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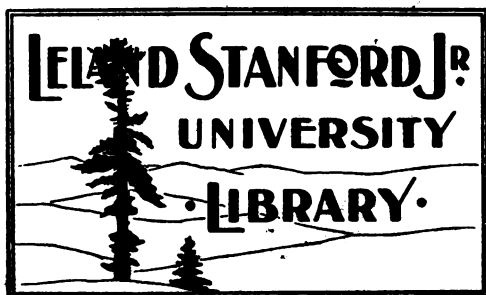
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Summons page 1



PRESENTED BY THOMAS WELTON STANFORD.

Liliana. 6/1/11
February 1853

Thos. M. G. Gausfield.

PLUNKETT'S

Second Edition 1871.

AUSTRALIAN MAGISTRATE :

A *from N. S. Wales*
GUIDE TO THE DUTIES

OF A

JUSTICE OF THE PEACE,

WITH

NUMEROUS FORMS.

New Edition.

BY EDWIN C. SUTOR, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW, CHIEF COMMISSIONER OF INSOLVENT ESTATES,
AND A MAGISTRATE OF THE COLONY OF NEW SOUTH WALES.

ALSO,

AN APPENDIX,

CONTAINING

THE RULES AND REGULATIONS RELATING TO CROWN LANDS AND ASSESSMENT
UPON STOCK, THE NEW JURY ACT, A BRIEF SUMMARY OF THE LAW
OF LANDLORD AND TENANT, WITH THE TENEMENTS ACT, AND
ACT FOR FACILITATING THE GRANTING OF LEASES,
AND THE SMALL DEBTS RECOVERY ACT.

SYDNEY :

W. A. COLMAN, 485, GEORGE STREET.

1847.

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A.35760.

TO THE MAGISTRATES
OF NEW SOUTH WALES,
AND THE AUSTRALIAN COLONIES GENERALLY,
This Edition
OF A WORK DESIGNED TO ELUCIDATE THE
LAW AND PRACTICE RELATIVE TO
THE DUTIES OF JUSTICES OF THE PEACE,
IS RESPECTFULLY INSCRIBED,
BY
THE EDITOR.

ADVERTISEMENT.

THE "AUSTRALIAN MAGISTRATE" was originally written in 1835, by John Hubert Plunkett, Esq., Her Majesty's Attorney-General, and a second edition by M. Murphy, Esq., J.P., appeared in 1840. Both those editions having long been out of print, I was induced, at the suggestions of some friends, to undertake the task of preparing a third,—the result of my labours I now submit to the public.

So many alterations have taken place in the law relative to the duties of Justices of the Peace in this Colony, since the Work was first published, that I have been obliged to re-write by far the greater portion of it,—much of the original Work having become altogether obsolete, and other parts requiring considerable alteration.

The publication too of Mr. Callaghan's useful Work—the "Acts of Council"—has, I conceive, rendered a strict adherence to the precise words of every enactment referred to unnecessary, I have therefore in many instances

merely given the substance of the clause, in as concise a form as possible, and thus avoided encumbering the Work with mere technical matter ;—some Acts, however, I have considered of sufficient importance to be set out in full.

In thus deviating in some degree from the plan pursued in the original Work, I hope I shall not be deemed guilty of any want of courtesy to the learned Author,—I conceive that under the circumstances he would himself have adopted such a proceeding, had his numerous avocations permitted him to edit the Work. His time however has been too much occupied for such an undertaking; and he readily consented that, so far as he was concerned, I should be at full liberty to pursue whatever course I thought requisite in the present publication,—I alone am therefore responsible for all imperfections. It appeared to me that a book of ready reference was required, one that would supply prompt information without the labour of a minute research; and my endeavour has been to render the present edition available as such to Magistrates, in the various important duties they are called upon to perform. I have spared no pains in searching for information, and have availed myself of the most authentic sources—the latest editions of the best English works on the subject having been carefully examined, and much of their contents transcribed. I trust, therefore, the Work will be found of some

utility,—not only to this my native Country, but also to the neighbouring Colonies.

