy or certificate of any record, or shall offer utter dispose of or put off any copy or certificate of any record having thereon any false or forged name handwriting or signature knowing the same to be false or forged, and whosoever shall forge the seal of any court of record, or shall forge or fraudulently alter any process of any court other than such courts as in the last preceding section mentioned, or shall serve or enforce any forged process of any court whatsoever knowing the same to be forged, or shall deliver or cause to be delivered to any person any paper falsely purporting to be any such process or a copy thereof or to be any judgment decree or order of the Supreme Court or any court of record or a copy thereof

Forged or false process.

knowing the same to be false, or shall act or profess to act under any such false process knowing the same to be false, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

"The Criminal L. and P. Statute 1864."

253. Whosoever shall forge or fraudulently alter, or shall offer utter dispose of or put off knowing the same to be forged or fraudulently altered, any instrument whether written or printed or partly written and partly printed which is or shall be made evidence by any Act passed or to be passed and for which offence no punishment is herein provided shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Forging instruments of evidence.
Ib. s. 232.
24 & 25 Vict. c. 93 s. 29.

(12) *Forging Registers of Deeds &c.*

254. Whosoever shall forge or fraudulently alter, or shall offer utter dispose of or put off knowing the same to be forged or fraudulently altered, any memorial receipt affidavit affirmation attestation entry certificate endorsement document or writing made or issued under the provisions of any Act passed or hereafter to be passed for or relating to the registry of deeds or other instruments, shall forge or counterfeit the seal of or belonging to any office for the registry of deeds or other instruments or any stamp or impression of any such seal, or shall forge any name handwriting or signature purporting to be the name handwriting or signature of any person to any such memorial receipt affidavit affirmation attestation entry certificate endorsement document or writing which shall be required or directed to be signed by or by virtue of any Act passed or to be passed, or shall offer utter dispose of or put off any such memorial or other writing as in this section before mentioned having thereon any such forged stamp or impression of any such seal, or any such forged name handwriting or signature knowing the same to be forged shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging registry of deeds &c.
Ib. s. 233.
Ib. s. 31.

255. Whosoever shall forge or fraudulently alter or shall offer utter dispose of or put off knowing the same to be forged or fraudulently altered any instrument document or writing made or issued under the provisions of any Act passed or to be passed for or relating to the transfer of estates or other interests in land, or shall forge or counterfeit the seal of or belonging to any office or officer appointed by or under any such Act for the purposes thereof or any stamp or impression of such seal, or shall forge any name handwriting or signature purporting to be the name handwriting or signature of any person to any instrument document or writing which shall be required or authorized to be signed by or by virtue of any such Act, or shall offer utter dispose of or put off any instrument document or writing having thereon any such forged stamp or impression of such seal or any such forged name handwriting or signature knowing the same to be forged, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Forging instruments &c. under Transfer of Land Act 1890 &c.
Ib. s. 234.

(13) *Forging Orders &c. of Justices of the Peace.*

"The Criminal
L. and P.
Statute 1864"
s. 235.

Forging orders
&c. of Justices.
24 & 25 Vict.
c. 98 s. 32.

256. Whosoever with intent to defraud shall forge or alter, or shall offer utter or dispose of or put off knowing the same to be forged or altered, any summons conviction order or warrant of any justice or any recognisance purporting to have been entered into before any justice or other officer authorised to take the same, or any examination deposition affidavit affirmation or solemn declaration taken or made before any justice, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

(14) *Forging Names &c. of Officers of Courts &c.*

Forging names
of officers of
courts.

Ib. s. 236.
See ib. s. 33.

257. Whosoever with intent to defraud shall forge or alter, or offer or utter dispose of or put off knowing the same to be forged or altered, any document instrument or writing made or purporting or appearing to be made by the Master-in-Equity, a judge of the court of insolvency, or any officer of any court of record, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

(15) *Falsely acknowledging Recognisances &c.*

Falsely acknow-
ledging bail.

Ib. s. 237.
Ib. s. 34.

258. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall in the name of any other person acknowledge any recognisance or bail or any *cognovit actionem* or judgment or any deed or other instrument before any court or judge or other person lawfully authorized in that behalf, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

(16) *Forging Marriage Licences &c.*

Forging
marriage
licences &c.

Ib. s. 238.
See ib. s. 35.

259. Whosoever shall forge or fraudulently alter any licence of marriage or any consent or writing purporting to be a consent to the marriage of any person under the age of twenty-one years or any certificate of marriage or writing purporting to be a certificate of marriage, or shall offer utter dispose of or put off any such licence consent certificate or writing knowing the same to be forged or fraudulently altered, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Transmitting
false certificate.

Ib. s. 239.
Ib. s. 35.

260. Whosoever shall knowingly and unlawfully transmit to any minister registrar-general registrar or other officer appointed under any Act relating to marriages or the registration thereof any certificate or writing purporting to be a certificate containing any false statement, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

(17) *Forging Registers &c. of Births Baptisms Marriages Deaths and Burials.*

Forging &c.
registers of
births &c.

Ib. s. 240.
Ib. s. 36.

261. Whosoever shall unlawfully destroy deface or injure or cause or permit to be destroyed defaced or injured any register of births baptisms marriages deaths or burials which now is or hereafter shall be by law authorized or required to be kept or any part of any such register

or any certified copy of any such register or any part thereof, or shall forge or fraudulently alter in any such register any entry relating to any birth baptism marriage death or burial or any part of any such register or any certified copy of such register or of any part thereof, or shall knowingly and unlawfully insert or cause or permit to be inserted in any such register or in any certified copy thereof any false entry of any matter relating to any birth baptism marriage death or burial, or shall knowingly and unlawfully give any false certificate relating to any birth baptism marriage death or burial, or shall certify any writing to be a copy or extract from any such register knowing such writing or the part of such register whereof such copy or extract shall be so given to be false in any material particular, or shall forge or counterfeit the seal (if any) of or belonging to the office of the Registrar-General or of any deputy registrar, or shall offer utter dispose of or put off any such register entry certified copy certificate or seal knowing the same to be false forged or altered, or shall offer utter dispose of or put off any copy of any entry in any such register knowing such entry to be false forged or altered, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

"The Criminal L. and P. Statute 1894."

(18) *Demanding property upon Forged Instruments.*

262. Whosoever with intent to defraud shall demand receive or obtain or cause or procure to be delivered or paid to any person or endeavour 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, under upon or by virtue of any forged or altered instrument whatsoever knowing the same to be forged or altered, or 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 shall have been obtained to have been forged or altered 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 being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Demanding property on forged instruments.
Id. s. 241.
24 & 25 Vict. c. 93 s. 38.

(19) *Miscellaneous Provisions.*

263. Where by this Act or by any other Act any person is or shall hereafter be made liable to punishment for forging or altering or for offering uttering disposing of or putting off knowing the same to be forged or altered any instrument or writing designated in such Act by any special name or description, and such instrument or writing however designated shall be in law a will testament codicil or testamentary writing or a deed bond or writing obligatory or a bill of exchange or a promissory note for the payment of money or an endorsement on or assignment of a bill of exchange or promissory note for the payment of money or an acceptance of a bill of exchange or an undertaking warrant order authority or request for the payment of money or an endorsement on or assignment of an undertaking warrant order authority or request for the payment of money within the true intent and meaning of this Division of this Part of this Act, in every such case the person forging or altering such instrument or writing or offering uttering disposing of

Forging documents which in law are wills deeds bills &c.
Id. s. 242.
Id. s. 39.

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L. and P.
Statute 1864."*

or putting off such instrument or writing knowing the same to be forged or altered may be informed against as an offender against this Act, and punished accordingly.

Forging foreign
instruments.
*Ib. s. 243.
24 & 25 Vict.
c. 98 s. 40.*

264. Where the forging or altering any writing or matter whatsoever or the offering uttering disposing of or putting off any writing or matter whatsoever knowing the same to be forged or altered is in this Act expressed to be an offence, if any person shall in Victoria forge or alter or offer utter dispose of or put off knowing the same to be forged or altered any such writing or matter, in whatsoever place or country out of Victoria whether under the dominion of Her Majesty or not such writing or matter may purport to be made or may have been made and in whatever language the same or any part thereof may be expressed, every such person and every person aiding abetting or counselling such person shall be deemed to be an offender within the meaning of this Act; and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in Victoria. And if any person shall in Victoria forge or alter or offer utter dispose of or put off knowing the same to be forged or altered any bill of exchange or any promissory note for the payment of money or any endorsement on or assignment of any bill of exchange or promissory note for the payment of money or any acceptance of any bill of exchange or any undertaking warrant order authority or request for the payment of money or for the delivery or transfer of any goods or security or any deed bond or writing obligatory for the payment of money (whether such deed bond or writing obligatory shall be made only for the payment of money or for the payment of money together with some other purpose) or any endorsement on or assignment of any such undertaking warrant order authority request deed bond or writing obligatory, in whatsoever place or country out of Victoria whether under the dominion of Her Majesty or not the money payable or secured by such bill note undertaking warrant order authority request deed bond or writing obligatory may be or may purport to be payable or the goods or security transferable or deliverable under such undertaking warrant order authority or request may be or may purport to be so transferable or deliverable, and in whatever language the said writings or instruments respectively or any part thereof may be expressed, and whether such bill note undertaking warrant order authority or request be or be not under seal, every such person and every person aiding abetting or counselling such person shall be deemed to be an offender within the meaning of this Act; and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in Victoria.

Possession
defined.
*Ib. s. 244.
Ib. s. 46.*

265. Where the having any matter in the custody or possession of any person is in this Division of this Part of this Act expressed to be an offence, if any person shall have any such matter in his personal custody or possession or shall knowingly and wilfully have any such matter in the actual custody or possession of any other person, or shall knowingly and wilfully have any such matter in any dwelling-house or other building lodging apartment field or other place open or enclosed, whether belonging to or occupied by himself or not and whether such matter shall be so had for his own use or for the use or benefit of another, every such person shall be deemed and taken to have such matter in his

custody or possession within the meaning of this Division of this Part of this Act. "The Criminal L. and P. Statute 1864."

266. Where by any Act now in force any person falsely making forging counterfeiting erasing or altering any matter whatsoever, or uttering publishing offering disposing of putting away or making use of any matter whatsoever knowing the same to have been falsely made forged counterfeited erased or altered, or any person demanding or endeavouring to receive or have any thing or to do or cause to be done any act upon or by virtue of any matter whatsoever knowing such matter to have been falsely made forged counterfeited erased or altered would according to the provisions contained in any such Act be guilty of felony and would before the first day of August in the year of our Lord One thousand eight hundred and thirty-three have been liable to suffer death as a felon; or where by any Act now in force any person falsely personating another, or falsely acknowledging any thing in the name of another, or falsely representing any other person than the real party to be such real party, or wilfully making any false entry in any book account or document, or in any manner wilfully falsifying any part of any book account or document, or wilfully making a transfer of any stock annuity or fund in the name of any person not being the owner thereof, or knowingly taking any false oath or knowingly making any false affidavit or false affirmation, or demanding or receiving any money or other thing by virtue of any probate or letters of administration knowing the will on which such probate shall have been obtained to have been false or forged or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation, would according to the provisions contained in any such Act be guilty of felony and would before the first day of August in the year of our Lord One thousand eight hundred and thirty-three have been liable to suffer death as a felon; or where by any Act now in force any person making or using or knowingly having in his custody or possession any frame mould or instrument for the making of paper with certain words visible in the substance thereof, or any person making such paper or causing certain words to appear visible in the substance of any paper, would according to the provisions contained in any such Act be guilty of felony and would before the first day of August in the year of our Lord One thousand eight hundred and thirty-three have been liable to suffer death as a felon; then and in each of the several cases aforesaid, if any person shall after the commencement of this Act be convicted of any such felony as is hereinbefore in this section mentioned or of aiding abetting counselling or procuring the commission thereof and the same shall not be punishable under any of the other provisions of this Act, every such person shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Punishments for forgeries capital before 1st August 1833.
Ib. s. 246.
24 & 25 Vict. c. 98 s. 48.

DIVISION 5.—COINAGE OFFENCES.

267. In the interpretation of and for the purposes of this Act the expression "the Queen's current gold or silver coin" shall include any gold or silver coin coined in any of Her Majesty's mints or lawfully current by virtue of any Act or proclamation or otherwise in any part of Her Majesty's dominions whether within the United Kingdom or otherwise. And the expression "the Queen's copper coin" shall include

Definition of coin &c.
Ib. s. 246.
Ib. c. 99 s. 1.

"The Criminal
L. and P.
Statute 1864."

any copper coin and any coin of bronze or mixed metal coined in any of Her Majesty's mints or lawfully current by virtue of any Act or proclamation or otherwise in any part of Her Majesty's said dominions. And the expression "false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin" shall include any of the current coin which shall have been gilt silvered washed coloured or cased over or in any manner altered so as to resemble or be apparently intended to resemble or pass for any of the Queen's current coin of a higher denomination. And the expression "the Queen's current coin" shall include any coin coined in any of Her Majesty's mints or lawfully current by virtue of any Act or proclamation or otherwise in any part of Her Majesty's said dominions and whether made of gold silver copper bronze or mixed metal. And where the having any matter in the custody or possession of any person is mentioned in this Division of this Part of this Act, it shall include not only the having of it by himself in his personal custody or possession but also the knowingly and wilfully having it in the actual custody or possession of any other person and also the knowingly and wilfully having it in any dwelling-house or any other building lodging apartment field or other place open or enclosed whether belonging to or occupied by himself or not and whether such matter shall be so had for his own use or benefit or for that of any other person.

Counterfeiting
gold or silver
coin.

1b. s. 247.

24 & 25 Vict.
c. 99 s. 2.

268. Whosoever shall falsely make or counterfeit any coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Colouring coin to
pass as gold or
silver.

1b. s. 248.

1b. s. 3.

269. Whosoever shall gild or silver, or shall with any wash or materials capable of producing the colour or appearance of gold or of silver or by any means whatsoever wash case over or colour any coin whatsoever resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or shall gild or silver, or shall with any wash or materials capable of producing the colour or appearance of gold or of silver or by any means whatsoever wash case over or colour any piece of silver or copper or of coarse gold or coarse silver or of any metal or mixture of metals respectively being of a fit size and figure to be coined and with intent that the same shall be coined into false and counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or shall gild, or shall with any wash or materials capable of producing the colour or appearance of gold or by any means whatsoever wash case over or colour, any of the Queen's current silver coin, or file or in any manner alter such coin with intent to make the same resemble or pass for any of the Queen's current gold coin, or shall gild or silver, or shall with any wash or materials capable of producing the colour or appearance of gold or silver or by any means whatsoever wash case over or colour, any of the Queen's current copper coin, or file or in any manner alter such coin with intent to make the same resemble or pass for any of the Queen's current gold or silver coin, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

270. Whosoever shall impair diminish or lighten any of the Queen's current gold or silver coin, with intent that the coin so impaired diminished or lightened may pass for the Queen's current gold or silver coin, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

"The Criminal L. and P. Statute 1864" s. 249.
Impairing gold or silver coin.
24 & 25 Vict. c. 99 s. 4.

271. Whosoever shall unlawfully have in his custody or possession any filings or clippings or any gold or silver bullion or any gold or silver in dust solution or otherwise which shall have been produced or obtained by impairing diminishing or lightening any of the Queen's current gold or silver coin knowing the same to have been so produced or obtained, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Possessing filings or clippings of gold or silver coin.
Ib. s. 250.
Ib. s. 5.

272. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall buy sell receive pay or put off, or offer to buy sell receive pay or put off any false counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin at or for a lower rate or value than the same imports or was apparently intended to import, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Buying &c. counterfeit gold or silver coin.
Ib. s. 251.
Ib. s. 6.

273. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall import or receive into Victoria from beyond the seas any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin knowing the same to be false or counterfeit, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Importing counterfeit gold or silver coin.
Ib. s. 252.
Ib. s. 7.

274. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall export or put on board any ship vessel or boat for the purpose of being exported from Victoria any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current coin knowing the same to be false or counterfeit, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Exporting same.
Ib. s. 253.
Ib. s. 8.

275. Whosoever shall tender utter or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin knowing the same to be false or counterfeit, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding one year.

Uttering base gold or silver coin.
Ib. s. 254.
Ib. s. 9.

276. Whosoever shall tender utter or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin knowing the same to be false or counterfeit, and shall at the time of such tendering uttering or putting off have in his custody or possession besides the false or counterfeit coin so tendered uttered or put off any other piece of false or

Two utterings of same.
Ib. s. 255.
Ib. s. 10.

"The Criminal
L. and P.
Statute 1864."

counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or shall either on the day of such tendering uttering or putting off or within the space of ten days then next ensuing tender utter or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin knowing the same to be false or counterfeit, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Possession of
three pieces of
false coin.

Ib. s. 256.

24 & 25 Vict.
c. 99 s. 11.

277. Whosoever shall have in his custody or possession three or more pieces of false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin knowing the same to be false or counterfeit and with intent to utter or put off the same or any of them, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

Second or subse-
quent offence.

Ib. s. 257.

Ib. s. 12.

278. Whosoever having been convicted either before or after the passing of this Act of any such misdemeanor as in any of the last three preceding sections mentioned or of any felony against this or any former Act relating to the coin, shall afterwards commit any of the misdemeanors in any of the said sections mentioned, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Uttering foreign
coin medals &c.

Ib. s. 258.

Ib. s. 13.

279. Whosoever shall with intent to defraud tender utter or put off as or for any of the Queen's current gold or silver coin any coin not being such current gold or silver coin or any medal or piece of metal or mixed metals resembling in size figure and colour the current coin as or for which the same shall be so tendered uttered or put off, such coin medal or piece of metal or mixed metals so tendered uttered or put off being of less value than the current coin as or for which the same shall be so tendered uttered or put off, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding one year.^(a)

Counterfeiting
copper coin.

Ib. s. 259.

Ib. s. 14.

280. Whosoever shall falsely make or counterfeit any coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin and whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall knowingly make or mend or begin or proceed to make or mend or buy or sell or have in his custody or possession any instrument tool or engine adapted and intended for the counterfeiting any of the Queen's current copper coin, or shall buy sell receive pay or put off or offer to buy sell receive pay or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin at or for a lower rate or value than the same imports or was apparently intended to import, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

(a) Where a prisoner has passed three medals as coins of the realm, which it was evident to a casual observer were not so, and another man received

them as money and gave change: *Held*, sufficient evidence to support a conviction for uttering counterfeit coin.—*Reg. v. McColl*, 7 V.L.R., 136.

281. Whosoever shall tender utter or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin knowing the same to be false or counterfeit, or shall have in his custody or possession three or more pieces of false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin knowing the same to be false or counterfeit and with intent to utter or put off the same or any of them, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding one year.

"The Criminal L. and P. Statute 1864" s. 280.
Uttering counterfeit copper coin.
24 & 25 Vict. c. 99 s. 15.

282. Whosoever shall deface any of the Queen's current gold silver or copper coin by stamping thereon any names or words, whether such coin shall or shall not be thereby diminished or lightened, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding one year.

Defacing coin.
Ib. s. 261.
Ib. s. 16.

283. No tender of payment in money made in any gold silver or copper coin so defaced by stamping as in the last preceding section mentioned shall be allowed to be a legal tender; and whosoever shall tender utter or put off any coin so defaced shall on conviction thereof before two justices be liable to forfeit and pay any sum not exceeding Forty shillings. Provided that it shall not be lawful for any person to proceed for any such last-mentioned penalty without the consent of a law officer.

Tendering defaced coin.
Ib. s. 262.
Ib. s. 17.

284. Whosoever shall make or counterfeit any kind of coin not being the Queen's current gold or silver coin but resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince state or country, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Counterfeiting foreign gold or silver coin.
Ib. s. 263.
Ib. s. 18.

285. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall bring or receive into Victoria any such false or counterfeit coin resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince state or country, knowing the same to be false or counterfeit, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Importing such counterfeit coin.
Ib. s. 264.
Ib. s. 19.

286. Whosoever shall tender utter or put off any such false or counterfeit coin resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince state or country, knowing the same to be false or counterfeit, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding six months.

Uttering such counterfeit coin.
Ib. s. 265.
Ib. s. 20.

287. Whosoever having been so convicted as in the last preceding section mentioned shall afterwards commit the like offence of tendering uttering or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

Second and third offence.
Ib. s. 266.
Ib. s. 21.

"The Criminal
L. and P.
Statute 1864."

And whosoever having been so convicted of a second offence shall afterwards commit the like offence of tendering uttering or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Counterfeiting
other foreign
coin.

Ib. s. 267.

24 & 25 Vict.
c. 99 s. 22.

288. Whosoever shall falsely make or counterfeit any kind of coin not being the Queen's current coin but resembling or apparently intended to resemble or pass for any copper coin of any foreign prince state or country or any other coin of any foreign prince state or country made of any metal or mixed metals of less value than the silver coin of such foreign prince state or country, shall be guilty of a misdemeanor; and being convicted thereof shall be liable at the discretion of the court for the first offence to be imprisoned for any term not exceeding one year; and for the second offence to be imprisoned for any term not exceeding five years.

Possession of five
pieces of such
coin.

Ib. s. 268.

Ib. s. 23.

289. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall have in his custody or possession any greater number of pieces than five pieces of false or counterfeit coin resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince state or country or any such copper or other coin as in the last preceding section mentioned, shall on conviction thereof before any justice forfeit and lose all such false and counterfeit coin, which shall be cut in pieces and destroyed by order of such justice; and shall for every such offence forfeit and pay any sum of money not exceeding Forty shillings nor less than Ten shillings for every such piece of false and counterfeit coin which shall be found in the custody or possession of such person; and in case any such penalty shall not be forthwith paid, it shall be lawful for any such justice to commit the person who shall have been adjudged to pay the same to be imprisoned and kept to hard labour for the space of three months or until such penalty shall be paid.

Making &c.
coining tools.

Ib. s. 269.

Ib. s. 24.

290. Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused) shall knowingly make or mend or begin or proceed to make or mend or buy or sell or have in his custody or possession any puncheon counter puncheon matrix stamp die pattern or mould in or upon which there shall be made or impressed or which will make or impress or which shall be adapted and intended to make or impress the figure stamp or apparent resemblance of both or either of the sides of any of the Queen's current gold or silver coin or of any coin of any foreign prince state or country or any part or parts of both or either of such sides, or shall make or mend or begin or proceed to make or mend or shall buy or sell or have in his custody or possession any edger edging or other tool collar instrument or engine adapted and intended for the marking of coin round the edges with letters grainings or other marks or figures apparently resembling those on the edges of any such coin as in this section aforesaid knowing the same to be so adapted and intended as aforesaid, or shall make or mend or begin or proceed to make or mend or shall buy or sell or have in his custody or possession any press for coinage or any cutting engine for cutting by force of a screw or of any other contrivance round blanks out of gold silver or other metal

or mixture of metals or any other machine, knowing such press to be a press for coinage or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin as in this section aforesaid, shall be guilty of felony; and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

291. Every offence of falsely making or counterfeiting any coin or of buying selling receiving paying tendering uttering or putting off or of offering to buy sell receive pay utter or put off any false or counterfeit coin against the provisions of this Division of this Part of this Act shall be deemed to be complete, although the coin so made or counterfeited or bought sold received paid tendered uttered or put off or offered to be bought sold received paid uttered or put off shall not be in a fit state to be uttered or the counterfeiting thereof shall not be finished or perfected.

What shall be a complete counterfeiting.
Id. s. 270.
24 & 25 Vict.
c. 99 s. 30.

DIVISION 6.—PERJURY.

292. In every case in which by any Act now or hereafter to be in force it shall be required or authorized that facts matters or things be verified or otherwise assured or ascertained by or upon the oath affirmation declaration or affidavit of some or any person, if any person having in any such case taken or made any oath affirmation or declaration so required or authorized shall knowingly wilfully and corruptly upon such oath affirmation or declaration depose swear to or make any false statement as to any such fact matter or thing, or if any person shall knowingly wilfully and corruptly upon oath depose to the truth of any statement for so verifying assuring or ascertaining any such fact matter or thing or purporting so to do, or shall knowingly wilfully and corruptly take make sign or subscribe any such affirmation declaration or affidavit as to any such fact matter or thing, such statement affirmation or declaration being untrue in the whole or any part thereof, or shall knowingly wilfully and corruptly omit from any such affidavit made or sworn under the provisions of any law relating to the registration of newspapers any matter which by the provisions of such law is required to be stated in such affidavit, he shall be deemed to be guilty of wilful and corrupt perjury and be punishable accordingly. Provided that nothing herein contained shall affect any case amounting to perjury at the common law or the case of any offence in respect of which other or special provision is made by any Act.

Making &c. false declaration under any Act to be perjury.
Id. s. 271.

293. All evidence and proof whatsoever, whether given or made orally or by or in any affidavit examination or deposition, shall be deemed and taken to be material with respect to the liability of any person to be proceeded against and punished for wilful and corrupt perjury or for subornation of perjury.

All evidence material with respect to perjury.
Id. s. 272.

Sections sixty-seven and sixty-eight of the *Evidence Act 1890* shall be deemed to be incorporated with and form part of this Act.

Act No. 343 s. 3.

DIVISION 7.—OFFENCES IN RESPECT OF ELECTIONS.

(1) *Elections to Parliament.*

294. If any person to whom any of the prescribed questions which shall or may be put by the returning officer or deputy returning officer in accordance with the provisions of *The Constitution Act Amendment Act 1890* shall be so put shall wilfully make a false answer to the same or

False answers to questions &c. or double voting a misdemeanor.
"The Electoral Act 1895" s. 116.

"*The Electoral Act 1885.*"

any part thereof, and if any person being so required to write his name as in the said Act provided shall wilfully write as his own name the name of any other person or any name not being his own name, and if any person shall wilfully make a false declaration under section two hundred and forty-nine of the said Act, or shall personate any elector for the purpose of voting at any election or shall vote twice at any election for the same province or district, or wilfully and knowingly deposit in the ballot box at any polling place more ballot papers than one, he shall be guilty of a misdemeanor.