Under the titles “Commitment” and “Conviction,” the practice in reference to committals and summary convictions (chiefly taken from the last edition of “Archbold’s Justice of the Peace”) is set out at length; and I would particularly recommend Magistrates to study attentively that portion of the Work. The titles “Arrest” and “Constable” comprise the Duties of constables and peace officers, and are of the utmost importance. Many new forms of Informations, Commitments, Convictions, Warrants, &c., have been added; and the Appendix contains the Rules and Regulations relating to Crown Lands—the New Jury Act—a brief summary of the Law of Landlord and Tenant, extracted from the former edition—the Tenements Act—the Act for facilitating the granting of Leases—and the Recovery of Small Debts Act;—the insertion of which will, I think, be found useful.

EDWIN C. SUTTOR.

Elizabeth Street North,
November, 1847.

A GUIDE

TO THE DUTIES OF

A JUSTICE OF THE PEACE.

ABATEMENT.

THE ABATEMENT, by undue means, of the price of native commodities, is a misdemeanor, and punishable by fine and ransom. 3 *Inst.* 196. A case is mentioned where certain persons came to Coteswold, in England, and said in deceit of the people, that there were such wars beyond the seas that wool could not pass or be carried beyond sea, whereby the price of wools was abated; and presentment thereof being made, the defendants having appeared, were, upon their confession, put to fine and ransom. 3 *Inst.* 196. See also 1, *Russell on Crimes*, 173 (1843.)

ABATEMENT IN CRIMINAL PLEADINGS.—No indictment or information can be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of the party offering such plea; but in such case the Court may order the indictment or information to be amended—7 G. IV. c. 64, s. 19. (*Callaghan's Acts of Council*, vol. 1, p. 346.)

ABDUCTION.

FORCIBLE ABDUCTION.—Taking away or detaining, against her will, any woman having any interest, present or expectant, in property, from motives of lucre, with intent to marry or defile her—*felony*—9 G. IV. c. 31, s. 19. (*Callaghan*, vol. 1, p. 325.)

EVIDENCE.—Prove that the woman was taken away against her will, or that she was detained against

her will, and with the felonious intent. (The intent may be proved from the words or the acts of the prisoner, or of others acting in concert with him.) The woman's interest in property must also be proved; and from this, motives of lucre may be presumed.

The woman, though married to him, may be a witness for or against the prisoner. 1 *Hale*, 661. 4 *Blac. Com.* 209. See also 1 *Russell on Crimes*, (1843) p. 709, and *Wakefield's Case*, 2 *Lew.* 279.

If through fraud, the woman consent, the case is within the Statute. See *Wakefield's Case*, 2 *Lew.* 279.

ABDUCTION OF A GIRL UNDER SIXTEEN YEARS OF AGE.—Unlawfully taking an unmarried girl, under the age of sixteen, out of the possession, and against the will, of her parent, or other person having the lawful care of her—*misdemeanor*. 9 G. IV. c. 31, s. 20. (*Callaghan*, vol. 1, p. 325.)

EVIDENCE.—Prove the taking away of the girl by the prisoner against the will of her father or other person having charge of her (whether she consent herself or not is immaterial.) Prove also the age of the girl, and that she was unmarried. (If the girl be under the age of ten years, the offence will fall under the 21st section of the above Act. See post, "Child Stealing.") The motive of the prisoner in taking the girl need not be proved. It has been decided, under the 4 and 5 Ph. and M., c. 8, that the taking away a natural daughter under sixteen years of age from the custody of her putative father, was an offence within the statute. *R. v. Cornforth 2, Str.* 1162. It was also holden that a mother retained her authority, notwithstanding her marriage to a second husband; and that the assent of the second husband was not material. *Ratcliffe's Case*, 3 *Co.* 39.* As to taking away a child under the age of ten years, see post, "Child Stealing."

* These decisions were made under the repealed Act 4 and 5 Ph. and M., c. 8; but there does not appear to be anything in the present statute by which they may be set aside.

FORM OF COMMITMENT FOR ABDUCTION.