Penalty for breaking seal of or opening parcel or packet.
Ib. s. 125.

295. If any person shall knowingly and wilfully break the seal of or open any sealed parcel or sealed packet of ballot papers, certified copies of rolls books rolls and papers which have been sealed in accordance with the provisions of *The Constitution Act Amendment Act 1890*, unless he be by the lawful command of some competent court or other tribunal required so to do or called upon to produce some portion of the contents of such parcel or packet, he shall be guilty of a misdemeanor.

Violation of secrecy by officers &c.
Ib. s. 182.

296. If any returning officer or the substitute of any returning officer or any deputy returning officer poll clerk or scrutineer shall in the discharge of his duties under *The Constitution Act Amendment Act 1890* at or concerning any election learn or have the means of learning for what candidate any person shall vote or have voted at such election, he shall not by word or act or any other means whatsoever directly or indirectly divulge or discover or aid in divulging or discovering the same, save in answer to some question which he is legally bound to answer or in compliance with the express provisions of the law relating to parliamentary elections; and every such returning officer substitute deputy poll clerk or scrutineer who shall knowingly and wilfully offend against the provisions of this section shall be guilty of a misdemeanor.

(2) *Elections to Municipal Councils.*

False answer polling twice and personation.
"*Local Government Act 1874*"
s. 134.

297. Every person who shall wilfully make a false answer to any of the questions which in accordance with the provisions of the *Local Government Act 1890* shall or may be put by the returning officer deputy or person appointed by writing under the hand of the returning officer or his deputy in accordance with the provisions of the said Act, or who shall poll more than once or offer to poll more than once at the same election or who shall depart or attempt to depart from any polling booth after having received a ballot paper without having deposited the same in the ballot box as in the said Act provided, or who shall personate any other person for the purpose of polling at such election, shall on conviction before any two or more justices for every such offence be imprisoned for any period not exceeding one year; but nothing contained in this section shall apply to any person only by reason of his exercising the right of voting as often as it appears by the roll he is entitled so to do.

Penalty for breaking seal of or opening parcel or packet.
Ib. s. 137.

298. If any person knowingly and wilfully break the seal of or open any sealed parcel or packet of ballot papers sealed in accordance with the provisions of the *Local Government Act 1890* unless by the lawful command of some competent court or other tribunal required so to do, or to produce some portion of the contents of such parcel or packet, he shall be guilty of a misdemeanor.

299. If any returning officer deputy or person appointed as aforesaid or any scrutineer or poll clerk in the discharge of his duties under the *Local Government Act 1890* at or concerning any election learn or have the means of learning for what candidate any person has voted at such election, he shall not by word or act or any other means whatsoever directly or indirectly divulge or discover or aid in divulging or discovering the same, save in answer to some question which he is legally bound to answer; and every such returning officer deputy person appointed as aforesaid scrutineer and poll clerk who knowingly and wilfully offends against the provisions of this section shall be guilty of a misdemeanor.

"Local Government Act 1874" s. 138.
Penalty for returning officer or deputy &c. divulging the name of the candidate for whom any person may vote.

DIVISION 8.—SUBSEQUENT AND OTHER FELONIES.

300. Whosoever shall be convicted of any felony not punishable with death committed after a previous conviction for felony shall (save where it is otherwise specially provided) be liable on such subsequent conviction at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Punishment for a subsequent felony.
"The Criminal L. and P. Statute 1864" s. 235.
See 7 & 8 Geo. IV. c. 28 s. 11.

301. Whosoever shall be convicted of any felony not punishable with death shall be punished in the manner prescribed by the Statutes or Acts relating to such felony; and whosoever shall be convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this section; and shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Felonies not otherwise provided for punishable under this section.
Ib. s. 236.
See Ib. s. 8.

PART II.—OFFENDERS.

DIVISION 1.—PRINCIPALS IN THE SECOND DEGREE ACCESSORIES RECEIVERS AND ABETTORS.

(1) *Principals in the Second Degree.*

302. In every felony punishable under this Act every principal in the second degree shall be punishable in the same manner as the principal in the first degree is punishable.

Principals in second degree.
Ib. s. 273.
24 & 25 Vict. c. 98 s. 49.
Ib. c. 90 s. 35.

(2) *Accessories before the fact.*

303. Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, may be presented indicted informed against tried convicted and punished in all respects as if he were a principal felon.

Accessories before the fact.
Ib. s. 274.
Ib. c. 94 s. 1.
Ib. c. 98 s. 49.
Ib. c. 99 s. 35.
11 & 12 Vict. c. 46 s. 1.

(3) *Accessories after the fact.*

304. Whosoever shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, may be presented indicted informed against and convicted either as an accessory after the fact to the principal felony together with the principal felon or after the conviction of the principal felon; or may be presented indicted informed against and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice; and may thereupon be punished in like manner as

Accessories after the fact how dealt with.
Ib. s. 275.
24 & 25 Vict. c. 94 s. 2.

"The Criminal
L. and P.
Statute 1864."

Accessories to
murder how
punished.

Ib. s. 276.

See 24 & 25 Vict.
c. 100 s. 67.

To other felonies
how punished.

Ib. s. 277.

Ib. c. 94 s. 4.

Ib. c. 96 s. 98.

any accessory after the fact to the same felony if convicted as an accessory may be punished.

305. Whosoever shall become accessory after the fact to murder shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

306. Every accessory after the fact to any felony (except where it is otherwise specially enacted) whether the same be a felony at common law or by virtue of any Act passed or to be passed shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

(4) *Receivers.*

Receivers of prop-
erty feloniously
stolen or other-
wise disposed of
how dealt with.

Ib. s. 278.

Ib. s. 91.

307. Whosoever shall receive any chattel money valuable security or other property whatsoever, the stealing taking extorting obtaining embezzling or otherwise disposing whereof shall amount to a felony either at common law or by virtue of Division two of Part I. of this Act, such person knowing the same to have been feloniously stolen taken extorted obtained embezzled or disposed of, shall be guilty of felony; and may be presented indicted informed against and convicted either as an accessory after the fact or for a substantive felony; and in the latter case whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice; and every such receiver howsoever convicted shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years. Provided always that no person howsoever tried for receiving as aforesaid shall be liable to be prosecuted a second time for the same offence.

Where the ori-
ginal offence is a
misdemeanor re-
ceivers how dealt
with.

Ib. s. 279.

Ib. s. 95.

308. Whosoever shall receive any chattel money valuable security or other property whatsoever the stealing taking obtaining converting or disposing whereof, is made a misdemeanor by Division two of Part I. of this Act, such person knowing the same to have been unlawfully stolen taken obtained converted or disposed of shall be guilty of a misdemeanor; and may be presented indicted informed against and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof or shall or shall not be amenable to justice; and every such receiver being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

Receivers where
the original
offence is pun-
ishable on sum-
mary conviction.

Ib. s. 280.

Ib. s. 97.

309. Where the stealing or taking of any property whatsoever is by Division two of Part I. of this Act punishable on summary conviction either for every offence or for the first and second offence only or for the first offence only, any person who shall receive any such property knowing the same to be unlawfully come by shall on conviction thereof before a justice be liable for every first second or subsequent offence of receiving to the same forfeiture and punishment to which a person guilty of a first second or subsequent offence of stealing or taking such property is by the said Division two made liable.

(5) *Accessories generally.*

Accessory may
be dealt with as
though principal
attainted.

Ib. s. 281.

Ib. c. 94 s. 5.

310. If any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory either before or after the fact in the same manner as if such principal felon

had been attainted thereof, notwithstanding such principal felon shall die or be pardoned or otherwise delivered before attainer; and every such accessory shall upon conviction suffer the same punishment as he would have suffered if the principal had been attainted.

311. No person who shall be once duly tried either as an accessory before or after the fact or for a substantive felony under the provisions hereinbefore contained shall be liable to be afterwards prosecuted for the same offence.

The Criminal L. and P. Statute 1864.
Accessories once tried not to be afterwards liable.
Ib. s. 232.
24 & 25 Vict. c. 94 s. 7.

(6) *Abettors in Misdemeanors.*

312. Whosoever shall aid abet counsel or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law or by virtue of any Act passed or to be passed, shall be liable to be tried presented indicted informed against and punished as a principal offender.

Abettors in misdemeanors how dealt with.
Ib. s. 233.
Ib. s. 8.

(7) *Abettors in Offences punishable summarily.*

313. Whosoever shall aid abet counsel or procure the commission of any offence which is by this Act punishable on summary conviction either for every time of its commission or for the first and second time only or for the first time only, every such person shall on conviction before a justice (save in cases in which some other provision is made by this Act) be liable for every first second or subsequent offence of aiding abetting counselling or procuring to the same forfeiture and punishment to which a person guilty of a first second or subsequent offence as a principal offender is by this Act made liable.

Abettors in offences punishable on summary conviction how dealt with.
Ib. s. 234.
Ib. c. 96 s. 90.

DIVISION 2.—JUVENILE OFFENDERS.

314. In this Division of this Part of this Act, unless inconsistent with the subject-matter or context, the following words shall have the meanings hereinafter respectively assigned to them (that is to say):—

Interpretation of terms.
"The Juv. Offenders Act 1887"
s. 3.

"Inmate" shall mean and include inmate within the meaning of "The Juvenile Offenders Act 1887" and the Acts thereby repealed:

"The Inspector" shall mean the Inspector of Reformatory Schools:

"The Minister" shall mean the responsible Minister of the Crown administering this Division of this Part of this Act:

"The Secretary" shall mean the Secretary of the Department for Reformatory Schools:

"Ward of the Department for Reformatory Schools" shall include any one of whose person the superintendent or matron of any reformatory school is guardian under the provisions of this Division of this Part of this Act.

(1) *Establishment of Reformatory Schools.*

315. The Governor in Council may from time to time for the purposes of this Division of this Part of this Act establish and abolish reformatory schools, and every such school shall be occupied by and used for males or females exclusively as the Governor in Council may direct, and any such reformatory school for males if the Governor in Council think fit may be established upon a training ship, and all

Reformatory schools.
Ib. s. 6.

"The Juven. Offenders Act 1887." existing reformatory schools established under "*The Juvenile Offenders Act 1887*" or under any Act thereby repealed shall for the purposes of this Division of this Part of this Act be deemed to have been established under this Act.

Reformatory schools established by private persons.
Ib. s. 6.

316. Any school established by private contributions and approved by the Governor in Council as a reformatory school shall unless and until such approval be withdrawn be deemed a reformatory school within the meaning of this Division of this Part of this Act, and any person for the time being approved by the Governor in Council for that purpose shall be deemed the superintendent or matron of such school. And in case any such school is established for any religious denomination or denominations exclusively, the Governor in Council may approve of the same for such denomination or denominations, and in such case no child shall be sent or committed to such school who is not a member of the denomination or of one of the denominations for which the school is approved.

Any school approved by the Governor in Council under section nine of "*The Neglected and Criminal Children's Act 1864*" as a reformatory school shall unless and until such approval be withdrawn be deemed to have been appointed as a reformatory school within the meaning of this Division of this Part of this Act for the denomination or denominations (if any) for which the school is stated to be supported in the order approving the same.

State aid to private reformatory schools.
Ib. s. 7.

317. The managers of every school established by private contributions and approved by the Governor in Council as aforesaid as a reformatory school shall be entitled to receive out of any moneys which may be appropriated by Parliament for that purpose for every ward of the Department for Reformatory Schools or inmate under the provisions of this Division of this Part of this Act or "*The Juvenile Offenders Act 1887*" or any Act thereby repealed maintained in such school during the preceding year or any part thereof a sum calculated at the rate of not more than five shillings a week, or in case such ward be a cripple or invalid or of unsound mind at such greater rate as the Minister may approve.

Approval of private reformatory school how withdrawn.
Ib. s. 8.

318. If at any time upon the report of the Inspector the Governor in Council is dissatisfied with the condition management or regulations of any reformatory school established by private contributions he may withdraw his approval from such school, and from and after publication of such withdrawal in the *Government Gazette* the school shall cease to be a reformatory school within the meaning of this Division of this Part of this Act and to be entitled to receive aid from the consolidated revenue. Provided nevertheless that the Governor in Council shall not withdraw his approval of any school as aforesaid until after the lapse of two months from the transmission of a duplicate of the report aforesaid to the superintendent matron or managers of such school.

(2) Officers.

Secretary.
Ib. s. 9.

319. The person holding the office of Secretary of the Department for Reformatory Schools at the commencement of this Act shall unless and until removed in accordance with the provisions of the *Public Service Act 1890* or any amendment thereof by the Governor in

Council be the Secretary of the Department for Reformatory Schools under this Act as if appointed hereunder, and the Governor in Council may subject to the provisions of the *Public Service Act* 1890 or any amendment thereof from time to time appoint some fit and proper person to be Secretary of the Department for Reformatory Schools and remove every such Secretary. It shall be the duty of the Secretary under the direction of the Minister to carry into operation the provisions of this Division of this Part of this Act so far as the execution thereof is not expressly committed to any other person.

320. The Secretary shall on or before the thirtieth of June in each year submit to the Minister a report of his proceedings and accounts of the receipts and expenditure under the powers or for the purposes of this Division of this Part of this Act during the past year, with returns showing the number of children received and discharged their ages religion parentage birth-place location and cost of maintenance and the sums contributed by relatives towards their support, together with any general remarks he may think fit to make, and there shall be annexed to such report reports by the superintendent matron or manager of every reformatory school upon the state and requirements of such school, which such superintendents matrons and managers are hereby required to furnish to the Secretary on or before the thirty-first day of March in every year for that purpose. And the Minister shall lay such report of the Secretary with the reports annexed to it before both Houses of Parliament within three weeks after the presentation thereof if Parliament be then sitting, or if not then sitting within three weeks from the next assembling of Parliament.

*Report of the
Secretary.
Ib. s. 10.*

321. The person holding the office of Inspector of Reformatory Schools at the commencement of this Act shall unless and until removed in accordance with the provisions of the *Public Service Act* 1890 or any amendment thereof by the Governor in Council be the Inspector of Reformatory Schools under this Division of this Part of this Act as if appointed hereunder, and the Governor in Council may subject to the provisions of the *Public Service Act* 1890 or any amendment thereof from time to time appoint some fit and proper person to be Inspector of Reformatory Schools and remove every such inspector.

*The Inspector.
Ib. s. 11.*

322. It shall be the duty of the Inspector to visit and inspect every reformatory school as often as occasion may require and not less often than the Governor in Council may by regulation direct, and to report to the Minister thereon, and upon all matters connected therewith.

*Duties of
Inspector.
Ib. s. 12.*

323. Subject to the provisions of the *Public Service Act* 1890 or any amendment thereof, the Governor in Council may from time to time appoint for every reformatory school for males a superintendent and for every reformatory school for females a matron, and may remove every such superintendent and matron; and it shall be the duty of the superintendent and matron of every such school to carry into execution all the provisions of this Division of this Part of this Act and the regulations in force thereunder so far as the same relate to such school and the children for the time being detained there.

*Superintendents
and matrons.
Ib. s. 13.*

"The Juven. Offenders Act 1887" s. 14.
Existing superintendents and matrons to continue.

324. Every person holding the office of superintendent or matron of any reformatory school at the commencement of this Act shall, unless and until removed by the Governor in Council, continue superintendent or matron as the case may be of such school under this Division of this Part of this Act as if appointed hereunder.

Teachers officers and servants.
Ib. s. 15.

325. It shall be the duty of the teachers officers and servants of every reformatory school to obey all lawful and reasonable orders and directions of the superintendent or matron as the case may be in the execution of this Division of this Part of this Act.

Application of the Public Service Act 1890.
Ib. s. 16.

326. The Inspector and every superintendent and matron deemed to be appointed under this Division of this Part of this Act shall be deemed to be so appointed with the same classification salaries and emoluments subject to be altered in the same manner and no other as would have been the case if this Division of this Part of this Act had not passed, and save as aforesaid nothing in this Division of this Part of this Act shall be deemed to alter or repeal the *Public Service Act* 1890, and all appointments and removals to be made by the Governor in Council under the powers contained in this Division of this Part of this Act shall be made subject to the provisions of the *Public Service Act* 1890 or any other Act for the time being in force relating to the Public Service.

Power to appoint temporary officers.
Ib. s. 17.

327. In case of the absence on leave or temporary incapacity of any officer appointed under the provisions of this Division of this Part of this Act the Governor in Council may appoint some fit and proper person to act in his stead, and every such person when so acting may exercise all the powers and duties of the officer in whose place such person is appointed.

Judicial notice to be taken of signatures.
Ib. s. 18.

328. All courts judges and persons acting judicially shall take judicial notice of the signature of the Minister the Secretary the Inspector and of any superintendent matron or clerk of a court or of any person acting in any of such offices to every document required to be signed for the purpose of this Division of this Part of this Act.

(3) *Committal to Reformatory Schools.*

Convicted child may be sent to a reformatory, or if under twelve committed to the care of the department, in lieu of imprisonment.
Ib. s. 19.

329. Whenever any child apparently under the age of seventeen years is convicted of any offence for which a sentence of imprisonment may be awarded, whether such offence is an indictable offence or punishable on summary conviction, the judge or chairman of the court before which or any two or more justices by whom such child is so convicted may in lieu of any sentence of imprisonment order such child to be committed if apparently over the age of twelve years or having in the opinion of such judge chairman or justices been leading an immoral or depraved life to a reformatory school, and if apparently under the age of twelve years and not having in the opinion of such judge chairman or justices been leading an immoral or depraved life to the care of the Department for Neglected Children. Provided always that such judge chairman or justices may under the special circumstances of any case order any such child apparently over the age of twelve years and not having in the opinion of such judge chairman or justices been leading an immoral or depraved life to be committed to the care of

the Department for Neglected Children instead of to a reformatory school. *"The Juu. Offenders Act 1887."*

330. When any child convicted of any offence is committed to a reformatory school or to the care of the Department for Neglected Children, such child shall not suffer any forfeiture or disability of any kind in consequence of such conviction other than is provided by this Division of this Part of this Act or any law for the time being in force relating to neglected children. *Committal to a reformatory &c. not to entail other disability. Ib. s. 20.*

331. Every order committing a child to a reformatory school shall specify the particular school to which the child is committed, which must be some one of the schools established or approved by the Governor in Council as aforesaid to which such child may be lawfully committed. Provided always that no order shall be bad or liable to be quashed for specifying a school to which the child cannot be lawfully committed, but it shall be the duty of the Secretary in any such case to take the proper steps to procure the transfer of such child to some school to which such child might have been lawfully committed. *Committal to be to particular reformatory school which may be changed. Ib. s. 21.*

332. Every order committing a child to a reformatory school or to the care of the Department for Neglected Children may be in such one of the forms in the Third Schedule hereto as may be applicable or in any form which may be substituted therefor by the regulations of the Governor in Council for the time being in force or to the like effect, and such order or an office copy thereof without any warrant shall be sufficient authority for any constable to take such child to the reformatory school named therein, or in case of a child committed to the care of the Department for Neglected Children to the place to which the Secretary may direct such child to be taken, or in default of any such direction to such receiving house for children of the same age and sex as may be nearest or most convenient. *Form of order committing a child to a reformatory or the care of the department. Ib. s. 22. Third Schedule.*

333. When at or after the commencement of this Act any child apparently under the age of eighteen years is confined in any gaol under sentence of imprisonment it shall be the duty of the Inspector-General of Penal Establishments to consult with the Secretary and consider whether such child could be properly transferred to a reformatory school; and if the Inspector-General and Secretary concur that such child should be transferred to a reformatory school, they may jointly report to the Minister to that effect naming the school to which in their opinion such child could be properly transferred, and accompanying such report by a full record of such child, and the Minister shall transmit such report and record to the superintendent or matron of such school, who shall make such remarks thereon as to such superintendent or matron may seem fit and return the same to the Minister, who shall lay such report and record together with the remarks of such superintendent or matron before the Governor in Council, who may if it seem fit upon the consideration thereof order that such child be transferred to such reformatory school, and such order shall have the same effect as and be deemed an order committing such child to such reformatory school under the provisions of this Division of this Part of this Act and shall unless such child be transferred back to such gaol under the powers herein contained in that behalf operate as a remission of the residue of the sentence of imprisonment of such child. *Power to transfer child from gaol to reformatory. Ib. s. 23.*

"The Juvs. Offenders Act 1857"
s. 24.

Power to send
child transferred
from gaol to
reformatory
back to gaol.

334. In case the behaviour of any person transferred from a gaol to a reformatory under the power contained in the last preceding section be in the opinion of the matron or superintendent of such reformatory so bad as to be injurious to the discipline of the said reformatory and to the other wards of the Department for Reformatory Schools or inmates therein, such matron or superintendent may report to the Minister to that effect, who may lay such report before the Governor in Council, who may if it seem fit upon the consideration thereof order such person to be transferred back to such gaol, and thereupon such person shall be removed to such gaol and shall serve the residue of his sentence which was unexpired at the time of the order for his transfer to the reformatory, and the time spent in the reformatory shall not be reckoned as part thereof.

(4) *Management of Wards of the Department for Reformatory Schools.*

Superintendent
or matron to be
guardian of the
person of a child
committed to a
reformatory.
Id. s. 25.

335. Whenever any child is committed or transferred to a reformatory school under the provisions of this or any other Act for the time being in force authorizing such committal or transfer, the superintendent or matron of such school shall become guardian of the person of such child to the exclusion respectively of the father and every other guardian until such child attains the age of eighteen years or such greater age not exceeding twenty years as the Governor in Council may direct, unless such child is sooner discharged; and such superintendent or matron shall as such guardian have the sole right to the custody of such child and shall deal with such child as directed by this Division of this Part of this Act and the regulations of the Governor in Council in force hereunder.

Method of trans-
ferring child
from one refor-
matory to
another.
Id. s. 26.

336. Whenever any ward of the Department for Reformatory Schools is desired to be transferred from one reformatory school to another, the Secretary may write or cause to be written on the order committing such ward to such reformatory school or an office copy thereof a memorandum to the following effect:—"I recommend that A.B. within named be transferred to the reformatory school at (describing the school)," and may sign such memorandum, and the Minister may write or cause to be written after such memorandum the word "approved" together with the date and may sign the same, and thereupon such ward shall be deemed to be transferred to such reformatory school.

Method of trans-
ferring a child
from a reforma-
tory to the care
of the Depart-
ment for
Neglected
Children.
Id. s. 27.

337. Whenever any ward of the Department for Reformatory Schools is desired to be transferred from a reformatory school to the care of the Department for Neglected Children, the superintendent or matron of such school may write or cause to be written on the order committing such ward to such school, or if such ward has been transferred from the care of the Department for Neglected Children the order committing such ward to the care of such Department or an office copy thereof respectively, a memorandum to the following effect:—"I recommend that A.B. within named be transferred to the care of the Department for Neglected Children," and may sign such memorandum, and the Secretary may write or cause to be written after such memorandum the words "I concur," and may sign the same, and the Minister

may thereupon write or cause to be written the word "approved" together with the date and sign the same, and thereupon such ward shall be deemed to be transferred to the care of the Department for Neglected Children.

"The Juv. Offenders Act 1887."

338. No warrant shall be necessary to authorize the detention of any ward of the Department for Reformatory Schools, but if the right to the custody of such ward be called in question by *habeas corpus* or otherwise it shall be sufficient to give in evidence the order committing such ward to a reformatory school, and in case such ward has been transferred from one reformatory school to another, the order or orders transferring such ward, or in case such ward has been transferred from the care of the Department for Neglected Children to a reformatory school the order committing such ward to the care of the Department for Neglected Children together with the order or orders transferring such ward, and to show that such ward is detained by the authority of the superintendent or matron as the case may be as guardian of the person of such ward.

Warrant not to be necessary to detain child.
ib. s. 23.

339. The Governor in Council may at any time order any ward of the Department for Reformatory Schools to be discharged, and thereupon the superintendent or matron as the case may be shall cease to be guardian of the person of such ward.

Power to the Governor in Council to discharge any ward of the department.
ib. s. 29.

340. Subject to the regulations of the Governor in Council every ward of the Department for Reformatory Schools may from time to time be dealt with by the superintendent or matron in one or other of the following ways:—

Wards of the Department for Reformatory Schools how dealt with.
ib. s. 30.

- (1) Detained in the reformatory school:
- (2) Transferred with the approval of the Minister to some other reformatory school to which such ward might be lawfully committed:
- (3) Transferred with the approval of the Minister to the care of the Department for Neglected Children:
- (4) Placed at service with some suitable person:
- (5) Apprenticed to some trade either on land or at sea:
- (6) Placed in the custody of some suitable person who has given a bond with or without sureties in the form prescribed by the regulations of the Governor in Council conditioned for the good behaviour of such ward.

The last-mentioned power shall apply to inmates of reformatory schools on and after the first day of January One thousand eight hundred and eighty-eight, who for that purpose shall be deemed wards of the Department for Reformatory Schools.

Provided always that no ward of the Department for Reformatory Schools who has been leading an immoral or depraved life shall be transferred to the care of the Department for Neglected Children until the superintendent or matron has certified to the Minister that such ward can be safely and properly so transferred.

341. Every person with whom any ward of the Department for Reformatory Schools may be placed shall from time to time permit such ward to be visited and any place where such ward may be or reside to be inspected by the Inspector or any person authorized by or

Power to visit and inspect wards placed at service &c.
ib. s. 31.

"The Juven. Offenders Act 1887." under the regulations of the Governor in Council for the time being in force in that behalf.

Female children in reformatories who have been leading an immoral or a depraved life to be kept separate from the rest.
Ib. s. 32.