1ST. OF A WOMAN AGAINST HER WILL.

New South Wales, } J. P., Esquire, one of Her Majesty's Justices of the
to Wit. } Peace for the said Colony.

To _____, Constable of _____, in the said Colony, and to the Keeper of the Common Gaol at _____ in the said Colony. These are to command you, the said constable, in Her Majesty's name, forthwith to convey and deliver into the custody of the said Keeper of the said Common Gaol, the body of C. D., this day charged before me, the said Justice, on the oath of A. B. (labourer,) for that he, the said C. D., on the _____ day of _____ in the year _____ at _____ feloniously did, from motives of lucre, take away and detain one E. F. against her will, she, the said E. F., being then a woman having an interest in certain real (or) "personal estate," (or) "heiress presumptive," (or) "next of kin" of a person having an interest in a certain real (or) "personal" estate, with intent her, the said E. F., to marry, (or) "defile," (or) "or cause to be married to," (or) "defiled by," G. U., (or) "by some person unknown," against the form of the statute in that case made and provided.

And you, the said keeper, are hereby required to receive the said C. D. into your custody, in the same Common Gaol, and him safely keep until he shall be thence delivered by due course of law. Herein fail you not.

Given under my hand and seal, the
day of _____ in the year _____

J. P.

2ND. FOR TAKING AWAY A GIRL UNDER 16.

Commencement as ante.

For that he, the said C. D., on the _____ day of _____ at _____ unlawfully did take one A. B. out of the possession and against the will of J. P., her father (or "mother," or "person having the lawful care and charge of her") she, the said A. B., being then and there an unmarried girl, and under the age of sixteen years, to wit, of the age of _____ years, against the form of the statute in that case made and provided. And you, the said Keeper, &c. (Conclude as before.)

ABETTORS.

(IN MISDEMEANORS.)

PERSONS aiding, abetting, counselling, or procuring the Commission of any misdemeanor under the Larceny Act (7 and 8 G. IV. c. 29) are to be indicted and punished in the same manner as principal offenders. 7 & 8 G. IV. c. 29, s. 61. (*Callaghan*, vol. 1, p. 308.)

PERSONS aiding, abetting, counselling, or procuring the commission of any offence punishable (by the Larceny Act, 7 & 8 G. IV. c. 29.) on summary conviction, liable to the same punishment as principal offenders. *Id.* s. 62.

ABORIGINAL NATIVES.

THE ABORIGINAL NATIVES of this Colony are as much under the protection of and amenable to the law as the rest of Her Majesty's subjects.

By the Publicans' Act, 2 Vict. No. 18, (*Callaghan*, vol. 1, p. 330,) a penalty of five pounds is imposed on any person, licensed or unlicensed, who shall sell or give to any aboriginal native any spirituous or fermented liquor in any quantity which shall produce intoxication.*

By a late Act of Parliament (the 6 & 7 Vict. c. 22.), authority is given to the Legislatures of British Colonies to make laws or ordinances for the admission in any Court or before Magistrates of the evidence of aboriginal natives. See *Callaghan*, *Sup.* p. 1499.

 ABORTION.

ADMINISTERING POISON, or other noxious thing, or using any instrument or other means to procure the miscarriage of a woman: *felony*.—1 Vict. c. 85, s. 6. (*Callaghan*, vol. 1, p. 330.)

EVIDENCE.—Prove the administering the poison or other noxious thing, or the using the instrument or other means by the prisoner with the intent to procure abortion. The administering need not actually be by the hand of the prisoner, as for instance, where a woman had mixed poison with coffee, and had told her mistress that the coffee was for her, and the mistress took it, and drank some of it, it was held that this was sufficient.—*R. v. Harley*, 4 C. and P. 369. But it is necessary, to support an indictment, that the woman should swallow some of the poison. See 1, *Russell on Crimes*, 674 (1843.)

* For the new Act, see "Appendix".

FORM OF COMMITMENT FOR ADMINISTERING DRUGS.

On _____ at _____ did unlawfully administer to one C. D., and did then and there cause to be taken by her, one ounce weight of a certain poison (or "noxious thing") called _____ with intent in so doing, then and there and thereby to procure the the miscarriage of the said C. D, against the form of the statute in such case made and provided. And you, the said Keeper, &c,

FORM OF COMMITMENT FOR USING INSTRUMENTS, &c.

On _____ at _____ did use a certain instrument called a _____ (stating how, or if other means have been used, state them,) with intent, &c. As in last.)

ACCESSARY AND PRINCIPAL.

AN ACCESSARY (*particeps criminis*) is one who, being absent at the time of the commission of a felony, is nevertheless guilty of a felonious offence, not principally, but by participation, as by command, advice, concealment, or assistance.

Of accessories there are two classes :—

1. ACCESSARIES BEFORE THE FACT.
2. ACCESSARIES AFTER THE FACT.

1st. An accessory before the fact, to a felony, is one who counsels, incites, moves, procures, hires, or commands another to commit it; but is not himself present aiding or abetting in the commission of it. (See *R. v. Gordon*, 1 *Leach*, 315, 1 *East*, Pl. C. 352.)

By statute 7 G. IV. c. 64, s. 9. (*Callaghan*, vol. 1, p. 345,) accessories before the fact to felonies are to be deemed guilty of a substantive felony, and may be proceeded against as felons, whether or not the principals have been convicted; and the same, although the offence be committed on the high seas, or abroad.

In felonies within the statutes—7 and 8 G. IV. c. 29, and 1 Vict. c. 86. (Larceny Acts) *Callaghan*, vol. 1, p. 296, 313—7 and 8 G. IV. c. 30, and 1 Vict. c. 89. (Malicious injuries) *Callaghan*, vol. 1, p. 331, 340—9 G. IV. c. 31, and 1 Vict. c. 85. (Offences against the person) *Callaghan*, vol. 1, p. 324, 329—11 G. IV. and 1

W. IV. c. 66. (Forgery) *Callaghan*, vol. 1, p. 319—1 Vict. c. 87. (Robbery) *Callaghan*, vol. p. 315—1 Vict. c. 88. (Piracy) *Callaghan*, vol. 1, p. 342—and 9 Vict. No. 1. (Coin) *Callaghan*, sup. p. 1515. Every principal in the *second* degree, and every accessary *before* the fact, are liable to the same punishment as principals in the *first* degree; and every accessary after the fact is liable to be imprisoned for any term not exceeding two years at the discretion of the Court, to be kept to hard labour and solitary confinement, not exceeding one month at any one time, nor more than three months in any one year.

2nd. AN ACCESSARY AFTER THE FACT to a felony is one who receives, harbours, or assists the principal felon, knowing him to have committed the felony.

Accessaries after the fact may be tried, though the principal be not attained. 7 G. IV. c. 64, s. 11—*Callaghan*, vol. 1, p. 345.

THE DOCTRINE as to accessaries is confined entirely to felonies; for, in treasons* and misdemeanors, those who by counsel or incitement, &c., would be accessaries before the fact in felony, are deemed principals, and punished accordingly; and accessaries after the fact to misdemeanors are not punishable at all. 1, *Hale*, 613.

PRINCIPAL.—He who actually commits the offence is said to be principal in the *first* degree; and he who is present, aiding and abetting him in doing it, is said to be principal in the *second* degree. See *R. v. Boyce*, 4 *Burr*, 2073. Both however are equally guilty.

Persons present at the commission of an offence, are said to be aiding and abetting the party actually committing it, if they be confederated or engaged with him in a common design, of which the offence is a part, *R. v. Tattersall*, 1 *Russ.* 22; *R. v. Staudley*, *R. & Ry.* 305; or if by their presence they encourage him in the commission of it, *R. v. Murphy*, 6 *Car. & P.* 103.

* In treason all concerned are deemed principals.

ACCESSARY BEFORE THE FACT.

FORM OF COMMITMENT WITH THE PRINCIPAL.