342. It shall be the duty of the matron of every reformatory school for females to keep all wards of the Department for Reformatory Schools committed to a reformatory school on the ground that they have been living an immoral or depraved life or who she has reason to believe have in fact been leading an immoral or depraved life so far as possible separate from all others.

Power of apprenticing wards of the department.
Ib. s. 33.

343. The superintendent or matron of every reformatory school shall be deemed a person having the control of a public institution of an eleemosynary nature, and all wards of the Department for Reformatory Schools in such school shall be deemed children under his or her care or control within the meaning of the *Master and Apprentice Act 1890*.

Constables to assist in retaining custody of wards.
Ib. s. 34.

344. All constables and peace officers shall assist every superintendent or matron of a reformatory school in retaining or recovering the custody of any ward of the Department for Reformatory Schools or inmate who may abscond or attempt to abscond.

(5) *Visitors to Schools and Religious Instruction.*

Visiting committee.
Ib. s. 35.

345. The Governor in Council may appoint for every reformatory school so many fit and proper persons as may be determined by the regulations hereunder in that behalf, and in default of any such determination as may seem desirable, a majority of whom reside in the locality, to be a visiting committee, and the members of such visiting committee shall from time to time visit such schools as occasion may require and may report to the Minister as to them may seem fit.

Religious instruction.
Ib. s. 36.

346. Subject to the regulations of the Governor in Council, all ministers of religion or any person being duly authorized by the recognised head of any religious denomination shall have admission to every reformatory school maintained at the sole expense of the State, and access to such of the persons placed or detained therein as may be members of their respective denominations, and may give instruction to them on the days and at the times allotted by such regulations for the religious education of such persons of their respective denominations.

Other visitors.
Ib. s. 37.

347. Subject to the regulations of the Governor in Council, all persons authorized in that behalf by the Minister all Executive Councillors all Members of either House of Parliament all judges of courts (whether of record or otherwise) and all justices shall be entitled to visit every reformatory school, and shall have admission to the same accordingly.

Visitors' book.
Ib. s. 38.

348. Every person who by virtue of the provisions hereinbefore contained is entitled to visit any such school as aforesaid and every minister of religion may inscribe in a book (to be for that purpose provided and kept in such house or school by the superintendent or matron thereof) any remarks or observations which he may think fit to make touching or concerning such house or school and the superintendent matron teachers officers or servants or the persons placed or

detained therein or any of them, and such book shall be produced to the Inspector whenever he visits such house or school. *"The Juven. Offenders Act 1887."*

(6) *Committal to the Care of Private Persons.*

349. When any child has been committed to any reformatory school under this Division of this Part of this Act or any law for the time being in force relating to neglected children, if any person who is in the opinion of the judge chairman or justices committing such a child a proper person to have the custody of such child appear and apply for the custody of such child and offer to enter into such security as such judge chairman or justices may think sufficient for the good behaviour of such child and for the appearance of such child at the reformatory school to which such child has been committed when such child may be called upon by the Minister, such judge chairman or justices may take the recognisance of such person for the appearance of such child at such reformatory school at any time such child may be called upon by the Minister before such child attain the age of eighteen years and for the good behaviour of such child in the meantime, and may thereupon commit such child to bail of such person without such child being taken to the reformatory school. Provided always that no such child shall be educated in any religion different from that in which it would be the duty of any guardian of such child appointed by the Supreme Court to direct such child to be educated.

Power to release on bail child committed to reformatory.
Ib. s. 39.

350. Any child so released on bail may at any time be surrendered by the person to whose bail such child has been committed to the custody of the superintendent or matron of the reformatory school to which such child has been committed, and such bail shall thereupon be discharged from his recognisance as regards any liability thereafter to be incurred.

Such child may be surrendered by his bail.
Ib. s. 40.

351. If any child so released on bail refuse or neglect to go to the reformatory school to which such child is committed when called upon by the Minister or the person to whose bail such child has been committed so to do, such child shall be deemed to abscond from such school within the meaning of this Division of this Part of this Act.

Such child refusing to go to reformatory when called on to be deemed an absconder.
Ib. s. 41.

352. When any child who has been committed to any reformatory school is released on bail, so long as such child remains on bail the person to whose bail such child has been committed shall exercise the powers of guardian of the person of such child, and unless the Secretary intervenes any person who would have been guardian of the estate of such child if such child had not been committed to a reformatory school shall continue to act as such guardian of the estate. But the Secretary shall have power to intervene at any time, and thereupon the powers of any such person as guardian of the estate of such child shall cease.

Guardianship of any child released on bail.
Ib. s. 42.

(7) *Release on Probation.*

353. When any person under the age of twenty-one years not having been previously convicted of any offence, whether an indictable offence or punishable upon summary conviction, for which such person was sentenced or adjudged to be imprisoned not in default of payment of a fine merely, is convicted of any indictable offence or any offence

Power to suspend the execution of sentences for first offences by persons under twenty-one on their recognisance.
Ib. s. 43.

"The Juv. Offenders Act 1887."

Power to the Governor to extend mercy to juvenile offenders on their recognisances.
Ib. s. 44.

Form of recognisance.
Ib. s. 45.

Release of offender.
Ib. s. 46.

Circumstances under which such offenders are to be re-committed to prison or finally discharged from their sentences.
Ib. s. 47.

punishable upon summary conviction and sentenced or adjudged to be imprisoned for any term not exceeding three years, the judge or chairman of the court before which or any two or more justices by whom such person is so convicted may if it seem fit suspend the execution of the sentence upon such person entering into a recognisance as hereinafter mentioned.

354. It shall be lawful for the Governor in all cases in which he is or shall be authorized on behalf of Her Majesty to extend mercy to any offender under sentence of imprisonment pronounced when such offender was under the age of twenty-five years not being an offender who has been at any time previously released from custody on entering into recognisances under the provisions of this Subdivision of this Division of this Part of this Act to extend mercy on condition of such offender entering into a recognisance as hereinafter mentioned. Provided always that nothing in this Division of this Part of this Act shall in any manner affect Her Majesty's Royal prerogative of mercy.

355. Every such recognisance shall be in such amount and without sureties or with one or more sureties as such judge chairman or justices or the Governor as the case may be may direct, and shall be conditioned that the offender be of good behaviour for a period to be fixed by such judge chairman or justices or by the Governor as the case may be, not being less than twelve months from the date thereof or such longer period as may be equal to the term of the sentence, or in case of an offender to whom the Governor may extend mercy the term of the sentence then unexpired.

356. When such recognisance is entered into the offender shall be released from custody but shall be liable to be committed to prison to undergo his sentence or the residue thereof under the circumstances hereinafter mentioned.

357. If during the period specified in the recognisance—

- (1) On any offender so released being brought before any two justices charged by any constable or peace officer with getting his livelihood by dishonest means it appears to such justices that there are reasonable grounds for believing that he is getting his livelihood by dishonest means; or
- (2) If on his being brought before any justice charged with any offence and being required by such justice to give his name and address he does not do so, or gives a false name and address; or
- (3) If he is convicted of any indictable offence or of any offence punishable on summary conviction for which he is sentenced or adjudged to be imprisoned for any period—

then and in any of such cases the offender shall be deemed guilty of misbehaviour for which the recognisance shall be forfeited, and any two justices may direct that such offender shall be committed to prison to undergo the sentence execution of which was suspended and may sign any warrant that may be necessary for that purpose, and thereupon such sentence or the residue thereof as the case may be shall begin to run as from the day on which such offender is so committed to prison.

But if during the period aforesaid none of the aforesaid events happen, such offender shall be discharged from the sentence. *"The Juu. Offenders Act 1887."*

(8) *Offences Penalties and Legal Proceedings.*

358. If any person without lawful authority or excuse—

- (1) Holds or attempts to hold any communication with any ward of the Department for Reformatory Schools in any reformatory school; or

Penalty for entering schools &c. or holding communication with wards of the department.

- (2) Enters any reformatory school or any building yard or ground belonging thereto and does not depart therefrom when required to do so by the superintendent matron or other officer or servant of such house or school;

Ib. s. 48.

every person so offending on conviction of any such offence before any two justices shall be liable to a penalty not exceeding Twenty pounds.

359. If the superintendent or matron of any reformatory school or any teacher officer or servant thereof negligently or voluntarily permits any ward of the department to escape, every person so offending shall on conviction of any such offence before any two justices be liable to a penalty not exceeding Twenty pounds.

Penalty for allowing ward - the department to escape.

Ib. s. 49.

360. If any person directly or indirectly—

- (1) Withdraws unlawfully any ward of the Department for Reformatory Schools or counsels or induces any such ward to abscond from any reformatory school or from any person to or with whom such ward is licensed or placed under the provisions of this Division of this Part of this Act; or

Penalty for inducing any ward of the department to abscond &c. or ill-treating any such ward.

Ib. s. 50.

- (2) Knowing any such ward to have been so withdrawn or to have so absconded harbours or conceals or assists in harbouring or concealing such ward or prevents such ward from returning to the school from which or the person from whom such ward has been so withdrawn or has so absconded; or

- (3) Being the person to or with whom any such ward is licensed or placed ill-treats or neglects to discharge his duty to such ward;

every person so offending on conviction of any such offence before any two justices shall be liable to a penalty not exceeding Ten pounds or to be imprisoned for any time not exceeding fourteen days.

361. If any person—

- (1) For the purpose of prostitution or defilement inveigles or entices any unmarried female ward of the Department for Reformatory Schools apparently under the age of eighteen years from any reformatory school or from the house or other place where or from any person to or with whom she may be licensed placed or apprenticed under the provisions of this Division of this Part of this Act; or

Penalty for seducing ward of the department.

Ib. s. 51.

- (2) Carnally knows any such female who is apparently under the age of fifteen years in any such school house or place as aforesaid; or

"*The Juu. Offenders Act 1887.*"

(3) Being the person to or with whom such female is licensed placed or apprenticed carnally knows any such female who is apparently under the age of eighteen years; or

(4) Aids or assists any person in any of the foregoing offences; every person so offending shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding three years. Provided that no conviction shall be had under the provisions of this section on the unsupported testimony of any one witness nor unless proceedings be taken within six months after the commission of the offence. Provided also that nothing in this section shall exempt any person from prosecution under any other law so that no person be punished for the same offence both under this section and any other law.

Power to forfeit earnings of ward for misbehaviour.

Ib. s. 52.

362. If any ward of the Department for Reformatory Schools is guilty of any misbehaviour, of which the Minister shall be the sole judge—

(1) The Minister may order the whole or any part of any moneys to which such ward is entitled invested on deposit with the Postmaster-General under any law now or hereafter to be in force relating to post-office deposit for savings to be applied in making good to Her Majesty or any other person any loss or expense occasioned by the misbehaviour of such ward. And for the purpose of carrying out the powers contained in this section the Minister may sign an order on the Postmaster-General directing payment to the Secretary or his order of the whole or any part of such money, and the Postmaster-General shall pay the same accordingly.

(2) The Minister may direct the whole of such moneys to be withheld from such ward notwithstanding such ward may have come of age until proof of the good conduct of such ward for a period of twelve months be given to the satisfaction of the Minister.

This subdivision to extend to persons committed under the repealed Acts.

Ib. s. 53.

363. Any inmate of a reformatory school under "*The Juvenile Offenders Act 1887*" or under any of the Acts thereby repealed shall be deemed a ward of the Department for Reformatory Schools within the meaning of this Subdivision of this Division of this Part of this Act.

Constable to apprehend offenders without warrant.

Ib. s. 54.

364. For the more effectual prosecution of all offences against this Division of this Part of this Act, any person found committing any such offence may be immediately apprehended without a warrant by any constable and forthwith taken before some neighbouring justice to be dealt with according to law.

Power to justices to award solitary confinement in certain cases.

Ib. s. 56.

365. Whenever imprisonment may by law be awarded for any offence punishable on summary conviction involving violence threats indecent or insulting behaviour or wilful and malicious injury to property, the justices may in their discretion direct that the offender being sixteen years of age or upwards be kept in solitary confinement for any portion or portions of his imprisonment or imprisonment with hard labour not exceeding seven days at any one time and not exceeding

twenty-one days in the whole, with intervals of not less than twenty-eight days between every term of solitary confinement. Provided always that no such offender shall by reason of any such direction be kept in solitary confinement without being previously examined by the medical officer of the gaol or for any longer time if at all than in the opinion of such medical officer such offender can be kept in solitary confinement without permanent injury to his health.

366. When any boy apparently under the age of sixteen years is convicted of any offence punishable on summary conviction for which imprisonment may be awarded, the justices may in addition to or in lieu of any other punishment which may be lawfully awarded for such offence order such boy to be privately whipped with a cane or a birch rod by a constable in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence if he desires to be present of the parent or guardian of the child or by any other person not being a public official who may be duly authorized for such purpose by the Governor in Council. Provided that the order shall specify the number of strokes to be inflicted and that no such punishment shall exceed in degree or severity such as may be lawfully inflicted by schoolmasters.

Whipping for boys under sixteen on summary conviction.
Ib. s. 57.

367. When for the purpose of exercising any of the powers conferred by this Division of this Part of this Act it is necessary to determine the age of any person, the court or justices dealing with the case shall determine such age as they may be best able having regard to the evidence before them, or if there is no other sufficient evidence to the appearance of such person; and every order directing any person to be committed to a reformatory school or to the care of the Department for Neglected Children shall state the age of the person so committed as determined by the court or justices making such order, and the statement of the age of any such person contained in any such order shall be conclusive for the purposes of this Division of this Part of this Act.

Determination of age by the court to be conclusive.
Ib. s. 58.

(9) *Regulations of the Governor in Council.*

368. The Governor in Council may from time to time by Order, to be published in the *Government Gazette*, make alter and repeal regulations for the following purposes:—

Power to make regulations.
Ib. s. 59.

- (1) The conduct management inspection and supervision of reformatory schools:
- (2) The employment education supervision and correction of wards of the Department for Reformatory Schools. Provided that no such regulation shall permit any corporal punishment except such as may be lawfully inflicted by schoolmasters:
- (3) The placing out at service or apprenticing of wards of the Department for Reformatory Schools either on land or at sea:
- (4) Prescribing the forms of orders warrants bonds and other instruments to be used by courts judges justices the various officers mentioned in this Division of this Part of this Act and others in carrying into execution this Division of this Part of this Act:

"The Juu. Offenders Act 1887."

- (5) The collection and investment either with the Postmaster-General under any law now or hereafter to be in force relating to post-office deposit for savings or otherwise of any earnings of any ward of the Department for Reformatory Schools and the application thereof or any part thereof;
- (6) Prescribing the method of keeping accounts of payments and moneys payable under the provisions of this Division of this Part of this Act;
- (7) For prescribing the manner of carrying out the whipping provided for boys under sixteen and limiting directing and regulating the same.
- (8) For the various purposes mentioned in this Division of this Part of this Act and generally for carrying this Division of this Part of this Act into effect.

Regulations to be laid before Parliament.
Ib. s. 80.

369. All regulations of the Governor in Council made hereunder shall be laid before both Houses of Parliament within ten days after the publication thereof if Parliament is then sitting, or if not then sitting then within ten days from the next assembling of Parliament.

DIVISION 3.—SUSPECTED PERSONS.

Suspected persons may be arrested.

Act 18 Vict.
No. 3 s. 1.

370. It shall be lawful for any justice of the peace or any constable at any time after the passing of this Act, having reasonable cause to suspect that any person has at any time been found guilty of any capital or transportable felony by a court of competent jurisdiction in the United Kingdom of Great Britain and Ireland or any British possession other than Victoria and has at any time after the passing of this Act come into Victoria, forthwith and without any warrant for such purpose to cause such suspected person to be apprehended and taken before any two justices of the peace to be dealt with as hereinafter mentioned, such person not having been lawfully resident in Victoria at the time of or previous to the passing of this Act.^(a) Provided that it shall be lawful for any justice of the peace to take bail for the appearance of such suspected person before such justices in such sum and with or without such securities as such justice may deem expedient. Provided also that nothing in this Division of this Part of this Act contained shall apply or be deemed to apply to any person whose sentence or sentences (if more than one) shall have expired for a greater period than three years previous to his arrival in Victoria.^(b)

Punishment on suspected persons being convicted.
Ib. s. 2.

371. It shall be lawful for any two justices of the peace before whom any such suspected person shall have been brought, on proof that such person has come into Victoria contrary to the provisions of this Division of this Part of this Act, to convict him thereof; and at their

(a) It was decided that Act 18 Vict. No. 3, with which this Division of this Part of this Act corresponds, applied equally to absolutely, as to conditionally, pardoned criminals, and the Crown, in assenting to the said Act, expressed an intention that the Royal prerogative should be exercised subject to it.—*Ryall v. Kenealy*, 6 W.W. & a'B. (L.), 193.

(b) A prisoner was convicted by justices of coming into Victoria before the lapse of a period of three years from the expiry of his sentence for a transportable felony in New South Wales. No

evidence was given before the justices as to the offence being a transportable felony by the law of New South Wales: *Held*, that on an application for a writ of *habeas corpus* affidavits were not admissible to contradict the recitals in the warrant, or to show that the magistrates adjudicated on insufficient proof of the prisoner's offence in New South Wales being a transportable felony. The proper remedy for a person who feels himself aggrieved by a conviction under this Division is by appeal under section 384, not by *habeas corpus*.—*In re Keogh*, 15 V.L.R., 395.

discretion either to take bail that such person shall leave Victoria within seven days after his conviction, or to cause such person to be conveyed in custody to the country or possession from whence he came, or to sentence such person if a male to be kept to hard labour with or without irons on the roads or other public works of Victoria for any period not exceeding three years, or if a female to be imprisoned with or without hard labour in any gaol for any period not exceeding one year.

*Act 18 Vict.
No. 3.*

372. All property found upon or in the possession of any such suspected person as aforesaid shall upon his apprehension be seized and detained; and in the event of his being convicted and sentenced as aforesaid shall at the discretion of the convicting justices be forfeited and sold.

*Forfeiture of
property.
Ib. s. 3.*

373. Any person sentenced as aforesaid to hard labour or imprisonment who shall remain in Victoria for three months after the termination of such sentence shall be liable to be again similarly apprehended and sentenced; and so on from time to time as often as he shall so remain.

*Additional
punishment for
convicted
persons
remaining after
expiration of
sentence.*

374. Any person, who shall harbour or conceal any other person whom he shall know or believe to have come into or remained in Victoria contrary to the provisions of this Division of this Part of this Act, shall be subject to a fine not exceeding One hundred pounds or to be imprisoned in any gaol or house of correction in Victoria for any period not exceeding twelve months.

*Ib. s. 4.
Penalty for
harboring.
Ib. s. 5.*

375. Any master mariner or other person, commanding navigating or sailing any vessel for the trip or voyage when such vessel shall bring to any port or place in Victoria any person having been found guilty as aforesaid, shall upon conviction thereof before any two justices of the peace for every such offence be liable to a fine not exceeding One hundred pounds, or to imprisonment for any time not exceeding six months, or to both at the discretion of the said justices.

*Master liable if
persons improperly
brought to
Victoria.
Ib. s. 6.*

376. It shall be lawful for any justice of the peace, having information on oath that any person who has arrived in Victoria contrary to the provisions of this Division of this Part of this Act is harbored in any house or other place within the jurisdiction of such justice, to grant a general search warrant to any constable for such person; and it shall be lawful for any such constable in virtue of such general search warrant to break enter and search by day or by night any dwelling-house tenement or other place wherein such person may be suspected to be concealed, and to apprehend any person whom such constable shall have reasonable cause for suspecting to have arrived or remained in Victoria contrary to the provisions hereof, and also to apprehend all persons found in or about such dwelling-house tenement or other place whom such constable shall have reasonable grounds for suspecting and believing to have knowingly harbored and concealed such suspected person; and all persons found and apprehended as aforesaid shall be forthwith taken before any justices of the peace to be dealt with as herein provided.

*Power to grant
search warrants.
Ib. s. 7.*

377. It shall be lawful for any justice of the peace or constable to enter on board any vessel and, having reasonable cause to suspect that any person having been found guilty as aforesaid is on board such vessel, to search any and every part thereof, and apprehend any person found therein contrary to the provisions of this Division of this Part of this Act.

*Power of search.
Ib. s. 8.*

Act 18 Vict.
No. 3 s. 9.
Summary juris-
diction.

378. It shall be lawful for any two or more justices assembled at petty sessions to hear and determine in a summary way all cases arising under this Division of this Part of this Act, and at their discretion to fix and determine all the fines penalties punishments and forfeitures hereby imposed; and no complaint conviction order for confiscation punishment or forfeiture or other proceeding before or by any justices under this Division of this Part of this Act shall be quashed or set aside or deemed void or insufficient for want of form only, or be removed or removable by *certiorari* or any other writ or process whatsoever into the Supreme Court.

Words of Act
sufficient state-
ment of offence.
Ib. s. 10.

379. Every summons information conviction and warrant of commitment under the provisions of this Division of this Part of this Act shall be deemed valid in which the offence charged or alleged in the same respectively shall be set forth in the words of this Division of this Part of this Act.

Oral proof.
Ib. s. 11.

380. Oral proof that any person was in any country known to have been or commonly deemed or reputed to have been found guilty of any felony in the United Kingdom or any British possession other than Victoria or to have been serving any sentence of transportation or imprisonment for such offence, or the production of any paper purporting to be a *Government Gazette* published in any of the Australian colonies and containing the name of any person charged with offending against any of the provisions of this Division of this Part of this Act described in such paper as a convicted prisoner of the Crown or transported felon, shall for the purposes of this Division of this Part of this Act be taken as good *prima facie* evidence that such person was found guilty of felony as aforesaid; and proof that any person so found guilty was apprehended in Victoria at any time after the commencement of this Act not having a fixed and known place of residence shall be deemed good *prima facie* evidence that such person arrived in Victoria after the commencement hereof unless the contrary be proved.

Recovery of
penalties.
Ib. s. 12.

381. Whenever any pecuniary penalty shall have been imposed under the provisions of this Division of this Part of this Act and the person convicted shall not forthwith pay the same into the hands of the convicting justices, it shall be lawful for such justices to direct that such person be imprisoned with or without hard labour as they shall think fit, for a period not exceeding two calendar months if the penalty be not above Twenty pounds, and for a period not exceeding four calendar months if the penalty be above Twenty pounds and not above Fifty pounds, and for a period not exceeding twelve calendar months if the penalty be above Fifty pounds; and such person shall be detained and kept to hard labour unless such respective penalties shall be sooner paid.

Application of
penalties.
Ib. s. 13.

382. All pecuniary fines and penalties and the proceeds of all forfeitures received under this Division of this Part of this Act shall be paid into the police reward fund, except such portion thereof not exceeding one-half as the convicting justices may award to the informer; and such informer shall be in all cases a competent witness.

Indemnifying
justices.
Ib. s. 14.

383. If any suit or action shall be brought against any justice of the peace constable or other person for any act or thing done in furtherance of the provisions of this Division of this Part of this Act, the

defendant in every such action may give this Division of this Part of this Act and the special matter in evidence at any trial to be had thereupon; and if the verdict shall be for the defendant, or if the plaintiff in any such action or suit shall be nonsuited or discontinue his action or suit, or if judgment shall be given against the plaintiff, the defendant shall have treble costs, and shall have the like remedy for the same as any other defendant hath in any other case to recover costs by law; and although a verdict shall be given for the plaintiff in any such action, he shall not be entitled to recover any costs against the defendant unless the judge before whom such action shall be tried shall certify at the trial and in open court under his hand on the back of the record his approbation of the action and of the verdict thereupon.

*Act 13 Vict
No. 3.*

384. Any person who shall feel himself aggrieved by the judgment of the justices adjudicating under this Division of this Part of this Act may appeal from their order or adjudication to the next court of general sessions of the peace which shall be held nearest to the place where such order or adjudication shall have been given or made; and the execution of every such order or adjudication so appealed from and the forfeiture and sale of any property as aforesaid may at the discretion of such justices be suspended, in case such person shall with one or more sufficient surety or sureties before such justices enter into a recognisance to Her Majesty her heirs and successors in such sum as to such justices shall seem fit (which recognisance such justices are hereby authorized to take), conditioned to prosecute such appeal with effect and to be forthcoming to abide the determination of such court of general sessions and pay such costs as the said court shall award; and such court is hereby authorized finally to hear and determine the matter of such appeal.

*Appeal.
Ib. s. 15.*

385. This Division of this Part of this Act shall continue in force and effect until otherwise provided by law. ^(a)

*Duration of this
Division of this
Part of this Act.
Act No. 68 s. 1.*

PART III.—PROCEDURE AND PUNISHMENT.

DIVISION I.—PLEADING AND PROCEDURE.

(1) *Mode of Prosecution.*

386. All treasons and misprisions of treason shall be prosecuted by indictment only, and all other indictable offences may be prosecuted by indictment or by presentment as hereinafter directed or (where a coroner has jurisdiction) by inquisition.

*Mode of
prosecution.
Act No. 502 s. 18.*

387. Every person who at the time of the commencement of this Act shall hold the office of Prosecutor for the Queen shall without any further or other appointment than this Act be a Prosecutor for the Queen under the provisions hereof, and shall hold the said office during pleasure, and the Governor in Council may from time to time appoint as many fit

*Prosecutors for
the Queen.
Ib. s. 19.*

(a) "*The Constitution Statute*" gave the Legislature of Victoria authority to "re-enact" existing laws, and 22 Vict. No. 68 (with which this section corresponds), in making 18 Vict. No. 3 (with which

this Division of this Part of this Act corresponds) perpetual, was a re-enactment of it, by virtue of which it is still in force.—*Ryall v. Kenealy*, 6 W.W. & a.B. (L.), 193.

Act No. 502.

and proper persons as may be needed to be Prosecutors for the Queen ; and every such person shall be a barrister-at-law of Victoria, and shall have practised as an advocate or barrister and special pleader or as either in England Ireland Scotland and Victoria or any of them for such period as shall make an aggregate of five years.