After describing the offence of the principal, state that of the accessory thus—
 And that the said C. D. before the said felony was so committed as aforesaid, did feloniously (and maliciously) incite, move, procure, counsel, and command the said A. B. to do and commit the said felony. And you, the said Keeper, &c.

FORM OF COMMITMENT WITHOUT THE PRINCIPAL.

"For that one (or "some person unknown") on at did feloniously," &c. (describing the offence as in a commitment of the principal.)
 And that the said C. D., before the said felony was so committed, did feloniously and maliciously incite, move, procure, counsel, and command the said A. B. (or "person unknown") to do and commit the said felony. And you the said Keeper, &c."

ACCESSARY AFTER THE FACT.

FORM OF COMMITMENT WITH THE PRINCIPAL.

After describing the offence of the principal, state that of the accessory thus—
 "And that the said C. D. well knowing the said A. B. to have committed the felony aforesaid, did afterwards on at feloniously receive, harbour, and maintain the said A. B. And you the said keeper, &c."

FORM OF COMMITMENT WITHOUT THE PRINCIPAL.

"For that one A. B. (or some person unknown) on at did feloniously," &c. (describing the offence as in a commitment of the principal) "And that the said C. D. well knowing the said A. B. to have committed the felony aforesaid, did afterwards on at feloniously receive, harbour, and maintain the said A. B. And you the said keeper," &c.

PRINCIPAL IN THE SECOND DEGREE.

The Commitment of a principal in the second degree may either be in the ordinary form as a principal in the first degree; or if the principal in the first degree be committed with him, then after describing the offence of the principal in the first degree, the offence of the abettor may be described in the same warrant, thus:
And that the said C. D. feloniously was then and there present, aiding, abetting, and assisting the said A. B. to do and commit the said felony; and you the said keeper, &c.

ACCOMPLICE.

(See POST "APPROVER.")

The testimony of an accomplice should be confirmed by other evidence.

ACCUSING.

(OF CRIME.)

1. ACCUSING OR THREATENING TO ACCUSE a person of a CRIME PUNISHABLE WITH DEATH, transportation, or pillory, or of an attempt to commit a rape, or of any infamous crime, with intent to extort gain: *Felony.* 7 & 8, G. IV. c. 29, s. 8. (*Callaghan*, vol. 1, p. 296.)

2. ACCUSING OR THREATENING TO ACCUSE A PERSON OF AN INFAMOUS CRIME, with intent to extort gain: and thereby extorting gain: *Felony.* 1 Vict. c. 87, s. 4. (*Callaghan* vol. 1, p. 315.)

As to DEFINITION of an infamous crime see 7 & 8 G. IV. c. 29, s. 9. (*Callaghan* vol. 1, p. 296.)—See Post "Threatening Letters."

It is immaterial whether the prosecutor be guilty or innocent of the offence imputed to him. *R. v. Gordon*, 1 C. and P. 479.

The threatening to accuse need not be a threat to accuse before a judicial tribunal, a threat to charge before any third person is sufficient. *R. v. Robinson*, 2 M. & Rob. 14.

FORM OF COMMITMENT FOR A VERBAL ACCUSATION OR THREAT.

On _____ at _____ feloniously did (threaten the said C. D.,) accuse him, the said C. D., of having (attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B., (or as the case may be,) with a view and intent thereby to extort and gain money, (chattel money, or valuable security,) from the said C. D., against the form of the statute in such case made and provided. And you, the said Keeper, &c.

FORM OF COMMITMENT FOR SENDING A LETTER, ACCUSING, OR THREATENING TO ACCUSE.

On _____ at _____ knowingly, and feloniously, did send, (or deliver,) to the said C. D., a certain letter, (or writing,) directed to the said C. D., threaten-

ing to accuse (or accusing) him, the said C. D., of having (attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B., (or as the case may be), with a view and intent to extort and gain money" (chattel money, or valuable security,) from the said C. D., against the form of the statute in such case made and provided. And you, the said Keeper, &c.

FORM OF COMMITMENT FOR THREATENING, AND THEREBY
EXTORTING.

On at feloniously did (threaten the said C. D. to,) accuse him, the said C. D., of having (attempted and endeavoured to commit the abominable crime of buggery, with and upon him, the said A. B., or with and upon one E. F., (or as the case may be,) with a view and intent, then and there, to extort and gain property from the said C. D., and that the said A. B., by then and there intimidating the said C. D., by the said accusation, (or threat,) as aforesaid, did then and there extort and gain from the said C. D., (ten pieces of the current gold coin of the realm, called sovereigns, &c., as in larceny,) "the property of him, the said C. D., against the form of the statute, in such case made and provided. And you, the said Keeper," &c.

ADMIRALTY.

Justices of the Peace may take information on oath touching any treason, piracy, felony, robbery, murder, or conspiracy, committed on the high seas or elsewhere, within the jurisdiction of the Admiralty, and may issue warrant for apprehension, and, if cause be shown, may commit to safe custody. 7 G. IV. c. 38.

ADMISSIONS.

(SEE POST "EVIDENCE.")

AFFRAY.

(MISDEMEANOR.)

AFFRAYS are the fighting of *two* or more persons in some public place (street or highway) to the terror of Her Majesty's subjects.

Fighting in any *private place* does not amount to an affray; nor do quarrelsome or threatening words. (1 *Hawk*, c. 63.) But there may be an affray where no violence is used, as where persons arm themselves with dangerous and unusual weapons. 1 *Russell on Crimes*, 292 (1843.)

FORM OF WARRANT TO APPREHEND AFFRAYERS.

To Constable of in the Colony of New South Wales and to all other peace officers in the said Colony.

NEW SOUTH WALES TO WIT.—Forasmuch as A. O. of yeoman, and C. D. of yeoman, in the said Colony, have this day been charged before me one of Her Majesty's Justices of the Peace for the said Colony, on the oath of a credible witness, for that on the day of in the year of the said A. O. of yeoman, and C. D. of yeoman, at

in the said Colony, in a tumultuous manner made an affray wherein the person of the said T. A. was beaten and abused by them the said A. O. and C. D. without any lawful or sufficient provocation given to them or either of them by the said T. A. These are therefore to command you forthwith to apprehend the said A. O. and C. D. and bring them before me or some other Justice of the Peace for said Colony to answer the premises, and to find sureties as well for their personal appearance at the next General Quarter Sessions of the Peace to be holden at , then and there to answer an information to be filed against them for said offence, as also for their keeping the peace in the mean time towards Her Majesty and all her liego people, and especially towards the said T. A. Herein fail not, or you will answer the contrary at your peril.

Given under my hand and seal, at the day of in the year, &c. &c.

J. P.

FORM OF COMMITMENT FOR AN AFFRAY.

On at in a certain public street and highway there unlawfully, and to the great terror and disturbance of Her Majesty's subjects there being, did make an affray. And you the said keeper, &c.

AGENT.

(BANKER, &c.)

1. AGENT, banker, merchant, broker, or attorney, applying to his own use money or security entrusted to him, with written directions for a special purpose: *misdeemeanor*. 7 and 8 G. IV. c. 29, ss. 49, 50. *Callaghan*, vol. 1, p. 305.

2. Or selling or pledging chattels, securities, powers to sell stock, &c., entrusted to him for safe custody or for a special purpose: *misdeemeanor*. *Id.*

3. AGENT or factor pledging the goods, bill of lading, delivery order, &c., of his principal: *misdeemeanor*. *Id.* ss. 51, 52.

An agent or factor, who has a lien upon goods, may pledge them to the extent *only* of his lien. *Id.* s. 51.

FORM OF COMMITMENT FOR EMBEZZLEMENT OF MONEY, &c.

That on at one C. D., did intrust to A. B., (he, the said A. B., being then a banker and agent, (or as the case may be,) the sum of one hundred pounds, (or as the case may be,) with directions to the said A. B., in writing, to apply the said sum of money for a certain purpose, then and there specified in the said directions, that is to say, (here state the substance of the directions,) and that the said A. B., afterwards, on at in violation of good faith, and contrary to the purpose so in the said directions specified as aforesaid, unlawfully did convert to his own use and benefit, the said sum of money, (or as the case may be,) so to him intrusted, as aforesaid, against the form of the statute, in such case made and provided. And you, the said Keeper, &c.