Presentments.

Ib. s. 20.

See 13 Geo. III.

c. 78 s. 24.

Fourth
Schedule.

388. Subject to the provisions hereinbefore contained, it shall be lawful for Her Majesty's Attorney-General or Solicitor-General for Victoria or for any Prosecutor for the Queen in the name of a law officer to make presentment^(a) at the Supreme Court or General Sessions of the Peace of any person for any indictable offence cognizable by such courts respectively, and every such presentment may be in the form contained in the Fourth Schedule to this Act or to that effect and shall be as good and of the same force strength and effect in the law as if the same had been presented and found by the oaths of twelve men.

Indictments.

Ib. s. 21.

See 22 & 23 Vict.

c. 17.

389. Upon the application of any person supported by an affidavit disclosing an indictable offence and either that the same has been committed by some body corporate or that some justice has declined or refused to commit or hold to bail the alleged offender or that no presentment was made against him at the court at which the trial would in due course have taken place, or upon the application of a law officer, it shall be lawful for the Full Court to order the sheriff of the proper bailiwick to summon a grand jury to appear at a court to be holden at a time and place to be mentioned in the rule or order ; and upon receipt of such rule or order the sheriff shall summon not less than twenty-three men to attend at such court at the time and place aforesaid to inquire present do and execute all things which on the part of the Queen shall then and there be commanded of them, and such men shall be taken from the special jury book of the jury district in which such place is situate in the same manner as a special jury is or may be taken ; and at the time and place aforesaid the said sheriff shall bring into court the said rule or order with the name place of abode and addition of every grand juror written on a panel signed by him and sealed with his seal of office and shall deliver the said panel to the proper officer of the said court, who shall in open court call aloud the names of the grand jurors on the said panel one after another, and the twenty-three men so first drawn and appearing or if twenty-three men shall not appear such of them as do appear not being less than twelve men shall be the grand jury and shall be sworn and act as such accordingly. Provided always that every such rule or order shall be delivered to the sheriff ten days before the day on which the indictment is intended to be preferred.

Informations &c.

Ib. s. 22.

390. Nothing herein contained shall in any manner alter or affect the power which Her Majesty's Attorney-General possesses at common law to file by virtue of his office an information in the Supreme Court, and all acts and duties which in England would be done and performed by or in the name of the Queen's Coroner and Attorney or the Master of the Crown office or by or in the name of the Queen's Remembrancer at the date of the commencement of the Act No. 502 shall be respectively

(a) A person may at his trial be charged in the presentment with an offence entirely different

from that for which he was committed for trial.—*Reg. v. Martin*, 10 V.L.R. (L.), 343; 6 A.L.T., 163.

done and performed by or in the name of the Prothonotary of the Supreme Court.^(a) Act No. 502.

(2) *Discharge without Prosecution.*

391. It shall be lawful for the Attorney-General, in respect of any person or persons now or hereafter imprisoned under committal for trial for felony or misdemeanor to grant at any time a certificate under his hand in the form in the Fifth Schedule to this Act addressed to the Judges of the Supreme Court or any one of them, who shall thereupon by warrant under their or his hand in the form in the Sixth Schedule to this Act order and direct the sheriff or gaoler in whose custody any such prisoner shall be immediately and without fee or reward to discharge the prisoner therein mentioned from imprisonment in respect of the offence mentioned in the same warrant. And if such sheriff or gaoler shall refuse or neglect so to do, he shall for every such offence forfeit and pay to the use of Her Majesty a fine or penalty of Fifty pounds, to be recovered by action in the name of the Attorney-General.

Persons under committal for felony and misdemeanor may be discharged in certain cases by judge's warrant on certificate from the Attorney-General. "The Criminal L. and P. Statute 1864" s. 321. Fifth and Sixth Schedules.

(3) *Venue &c.*

392. The offence of any person who shall be an accessory either before or after the fact to any felony may be dealt with inquired of tried determined and punished by any court which shall have jurisdiction to try the principal felony or any felonies committed in any place in which the act by reason whereof such person shall have become such accessory shall have been committed.

Venue for trial of accessories. *Ib.* s. 322. See 24 & 25 Vict. c. 94 s. 7.

393. The offence of bigamy may be dealt with inquired of tried determined and punished in any jurisdiction within which the offender shall be apprehended or be in custody in the same manner in all respects as if the offence had been actually committed within that jurisdiction.

Venue in bigamy. *Ib.* s. 323. *Ib.* c. 100 s. 57.

394. Whosoever shall receive any chattel money valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen taken obtained converted or disposed of, may (whether charged as an accessory after the fact to the felony or with a substantive felony or with a misdemeanor only) be dealt with presented indicted or informed against tried and punished in any jurisdiction in which he shall have or shall have had any such property in his possession, or in any jurisdiction in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with informed against tried and punished in the jurisdiction where he actually received such property.

Receivers triable where the principal is triable or where the property is found in their possession as well as where the receiving takes place. *Ib.* s. 324. *Ib.* c. 96 s. 90.

395. Whosoever shall steal any part of any ship which shall be in distress or shall commit any other of the offences enumerated in the section of this Act relating to such stealing may be presented indicted or informed against and tried either within the jurisdiction within which the offence shall have been committed or in any jurisdiction next adjoining.

Venue in case of stealing from ships in distress. *Ib.* s. 325. *Ib.* s. 64.

(a) An information by a private prosecutor brought in the name of the Prothonotary of the Supreme Court, where no warrant of *nisi prius* has been obtained must be tried at bar. Proceed-

ings by information for libel by a private prosecutor under this section are of a civil not of a criminal character.—*Reg. v. Trenwith*, 10 V.L.R. (L.), 250.

"The Criminal
L. and P.
Statute 1864"
s. 320.

Venue in cases of
embezzlement
by public
servants.
24 & 25 Vict.
c. 96 s. 70.

396. Whosoever shall as a person employed in the public service of Her Majesty commit any offence against the provisions of this Act relating to stealing embezzlement and fraudulent application or disposition by persons so employed, may be dealt with presented indicted or informed against tried and punished either in the jurisdiction within which he shall be apprehended or be in custody or in that within which he shall have committed the offence.

Venue in cases of
forgery &c.
Ib. s. 327.
Ib. c. 98 s. 41.

397. Whosoever shall commit any offence against Division four of Part I. of this Act, or shall commit any offence of forging or altering any matter whatsoever, or of offering uttering disposing of or putting off any matter whatsoever knowing the same to be forged or altered, whether the offence in any such case shall be indictable at common law or by virtue of any Act passed or to be passed, may be dealt with presented indicted or informed against tried and punished in any jurisdiction in which he shall be apprehended or be in custody in the same manner in all respects as if his offence had been actually committed in that jurisdiction. And every accessory before or after the fact to any such offence if the same be a felony, and every person aiding abetting or counselling the commission of any such offence if the same be a misdemeanor, may be dealt with presented indicted or informed against tried and punished in any jurisdiction in which he shall be apprehended or be in custody in the same manner in all respects as if his offence and the offence of his principal had been actually committed in such jurisdiction.

Venue in cases
uttering coun-
terfeit coin.
Ib. s. 328.
Ib. c. 98 s. 28.

398. Where any person shall tender utter or put off any false or counterfeit coin in one jurisdiction and shall also tender utter or put off any other false or counterfeit coin in any other jurisdiction either on the day of such first-mentioned tendering uttering or putting off or within the space of ten days next ensuing, or where two or more persons acting in concert in different jurisdictions shall commit any offence against Division five of Part I. of this Act, every such offender may be dealt with presented indicted or informed against tried and punished and the offence laid and charged to have been committed in any one of the said jurisdictions in the same manner in all respects as if the offence had been actually and wholly committed within such one jurisdiction.

Venue in the
margin sufficient
except where
local description
is necessary.
Ib. s. 329.
14 & 15 Vict.
c. 100 s. 23.

399. It shall not be necessary to state any venue in the body of any presentment indictment or information; but the jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such presentment indictment or information, provided that in cases where local description is or hereafter shall be required such local description shall be given in the body of the presentment indictment or information.

(4) Removal of Presentments Indictments &c.

Indictments &c.
not to be
removed except
on affidavit that
fair trial cannot
be had.
Act No. 502 s. 27.
16 & 17 Vict.
c. 90 s. 4.

400. No presentment indictment or inquisition except indictments or presentments against bodies corporate not authorized to appear by attorney in the court in which the indictment or presentment is found or made shall be removed by writ of *certiorari*, either at the instance of the prosecutor or of the defendant (other than a law officer acting on behalf of the Crown) unless it be made to appear to the Supreme Court by the party applying for the same that a fair and impartial trial of the case cannot be had in the court below, or that some question of law of

more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment or presentment is preferred, or a special jury may be required for the satisfactory trial of the same. Act No. 502.

401. Instead of the recognisance at the date of the commencement of the Act No. 502 by law required to be entered into before the allowance of a writ of *certiorari* every person indicted or presented in any court (other than a law officer acting on behalf of the Crown) who shall obtain a writ of *certiorari* for removing any indictment or presentment whatever, not being in custody for want of bail to answer such indictment or presentment, shall before the allowance of such writ enter into a recognisance before one of the Judges of the Supreme Court or before a justice of the bailiwick in which the offence is charged to have been committed or in which such person shall reside, in such sum and with such sureties as the Supreme Court or one of the Judges thereof shall by endorsement on the said writ order and direct, which recognisance shall contain the same conditions as were at the date of the commencement of the said Act No. 502 (by an Act passed in the fifth year of the reign of King William the Third and Queen Mary intituled "*An Act to prevent Delays of Proceedings at the Quarter Sessions of the Peace*" 5 & 6 Will. & Mary c. 11. and by another Act passed in the eighth and ninth years of the reign of King William the Third intituled "*An Act to make perpetual and more effectual an Act intituled 'An Act to prevent Delays at the Quarter Sessions of the Peace'*" 8 & 9 Will. III. c. 33.) required in cases of indictments removed from general sessions of the peace; and also the further provision following, that is to say, that the defendant or defendants in case he or they shall be convicted shall pay to the prosecutor his costs incurred subsequent to the removal of such indictment or presentment and thereupon all the sections and provisions contained in the said several Acts with respect to costs or otherwise shall extend to such last-mentioned recognisances, and every person being in custody for want of bail to answer the charge contained in such indictment or presentment shall be detained in custody until the like recognisances as are hereinbefore directed to be entered into (previous to the allowance of such writ of *certiorari*) shall have been entered into, or until such person be discharged by due course of law; and whenever any such writ of *certiorari* shall be awarded at the instance of the prosecutor (other than a law officer acting on behalf of the Crown) the said prosecutor shall enter into a recognisance (to be acknowledged in like manner as in cases of writs of *certiorari* awarded at the instance of the defendant) with the condition following, that is to say, that the said prosecutor shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs incurred subsequent to such removal. Recognisances for payment of costs before obtaining writ of certiorari. *Ib.* s. 28. See 5 & 6 Will. IV. c. 33 s. 2. See 16 & 17 Vict. c. 30 s. 5.

402. The costs hereinbefore respectively mentioned shall be taxed according to the course of the Supreme Court; and for the recovery thereof the persons entitled thereto shall, at the expiration of ten days after demand made of the person or persons at whose instance the writ of *certiorari* was awarded, and on oath made of such demand and refusal of payment, have a writ of attachment granted against him or them by the Supreme Court for such contempt; and the said court shall and may also order the said recognisance to be estreated. Their taxation and payment. *Ib.* s. 29. 16 & 17 Vict. c. 30 s. 6.

Act No. 502 s. 30.
If recognisances
not given trial to
proceed.
16 & 17 Vict.
c. 30 s. 7.

403. If the person or persons (other than a law officer acting on behalf of the Crown) at whose instance any writ of *certiorari* shall be awarded shall not, before the allowance thereof, enter into such recognisance as is hereinbefore provided, the court to which such writ may be directed shall and may proceed to the trial of the indictment presentment or inquisition as if such writ of *certiorari* had not been awarded.

Defendant to
remain in prison
after *certiorari*.
Ib. s. 31.
19 & 20 Vict.
c. 16 s. 11.

404. Whenever any writ of *certiorari* shall be delivered to any court for the purpose of removing any indictment presentment or inquisition from such court and any person charged with any offence by such indictment presentment or inquisition shall then be in prison such person shall not be discharged by such court out of prison, but shall remain therein until he shall be discharged by due course of law.

Transfer of trial
from sessions to
Supreme Court.
Ib. s. 32.

405. Whenever any person shall have been committed or held to bail to take his trial at the general sessions of the peace for any bailiwick for any felony or misdemeanor and it shall appear to the Supreme Court that it is expedient to the ends of justice that such person should be tried for such offence if it shall have been committed or supposed to have been committed within the central bailiwick at the sittings of the Supreme Court, in Melbourne, for criminal trials, or if it shall have been committed or supposed to have been committed within any other bailiwick at the sittings of the Supreme Court for criminal trials in the place appointed for such bailiwick, it shall be lawful for such Supreme Court to order that such person shall be tried for such offence at such sittings for criminal trials in Melbourne or elsewhere as the case may be, and thereupon such person shall be tried for such offence at such sittings and not elsewhere, and upon delivery of an office copy of such order to the justices of the peace before whom any indictment or presentment charging such person with such offence shall be then pending or before whom any such indictment or presentment shall thereafter be found or made, such justices shall without writ of *certiorari* or other writ for that purpose certify and transmit such indictment or presentment to the said Supreme Court sitting in Melbourne for criminal trials or sitting for such trials in the place appointed as aforesaid as the case may be; but nothing hereinbefore contained shall be deemed or taken to deprive the justices at any court of general sessions of the peace for any bailiwick of the power of certifying and transmitting at their discretion any indictment or presentment found or made before them for trial in the same bailiwick, either at the sittings of the Supreme Court in Melbourne for criminal trials or at the sittings of the Supreme Court for criminal trials in the place appointed as aforesaid as the case may be.

5 & 6 Will. IV.
c. 36 s. 19.

Transfer of trial
from another
jurisdiction to
the Criminal
Sittings of the
Supreme Court
in Melbourne.
Ib. s. 33.
19 & 20 Vict.
c. 16 s. 3.

406. Whenever any person shall have been committed or held to bail for any felony or misdemeanor committed or supposed to have been committed at any place out of the jurisdiction of the said Supreme Court sitting in Melbourne for criminal trials and it shall appear to the Supreme Court that it is expedient to the ends of justice that such person should be tried for such offence at the said sittings in Melbourne for criminal trials, it shall be lawful for such Supreme Court to order that such person shall be tried for such offence at the said sittings in Melbourne for criminal trials, and thereupon such person shall be tried for such offence at the said last-mentioned court and not elsewhere; and

upon delivery of an office copy of such order to the justices of oyer and terminer or of gaol delivery or of the peace, before whom any indictment presentment or inquisition charging such person with such offence shall then be pending, or before whom any such indictment shall thereafter be found or any such presentment shall thereafter be made, or to the coroner before whom any such inquisition shall have been or shall thereafter be taken, such justices or coroner shall without writ of *certiorari* or other writ for that purpose certify and transmit such indictment presentment or inquisition to the said Supreme Court sitting in Melbourne for criminal trials.

407. Whenever any such order as is mentioned in either of the two preceding sections of this Act shall have been made and any indictment presentment or inquisition shall have been transmitted to the said sittings of the Supreme Court in Melbourne for criminal trials or at any place appointed as aforesaid under the provisions of this Act, the gaoler or keeper of any gaol in which any person charged with any offence by such indictment presentment or inquisition shall be confined shall forthwith, upon the delivery to him of an office copy of such order, without writ of *habeas corpus* or other writ for that purpose, cause such person with his commitment and detainer to be safely removed to Her Majesty's gaol in the proper bailiwick, and thereupon the keeper of the said gaol shall receive such person into his custody in the said gaol, there to remain until he shall be delivered by due course of law.

Act No. 502.
Prisoner to be removed.
Ib. s. 34.
19 & 20 Vict.
c. 16 s. 5.

408. Whenever any application shall be made to the said Supreme Court or to any judge thereof, either before or after any indictment presentment or inquisition shall have been found made or taken, for an order that any person charged with an offence by such indictment presentment or inquisition, or committed or held to bail for any offence shall be tried at the said sitting of the Supreme Court in Melbourne for criminal trials or at any place appointed as aforesaid under the provisions of this Act, it shall not be necessary for such person to be brought or appear in person before the said Supreme Court or the said judge thereof either upon the making or the determination of such application.

Defendant need not apply or appear in person.
Ib. s. 35.
Ib. s. 6.

409. Every recognisance which shall have been or shall be entered into for the prosecution of any person, and every recognisance as well of any witness to give evidence as of any person to answer for any offence, shall in case any such order shall be made for the trial of such offence at the said sittings of the Supreme Court in Melbourne for criminal trials or at any place appointed as aforesaid, or in case the indictment presentment or inquisition by which such person is charged with such offence shall be removed by writ of *certiorari* be obligatory on each of the parties bound by such recognisance to prosecute and give evidence and to do all other things therein mentioned with reference to the said trial whenever and wherever the same shall be had in like manner as if such recognisance had been originally so entered into for prosecuting such offence appearing or giving evidence or doing such other things. Provided that notice in writing shall have been given either personally or by leaving the same at the place of residence as of which the parties bound by such recognisance are therein described to appear at a time and place to be mentioned in such notice upon the

Existing recognisances to be available on notice &c.
Ib. s. 36.
Party applying to enter into new recognisances &c.

Act No. 592.

trial of the said offence. Provided also that it shall be lawful for the said Supreme Court to cause the party applying for such order, whether he be the prosecutor or party charged with such offence, to enter into a recognisance in such sum and with or without sureties as such court or judge may direct conditioned to give such notice.

Supreme Court sitting in Melbourne for criminal trial to have same authority as if offence had been committed in its jurisdiction.
Ib. s. 38.
 19 & 20 Vict.
 c. 16 s. 16.

410. Whenever any indictment presentment or inquisition for any offence committed or supposed to have been committed out of the jurisdiction of the said Supreme Court sitting in Melbourne for criminal trials shall have been transmitted to the said Supreme Court under the provisions of this Act the justices and judges of the said Supreme Court, or any one or more of them, shall possess the same power jurisdiction and authority as to all matters and things whatsoever as if the offence charged in the said indictment presentment or inquisition had actually been committed within the jurisdiction of the said Supreme Court sitting in Melbourne for criminal trials; and every such offence may be dealt with tried and determined by and before such justices and judges of the said Supreme Court or any one or more of them in the same manner in all respects as if the same had actually been committed within the jurisdiction of the said Supreme Court sitting in Melbourne for criminal trials and as if such indictment presentment or inquisition had been originally found or made at or returned to the said Supreme Court.

Proof that indictment &c. was transmitted unnecessary.
Ib. s. 39.
Ib. s. 17.

411. It shall not be necessary for any purpose whatsoever to prove that any indictment presentment or inquisition for any offence committed or supposed to have been committed out of the jurisdiction of the said Supreme Court sitting in Melbourne for criminal trials has been duly transmitted to the said Supreme Court under the provisions of this Act; but every such indictment presentment and inquisition shall be presumed to have been duly transmitted under the provisions of this Act upon production of the same in the said Supreme Court by the proper officer having the custody of the records of the said Supreme Court, and no evidence or proof to the contrary shall be admitted.

Verdicts and judgments to be valid.
Ib. s. 40.
Ib. s. 18.

412. Every verdict and judgment which shall be given upon any indictment presentment or inquisition charging an offence to have been committed out of the central bailiwick and transmitted to the said Supreme Court sitting in Melbourne for criminal trials under the provisions of this Act shall be of the same force and effect in all respects as if such indictment had been duly found and such presentment had been duly made and such inquisition had been duly taken within the jurisdiction of the said Supreme Court and as if the offence charged in such indictment presentment or inquisition had been actually committed within the jurisdiction of the said Supreme Court.

(5) *Removal of Prisoners.*

Removal of prisoners.
Ib. s. 41.
Ib. s. 20.

413. Whenever any person shall have been removed into the custody of the keeper of the gaol of any bailiwick under the provisions of this Act, or shall have been committed to the custody of such keeper by the said Supreme Court sitting in Melbourne for criminal trials, such person shall without writ of *habeas corpus* or other writ for that purpose be removed into and from the said Supreme Court when and as often as

it may be necessary by the keeper of the said gaol with his commitment and detainer in order that he may be tried sentenced or otherwise dealt with according to law, and such removal shall not be deemed an escape. Act No. 502.

414. Every prisoner so removed as in any of the preceding sections of this Part of this Act is mentioned shall for and during the time of such removal and for and during the time of his being removed back to the gaol from which he shall have been brought when and as often as he shall for any reason be so removed back, and also for and during such time as he may be detained in the said gaol or in any gaol or bailiwick to or through which he shall have been so removed and until he shall be delivered by due course of law, be to all intents and purposes deemed and considered to be in the proper legal custody notwithstanding that he may in effecting such removal have been taken or detained out of the jurisdiction of the bailiwick to the gaol of which he may have been originally committed into any other jurisdiction or out of the bailiwick or jurisdiction to the gaol or court of which he has been removed into or through any other jurisdiction or bailiwick; and no action or other proceeding, civil or criminal, shall or may be maintained by such prisoner or any other person against the gaoler or keeper of the gaol from which such prisoner shall have been removed or against the gaoler or keeper of the gaol to which such prisoner shall have been removed or against any other person by reason or in consequence of any such removal or detainer of such prisoner, or by reason or in consequence of such prisoner having been taken out of the jurisdiction of any such bailiwick from the gaol of which such prisoner shall have been removed into any other jurisdiction or out of such bailiwick or jurisdiction to the gaol or court of which he shall have been removed into or through any other jurisdiction or bailiwick, or by reason or in consequence of any removal or detention of such prisoner under any of the provisions of this Act. Custody during removal to be lawful.
Ib. s. 42.
19 & 20 Vict.
c. 16 s. 21.

415. Where any person charged with any offence committed or supposed to have been committed out of the central bailiwick by any indictment presentment or inquisition transmitted to the said Supreme Court sitting in Melbourne for criminal trials under the provisions of this Part of this Act shall appear before such court in pursuance of any recognisance for that purpose or otherwise, it shall be lawful for such court from time to time and as often as to the same court shall seem fit, either to require such person to enter into such recognisance with so many sureties and in such sum or sums of money and with such condition for his appearance at such sittings of the Supreme Court and otherwise as to such court shall seem fit, or to commit such person to the custody of the keeper of the gaol of the central bailiwick until he shall be discharged by due course of law. Defendant on bail to be again bailed or committed.
Ib. s. 43.
Ib. s. 22.

416. Whenever any prosecutor or witnesses in any case where any indictment presentment or inquisition charging an offence to have been committed out of the central bailiwick shall have been transmitted to the said Supreme Court sitting in Melbourne for criminal trials under the provisions of this Act shall appear before the said Supreme Court, it shall be lawful for such court from time to time and as often as to the same court shall seem fit, to require such prosecutor and witnesses to Prosecutor and witnesses may be again bound over.
Ib. s. 44.
Ib. s. 23.

Act No. 502.

enter into such recognisance in such sum of money and with such condition as to appearance at the said sittings of the Supreme Court in Melbourne for criminal trials and otherwise as to the said Supreme Court shall seem fit.

Supreme Court may impose terms.

Id. s. 45.

19 & 20 Vict. c. 16 s. 24.

417. Whenever any prosecutor or person charged with any offence committed or supposed to have been committed out of the central bailiwick shall apply, either before or after any indictment presentment or inquisition shall have been found made or taken to the said Supreme Court or to any judge thereof, for an order that such indictment presentment or inquisition shall be tried at the said sittings of the Supreme Court in Melbourne for criminal trials under the provisions of this Part of this Act, it shall be lawful for the said Supreme Court to require such prosecutor or other person to submit to such conditions as to bail, the payment of the costs of the prosecutor and witnesses, and of the transmission of such indictment presentment or inquisition, and of the removal of such defendant and any other matter or thing whatsoever as in the judgment of such Supreme Court or judge may reasonably be imposed upon such prosecutor or defendant.

Where Crown obtains removal costs of witnesses to be paid.
Id. s. 46.
See ib. s. 25.

418. Whenever any order shall be made on application on behalf of Her Majesty or of any prosecutor to the said Supreme Court or to any judge thereof for an order that any person charged with any offence committed or supposed to have been committed at any place out of the jurisdiction of the said Supreme Court sitting in Melbourne for criminal trials shall be tried at the said sittings of the Supreme Court under the provisions of this Part of this Act, it shall be lawful for the said Supreme Court to issue a certificate, upon the production of which the Treasurer may order to be paid out of any moneys provided by Parliament for allowances to witnesses to the person so charged a sum not exceeding thirty pounds to enable such person to defray the charges and expenses of the attendance of his witnesses, provided that the sum so advanced shall be allowed for in the sum which in the event of the acquittal of such person may become payable under the order herein-after mentioned.

Costs on acquittal of defendant.
Id. s. 47.

419. In case any person who shall be tried at the said sittings of the Supreme Court in Melbourne for criminal business under the provisions of this Part of this Act upon application on behalf of Her Majesty or of any prosecutor shall be there acquitted, it shall be lawful for the justices and judges of the said Supreme Court before whom any such acquittal shall have taken place or for any one or more of them (unless the offence shall have been charged to have been committed in the central bailiwick) to issue a certificate for such sum as shall appear to them to have been properly expended for such removal of the trial of such person, and the Treasurer may upon receipt of such certificate pay such sum to the person so acquitted out of any moneys provided by Parliament for allowances to witnesses.

Existing laws.
Id. s. 48.

420. Every Act in force at the date of the commencement of the Act No. 502 in which the word "information" occurs in reference to trials for indictable offences shall apply to presentments and indictments unless there shall be something in the context showing that it only applies to an information at common law.