FORM OF COMMITMENT FOR SELLING, &c., CHATTELS OR SECURITIES INTRUSTED TO HIM.

That on at one C. D. did intrust to A. B., for safe custody, (or for the purpose of) he the said A. B. being then a banker and agent, (or as the case may be,) a certain promissory note, drawn by one E. F., for the payment of fifty pounds, (or as the case may be,) without any authority to sell, negotiate, transfer, or pledge the same; and that the said A. B., afterwards, on at in violation of good faith, and contrary to the object and purpose for which the said promissory note was so intrusted to him, as aforesaid, unlawfully did negotiate, transfer, and convert to his own use and benefit, (or as the case may be,) the said promissory note, against the form of the statute, in such case made and provided. And you, the said Keeper, &c.

FORM OF COMMITMENT FOR PLEDGING THE PROPERTY OF HIS PRINCIPAL.

That on at one C. D. did intrust to A. B. (he the said A. B. being then and there a factor or agent) one thousand quarters of wheat, of the value of three thousand pounds, for the purpose of selling the same (or as the case may be); And that the said A. B. afterwards on at for his own benefit, and in violation of good faith, unlawfully did deposit and pledge the said one thousand quarters of wheat with one E. F., as a security for a sum of two thousand pounds (or as the case may be) by the said A. B. then borrowed and received (or "by the said A. B. before that time borrowed and received," or "by the said A. B. then intended to be thereafter borrowed and received,") of and from the said E. F., against the form of the statute in such case made and provided. And you the said keeper, &c.

AIDING PRISONERS TO ESCAPE.

(SEE POST "ESCAPE.")

APPEAL.

APPEAL is a COMPLAINT and REMOVAL to a SUPERIOR COURT of the judgment of an inferior one.—In this work it is considered necessary to treat only of appeals from decisions of Justices of the Peace.

APPEAL lies only where it is expressly given by statute. The Act of Council, 6 G. IV. No. 19, 1825 (Fines) (*Callaghan*, vol. 1, p. 540) directs, that in cases of appeal from the decision of Justices, the party or parties so appealing are to deposit the amount of the fine or penalty, or to find sureties for double the amount of penalty within one week after such decision.

By Act of Council, 5 W. IV. No. 22, s. 3 (Summary proceedings) *Callaghan*, vol. 2, p. 706, any person so entitled by Act of Council, may appeal from the judgment or conviction of any Justice or Justices to the next General Quarter Sessions (or if such shall be held within six days next ensuing such judgment or conviction, to Quarter Sessions following) provided (in case of pecuniary penalty) such person pay the full amount of penalty, together with costs, or (in case of other judgment) enter into bond, with two sufficient sureties, to prosecute such appeal with effect, and to abide the event of the appeal, within one week of conviction or judgment.

APPRENTICE.

The Act of Council, 8 Vict. No. 2 (*Callaghan*, *Appendix*, vol. 2, p. 1309) is intituled "An Act to regulate and amend the law of Orphan and other Apprentices in the Colony of New South Wales." (1844.)*

PREAMBLE—BY WHOM APPRENTICES MAY BE TAKEN.

Whereas it hath been found, that the present law concerning the relation of master and apprentice is defective, and it is expedient and necessary, that the same should be amended, in order to secure on the one side, that the master shall perform his duty in the instruction and proper treatment of his apprentice, and on the other side, that the apprentice shall render due obedience to his master, and attention to his duties during the time of his apprenticeship: Be it enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That any householder, or any tradesmen, or other person exercising any art, mystery, or manual occupation, may take by indenture in writing, any apprentice above the age of twelve years,

* See also 9 G. IV. c. 83, s. 35 (*Callaghan*, vol. 1, p. 214.) 9 G. IV. No. 8 (Id. p. 4.) 5 W. IV. No. 3 (Id. p. 7.)

to be instructed in such trade, art, mystery, or occupation, provided the time of such apprentice shall not exceed seven years.