(6) *Joinder of Defendants in certain cases.*

421. Any number of accessories at different times to any felony, and any number of receivers at different times of the whole or any part or parts of any property which shall at one time have been stolen taken extorted obtained embezzled or otherwise disposed of in such a manner as to amount to a felony either at common law or by virtue of this Act, may be charged with substantive felonies in the same presentment indictment or information and may be tried together, notwithstanding the principal felon shall not be included in the same presentment indictment or information or shall not be in custody or amenable to justice.

"The Criminal L. and P. Statute 1864" s. 331.
Separate accessories or receivers may be tried together.
See 24 & 25 Vict. c. 94 s. 6.
See ib. c. 96 s. 93

(7) *What Presentments Indictments Informations and Instruments shall suffice and avail.*

422. No presentment indictment or information for any indictable offence shall be held insufficient for want of the averment of any matter unnecessary to be proved nor for the omission of the words "as appears upon the record" or "as appears by the record" or of the words "with force and arms" or of the words "against the peace;" or for the insertion of the words "against the form of the Statute" instead of the words "against the form of the Statutes" or *vice versa*; or for that any person mentioned in the presentment indictment or information is designated by a name of office or other descriptive appellation instead of his proper name; or for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence; or for stating the time imperfectly; or for stating the offence to have been committed on a day subsequent to the finding of the presentment indictment or information or on an impossible day or on a day that never happened; or for want of a proper or perfect venue; or for want of a proper or formal conclusion; or for want of or imperfection in the addition of any defendant; or for want of the statement of the value or price of any matter or thing or the amount of damage injury or spoil, in any case where the value or price or the amount of damage injury or spoil is not of the essence of the offence.

Omission of certain averments not fatal to presentment &c.
Th. s. 332.
14 & 15 Vict. c. 100 s. 24.

423. In any presentment indictment or information for any felony or misdemeanor wherein it shall be requisite to state the ownership of any property whatsoever whether real or personal which shall belong to or be in the possession of more than one person whether such persons be partners in trade joint tenants parceners or tenants in common, it shall be sufficient to name one of such persons and to state such property to belong to the person so named and another or others as the case may be; and whenever in any presentment indictment or information for any felony or misdemeanor it shall be necessary to mention for any purpose whatsoever any partners joint tenants parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint stock companies and trustees.

In Informations for offences committed on the property of partners it may be laid in any one partner by name and others.
Th. s. 333.
7 Geo. IV. c. 64 s. 14.

424. All property real and personal whereof any body corporate shall by law have the management control or custody shall, for the purpose of any presentment indictment or information or proceeding against any other person for any offence committed on or in respect thereof, be deemed to be the property of such body corporate.

Real or personal estate under management of body corporate to be deemed property thereof.
Th. s. 334.

"The Criminal
L. and P.
Statute 1864"
s. 336.

Information for
murder.
24 & 25 Vict.
c. 100 s. 6.
For man-
slaughter &c.

425. In any presentment indictment or information^(a) for murder manslaughter or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused; but it shall be sufficient in any presentment indictment or information for murder to charge that the defendant did feloniously wilfully and of his malice aforethought kill and murder the deceased; and it shall be sufficient in any presentment indictment or information for manslaughter to charge that the defendant did feloniously kill and slay the deceased; and it shall be sufficient in any presentment indictment or information against any accessory to any murder or manslaughter to charge the principal with the murder or manslaughter (as the case may be) in the manner hereinbefore specified, and then to charge the defendant as an accessory in the manner heretofore used and accustomed.

In certain infor-
mations general
avowment of in-
tent to defraud
or injure
sufficient.

Ib. s. 336.

See *ib.* c. 96 s. 88.

See *ib.* c. 97 s. 60.

See *ib.* c. 98 s. 44.

426. In any presentment indictment or information for forging altering uttering offering disposing of or putting off any instrument whatsoever or for obtaining or attempting to obtain any property by false pretences or for any offence against Division three of Part I. of this Act, it shall be sufficient, where it shall be necessary to allege an intent to defraud or injure, to allege that the defendant did the act with intent to defraud or injure (as the case may be), without alleging an intent to defraud or injure any particular person; and in the case of obtaining or attempting to obtain property by false pretences, without alleging any ownership of the chattel money or valuable security. And on the trial of any of the offences in this section mentioned, it shall not be necessary to prove an intent on the part of the defendant to defraud or injure any particular person; but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud or injure (as the case may be).

Information
&c. for subse-
quent offences.

"The Criminal
L. and P.
Amend. Stat.
1871" s. 30.

Ib. c. 96 s. 116.

427. In any presentment indictment or information for any indictable offence punishable under this Act and committed after a previous conviction or convictions for any felony misdemeanor or offence or offences punishable upon summary conviction, it shall be sufficient after charging the subsequent offence to state that the offender was at a certain time and place or at certain times and places convicted of felony or of an indictable misdemeanor or of an offence or offences punishable on summary conviction (as the case may be) without otherwise describing the previous offence or offences.

Previous con-
victions provable
in cases not
provided for.
Ib. s. 31.

428. In any presentment indictment or information for any indictable offence not punishable with death it shall be lawful, in order to enable the court the better to exercise its discretion with respect to punishment, to add and upon the trial to prove a statement that the offender had previously to committing such offence been convicted of an indictable offence, although either or both of such offences shall be not such as that by reason of any provision of this Act the degree character or punishment of the subsequent offence is affected; and such previous conviction shall be averred, and such averment proceeded upon and

(a) A prisoner was charged in the presentment with murder. The crime for which she was tried was for causing death by attempting to procure abortion. The judge held that there was no evidence of murder to go to the jury, but left it to the jury to say whether she was guilty of man-

slaughter by criminal negligence in the performance of an operation immediately subsequent to the abortion. The jury convicted her of manslaughter. *Held*, that prisoner was rightly convicted.—*Reg. v. Taylor*, 12 V.L.R., 845.

proved in like order and manner as in the case of any previous conviction with respect to which provision is made by this Act. Provided that in such averment where the case is not within such provision as lastly aforesaid the substance and effect (omitting the formal part) of the presentment indictment or information and of the conviction for the previous offence shall be stated.

429. In every presentment indictment or information whatsoever whether for any of the offences hereinafter in this section specially named or not in which it shall be necessary to make any averment as to any money or any note of any bank, and in every presentment indictment or information for embezzlement fraudulent application or fraudulent disposition by any person as a person employed in the public service of Her Majesty or for embezzlement as a clerk or servant or person employed for the purpose or in the capacity of a clerk or servant where the offence shall relate to any valuable security, it shall be sufficient to describe such money bank note or valuable security simply as money, without specifying any particular coin bank note or valuable security. And such allegation, so far as regards the description of the property, shall in all cases be sustained by proof of any amount of coin or of any bank note and in the cases of the offences hereinbefore in this section specially named of any valuable security, although the particular species of coin of which such amount was composed or the particular nature of the bank note or valuable security shall not be proved; and in the cases of the offences so specially named and also in the case of obtaining money or bank notes by false pretences, by proof that the offender embezzled fraudulently applied or disposed of any amount or obtained any piece of coin or any bank note or any portion of the value thereof respectively, although such piece of coin or bank note or valuable security (as the case may be) may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part shall have been returned accordingly.

430. It shall be lawful to insert several counts in the same presentment indictment or information against the same person for any number of distinct acts of stealing not exceeding three which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them.

431. In any presentment indictment or information for stealing or for any fraudulent purpose destroying cancelling obliterating or concealing the whole or any part of any document of title to lands, it shall be sufficient to allege such document to be or to contain evidence of the title or of part of the title of the person or of some one of the persons having an interest whether vested or contingent legal or equitable in the real estate to which the same relates, and to mention such real estate or some part thereof.

432. In any presentment indictment or information for any of the following offences it shall not be necessary to allege that the instrument document article or thing in respect of which the offence is committed is the property of any person (that is to say):—

The offence of stealing any testamentary instrument and any other of the offences enumerated in the section of this Act relating to such stealing.

"The Criminal L. and P. Amend. Stat. 1871."

Coin bank notes and securities may be described simply as money.

"The Criminal L. and P. Statute 1864"

s. 338.
See 24 & 25 Vict. c. 96 s. 71.

Several counts for distinct larcenies within six months.
Ib. s. 339.
Ib. s. 5.

Information for stealing &c. deeds &c.
Ib. s. 340.
Ib. s. 28.

In certain cases not necessary to lay property in any person.
Ib. s. 341.
See ib. ss. 29, 30, 31.

"The Criminal
L. and P.
Statute 1864."

The offence of stealing any original document of any court and any other of the offences enumerated in the section of this Act relating to such stealing.

The offence of stealing or of ripping cutting severing or breaking with intent to steal anything made of metal fixed in any square or street or in any place dedicated to public use or ornament.

Distinct acts of
embezzlement
may be charged
in the same
presentment
indictment or
information.
Ib. s. 342.

See 24 & 25 Vict.
c. 96 s. 71.

433. For preventing difficulties in the prosecution of offenders in any case of embezzlement or fraudulent application or disposition by any person as a person employed in the public service of Her Majesty or of embezzlement by any person as a clerk or servant or person employed for the purpose or in the capacity of clerk or servant, it shall be lawful to charge in the presentment indictment or information and proceed against the offender for any number of distinct acts of embezzlement or of fraudulent application or disposition not exceeding three which may have been committed by him against Her Majesty or against the same master or employer (as the case may be) within the space of six months from the first to the last of such acts.

Property may be
laid in Her Ma-
jesty in certain
cases.

Ib. s. 343.

Ib. s. 70.

434. In every case of larceny committed against Her Majesty or embezzlement fraudulent application or disposition committed against Her Majesty as in the last preceding section mentioned of any chattel money or valuable security, it shall be lawful in the order of committal by the justice before whom the offender shall be charged and in the presentment indictment or information to be preferred against the offender to lay the property of any such chattel money or valuable security as aforesaid in Her Majesty.

Presentment
indictment or
information in
cases of stealing
by tenants &c.
Ib. s. 344.

Ib. s. 74.

435. In every case of stealing any chattel let to be used in or with any house or lodging, it shall be lawful to prefer a presentment indictment or information in the common form as for larceny; and in every case of stealing any fixture so let as aforesaid, to prefer a presentment indictment or information in the same form as if the offender were not a tenant or lodger; and in either case to lay the property in the owner or person letting to hire.

Counts for steal-
ing and
receiving.

Ib. s. 345.

Ib. s. 92.

436. In any presentment indictment or information containing a charge of feloniously stealing any property, it shall be lawful to add a count or several counts for feloniously receiving the same or any part or parts thereof knowing the same to have been stolen; and in any presentment indictment or information for feloniously receiving any property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same.

Describing in-
struments in
presentments
indictments or
informations for
forgery &c.
Ib. s. 346.

See *ib.* c. 98 s. 42

437. In any presentment indictment or information for forging altering offering uttering disposing of or putting off or for stealing embezzling extorting converting disposing of destroying or concealing or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof without setting out any copy or fac-simile thereof or otherwise describing the same or the value thereof.

Mode of
describing in-
strument &c. in
presentment
indictment or
information for
engraving &c.
Ib. s. 347.

438. In any presentment indictment or information for engraving or making the whole or any part of any instrument matter or thing whatsoever, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of

any instrument matter or thing whatsoever shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument matter or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument matter or thing by any name or designation by which the same may be usually known, without setting out any copy or fac-simile of the whole or any part of such instrument matter or thing.

"The Criminal L. and P. Statute 1864."
24 & 25 Vict.
c. 98 s. 43.

439. In all other cases wherever it shall be necessary to make any averment in any presentment indictment or information as to any instrument whether the same consists wholly or in part of writing print or figures it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof, without setting out any copy or fac-simile of the whole or any part thereof.

Mode of averring as to instruments generally.
Ib. s. 348.
14 & 15 Vict.
c. 100 s. 7.

440. In any presentment indictment or information for unlawfully buying or selling any false or counterfeit coin at or for a lower rate or value than the same imports or was apparently intended to import or for any other of the offences enumerated in the section of this Act relating to such buying and selling, it shall be sufficient to allege that the party accused did buy sell receive pay or put off or did offer to buy sell receive pay or put off the false or counterfeit coin at or for a lower rate or value than the same imports or was apparently intended to import, without alleging at or for what rate price or value the same was bought sold received paid or put off or offered to be bought sold received paid or put off.

Mode of alleging the sale &c. of false or counterfeit coin at lower value.
Ib. s. 349.
24 & 25 Vict.
c. 99 s. 6.

441. In any presentment indictment or information for perjury or for unlawfully wilfully falsely fraudulently deceitfully maliciously or corruptly taking making signing or subscribing any oath affirmation declaration affidavit deposition bill answer notice certificate or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant and by what court or before whom the oath affirmation declaration affidavit deposition bill answer notice certificate or other writing was taken made signed or subscribed, without setting forth the bill answer affirmation information declaration or any part of any proceeding either in law or in equity or other jurisdiction, and without setting forth the commission or authority of the court or the person before whom such offence was committed.

Form of presentment indictment or information for perjury and like offence.
Ib. s. 350.
14 & 15 Vict.
c. 100 s. 20.

442. In every presentment indictment or information for subornation of perjury or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury or for inciting causing or procuring any person unlawfully wilfully falsely fraudulently deceitfully maliciously or corruptly to take make sign or subscribe any oath affirmation declaration affidavit deposition bill answer notice certificate or other writing it shall be sufficient wherever such perjury or other offence aforesaid shall have been actually committed to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully wilfully and corruptly did cause and procure the said person the said offence in manner and form aforesaid to do and commit: and wherever such perjury or other offence aforesaid shall not have been actually committed, it shall be sufficient to set

Forms of presentment indictment and information for subornation of perjury and other like offences.
Ib. s. 351.
Ib. s. 21.

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forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

In perjury the
materiality of
evidence need
not be averred
or proved.
Ib. s. 352.

443. It shall not be necessary in any presentment indictment or information for perjury or subornation of perjury to allege or on the trial thereof to prove the materiality of any evidence or proof whereupon the perjury shall be assigned.

(8) *Objections to Presentments Indictments and Informations how taken—Power of Amendment.*

No technical
objections
allowed.

Act No. 502 s. 37.
19 & 20 Vict.
c. 16 s. 15.

444. It shall not be lawful for any person by himself or by his counsel to take any objection either in the Supreme Court sitting in Melbourne for criminal trials or in any court of error to any writ of *certiorari* or to any order of the said Supreme Court or of any judge thereof or to any other proceeding under or by virtue of which any presentment indictment information or inquisition shall have been removed into the said Supreme Court or transmitted under the provisions of this Act to the said Supreme Court sitting in Melbourne as aforesaid, or to any caption of any court before which such presentment indictment or information shall have been found or made, or to any matter or thing set out or appearing on the face of the record save and except only to such presentment indictment information or inquisition alone, and every objection to any presentment indictment information or inquisition for any formal defect apparent on the face thereof shall be taken by demurrer or by motion to quash such presentment indictment information or inquisition before the trial is commenced and not afterwards, and every court before which any such objection shall be taken for any formal defect may if it be thought necessary cause the presentment indictment information or inquisition to be forthwith amended in such particular by some officer of the court or other person and thereupon the trial shall proceed as if no such defect had appeared.^(a)

14 & 15 Vict.
c. 100 s. 25.

(9) *Postponement of Trial &c.*

No person en-
titled to traverse
or have time to
plead.

"The Criminal
L. and P.
Statute 1864"
s. 354.

Court may post-
pone trial &c.
Ib. s. 27.

445. No person prosecuted shall be entitled as of right to traverse or postpone the trial of any presentment indictment or information preferred against him in the Supreme Court or court of general sessions of the peace or to have time to plead or demur to any such presentment indictment or information allowed him. Provided always that if the court before which any person is so presented indicted or informed against shall upon the application of such person or otherwise be of opinion that he ought to be allowed a further time to plead or demur or to prepare for his defence or otherwise, such court may grant such further time to plead or demur or may adjourn the receiving or taking of the plea or demurrer and the trial or as the case may be the trial of such person to some future time of the sittings of the said court or the next or any subsequent session or sittings of such court, and upon such terms as to bail or otherwise as to such court shall seem meet,

(a) It is too late on a criminal trial to take an objection to the presentment for duplicity after the jury have given their verdict. *Semble*, such an objection should be taken as provided by this

section by demurrer or motion to quash before the trial is commenced.—*Reg. v. Yorke*, 13 V.L.R., 393.

and may, in the case of adjournment to another session or sitting, respite the recognisances of the witnesses accordingly; in which case the witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sittings, without entering into any fresh recognisances for that purpose.

"The Criminal L. and P. Statute 1864."

(10) *Court Fees not payable by Defendants.*

446. It shall not be lawful to take demand or receive any court fees for the issuing of any process for or on behalf of any person charged with or presented indicted or informed against for any felony or as accessory thereto or with or for any misdemeanor in any court of criminal jurisdiction or before any justice or justices in Victoria; nor shall it be lawful to take demand or receive any fees from any such person for taking any recognisance of bail or issuing any writ of *habeas corpus* or recording any appearance or plea to any presentment indictment or information or for discharging any recognisance taken from any such person or surety or sureties for them.

Court fees not payable by defendants. *Ib. s. 356.*

(11) *Arraignment Plea &c.*

447. If any person being arraigned upon any presentment indictment or information for any indictable offence shall plead thereto a plea of "Not guilty," he shall by such plea without any further form be deemed to have put himself upon the country for trial; and the court shall in the usual manner order a jury for the trial of such person accordingly.

A plea of "Not guilty" without more shall put the prisoner on his trial by jury. *Ib. s. 356. 7 & 8 Geo. IV. c. 26 s. 1.*

448. If any person charged with or arraigned upon any presentment indictment or information for any indictable offence shall stand mute of malice or will not answer directly to the presentment indictment or information, in every such case it shall be lawful for the court (if it shall so think fit) to order the proper officer to enter a plea of "Not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

If he refuses to plead court may order a plea of "Not guilty" to be entered. *Ib. s. 357. Ib. s. 2.*

449. If any person presented indicted or informed against for any indictable offence shall be insane and shall upon arraignment be found so to be by a jury lawfully impanelled for that purpose so that such person cannot be tried upon such presentment indictment or information, or if upon the trial of any person so presented indicted or informed against such person shall appear to the jury charged with such presentment indictment or information to be insane, it shall be lawful for the court before whom any such person shall be brought to be arraigned or tried as aforesaid to direct such finding to be recorded; and thereupon to order such person to be kept in strict custody until the Governor's pleasure shall be known. And if any person presented indicted or charged with any indictable offence shall be brought before any court to be discharged for want of prosecution and such person shall appear to be insane, it shall be lawful for such court to order a jury to be impanelled, to try the sanity of such person; and if the jury so impanelled shall find such person to be insane, it shall be lawful for the court to order such person to be kept in strict

Where person on arraignment is found to be insane the court to order him to be kept in custody till the Governor's pleasure be known. The like on trial. *Ib. s. 358. 39 & 40 Geo. III. c. 94 s. 2.*

The like on discharge.

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custody in such place and in such manner as to such court shall seem fit until the Governor's pleasure shall be known. And in all cases of insanity so found it shall be lawful for the Governor to give such order for the safe custody of such person so found to be insane during the Governor's pleasure in such place and in such manner as to him shall seem fit.

Attainder of
another crime
not pleadable.
Ib. s. 359.
7 & 8 Geo. IV.
c. 28 s. 4.

450. No plea setting forth any attainder shall be pleaded in bar of any presentment indictment or information unless the attainder be for the same offence as that charged in the presentment indictment or information.

Presentment &c.
not to abate by
dilatatory plea of
misnomer &c.
Ib. s. 360.
7 Geo. IV.
c. 64 s. 19.

451. No presentment indictment or information shall be abated by reason of any dilatatory plea of misnomer or of want of addition or of wrong addition of the party offering such plea, if the court shall be satisfied by affidavit or otherwise of the truth of such plea; but in such case the court shall forthwith cause the presentment indictment or information to be amended according to the truth, and shall call upon such party to plead thereto and shall proceed as if no such dilatatory plea had been pleaded.

Form of plea of
autrefois convict
or *autrefois acquit*.
Ib. s. 361.
14 & 15 Vict.
c. 100 s. 28.

452. In any plea of *autrefois convict* or *autrefois acquit* it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the said offence charged in the presentment indictment or information.

Mode of proce-
dure on trials for
subsequent
offences.
Ib. s. 362.
24 & 25 Vict.
c. 96 s. 116.
Ib. c. 99 s. 37.

453. The proceedings upon any presentment indictment or information for committing any offence after a previous conviction or convictions shall be as follows (that is to say):—The offender shall in the first instance be arraigned upon so much only of the presentment indictment or information as charges the subsequent offence; and if he plead not guilty or if the court order a plea of not guilty to be entered on his behalf, the jury shall be charged in the first instance to inquire concerning such subsequent offence only; and if they find him guilty or if on arraignment he plead guilty, he shall then and not before be asked whether he had been previously convicted as alleged in the presentment indictment or information; and if he answer that he had been so previously convicted, the court may proceed to sentence him accordingly; but if he deny that he had been so previously convicted or stand mute of malice or will not answer directly to such question, the jury so in the first instance charged as aforesaid or if by reason of a plea of guilty in the first instance no such jury has been so charged then a jury in like manner as in other cases shall be charged to inquire concerning such previous conviction or convictions; and in the case of a jury so charged in the first instance, it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry. Provided that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character, it shall be lawful for the prosecutor in answer thereto to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned; and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

454. Where any person shall be presented indicted or informed against for treason or felony, the jury impanelled to try such person shall not be charged to inquire concerning his lands tenements or goods, nor whether he fled for such treason or felony.

"The Criminal L. and P. Statute 1864" s. 363.

Jury shall not inquire of prisoner's lands &c. nor whether he fled.

7 & 8 Geo. IV. c. 28 s. 5.

When and by whom prisoner's defence may be made.

Ib. s. 364.

See 6 & 7 Will. IV. c. 114 s. 1.

(12) *Defence.*

455. All persons tried for felonies shall be admitted after the close of the case for the prosecution to make full answer and defence thereto by counsel learned in the law, or by attorney in courts where attorneys practice as counsel.

(13) *Summing Up.*

456. If any prisoner or prisoners defendant or defendants shall be defended by counsel but not otherwise it shall be the duty of the presiding judge at the close of the case for the prosecution to ask the counsel for each prisoner or defendant so defended by counsel 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 in support of his case for the purpose of summing up the evidence against such prisoner or prisoners or defendant or defendants; and upon every trial for an indictable offence whether the prisoners or defendants or any of them shall be defended by counsel or not each and every such prisoner or defendant or his or their counsel respectively shall be allowed if he or they shall think fit to open his or their case or cases respectively, and after the conclusion of such opening or of all such openings if more than one such prisoner or prisoners or defendant or defendants or their counsel shall be entitled to examine such witnesses as he or they may think fit and when all the evidence is concluded to sum up the evidence respectively, and the right of reply and practice and course of proceedings save as hereby altered shall be as at present.

Summing up in cases of trial for indictable offences.

"The Criminal L. and P. Amend. Stat. 1871" s. 32.

28 & 29 Vict. c. 18 s. 2.

(14) *Variances and Amendment.*

457. If on the trial of any presentment indictment or information for any indictable offence there shall appear to be any variance between the statement in such presentment indictment or information and the evidence offered in proof thereof, it shall and may be lawful for the court before which the trial shall be had, if such court shall consider such variance not material to the merits of the case and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such presentment indictment or information to be amended according to the proof in such part of the presentment indictment or information and in such manner as such court shall think fit, on such terms as to postponing the trial to be had before the same or another jury as such court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences both with respect to the liability of witnesses to be informed against for perjury and otherwise as if no variance had occurred; and in all such cases where the trial shall be so postponed, it shall be lawful for the court to discharge the jury sworn from giving any verdict and to cause to be endorsed on the presentment indictment or information the words "Jury discharged from giving a verdict." Provided that in all such cases

The court may amend certain variances not material to the merits of the case &c.

"The Criminal L. and P. Statute 1864" s. 365.

See 14 & 15 Vict. c. 100 s. 1.

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where the trial shall be so postponed as aforesaid, it shall be lawful for such court to respite the recognisances of the witnesses and of the defendant and the surety or sureties (if any) accordingly; in which case the witnesses shall be bound to attend to give evidence respectively and the defendant shall be bound to attend to be tried at the time and place to which such trial shall be postponed, without entering into any fresh recognisances for that purpose, in such and the same manner as if they were originally bound by their recognisances to appear and give evidence at the same time and place to which such trial shall have been postponed. Provided also that where any such trial shall be to be had before another jury, the Crown and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was impanelled.

(15) *Verdict.*

When person
charged acquit-
ted on the ground
of insanity the
jury to find so
specially and the
court to order
him to be kept in
custody.
Ib. s. 306.
39 & 40 Geo. III.
c. 94 s. 1.

458. In cases where it shall be given in evidence upon the trial of any person charged with any indictable offence that such person was insane at the time of the commission of such offence and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing of such offence, the court before whom such trial shall be had shall order such person to be kept in strict custody in such place and in such manner as to the court shall seem fit until the Governor's pleasure shall be known; and it shall thereupon be lawful for the Governor to give such order for the safe custody of such person so found to be insane during his pleasure in such place and in such manner as to him shall seem fit.

On trial for
felony verdict of
attempt.
Ib. s. 307.
14 & 15 Vict.
c. 100 s. 9.

459. If on the trial of any person charged with felony or misdemeanor it shall appear to the jury upon the evidence that the defendant did not complete the offence charged but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted; but the jury may return as their verdict that the defendant is not guilty of the felony or misdemeanor charged but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon a presentment indictment or information for attempting to commit the particular felony or misdemeanor charged in the presentment indictment or information; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

Facts proved on
trial for misde-
meanor amount-
ing to felony not
to entitle to
acquittal.
Ib. s. 368.
Ib. s. 12.

460. If upon the trial of any person for any misdemeanor it shall appear 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 misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before which such trial may be had shall think fit in its discretion to discharge the jury from giving any verdict upon such trial and to direct such person to be presented for felony in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

461. If upon the trial of any presentment indictment or information for any felony except murder or manslaughter where the presentment indictment or information shall allege that the defendant did wound any person, the jury shall be satisfied that the defendant is guilty of the wounding charged in such presentment indictment or information but are not satisfied that the defendant is guilty of the felony charged in the presentment indictment or information, then and in every such case the jury may acquit the defendant of such felony and find him guilty of unlawfully wounding;^(a) and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon a presentment indictment or information for the misdemeanor of wounding.

"The Criminal L. and P. Statute 1864" s. 369.

On trial for feloniously wounding jury may acquit of felony and convict of misdemeanor. See 14 & 15 Vict. c. 19 s. 6.

462. If upon the trial of any person for the felony of unlawfully and maliciously administering poison so as thereby to endanger life or for any other felony mentioned in the section of this Act relating to such administering the jury shall not be satisfied that such person is guilty of such felony but shall be satisfied that he is guilty of any misdemeanor mentioned in the section next succeeding such section, then and in every such case the jury may acquit the accused of such felony and find him guilty of such misdemeanor; and thereupon he shall be liable to be punished in the same manner as if convicted upon a presentment indictment or information for such misdemeanor.

On trial for poisoning verdict of misdemeanor. *Ib.* s. 370. 24 & 25 Vict. c. 100 s. 25.

463. If on the trial of any person charged with the offence of rape or with the offence of having unlawfully and carnally known and abused any girl under the age of ten years, the jury shall not be satisfied that he is guilty thereof but shall be satisfied that he is guilty of an assault with intent to commit the same, then the jury may return as their verdict that he is not guilty of the offence so charged, and may find him guilty of an assault with intent to commit the same.

On trial for rape &c. verdict of assault with intent. *Ib.* s. 371.

464. If any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find (in case it shall so appear in evidence) that the child had recently been born and that such person did by some secret disposition of the dead body of such child endeavour to conceal the birth thereof; and thereupon the court may pass such sentence as if such person had been convicted upon an information for the concealment of the birth.

On trial for child murder verdict of concealing birth. *Ib.* s. 372. See *ib.* s. 60.

465. If upon the trial of any person upon any presentment indictment or information for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted; but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob; and thereupon the defendant shall be liable to be punished in the same manner as if he had been convicted

On trial for robbery verdict of assault with intent &c. *Ib.* s. 373. *Ib.* c. 96 s. 41.

(a) When an information charged a prisoner with having feloniously caused grievous bodily harm and he was found guilty of a common assault, in the absence of any enactment giving a jury

liberty so to find, the verdict could not stand.—*Reg. v. Longmuir*, 6 W. & A. B. (L.), 237; N.C., 58.

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upon a presentment indictment or information for feloniously assaulting with intent to rob; and no person so tried as before lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

On trial for
stealing cattle
verdict of
misdemeanor.
Ib. s. 374.

466. If upon the trial of any person for feloniously stealing any cattle within the meaning of Division two of Part I. of this Act the jury shall not be satisfied that he is guilty of such felony but shall be satisfied that he is guilty of the misdemeanor of unlawfully taking using or working the cattle contrary to this Act, then the jury may return as their verdict that he is not guilty of the felony charged but is guilty of such misdemeanor and he may be punished accordingly.

On trial for
embezzlement
verdict of
larceny.
Ib. s. 375.
See 24 & 25 Vict.
c. 96 s. 72.

467. If upon the trial of any person presented indicted or informed against for embezzlement fraudulent application or disposition as a person employed in the public service of Her Majesty or with embezzlement as a clerk servant or person employed for the purpose or in the capacity of a clerk or servant it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted; but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement or of fraudulent application or disposition (as the case may be) but is guilty of simple larceny or of larceny as a person employed in the public service of Her Majesty or as a clerk servant or person employed for the purpose or in the capacity of a clerk or servant (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 a presentment indictment or information for such larceny.

And vice versa.

And if upon the trial of any person presented indicted or informed against for larceny it shall be proved that he took the property in question in any such manner as to amount in law to such embezzlement fraudulent application or disposition as aforesaid or to embezzlement as a clerk or servant or such person employed as aforesaid (as the case may be) he shall not by reason thereof be entitled to be acquitted; but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny but is guilty of such embezzlement fraudulent application or disposition as first aforesaid or of embezzlement as a clerk or servant or such person employed as a clerk or servant (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 a presentment indictment or information for such embezzlement fraudulent application or disposition according to the nature thereof respectively.

And no person so tried for embezzlement fraudulent application or disposition or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny fraudulent application or disposition or embezzlement upon the same facts.

No acquittal for
obtaining money
by false pre-
tences on the
ground that the
case proved
amounts to
larceny.
Ib. s. 376.
Ib. s. 88.

468. If upon the trial of any person presented indicted or informed against for the misdemeanor of obtaining property by false pretences it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

469. If upon the trial of any presentment indictment or information for larceny it shall appear that the property alleged in such presentment indictment or information to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed; unless it shall appear that there were more than three takings or that more than the space of six months elapsed between the first and the last of such takings; and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings not exceeding three as appear to have taken place within the period of six months from the first to the last of such takings.

"The Criminal L. and P. Statute 1864"
s. 377.

Prosecutor need not in all cases elect though several larcenies proved.
24 & 25 Vict. c. 96 s. 6.

470. If upon the trial of two or more persons presented indicted or informed against for jointly receiving any property it shall be proved that one or more of such persons separately received any part or parts of such property, it shall be lawful for the jury to convict upon such presentment indictment or information such of the said persons as shall be proved to have received any part or parts of such property.

Separate receivers may be convicted.

Ib. s. 378.

Ib. s. 94.

471. Where any presentment indictment or information containing two or more counts both for feloniously stealing and receiving shall have been preferred against any person, the prosecutor shall not be put to his election; but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen. And if such presentment indictment or information shall have been preferred against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen or to find one or more of the said persons guilty of stealing the property and the other or others of them guilty of receiving the same or any part or parts thereof knowing the same to have been stolen.

Verdict where several counts for stealing and receiving and several defendants.

Ib. s. 379.

See *ib.* s. 92.

472. If upon the trial of any person for the felony of having while with other persons riotously and tumultuously assembled unlawfully and with force demolished any church or for any other of the felonies enumerated in the section of this Act relating to such demolition the jury shall not be satisfied that such person is guilty thereof but shall be satisfied that he is guilty of any misdemeanor mentioned in the section next succeeding such section, then the jury may return as their verdict that he is not guilty of the felony charged but is guilty of such misdemeanor; and he may be punished accordingly.

On trial for riotous demolition verdict of misdemeanor.

Ib. s. 380.

Ib. c. 97 s. 12.

(16) *Evidence &c. in certain cases.*

473. Where any person shall be informed against before any court of criminal jurisdiction or charged before justices for a subsequent offence in either case committed after any previous summary conviction or convictions, a copy of any such conviction certified by the proper officer of the court to which such summary conviction shall have been returned or proved to be a true copy shall be sufficient evidence to prove a conviction for the former offence; and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Evidence of previous summary conviction.

Ib. s. 381.

See *ib.* c. 96 s. 112.

See *ib.* c. 97 s. 70.

"The Criminal
L. and P.
Statute 1804"
s. 382.

Evidence of con-
viction for lar-
ceny summarily
tried.

18 & 19 Vict.
c. 126 s. 7.

474. The justices adjudicating under any of the sections hereof numbered sixty-seven sixty-eight and sixty-nine shall transmit the conviction or a duplicate of a certificate of dismissal with the written charge the depositions of the witnesses for the prosecution and for the defence and the statement of the accused to the next court of general sessions for the district, there to be kept by the proper officer among the records of the court: and a copy of such conviction or of such certificate of dismissal certified by the proper officer of the court or proved to be a true copy shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceedings whatever.

Prisoners
entitled to in-
spect depositions
on trial.

Ib. s. 388.

See 6 & 7 Will.
IV. c. 114 s. 4.

475. All persons under trial shall be entitled at the time of their trial to inspect without fee or reward all depositions which have been taken against them and delivered in manner by law required to the proper officer of the court before which such trial shall be had or copies of such depositions.

Depositions
taken on one
charge may be
read in prosecu-
tion of others.
Ib. s. 384.

476. Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of the same or any other offence whatsoever upon the like proof and in the same manner in all respects as they may according to the law now in force be read in the prosecution of the offence with which such person was charged when such depositions were taken.

Evidence in case
of forged stamp.
Ib. s. 385.

477. It shall be lawful for the court and the jury sworn upon the trial of any person charged with any offence against the provisions of Division four of Part I. of this Act relating to the stamps of the United Kingdom to compare and receive evidence founded upon the comparison of any stamp die mark or impression alleged to be forged or counterfeited with any mark or impression denoting any stamp duty which shall appear to the court to be genuine and thereupon to decide and determine accordingly.

Evidence that
coin is counter-
feited.

Ib. s. 386.

24 & 25 Vict.
c. 99 s. 29.

478. Where upon the trial of any person charged with any offence against Division five of Part I. of this Act it shall be necessary to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of any moneyer or other officer of Her Majesty's Mint; but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness.

(17) Amendments not to prejudice after Verdict &c.

Verdicts and
judgments valid
after amend-
ment.

Ib. s. 387.

14 & 15 Vict.
c. 100 s. 2.

479. Every verdict and judgment which shall be given after the making of any amendment under this Act shall be of the same force and effect in all respects as if the indictment presentment or information had originally been in the same form in which it was after such amendment was made.

Records to be
drawn up in
amended form
without noticing
amendment.

Ib. s. 388.

Ib. s. 3.

480. If it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made under this Act, such record shall be drawn up in the form in which the indictment presentment or information

was after such amendment was made, without taking any notice of the fact of such amendment having been made.

"The Criminal
L. and P.
Statute 1864."

(18) *Crown Cases reserved.*

481. If on the trial^(a) of any person convicted^(b) of any indictable offence in or before any court of criminal jurisdiction any question of difficulty in point of law^(c) shall have arisen, it shall be lawful for such court in its discretion to reserve such question of law for the consideration and determination of the Judges of the Supreme Court; and in any such case to respite the execution of the judgment on such conviction or postpone the judgment until such question of law shall have been considered and determined; and in either case the court in its discretion shall commit the person convicted to prison, or shall take a recognisance of bail with one or more sufficient surety or sureties and in such sum as the court shall think fit conditioned to appear at such time or times and place as the court shall direct and receive judgment or to render himself in execution as the case may be.

Questions of law
may be reserved.
Ib. s. 339.
See 11 & 12 Vict
c. 73 s. 1.

482. The court by which such question of law may have been so reserved shall thereupon state a case,^(d) setting forth the question or questions of law which shall have been so reserved with the special circumstances upon which the same shall have arisen; and the judge or other person presiding in such court shall sign^(e) and transmit the same within a reasonable time^(f) to the judges of the said Supreme Court; and the said judges shall have power to hear and finally determine the said question or questions, and thereupon to affirm amend or reverse any judgment which shall have been given on the information on the trial whereof such question or questions have arisen, or to avoid such judgment and to order an entry to be made on the record that in the judgment of the said judges the party convicted ought not to have been convicted, or to order judgment to be given thereon at some other session

Case.
Ib. s. 390.
See ib. s. 2.

Mode of
proceeding.

(a) A question of law cannot be reserved or case stated by a judge unless the question arose "on the trial."—*Reg. v. Thompson*, 4 W.W. & a'B. (L.), 23; see *Reg. v. Whelan*, 5 W.W. & a'B. (L.), 7.

On a trial for murder committed on the high seas, after the jury had given a verdict of "guilty," doubts arose as to the proper sentence, and a case was reserved for the opinion of the Full Court: *Held*, that the difficulty was one which had arisen "on the trial" within the meaning of this section; but since the court where a case was reserved had to "hear and finally determine the question," it had no power to deal with the question, since it could not compel the Supreme Court to pass the sentence which it might deem legal. The court, however, gave its opinion to the judge who had reserved the case.—*Reg. v. Mount and Morris*, 4 A.J.R., 38.

(b) A case reserved would lapse in case of acquittal.—See *Reg. v. Benjamin*, 5 W.W. & a'B. (L.), 178.

On a plea of *autrefois acquit* where a verdict has been entered for the Crown, the usual practice is to proceed with the trial on the plea of "not guilty." Where this was not done and the prisoner was not convicted, the court *held* that it

had no jurisdiction to deal with a point reserved under this section.—*Reg. v. Prendergast*, 4 A.J.R., 154.

(c) It is a rule of practice to be observed in all courts to which prisoners are committed not to permit the examination of witnesses the knowledge of whose evidence has been withheld from the prisoner till the trial. *Semble*, that such examination may be allowed where a very strong excuse, to the satisfaction of the presiding judge, is put forward by the prosecution. The propriety of the admission of such evidence is not a question of law within this section.—*Reg. v. Brown*, 6 W.W. & a'B. (L.), 239; N.C., 59.

(d) The court will not go outside the case stated. If necessary the judge's notes should be made part of the case.—*Reg. v. Murphy*, 4 W.W. & a'B. (L.), 63.

(e) Where a special case reserved was in the handwriting of the learned judge, but not signed by him, and he had died before it came on to be heard, the court considered the case sufficiently stated, and entertained it.—*Reg. v. Duffy*, 6 V.L.R. (L.), 430.

(f) As to what is a reasonable time for statement of a case, see *Reg. v. Whelan*, 5 W.W. & a'B. (L.), 7.

"The Criminal
L. and P.
Statute 1884."

Seventh
Schedule.

of gaol delivery or general sessions of the peace if no judgment shall have been before then given, or to direct a *venire de novo* or new trial to be had,^(a) or to make such other order as justice may require. And such judgment and order (if any) of the said judges shall be certified under the hand of the presiding chief justice or senior of the said judges to the associate or clerk of the peace as the case may be or the deputy of such clerk, who shall enter the same on the original record in proper form; and a certificate of such entry under the hand of such clerk or deputy, in the form as near as may be or to the effect in the Seventh Schedule with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff inspector-general or gaoler in whose custody the person convicted shall be; and the said certificate shall be a sufficient warrant to such sheriff inspector-general or gaoler and all other persons for the execution of the judgment as the same shall have been so certified to have been affirmed or amended, and execution shall be thereupon executed upon such judgment; and for the discharge of the person convicted from further imprisonment if the judgment shall have been reversed or avoided, and in that case such sheriff inspector-general or gaoler shall forthwith discharge him and also the next court of gaol delivery or general sessions of the peace as the case may be shall vacate the recognisance of bail if any; and if the court of gaol delivery or general sessions of the peace shall be directed to give judgment, the said court shall proceed to give judgment at the next session.

Case may be
sent back for
amendment.
Ib. s. 391.
11 & 12 Vict.
c. 78 s. 4.

483. The said judges of the Supreme Court when a case has been reserved for their opinion shall have power if they think fit to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly and judgment shall be delivered after it shall have been amended.

Argument and
judgment.
Ib. s. 392.
Ib. s. 3.

484. The judgment or judgments of the judges of the Supreme Court shall be delivered in open court after hearing counsel or the parties, in case the prosecutor or person convicted shall think it fit that the case be argued,^(b) in like manner as other judgments of the Supreme Court are now delivered.

When judge
refuses to
reserve a
question of law

485. When a judge refuses to reserve any question of law under section four hundred and eighty-one of this Act the applicant may apply to the Full Court for a rule or order *nisi* calling on such judge

(a) The Supreme Court cannot on a case stated by General Sessions order a new trial to be had before itself.—*Reg. v. Herbert*, 8 V.L.R. (L.), 205.

The court has power under this Act to grant new trials in case of felony, and an order for a new trial is good, though made at the time of quashing the first conviction, prisoner's counsel not being present to object.—*Reg. v. Whelan*, 5 W.W. & a'B. (L.), 7.

On the trial of prisoners for stealing and receiving goods the property in which was laid in different counts in different persons, the judge directed the jury that they might return a verdict generally, as the property was in one or other of the persons in whom it was laid. After a verdict of guilty of receiving was recorded the judge, at the request of counsel, asked the jury in whom they found the property to be? Whereupon they

replied that they did not know. *Held*, on special case stated, that this direction was wrong; that the judge might have directed the jury that they could find their verdict on the count laying the property in the person from whose custody it was stolen; or might himself have so entered it; that in strictness there should have been a finding on each particular count; that this was not a case for exercising the power of amendment under the next section. but that there should be a new trial.—*Reg. v. Murphy*, 4 W.W. & a'B. (L.), 218.

(b) On special cases reserved at criminal trials the party at whose instance the case has been reserved has the right to begin.—*Reg. v. Roberts*, 12 V.L.R., 135. On a case reserved, counsel for the Crown is entitled to be heard though there is no appearance for the prisoner.—*Reg. v. Taylor*, 2 W. & W. (L.), 153.

and also upon the Attorney-General to show cause why such question should not be reserved for the opinion of the Full Court, and the Full Court may make the same absolute or discharge it with or without costs as it may think proper; and the judge upon being served with any such rule or order absolute shall reserve such question of law accordingly for the opinion of the Full Court; and thereupon the procedure defined by the four last preceding sections shall become applicable as if such judge had consented to reserve such question of law on the trial.

"The Judicature Act 1883" s. 70.
in criminal cases the Court may order one to be stated.

(19) *Power to commit for Perjury.*

486. It shall be lawful for any of the judges of the Supreme Court or any chairman or other judge holding any court of general sessions of the peace or for any judge of the Court of Insolvency or for any judge of any court of record or for any court of petty sessions for any justice or for any sheriff or his lawful deputy or commissioner before whom any inquiry or trial is held which the said sheriff is by law required or authorized to hold, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given or in any affidavit deposition examination answer or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury in case there shall appear to them or him a reasonable cause for such prosecution; and to commit such person so directed to be prosecuted until the next session of gaol delivery for the jurisdiction within which such perjury was committed, or to permit such person to enter into a recognisance with one or more sufficient surety or sureties conditioned for the appearance of such person at such next session of gaol delivery and that he will then surrender and take his trial and not depart the court without leave; and to require any person he or they may think fit to enter into a recognisance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid.

Any court or judge may direct that a person guilty of perjury be prosecuted.

"The Criminal L. and P. Statute 1864" s. 393.

See 14 & 15 Vict. c. 100 s. 19.

(20) *Judgment good after Verdict in certain cases.*

487. No judgment after verdict upon any information for any felony or misdemeanor shall be stayed or reversed for want of a similitur; nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion; nor for any misnomer or misdescription of the officer returning such process or of any of the jurors; nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer; and where the offence charged has been created by any Statute or subjected to a greater degree of punishment or excluded from the benefit of clergy by any statute, the information shall after verdict be held sufficient to warrant the punishment prescribed by the Statute if it describe the offence in the words of the Statute.

What shall not be sufficient to stay or reverse judgment after the verdict.
16. s. 394.

(21) *Judgments.*

488. Upon all trials for felonies or misdemeanors upon any record of the Supreme Court judgment may be pronounced during the sittings by the judge before whom the verdict shall be taken as well upon the person who shall have suffered judgment by default or confession upon the same record as upon those who shall be tried and

Judgments may be pronounced on records during sittings.
Act No. 502 s. 23.
11 Geo. IV. and 1 Will. IV. c. 70 s. 2.

Act No. 502.

convicted, whether such persons be present or not in court, excepting only where the prosecution shall be by information filed by leave of the Supreme Court, or such cases of information filed by Her Majesty's Attorney-General wherein the Attorney-General shall pray that the judgment may be postponed; and the judgment so pronounced shall be afterwards entered upon the record^(a) and shall be of the same force and effect as the judgment of the court unless the court shall within four days after the commencement of the next ensuing sitting of the Full Court grant a rule to show cause why a new trial should not be had or the judgment amended; and it shall be lawful for the judge before whom the trial shall be had either to issue an immediate order or warrant for committing the defendant in execution or to respite the execution of the judgment upon such terms as he shall think fit until the fourth day of the next ensuing sitting of the Full Court.^(b)

Sentences to date from first day of sittings.
"The Gaols Act 1887" s. 15.

All sentences of imprisonment or of imprisonment with hard labour on any offenders at any sittings of the Supreme Court or any court of general sessions shall date from the first day of holding such sitting, and all other sentences of imprisonment from the date of signing any warrant of commitment under which any offender is detained in custody unless such offender was at large at the date of the signing of such warrant, in which case the sentence shall date from the time of the arrest.

Caption.

Act No. 502 s. 24.
Eighth Schedule.

489. The several forms of caption contained in the Eighth Schedule to this Act shall be good and sufficient in law and the same description of the courts in the said forms respectively mentioned may be used and shall be valid in all legal process and proceedings whatsoever.

Judgment may be amended.

Ib. s. 25.
11 & 12 Vict.
c. 73 s. 5.

490. When any writ of error shall be brought upon any judgment upon any indictment presentment or inquisition in any criminal case and the Supreme Court shall reverse the judgment, it shall be competent for such court either to pronounce the proper judgment or to remit the record to the court below in order that such court may pronounce the proper judgment upon such indictment presentment or inquisition.

Execution.

Ib. s. 26.
See 4 & 5 Will.
V. c. 88 s. 9.

491. Execution of the judgment of the said Supreme Court sitting in Melbourne for criminal trials and in any place appointed for holding criminal trials and general sessions shall and may be had and done upon any person convicted before such courts respectively in the same way and as fully to all intents and purposes as execution of the judgment of any circuit court or court of general sessions could have been had and done previously to the fourth day of January One thousand eight hundred and seventy-five.

(22) Costs.

Attorney to make out and deliver bill.

492. Whenever any attorney of the Supreme Court shall have been employed in the defence of any person tried or committed for trial

(a) On a criminal trial, an objection to the jurisdiction taken after verdict recorded is not too late.
—*Reg. v. Herbert*, 8 V.L.R. (L.), 205.

(b) This section was not intended to confer on a person convicted of felony or misdemeanor any right to apply for a new trial or to have the judgment amended which he would not have had previously to the passing of the Act No.

502. Its object was to regulate the practice in delivering and entering judgments on trials for felonies and misdemeanors in cases in which it was previously to such time necessary that a rule should be entered on the *postea* before judgment could be pronounced by the court.—*Reg. v. Stanley*, 14 V.L.R., 509.

before the said court, he shall before appropriating any sum to the payment or settlement of his costs and charges make out and deliver to the party by whom he has been retained to conduct such defence a bill of costs containing full and particular items of the moneys laid out and business charged for therein and of all sums of money received held or appropriated by him or any person for his use on account thereof; and shall at the same time make out and deliver to one of the associate clerks of some judge of the said court a copy of the said bill of costs together with an affidavit annexed verifying the payment of all sums and fees paid to counsel and others and all actual expenditure charged therein; and the said copy of such bill of costs shall after delivery to the said clerk be taxed in such manner as the said court or any judge thereof shall direct; and after such taxation the said court or any judge thereof shall make such order or orders in relation thereto as to him or them shall seem fit.

"The Criminal L. and P. Statute 1884" s. 395.

493. For the purpose of making any inquiries which may be necessary to give due effect to the provisions of the last preceding section, it shall be lawful for the said court or any judge thereof to summon or call before such court or judge in a summary way any attorney who shall have been employed in such defence as aforesaid, and by examination of him on oath or otherwise to ascertain the truth of any matters touching or relating to any bill of costs and charges which has been or ought to have been delivered under the foregoing provisions in respect of such defence; and the said court or any judge thereof shall also have power in regard to such matters to order the attendance before them or him of any person or persons whose testimony may be conducive to the discovery of the truth relating thereto, and to examine them on oath or otherwise in regard to such matters; and after hearing the said attorney and such person or persons as may be interested therein, it shall be lawful for the said court or a judge thereof to make such order in the matter as to them or him shall seem meet. Provided always that no attorney shall be struck off the rolls of the said court for misconduct in regard to any of the said matters until he has been previously called upon to show cause before the said court why he should not be so struck off.

Court may summon attorney &c. Ib. s. 396.

494. It shall be lawful for the court to establish a scale of fees and charges for the conduct of business in the criminal jurisdiction of such court; and the associate clerk of a judge shall tax and allow all bills of costs according to such scale as far as the same shall apply; and for all business not comprehended within the said scale the like fees and charges shall be allowed as are sanctioned by the court for the conduct of the civil business of the said court.

Scale of charges. Ib. s. 7.

(23) *No Certiorari &c.*

495. No summary conviction under this Act and no adjudication made on appeal therefrom to any court of general sessions shall be quashed for want of form, or be removed by *certiorari* into the Supreme Court; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted and there be a good and valid conviction to sustain the same.

No certiorari. Ib. s. 398. See 24 & 25 Vict. c. 96 s. 111. See ib. c. 99 s. 32. See ib. c. 100 s. 72.

(24) *Restitution of Property Stolen &c.*

"The Criminal
L. and P.
Statute 1884"
s. 389.

The owner of
stolen property
prosecuting thief
or receiver to
conviction shall
have restitution
of his property.
24 & 25 Vict.
c. 96 s. 100.

496. If any person guilty of any such felony or misdemeanor as is mentioned in Division two of Part I. of this Act in stealing taking obtaining extorting embezzling converting or disposing of or as is mentioned in Division one of Part II. of this Act in knowingly receiving any chattel money valuable security or other property whatsoever shall be informed against for such offence by or on behalf of the owner of the property or his executor or administrator and convicted thereof, in such case the property shall be restored to the owner or his representative (a) and in every case in this section aforesaid, the court before whom any person shall be tried for any such felony or misdemeanor shall have power to award from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner. And if any person informed against for any such felony or misdemeanor as in the preceding part of this section mentioned shall have been acquitted thereof, it shall be lawful for the court in its discretion, if it shall be satisfied that any property to which such information relates has been so stolen taken obtained extorted embezzled converted disposed of or received, to award cause writs of restitution or to order in a summary manner the restitution of the property to the owner or his representative as aforesaid. Provided that if it shall appear before any award or order made that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen taken obtained extorted embezzled converted or disposed of, in such case the court shall not award or order the restitution of such security. Provided also that nothing in this section contained shall apply to the case of any prosecution of any banker merchant attorney factor broker or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanor against this Act.

Exception.

Restitution by
justices in
certain cases.
Ib. s. 400.

497. It shall be lawful for the justices by whom any person is convicted under any of the sections hereof numbered sixty-seven sixty-eight and sixty-nine to order restitution of the property stolen, in those cases in which the court before whom the person convicted would have been tried but for this Act may be by law authorized to order restitution.

(25) *Apprehension of Offenders and Search Warrants.*

A person in the
act of committing
any offence
against the

498. Any person found committing any offence punishable either upon information as for an indictable offence or upon summary conviction by virtue of Division two of Part I. of this Act (except

(a) B. obtained goods by means of valueless cheques, and pledged them. He was convicted of obtaining goods by means of false pretences. After conviction one of the original owners applied to have the goods restored to him. *Held*, that, notwithstanding this section, the pawnbroker was entitled to retain the goods as against the owner until he had been paid the amount advanced on them, on the ground that the contract

between the seller of the goods and B. was voidable only, and not void; and that, if before the contract was rescinded by the seller B. pawned the goods without notice to the pawnbroker as to the manner in which he had obtained them, the pawnbroker was entitled to a lien as against the original owner for the sum advanced.—*Reg. v. Clarke*, 1 A.L.T., 116.

only the offence of angling in the daytime) may be immediately apprehended without a warrant by any person and forthwith taken with the property if any on or in respect of which such offence of such person shall be committed before some neighbouring justice to be dealt with according to law. And if any credible witness shall prove upon oath before a justice a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence punishable either upon information or upon summary conviction by virtue of Division two of Part I. of this Act shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods. And any person to whom any property shall be offered to be sold pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized and if in his power is required to apprehend and forthwith carry before a justice the party offering the same together with such property to be dealt with according to law.

"The Criminal L. and P. Statute 1864" s. 401.

Second Division of Part I. may be apprehended without a warrant.

24 & 25 Vict. c. 96 s. 103.

Search warrant.

Any person to whom stolen property is offered may seize the party offering it.

499. It shall be lawful for any person whomsoever to apprehend any person who shall be found committing any offence against the seventeenth one hundred and twenty-eighth or one hundred and twenty-ninth section of this Act or who shall be found committing any indictable offence in the night; and to convey him or deliver him to some constable or other peace officer in order to his being conveyed as soon as conveniently may be before a justice to be dealt with according to law; and the night shall for the purposes of this section be deemed to commence and conclude at the times respectively mentioned in Division two of Part I. of this Act in that behalf.

Person found committing offences in the night or certain other offences may be apprehended by any person.

Ib. s. 402.

500. It shall be lawful for any person whomsoever who shall be present when any act shall be done or omitted to be done contrary to the twenty-fourth section hereof or when any injury shall be caused as in the said section mentioned by any such doing or omission to apprehend the offender; and to convey him or deliver him to some constable or other peace officer in order to his being conveyed as soon as conveniently may be before a justice to be dealt with according to law.

Who may apprehend persons causing harm by neglect.

Ib. s. 403.

14 & 15 Vict. c. 19 s. 11.

501. If any person liable to be apprehended under the two last preceding sections shall assault or offer any violence to any person authorized to apprehend or detain him or to any person acting in his aid and assistance, every such offender shall be guilty of a misdemeanor; and being convicted thereof shall be liable in the discretion of the court to be imprisoned for any term not exceeding three years.

Persons assaulting person authorized to apprehend guilty of misdemeanor.

Ib. s. 404.

Ib. s. 12.

502. Any person found committing any offence against Division three of Part I. of this Act whether the same be punishable upon information or upon summary conviction may be immediately apprehended without a warrant by any peace officer or the owner of the property injured or his servant or any person authorized by him and forthwith taken before some neighbouring justice to be dealt with according to law.

Who may apprehend persons offending against Third Division of Part I.

Ib. s. 405.

24 & 25 Vict. c. 97 s. 61.

503. Any constable or peace officer may take into custody without warrant any person whom he shall find lying or loitering in any highway yard or other place during the night and whom he shall have good cause

Who may apprehend persons loitering at night and suspected.

Ib. s. 406.

"The Criminal
L. and P.
Statute 1894."

24 & 25 Vict.
c. 96 s. 104.

Ib. c. 97 s. 57.

Ib. c. 100 s. 66.

Justice may
issue warrant
to search for
gunpowder.

Ib. s. 407.

Ib. c. 97 s. 55.

Ib. c. 100 s. 65.

to suspect of having committed or being about to commit any felony against Division one two or three of Part I. of this Act; and shall take such person as soon as reasonably may be before a justice to be dealt with according to law.

504. Any justice of any place in which any machine engine implement or thing or any gunpowder or other explosive dangerous or noxious substance is suspected to be made kept or carried for the purpose of being used in committing any of the felonies in Division one or three of Part I. of this Act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal for searching in the daytime any house mill magazine storehouse warehouse shop cellar yard wharf or other place or any carriage waggon cart ship boat or vessel in which the same is suspected to be made kept or carried for such purpose as hereinbefore mentioned. And every person acting in the execution of any such warrant shall have, for seizing and removing to proper places and detaining every such machine engine implement and thing and all such gunpowder explosive dangerous or noxious substances found upon such search which he shall have good cause to suspect to be intended to be used in committing any such offence and the barrels packages cases and other receptacles in which the same shall be, the same powers which by the *Explosives Act 1890* are given to persons searching under the warrant of a justice for explosives kept contrary to that Act.

Justice may
issue warrant
to search for
materials &c. for
forgery.

Ib. s. 408.

Ib. c. 98 s. 46.

505. If it shall be made to appear by information on oath or affirmation before a justice that there is reasonable cause to believe that any person has in his custody or possession without lawful authority or excuse any note or bill of the Governor and Company of the Bank of England or Ireland or of any body corporate company or person carrying on whether within Victoria or elsewhere within the dominions of Her Majesty the business of bankers, or any frame mould or implement for making paper in imitation of the paper used for such notes or bills, or any such paper or any plate wood stone 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, or any tool implement or material used or employed or intended to be used or employed in or about any of the operations aforesaid, or any forged security document instrument or stamp whatsoever, or 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 instrument or stamp whatsoever, such justice may if he think fit grant a warrant to search for the same; and if the same shall be found upon such search, it shall be lawful to seize and carry the same before some justice of the peace 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 where any such offender shall be tried or in case there shall be no such trial then by order of some justice, be defaced and destroyed or otherwise disposed of as such court or justice shall direct.

Coin suspected
to be counterfeit
may be bent &c.
by receiver.

Ib. s. 409.

Ib. c. 99 s. 26.

506. Where any coin shall be tendered as the Queen's current gold or silver coin to any person who shall suspect the same to be diminished otherwise than by reasonable wearing or to be counterfeit, it shall be lawful for such person to cut break bend or deface such coin; and if

any coin so cut broken bent or defaced shall appear to be diminished otherwise than by reasonable wearing or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight and shall appear to be lawful coin, the person cutting breaking bending or defacing the same is hereby required to receive the same at the rate it was coined for; and if any dispute shall arise whether the coin so cut broken bent or defaced be diminished in manner aforesaid or counterfeit, it shall be heard and finally determined in a summary manner by any justice, who is hereby empowered to examine upon oath as well the parties as any other person in order to the decision of such dispute. And the Treasurer of Victoria and his deputies and clerks, and all collectors of imposts and receivers of revenue, are hereby required to cut break or deface or cause to be cut broken or defaced every piece of counterfeit or unlawfully diminished gold or silver coin which shall be tendered to them in payment of any part of the consolidated revenue or otherwise by virtue of their office.

*"The Criminal
L. and P.
Statute 1864."*

507. If any person shall find or discover in any place whatever or in the custody or possession of any person having the same without lawful authority or excuse any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold silver or copper coin or any coin of any foreign prince state or country, or any instrument tool or engine whatsoever adapted and intended for the counterfeiting of any such coin or any filings or clippings or any gold or silver bullion or any gold or silver in dust solution or otherwise which shall have been produced or obtained by diminishing or lightening any of the Queen's current gold or silver coin, it shall be lawful for the person so finding or discovering and he is hereby required to seize the same and to carry the same forthwith before some justice. And where it shall be proved on the oath of a credible witness before any justice that there is reasonable cause to suspect that any person has been concerned in counterfeiting the Queen's current gold silver or copper coin or any such foreign or other coin as in Division five of Part I. of this Act mentioned or has in his custody or possession any such false or counterfeit coin or any instrument tool or engine whatsoever adapted and intended for the making or counterfeiting of any such coin or any other machine used or intended to be used for making or counterfeiting any such coin or any such filings clippings or bullion or any such gold or silver in dust solution or otherwise as aforesaid, it shall be lawful for any justice by warrant under his hand to cause any place whatsoever belonging to or in the occupation or under the control of such suspected person to be searched either in the day or in the night; and if any such false or counterfeit coin or any such instrument tool or engine or any such machine or any such filings clippings or bullion or any such gold or silver in dust solution or otherwise as aforesaid shall be found in any place so searched, to cause the same to be seized and carried forthwith before some justice. And whensoever any such false or counterfeit coin or any such instrument tool or engine or any such machine or any such filings clippings or bullion or any such gold or silver in dust solution or otherwise as aforesaid shall in any case whatsoever be seized and carried before a justice, he shall if necessary cause the same to be secured for the purpose of being produced in evidence against any person who may be prosecuted for any offence

Seizure and
disposition of
counterfeit coin
and coining
tools.
Ib. s. 410.
24 & 25 Vict.
c. 60 s. 27.

"The Criminal
L. and P.
Statute 1864."

against Division five of Part I. of this Act; and all such false and counterfeit coin, and all instruments tools and engines adapted and intended for the making or counterfeiting of coin, and all such machines and all such filings clippings and bullion, and all such gold and silver in dust solution or otherwise as aforesaid, after they shall have been produced in evidence or when they shall have been seized and shall not be required to be produced in evidence, shall forthwith be delivered up to the Treasurer of Victoria.

(26) *Miscellaneous.*

Chattels causing
death not to be
forfeited.
Ib. s. 411.

508. There shall be no forfeiture of any chattel which may have moved to or caused the death of any human being for or in respect of such death.

Provisions for
the protection of
person acting in
pursuance of
Act.

Ib. s. 412.

24 & 25 Vict.

c. 96 s. 113.

Ib. c. 97 s. 71.

Ib. c. 99 s. 33.

509. All actions and prosecutions to be commenced against any person for anything done in pursuance of Division two three or five of Part I. of this Act shall be commenced within six months after the fact committed and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action. And no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue any such action after issue joined, or if judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action.

DIVISION 2.—PUNISHMENT.

(1) *Sentences for Indictable Offences.*

Sentence of
death shall be
pronounced for
murder.

Ib. s. 287.

Ib. c. 100 s. 2.

510. Upon every conviction for murder the court shall pronounce sentence of death in the same manner in all respects as sentence of death might have been pronounced before the passing of this Act upon a conviction for any other felony for which the prisoner might have been sentenced to suffer death as a felon.

Recording of
sentence of
death.

Ib. s. 288.

4 Geo. IV.

c. 48 s. 1.

511. Whenever any person shall be convicted of any felony punishable with death except murder and the court before which such offender shall be convicted shall be of opinion that under the particular circumstances of the case such offender is a fit and proper person to be recommended for the royal mercy, it shall and may be lawful for such court if it shall think fit so to do to direct the proper officer then being present in court to require and ask (whereupon such officer shall require and ask) if such offender hath or knoweth anything to say why judgment of death should not be recorded against such offender: and in case such offender shall not allege any matter or thing sufficient in law to bar such judgment, the court shall and may and is hereby authorized to abstain from pronouncing judgment of death upon such offender and

instead of pronouncing such judgment to order the same to be entered of record; and thereupon such proper officer as aforesaid shall and may and is hereby authorized to enter judgment of death on record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if judgment of death had actually been pronounced in open court against such offender by the court before which such offender shall have been convicted.

"The Criminal L. and P. Statute 1864."

512. A record of every such judgment so entered as aforesaid shall have the like effects to all intents and purposes and be followed by all the same consequences as if such judgment had actually been pronounced in open court and the offender had been reprieved by the court.

Record to have effect of reprieve.
Ib. s. 280.
4 Geo. IV. c. 48 s. 2.

513. Where any person shall have been convicted of any offence punishable with death and shall be reprieved without judgment pronounced against him at that time, the court shall have full power and authority to pronounce judgment of death against such person at any time afterwards.

Sentence of death after reprieve.
Ib. s. 290.
1 Ed. VI. c. 7 s. 5.

514. Whenever imprisonment may by law be awarded for any indictable offence, the court in its discretion may by the sentence to be passed direct that the offender being a male be imprisoned or be imprisoned and kept to hard labour in any gaol in Victoria or be detained and kept to hard labour on public works at the place or places from time to time appointed by or under any law now or hereafter to be in force in that behalf, and for a term in every such several case not exceeding that for which by law the imprisonment may be awarded.

Imprisonment with hard labour or detention on public works for males.
Ib. s. 291.
7 & 8 Geo. IV. c. 28 s. 9.
24 & 25 Vict. c. 96 s. 118.
Ib. c. 98 s. 62.
Ib. c. 99 s. 39.
Ib. c. 100 s. 69.

515. Whenever imprisonment may by law be awarded for any indictable offence, the court in its discretion may by the sentence to be passed direct that the offender being a female be imprisoned or be imprisoned and kept to light labour or hard labour in any gaol for a term in every such case not exceeding that for which by law the imprisonment may be awarded.

Imprisonment with labour for females.
Ib. s. 292.
Ib.

516. Whenever imprisonment may by law be awarded for any indictable offence, the court in its discretion may direct that the offender shall not be kept to hard labour or to any labour, any law or regulation to the contrary notwithstanding.

Exemption by court from hard labour.
Ib. s. 293.

517. Whenever imprisonment may by law be awarded for any indictable offence, the court in its discretion may by the sentence to be passed on the offender direct that he be kept in solitary confinement for any portion or portions of his imprisonment or imprisonment with hard labour or detention as aforesaid not exceeding one month at any one time and not exceeding three months in any one year.

Solitary confinement.
Ib. s. 294.
24 & 25 Vict. c. 98 s. 53.
Ib. c. 99 s. 40.

518. Whenever imprisonment may be awarded for any indictable offence against Division one two three or eight of Part I. of this Act, the court may in its discretion by the sentence to be passed on the offender, if he be a male under the age of sixteen years, direct in addition to or in lieu of such award that he be privately whipped in such manner and as often not exceeding three times as the court shall direct; and the number of strokes at each whipping and the instrument with which they shall be inflicted shall be specified by the court in the sentence.

Whipping for youths.
Ib. s. 295.
24 & 25 Vict. c. 100 s. 70.

"The Criminal
L. and P.
Statute 1864"
s. 296.

Whipping for
adults in certain
cases of violence.

"The Criminal
L. and P.
Amend. Stat.
1871" s. 23.
20 & 27 Vict.
c. 44.

Ib. s. 33.

519. (1) Where any person is convicted of a crime under the eighteenth the forty-third the forty-fourth the forty-sixth the forty-seventh the forty-eighth the forty-ninth the fifty-ninth or the one hundred and twelfth section or of a crime punishable with imprisonment under the fifty-eighth section of this Act, the court before whom he is convicted may in addition to the punishment awarded direct that the offender, if a male whose age exceeds sixteen,^(a) be once twice or thrice privately whipped.

(2) Where any person of the age of sixteen years or upwards is convicted of an offence against section forty-one of the *Police Offences Act 1890* in wilfully and obscenely exposing his person the justices before whom he is convicted may in addition to the punishment awarded direct that the offender if a male be once or twice privately whipped.^(b)

Provided the number of strokes do not exceed fifty at each such whipping; and that the court in its sentence, or the justices in their sentence, shall specify the number of strokes to be inflicted and the instrument to be used. Provided also that in no case shall such whipping take place after the expiration of six months from the passing of the sentence or, in the case of justices, from the adjudication. Provided also that in all cases where the punishment of whipping shall be inflicted under the authority of this or the next preceding section, the surgeon or medical officer of the gaol in which the offender is confined shall be present when the said punishment is inflicted; and such surgeon or medical officer, if he be of opinion that the prisoner is not at any time able to bear the whole or any part of the said punishment so awarded, may from time to time order the infliction of the whole or any part of the said punishment to be postponed; and shall within seven days after the making of any such order send a report in writing stating his reasons for making such order to the Minister in whose department the Act now or hereafter to be in force relating to gaols shall for the time being be administered.

Irons in cases of
violence or
perjury.

"The Criminal
L. and P.
Statute 1864"
s. 297.

520. Whenever imprisonment may by law be awarded for any felony attended with violence to the person or committed by the offender when armed with any offensive weapon or instrument or by means of any threat or by putting in fear or for any perjury, the court may in its discretion by the sentence to be passed on the offender being a male direct that he be kept in irons for any portion not exceeding the first three years of such imprisonment or of such imprisonment or detention with hard labour as the court may award.

If a person under
sentence for
another crime is
convicted of
felony the court
may pass a
second sentence
to commence
after the expira-
tion of the first.
Ib. s. 298.

521. Whenever sentence shall be passed for felony on a person already whether under this or any former Act imprisoned or adjudged to be imprisoned or detained or adjudged to be detained and kept to hard labour on public works under sentence for another crime, it shall be lawful for the court to award the imprisonment or detention for the subsequent offence to commence at the expiration of the imprisonment or

(a) The justices may, without evidence, on their own conclusion, fix the prisoner's age. It is for him to show that he is under the age of sixteen, and his remedy is by appeal to general sessions, not by rule to quash.—*Reg. v. Benson, ex parte Tubby*, 8 V.L.R. (L.), 2.

(b) One justice (not being a police magistrate) adjudicating alone on a case under section forty-one (v.) of the *Police Offences Act 1890* has no power under this section on conviction to inflict a whipping.—*Purcell v. Nimmo*, 3 V.R. (L.), 233.

detention to which such person shall have been previously sentenced, although the aggregate term of imprisonment or detention respectively may exceed the term for which either of those punishments could be otherwise awarded.^(a)

"The Criminal L. and P. Statute 1864."
7 & 8 Geo. IV.
c. 23 s. 10.

522. No person convicted of felony shall suffer death unless it be for some felony which was punishable with death at the commencement of this Act or which shall by some Act hereafter to be passed be made punishable with death.

What felonies only shall be capital.
Ib. s. 300.
Ib. s. 7.

523. Whenever any person shall be convicted of any indictable misdemeanor punishable under this Act, the court may (if it shall think fit) in addition to or in lieu of any of the punishments by this Act authorized fine the offender and require him to enter into his own recognisances and to find sureties both or either for keeping the peace and being of good behaviour; and in case of any felony punishable under this Act, the court may if it shall think fit require the offender to enter into his own recognisances and to find sureties both or either for keeping the peace in addition to any punishment by this Act authorized. Provided that no person shall be imprisoned under this section for any period exceeding one year for not finding sureties. Provided that where any provision is made by this Act as to fines in any special case, such provision shall be pursued in awarding a fine under this section.

In misdemeanors court may impose fine and require sureties.
Ib. s. 301.
24 & 25 Vict.
c. 96 s. 117.
Ib. c. 90 s. 23.
In felonies court may require sureties.

(2) *Awards &c. in cases of Summary Conviction.*

524. Whenever imprisonment may be awarded for any offence punishable on summary conviction under this Act, the justices may in their discretion direct that the offender be imprisoned or be imprisoned and kept to hard labour in any gaol.

Justices may award hard labour.
Ib. s. 302.
27 Vict. No. 233
s. 302.

525. Where any person shall be summarily convicted before a justice of any offence against any of the provisions of Division two or three of Part I. of this Act other than the sixty-seventh and the five sections next following the same and it shall be a first conviction, the justice may if he shall so think fit discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs or either of them as shall be ascertained by the justice.

Justices may discharge offender making amends.
Ib. s. 303.
24 & 25 Vict.
c. 96 s. 108.
Ib. c. 97 s. 60.
7 & 8 Geo. IV.
c. 30 s. 34.

526. In case any person convicted of any offence punishable upon summary conviction by virtue of any of the provisions of Division two or three of Part I. of this Act other than the sixty-seventh and the five sections next following the same, shall have paid the sum adjudged to be paid together with costs under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for nonpayment thereof or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction by any justice as aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

Summary conviction discharge &c. a bar to further proceedings.
Ib. s. 304.
24 & 25 Vict.
c. 96 s. 109.
Ib. c. 97 s. 67.
7 & 8 Geo. IV.
c. 30 s. 34.

527. Every sum of money which shall under Division two or three of Part I. of this Act be forfeited on any summary conviction

Application of compensation and penalties.
Ib. s. 305.

(a) Where a sentence is made cumulative upon a former sentence, it is not sufficient in drawing up the record to insert in it "cumulative upon

former sentence." The particular sentence must be specified.—*Reg. v. Desmond*, 3 V.L.R. (L.), 43.

"The Criminal
L. and P.
Statute 1864."
24 & 25 Vict.
c. 96 s. 106.
Ib. c. 97 s. 64.

for the value of any property stolen or taken or for the amount of any injury done (such value or amount to be assessed in each case by the convicting justice) shall (save where herein otherwise provided) be paid to the party aggrieved; except where he is unknown, and in that case such sum shall be paid and applied to the consolidated revenue. Provided that where several persons shall join in the commission of the same offence and shall upon conviction thereof each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury in every such case, no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be paid and applied to the consolidated revenue.

Body corporate
to be deemed
party aggrieved.
Ib. s. 306.

528. Wherever under this Act or any other Act relating to any offence (whether punishable on information as for an indictable offence or on summary conviction) any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved.

Recovery of
penalties &c.
not otherwise
provided for.
Ib. s. 307.
24 & 25 Vict.
c. 96 s. 107.
Ib. c. 97 s. 65.

529. In every case of a summary conviction under Division two or three of Part I. of this Act where the sum which shall be forfeited for the value of the property stolen or taken or for the amount of the injury done or which shall be imposed as a penalty by the justice shall not be paid either immediately after the conviction or within such period as the justice shall at the time of the conviction appoint the convicting justice (unless where otherwise specially directed) may commit the offender to be imprisoned only or to be imprisoned and kept to hard labour according to the discretion of the justice for any term not exceeding two months where the amount of the sum forfeited or of the penalty imposed or of both (as the case may be) together with the costs shall not exceed Five pounds; and for any term not exceeding four months where the amount with costs shall not exceed Ten pounds; and for any term not exceeding six months in any other case the commitment to be determinable in each of the cases aforesaid upon the payment of the amount and costs.

(3) *Execution of Capital and other Sentences.*

Sentence of
death to be
carried into
effect within the
walls of the gaol.
Ib. s. 308.

530. Sentence of death passed on any person by the Supreme Court or by any judge thereof respectively shall be carried into execution within the walls or within the enclosed yard of such gaol as the Governor may by writing under his hand direct and not otherwise or elsewhere by the sheriff within whose bailiwick the gaol shall be situated.

Sheriff officers of
gaol &c. to wit-
ness execution.
Ib. s. 309.

531. The sheriff aforesaid the gaoler and such of the officers of the gaol as the said sheriff may require, including the medical officer in attendance on the occasion, shall be present within such walls or yard at every such execution, together with any justices ministers of religion and officers of police who may desire to attend; and such military guard and adult spectators as the said sheriff may think fit to admit.

Medical officer to
sign certificate
and witnesses to
sign declaration.
Ib. s. 310.

532. Each of the persons aforesaid who may attend or be present at any such execution shall continue and remain within the walls or enclosed yard of the gaol until the sentence shall have been carried into execution and completed according to law, and until the medical officer shall have signed a certificate in the form set forth in the Ninth

Ninth Schedule.

Schedule; and the said sheriff gaoler and officers of the gaol and such other persons present as may think fit shall before their departure from the gaol subscribe a declaration according to the form set forth in the Tenth Schedule.

"The Criminal L. and P. Statute 1864."

Tenth Schedule.

533. The body of any person on whom the sentence of death shall have been carried into execution as aforesaid shall not be buried or removed from the gaol within eight hours next after such execution or till after inquest as hereinafter provided; and every person who shall within that time produce to the gaoler of such gaol an order from any justice requiring such gaoler to admit the bearer of such order to view the body of such person shall and may be admitted by such gaoler accordingly.

Body not to be buried within eight hours and to be viewed.
Ib. s. 311.

534. The coroner acting for the district in which any gaol may be situated wherein any sentence of death shall have been carried into execution upon the body of any person shall so soon after as conveniently may be hold an inquest upon the body of such person; and the jurors of the jury on such inquest shall inquire and find whether such sentence was duly carried into execution.

Inquest to be held on the body of every person executed.
Ib. s. 312.

535. Any person who shall subscribe any certificate or declaration as aforesaid knowing the same to be false or to contain any false statement, or who shall bury or remove from such gaol within the time of eight hours aforesaid any such body as aforesaid, shall be deemed guilty of felony; and being thereof lawfully convicted shall be liable to be imprisoned for any period not exceeding seven years.

Penalty for making false declaration &c. or removal of body.
Ib. s. 313.

536. Every such certificate and declaration as aforesaid shall be forthwith transmitted by the sheriff as aforesaid to the prothonotary of the Supreme Court in Melbourne; and shall be entered and kept in his office as a record of the said court, and shall be by him published in the *Government Gazette* on three separate occasions.

Certificate and declaration to be recorded and published.
Ib. s. 314.

537. The body of every person executed for murder shall be buried within the precincts of the gaol in which he shall have been last confined after conviction, and the sentence of the court shall so direct.

Body of murderer to be buried within gaol.
Ib. s. 315.

538. Every sentence of imprisonment or of imprisonment or detention with hard labour which shall be passed for any indictable offence with or without solitary confinement whipping or irons, and every award of imprisonment for any offence punishable on summary conviction, shall be carried out in the manner for the time being provided by any Acts in force relating to gaols or penal establishments in that behalf according to the tenor of every such sentence.

24 & 25 Vict. c. 100 s. 3.
Sentences of imprisonment &c. to be carried out according to law relating to gaols &c.
Ib. s. 316.

539. Judgment shall not be given or awarded against any person convicted of any offence that such person do stand in or upon the pillory, any law or usage to the contrary notwithstanding.

Pillory abolished.
Ib. s. 317.
7 Will. IV. and 1 Vict. c. 23.

(4) *Commutation Mitigation and Remission.*

540. It shall be lawful for the Governor to grant to any person under any sentence of imprisonment with hard labour or detention with hard labour who shall have suffered such imprisonment or been so detained as the case may be for not less in any case than two years a remission of the remainder of the term for which he shall have been so sentenced, on condition that he shall not remain in or come within

Pardons on condition of exile.
Ib. s. 318.

"The Criminal
L. and P.
Statute 1864."

Remission condi-
tional or other-
wise of sentence.

Victoria during the residue of the said term. And it shall be lawful for the Governor in Council to make such rules and regulations as he shall think fit for the mitigation or remission conditional or otherwise of any sentence of imprisonment or of imprisonment or detention with hard labour as an incentive to or reward for good conduct whilst the offender shall be imprisoned or detained under such sentence, and to mitigate or remit the term of punishment accordingly.

Commutation of
capital sentence.
Ib. s. 319.

541. It shall be lawful for the Governor, in all cases in which he is or shall be authorized on behalf of Her Majesty to extend mercy to any offender under sentence or judgment of death whether actually pronounced or recorded only, to extend mercy on condition of such offender being imprisoned or imprisoned and kept to hard labour or being detained and kept to hard labour as herein provided on public works for life or for such term as he shall think fit; and also (if he shall think proper) to direct that any offender so pardoned shall be kept to hard labour in irons for any term not exceeding in any case the first three years of the time or term of imprisonment or of detention with hard labour on condition whereof such offender shall have been so pardoned; and also to direct that such offender shall be kept in solitary confinement for any portions of such time or term not other than or exceeding those for which solitary confinement may be awarded under this Act: and such extension of mercy shall be signified by the Chief Secretary to any judge of the Supreme Court, who shall thereupon allow such offender the benefit of a conditional pardon and make an order that such offender be dealt with according to the tenor and condition of such pardon; and such allowance or order shall be considered as and have the effect of a valid sentence made and passed by the court before which such offender was convicted, and shall be entered on the records of the court accordingly.

"The Criminal
L. and P.
Amend Stat.
1871" s. 27.

Whipping where
sentence of
death for rape
&c. commuted.
Ib. s. 29.

542. In every case in which the Governor shall exercise the powers vested in him by the last preceding section of this Act in respect of any person convicted under the forty-second, forty-fifth, fifty-eighth, or one hundred and eleventh sections of this Act the Governor may if he shall see fit exercise in addition in respect of such person the powers vested in the court by the five hundred and nineteenth section, and the word "sentence" in the said section shall for this purpose mean the direction given by the Governor in that behalf; and the said last preceding section and every provision thereof shall apply to and in respect of such direction in like manner as to the other matters which the Governor is thereby empowered to direct.

Royal prerogative of mercy
saved.

"The Criminal
L. and P.
Statute 1864" s. 320.

Forfeiture &c.
abolished.
Act No. 627 s. 1.
33 & 34 Vict.
c. 23 s. 1.
Conviction for
treason or felony
to be a disqualifi-
cation for offices
&c.

543. Nothing in this Act contained shall or doth in any manner affect Her Majesty's royal prerogative of mercy.

PART IV.—PROPERTY OF PERSONS CONVICTED OF TREASON OR FELONY.

544. No confession verdict inquest conviction or judgment of or for any treason or felony or *felo de se* shall cause any attainder or corruption of blood or any forfeiture or escheat.

545. If any person hereafter convicted of treason or felony for which he shall be sentenced to death or to any term exceeding twelve

months of imprisonment or detention with hard labour shall at the time of such conviction hold any office under the Crown or other public employment, or be entitled to any pension or superannuation allowance payable by the public or out of any public fund, such office or employment shall forthwith become vacant, and such pension or superannuation allowance shall forthwith determine and cease to be payable unless such person shall receive a free pardon from Her Majesty or the Governor on behalf of Her Majesty within two months after such conviction or before the filling up of such office or employment if given at a later period; and such person shall become and (until he shall have suffered the punishment to which he had been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon from Her Majesty or the Governor on behalf of Her Majesty) shall continue thenceforth incapable of holding any office under the Crown or other public employment or of being elected or sitting or voting as a Member of either House of Parliament or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within Victoria.

*Act No 627 s. 2.
33 & 34 Vict.
c. 23 s. 2.*

546. It shall be lawful for any court by which judgment shall be pronounced or recorded upon the conviction of any person for treason or felony in addition to such sentence as may otherwise by law be passed to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted if to such court it shall seem fit so to do, and the payments of such 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 apprehension, or may be enforced at the instance of any person liable to pay or who may have paid the same in such and the same manner (subject to the provisions of this Part of this Act) 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 may for the time being be enforced. Provided that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid or from his estate the same shall be paid and provided for in the same manner as if this Part of this Act had not been passed, and any money which may be recovered in respect thereof from the person so convicted or from his estate shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

*Persons convicted of treason or felony may be condemned in costs.
Ib. s. 3.
Ib. s. 3.*

547. It shall be lawful for any such court as aforesaid if it shall think fit upon the application of any person aggrieved and immediately after the conviction of any person for felony to award any sum of money not exceeding the value of the property lost stolen injured or destroyed by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the court to be paid under the last preceding section of this Act.

*Compensation to persons defrauded or injured by felony.
Ib. s. 4.
Ib. s. 4.*

Act No. 627 s. 5.

The word "forfeiture" defined.

83 & 84 Vict.

c. 23 s. 5.

The word "convict" defined.

Ib. s. 6.

548. The word "forfeiture" in the construction of this Part of this Act shall not include any fine or penalty imposed on any convict by virtue of his sentence, and the expression "convict" shall be deemed to mean any person against whom after the passing of this Act judgment of death or of imprisonment or of detention with hard labour shall have been pronounced or recorded by any court of competent jurisdiction in Victoria upon any charge of treason or felony.

When convict shall cease to be subject to operation of this Part.

Ib. s. 6.

Ib. s. 7.

549. When any convict shall die or be adjudicated insolvent, or shall have suffered any punishment to which sentence of death if pronounced or recorded against him may be lawfully commuted, or shall have undergone the full term of imprisonment or detention with hard labour for which judgment shall have been pronounced or recorded against him, or such other punishment as may by competent authority have been substituted for such full term, or shall have received from Her Majesty or the Governor on behalf of Her Majesty a pardon for the treason or felony of which he may have been convicted, he shall thenceforth so far as relates to the provisions hereinafter contained cease to be subject to the operation of this Part of this Act.

Convict disabled to sue for or to alienate property &c.

Ib. s. 7.

Ib. s. 8.

550. No action for the recovery of any property debt or damage whatsoever shall be brought by any convict against any person during the time while he shall be subject to the operation of this Part of this Act; and every convict shall be incapable during such time as aforesaid of alienating or charging any property or of making any contract save as hereinafter provided.

The Governor may appoint curator of any convict's property.

Ib. s. 8.

Ib. s. 9.

551. It shall be lawful for the Governor in Council (either generally or with reference to any particular case) to commit the custody and management of the property of any convict to a curator to be appointed in that behalf,^(a) and 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 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 such 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 such former curator during the continuance of his office, and the provisions hereinafter contained with reference to any curator shall in the case of the appointment of more than one person apply to such curators jointly.

Convict's property to vest in curator on appointment.

552. Upon the appointment of any such curator in manner aforesaid all the real and personal property^(b) including choses in action to

(a) A., a lessee of a mining lease, being convicted of forgery and sentenced to imprisonment, B. was appointed his curator under this section, and applied to be registered as proprietor of the lease. A., after his discharge from imprisonment, entered a caveat, and assigned his interest in the lease to C. and D. To a bill by A., C., and D. against B., and the Registrar of Titles to restrain B. from being registered as proprietor, and to have it declared that the lease had revested in A., B. demurred for misjoinder of A. as a co-plaintiff, and want of equity. *Held*, that, notwithstanding that A. had parted with all his interest, he

was, as registered proprietor of the lease, properly made a co-plaintiff; that after A.'s sentence had expired he was entitled to his former estate, subject to the rights of B. under this Part of this Act: that if B. has any such rights he should claim them by answer, and demurrer overruled.—*Mitchell v. McDougall*, 9 V.L.R. (E.), 13; 4 A.L.T., 114.

(b) Property held as a trustee by a person convicted of a felony does not pass to the curator of his property appointed under this Part of this Act.—*Mitchell v. McDougall*, 11 V.L.R., 487.

which the convict named in such appointment was at the time of his conviction or shall afterwards while he shall continue subject to the operations of this Part of this Act become or be entitled shall vest in such curator for all the estate and interest of such convict therein.

553. If in the instrument by which any such curator is appointed provision shall be made for the remuneration of such curator out of the property of the convict the said curator may receive and retain for his own benefit such remuneration accordingly.

*Act No. 627 s. 9.
33 & 34 Vict.
c. 23 s. 10.*

*Remuneration of
curator.
Ib. s. 10.
Ib. s. 11.*

554. The curator shall have absolute power to let mortgage sell convey and transfer any part of such property as to him shall seem fit.

*Powers of
curator.
Ib. s. 11.
Ib. s. 12.*

555. It shall be lawful for the curator to pay or cause to be paid out of such property or the proceeds thereof all costs and expenses which the convict may have been condemned to pay, and also all costs charges and expenses incurred by such convict in and about his defence, and also all such costs charges and expenses the said curator may incur or be put to in or about the carrying this Part of this Act into execution with reference to such property or with reference to any claims which may be made thereon.

*Curator to pay
out of property
costs of prosecu-
tion and costs of
executing this
Part.
Ib. s. 12.
Ib. s. 13.*

556. The curator may cause payment or satisfaction to be made out of such property of any debt or liability of such convict which may be established in due course of law or may otherwise be proved to his satisfaction, and may also cause any property which may come 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 pay
out of property
debts or liabilities
of convict.
Ib. s. 13.
Ib. s. 14.*

557. The curator may with consent of a judge of the Supreme Court 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 such convict as to him or such judge shall seem just, although no proof of such alleged criminal or fraudulent act may have been made in any court of law or equity; 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 always that nothing in this Part of this Act 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 Act had not passed.

*Curator may
make compensa-
tion out of prop-
erty to persons
defrauded by
criminal acts of
convict.
Ib. s. 14.
Ib. s. 15.*

558. The curator may cause such payments and allowances for the support or maintenance of any wife or child or reputed child of such convict or of any other relative or reputed relative of such convict dependent upon him for support or for the benefit of the convict himself as to such curator shall seem fit to be made from time to time out of such property or the income thereof.

*Curator may
make allowances
out of property
for support of
family of convict.
Ib. s. 15.
Ib. s. 16.*

559. The several powers hereinbefore given to the said curator or any of them may be exercised by him in such order and course as to priority of payments or otherwise as he shall think fit, and all contracts of letting or sale mortgages conveyances or transfers of property *bond*

*Exercise of cura-
tor's power as to
priority of pay-
ments; payments
by curator for
purposes of this*

Act No. 627 s. 16.
Part of this Act
not to be called
in question.
33 & 34 Vict.
c. 23 s. 17.

fide made by the said curator under the powers of this Part of this Act and all payments or deliveries over of property *bonâ fide* made by or under the authority of the said curator for any of the purposes hereinbefore mentioned shall be binding, and the propriety thereof and the sufficiency of the grounds on which the said curator may have exercised his judgment or discretion in respect thereof shall not be in any manner called in question by such convict or by any person claiming an interest in such property by virtue of this Part of this Act.

Property to be
preserved for
convict and to
revert to him or
his representa-
tives on comple-
tion of sentence
pardon or death.
Ib. s. 17.
Ib. s. 18.

560. Subject to the powers and provisions in this Part of this Act hereinbefore contained all such property and the income thereof shall be preserved and held in trust by the said curator, and the income thereof may if and when the said curator shall think proper be invested and accumulated in such securities as he shall from time to time think fit for the use and benefit of the said convict or his personal representatives or of such other persons as may be lawfully entitled thereto according to the nature thereof; and the same and the possession and the administration and management thereof shall revert in and be restored to such convict on his ceasing to be subject to the operation of this Part of this Act or in and to his personal representatives or such other persons as may be lawfully entitled thereto; and all the powers and authorities by this Part of this Act given to the said 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 the proceeds thereof of any liabilities or any costs charges or expenses for which provision is made by this Part of this Act for which purposes such powers and authorities shall continue to be in force until possession of such property shall be delivered up by the said curator to some person being or claiming to be lawfully entitled thereto.^(a)

Curator not
liable except for
what he receives.
Ib. s. 18.
Ib. s. 19.

561. The said curator shall not be answerable to any person for any property which shall not actually have come to his hands by virtue of this Part of this Act nor for any loss or damage which may happen through any mere omission or non-feasance on his part to any property vested in him by virtue hereof.

Curator to
receive costs of
actions between
solicitor and
client.
Ib. s. 19.
Ib. s. 20.

562. The costs as between solicitor and client of every action or suit which may be brought against the said curator with reference to any such property as aforesaid whether during the time while the same shall be and continue vested in him under this Part of this Act or after the same shall cease 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 or such suit is heard shall think fit otherwise to order.

Execution of
judgments
against convict
provided for.

563. All judgments or orders for the payment of money of any court of law or equity against such convict which shall have been duly

(a) After the expiry of his sentence, the convict becomes again entitled to his former estate in the land subject to the dispositions of the curator, and may restrain his registration as proprietor.—*Mitchell v. McDougall*, 9 V.L.R. (E.), 13.

But when the curator assigns the felon's estate

after the completion of the sentence, the onus is upon the curator to show that the assignment was warranted by some of the provisions of this Part of this Act. In a suit to impeach such an assignment, the assignee is not a necessary party.—*Mitchell v. McDougall*, 11 V.L.R., 487.

recovered or made either before or after his conviction may be executed against any property of such convict 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 such convict; and all such judgments or orders may likewise be executed by writ of *scire facias* or otherwise according to the practice of the court against any such property which may be vested in any curator of the property of such convict under the authority of this Part of this Act.

Act No. 627 s. 20
33 & 34 Vict.
c. 23 s. 27.

564. It shall be competent for the Attorney-General or for any person who (if such convict were dead intestate) would be entitled to his real or personal estate or any share thereof or for any person authorized by the Attorney-General in that behalf to apply in a summary way to any court which (if such convict were dead) would have jurisdiction to entertain a suit for the administration of his real or personal estate to issue a writ of summons calling upon any curator of the property of such convict appointed under this Part of this Act or any person who without legal authority shall have possessed himself of any part of the property of such convict to account for his receipts and payments in respect of the property of such convict in such manner as such court shall direct, and it shall be lawful for such court thereupon to issue such writ rule or other process and to enforce obedience thereto and to all 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, and 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 such convict and the due and proper application of the same and of the income thereof and the accumulation and investment of such balances if any as may from time to time remain in the hands of any such curator or other person as aforesaid in respect of such property, and so long as any such proceedings shall be pending in any such court every such curator or other person shall act in the exercise of all powers vested in him under this Part of this Act or otherwise in all respects as such court shall direct.

Proceedings may be taken to make curator accountable before property reverts to convict.
Ib. s. 21.
Ib. s. 23.

565. Subject to the provisions of this Part of this Act every such curator and other person as aforesaid shall from and after the time when such convict shall cease to be subject to the operation of this Part of this Act be accountable^(a) to such convict for all property of such convict which shall have been by him possessed or received and not duly administered in the same manner in which any guardian or trustee is so accountable to his ward or cestuique trust, but subject nevertheless and without prejudice to the administration and application of such property under and according to the powers of this Part of this Act.

Curator &c. to be accountable to convict when property reverts.
Ib. s. 22.
Ib. s. 29.

566. Provided always that nothing in this Part of this Act shall be deemed to alter or in anywise affect the law relating to felony in Victoria except as in this Part is expressly enacted.

Saving of general law as to felony.
Ib. s. 28.
Ib. s. 32.

(a) If the court thinks that an assignment of the convict's property was unwarranted, it may direct the curator to reconvey as far as he is able

to the felon, or failing that to make him compensation.—*Mitchell v. McDougall*, 11 V.L.R., 487.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of Repeal.
18 Vict. No. 3 ...	"An Act to prevent the Influx of "Criminals into Victoria"	The whole.
19 Vict. No. 3 ...	"An Act to continue for a limited "period an Act intituled 'An Act to "prevent the Influx of Criminals into "Victoria'"	The whole.
22 Vict. No. 68 ...	"An Act for the Continuation of Ex- "piring Laws"	So much as is not already repealed.
22 Vict. No. 86 ...	"An Act to amend the Law for the "Collection and Payment of the Pub- "lic Moneys the Audit of the Public "Accounts and the Protection and "Recovery of the Public Property"	Section 50.
27 Vict. No. 233 ...	"The Criminal Law and Practice "Statute 1864"	So much as is not already repealed.
29 Vict. No. 279 ...	"The Electoral Act 1865" ...	Sections 116, 125, and 132.
33 Vict. No. 343 ...	"An Act to amend the law relating to "Crimes and the Practice in Crimi- "nal Courts"	Section 3.
35 Vict. No. 399 ...	"The Criminal Law and Practice "Amendment Statute 1871"	The whole.
38 Vict. No. 502 ...	"An Act to erect a new Court for the "Trial of Offences, to establish uni- "formity of venue in Civil and "Criminal Judicature, and to amend "the practice and procedure of Courts "of Criminal Jurisdiction"	So much, except Sec- tions 1-17 inclusive and the Third Sched- ule, as is not already repealed.
38 Vict. No. 506 ...	"Local Government Act 1874" ...	Sections 134, 137, 138, 522, and 523.
39 Vict. No. 518 ...	"An Act to define the Boundaries of "Bailiwicks"	So much as is not already repealed.
42 Vict. No. 627 ...	"An Act to abolish forfeitures for "Treason and Felony, and to other- "wise amend the Law relating thereto"	The whole.
45 Vict. No. 655 ...	"The Falsification of Accounts Act 1880"	The whole.
46 Vict. No. 733 ...	"An Act to amend 'An Act to define "the Boundaries of Bailiwicks'"	The whole.
47 Vict. No. 761 ...	"The Judicature Act 1883" ...	Section 70.
47 Vict. No. 781 ...	"The Post Office Act 1883" ...	Sections 138, 139, and the following words in Section 140:—"If any "person be found of- "fending against any "of the two preceding "sections of this Act "any other person may "with or without war- "rant apprehend such "offender and may de- "liver him to some "constable or convey "him before some jus- "tice to be dealt with "according to law."
51 Vict. No. 951 ...	"The Juvenile Offenders Act 1887" ...	The whole.

SECOND SCHEDULE.

Section 67.

CERTIFICATE OF DISMISSAL.

To WIT. }

We the undersigned } of Her Majesty's Justices of the Peace
for the [] of certify that on the day
of [] in the year of our Lord
at [] in the said [] A.B. being charged before
us and consenting to our deciding upon the charge summarily for that he the said A.B.
[stating the offence charged and the time and place when and where alleged to be committed]
[and if the case so require and the value of the said property appearing to us to be under
two pounds or the said A.B. in our opinion having been under the age of sixteen years at
the time aforesaid] we did summarily adjudicate on the said charge and did dismiss the
same.

Given under our hands and seals this day of
at [] in the [] aforesaid

J.S. (L.S.)
H.M. (L.S.)

THIRD SCHEDULE.

Section 332.

To WIT. }

Be it remembered that on the day of
in Victoria A.B. of [] in Victoria a boy [or girl] of the age of
years [on the day of last past (these words to be inserted only
if the age can be exactly determined)] is convicted before for that
the said A.B. [state offence and time and place where committed] and
adjudge the said A.B. to be committed to the reformatory school at ; and
adjudge that [C.B. the father of the said A.B. or as the case may be]
pay the sum of shillings every week for or towards the maintenance
of the said A.B. the first payment to be made on day next; and such
payments are to be made to collector of imposts at
or such other person as may be for the time being appointed by the Governor in Council
to receive the same.

To WIT. }

Be it remembered that on the day of
in Victoria A.B. of [] in Victoria a boy [or girl] of the age of
years [on the day of last past (these words to be inserted only
if the age can be exactly determined)] is proved to the satisfaction of us the undersigned
justices of the peace for to have been [state description of the charge], and
we adjudge the said A.B. to be committed to the care of the Department for Neglected
Children; and we further adjudge that [C.B. the father of the said A.B. or as the case
may be] pay the sum of shillings every week for or towards the
maintenance of the said A.B. the first payment to be made on day
next; and such payments are to be made to collector of imposts at
or such other person as may be for the time being appointed by the
Governor in Council to receive the same.

FOURTH SCHEDULE.

Section 385.

To WIT.—The Attorney-General [or Solicitor-General] of our Lady the Queen
presents that, &c.

[Subsequent counts may commence as follows]:—

And the Attorney-General [or Solicitor-General] aforesaid doth further present,
&c.

(Signed) A.B. Attorney-General.
[or Solicitor-General.]
[or C.D. Prosecutor for the Queen.]

Section 391.

FIFTH SCHEDULE.

To the Judges of the Supreme Court of Victoria or any one of them.

This is to certify that I decline to file any presentment [or information] against E.F. detained in the custody of G.H. gaoler of _____ under the warrant of I.J. Esq. J.P. upon a charge of _____

Given under my hand this _____ day of _____ A.D. _____
J.H.P. Attorney-General.

Section 391.

SIXTH SCHEDULE.

To the Sheriff of _____ or the Gaoler of _____ in
Victoria.

Whereas E.F. is detained in your custody under the warrant of I.J. Esq. J.P. upon a charge of _____ and whereas it has been certified to me by J.H.P. Esq. Her Majesty's Attorney-General that he declines to file any presentment [or information] against the said E.F. for the said offence you are therefore hereby authorized and required forthwith to discharge the said E.F. from your custody upon the said warrant.

Given under our [or my] hand this _____ day of _____ A.D. _____
K.L. }
M.N. } Judges [or Judge] of the Supreme Court.

Section 482.

SEVENTH SCHEDULE.

To the Sheriff of _____ or the Inspector-General and the Gaoler of _____ and all
others whom it may concern.

Whereas at the Court of _____ for the _____ held on the _____ day of _____ A.D. before _____ A.B. late of _____ labourer having been found guilty of felony and [here state the substance of the judgment if judgment has been given] that [state the substance] the court before whom he was tried reserved a certain question of law for the consideration of the Judges of the Supreme Court and judgment was postponed [or if the case be so] execution was thereupon respited in the meantime.

This is to certify that it has been considered by the said judges that the judgment aforesaid be annulled [or otherwise as the case may be] and you are therefore required forthwith to discharge the said A.B. from your custody.

E.F. Clerk of the _____

Section 489.

EIGHTH SCHEDULE.

CENTRAL BAILLIWICK (TO WIT).—At a sitting of the Supreme Court begun and holden at Melbourne in and for the said bailiwick on the _____ day of _____ in the year of our Lord One thousand eight hundred and _____ before A.B. Esquire [one of the Judges of the Supreme Court], the Attorney or Solicitor General for our Lady the Queen doth [or the jurors for our Lady the Queen do upon their oath] present that, &c.

MIDLAND BAILLIWICK (TO WIT).—At a sitting of the Supreme Court begun and holden at _____ in and for the said bailiwick on the _____ day of _____ One thousand eight hundred and _____ before A.B. Esquire [one of the Judges of the Supreme Court], the Attorney or Solicitor General for our Lady the Queen doth [or the jurors for our Lady the Queen do upon their oath] present that, &c.

NORTHERN BAILLIWICK (TO WIT).—At the General Sessions of the Peace begun and holden at _____ in and for the said bailiwick on the _____ day of _____ One thousand eight hundred and _____ before A.B. Esquire chairman of the said court [and others his fellows justices of our Lady the Queen assigned to keep the peace of our said Lady the Queen in and for the said bailiwick] the Attorney or Solicitor General for our Lady the Queen doth [or the jurors for our Lady the Queen do upon their oath] present that, &c.

NINTH SCHEDULE.

Section 532.

I A.B. being the medical officer in attendance on the execution of C.D. at the gaol of _____ do hereby certify and declare that I have this day witnessed the execution of the said C.D. at the said gaol and I further certify and declare that the said C.D. 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 eight hundred and _____ at the gaol of _____.

TENTH SCHEDULE.

Section 532.

We do hereby testify and declare that we have this day been present when sentence of death was carried into execution on the body of C.D. convicted at the criminal sittings of the Supreme Court held at _____ on the _____ day of _____ and sentenced to death and that the said C.D. was in pursuance of the said sentence hanged by the neck until his body was dead.

Dated this _____ day of _____ A.D. 18 _____ at the goal of _____

Sheriff
Gaoler
Turnkey
Constables
Justices of the Peace
Other Spectators.

CRIMINAL LAW AND PRACTICE.

[See *Crimes Act* 1890.]

CRIMINALS INFLUX.

[See *Crimes Act* 1890.]

CROWN LANDS.

[See *Land Act* 1890.]