**APPRENTICES NOT TO LEAVE UNTIL TERM OF APPRENTICESHIP ACCOMPLISHED.—
LIMITING TERM.**

II. And be it enacted, That all apprentices legally bound by written indenture, by their parents or guardians, or other persons (as hereinafter is provided), for a stated time (not exceeding seven years) in order to learn a trade or some useful business, shall not leave their masters or mistresses, until they shall have served out the time of such apprenticeship: Provided nevertheless, That no apprentice shall be deemed to be bound by any such indenture to serve after the age of twenty-one years, any law, usage, or custom, to the contrary notwithstanding.

WHERE APPRENTICES HAVE NO PARENT OR GUARDIAN.

III. And be it enacted, That whenever any young person is about to be bound apprentice, who shall have no parent or guardian, it shall and may be lawful for any two magistrates of the district, in which the said person so to be bound, shall reside, to execute the indenture aforesaid, in the room and stead of such parent or guardian; and in case of any such person receiving eleemosynary support in any public establishment in said Colony, it shall and may be lawful for the person or persons, or any one or more of them, who may have the control or inspection of the same, to execute such indenture of apprenticeship in the room and stead of the parents of such person: Provided that nothing herein contained shall alter the provisions of any Act now in force, and specially providing for such cases.

PUNISHMENT OF APPRENTICES OFFENDING.

IV. And be it enacted, That it shall be lawful for any two or more Justices of the Peace, upon application or complaint, made on oath, by any master or mistress, against any apprentice, touching or concerning any breach of duty, disobedience, or ill behaviour, in his or her service (which oath such Justices are hereby empowered to administer), to hear, examine, and determine the same in a summary way, and to punish the offender by commitment to solitary confinement in any gaol, house of correction, or solitary cell, for any time not exceeding three days: Provided always, that such punishment shall in no case be inflicted upon any apprentice under fourteen years of age, or upon any female apprentice.

APPRENTICES ABSENTING THEMSELVES.

V. And be it enacted, That if any apprentice shall absent himself or herself from his or her master's or mistress's service before the term of apprenticeship shall have expired, or before he or she shall have attained the age of twenty-one years, every such apprentice shall, at any time or times thereafter, whenever he shall be found, be compelled to serve his or her master or mistress, for so long a time as he shall have so absented himself or herself from such service, unless he or she shall make reasonable satisfaction to his or her master or mistress, for the loss he or she shall have sustained by such absence; and so from time to time, as often as any apprentice shall without leave of his or her master or mistress, absent himself or herself from such service, before the term of his or her contract shall be fulfilled: and in case any such apprentice shall refuse to serve as hereby required, or to make such reasonable satisfaction to his or her master or mistress, such master or mistress may complain on oath, to any Justice of the Peace, which oath such Justice is hereby empowered to administer, and to issue a warrant under his hand, for apprehending any such apprentice, to be brought before any two or more Justices of the Peace, who shall hear the complaint in a summary way, and determine what satisfaction shall be made to such master or mistress; and in case such apprentice shall not give security to make such satisfaction, according to such determination, it shall and may be lawful for such Justice to

or a counterpart, is usually executed by the master ; but this also has been holden not to be necessary, to render the indenture valid. *R. v. St. Peters*, 2 *Bott*, 393, 377 ; and see *R. v. Fleet, Cald*, 31. Execution by the master is necessary, only to give the apprentice, or his father, or friend, a remedy against him, for any breach of the usual covenants on his part, to teach and keep the apprentice. See 1 *Arch. J. P.* 73.

“The master has more authority over an apprentice than over a common servant ; for he may legally correct his apprentice for negligence, or other misbehaviour, provided it be done with moderation. But in cases of gross misconduct, it is better for the master to apply to a Justice of the Peace, or Sessions, to discharge, or punish the apprentice, than to take the law into his own hands. It is to be observed, that the master cannot *delegate* this authority to another, (9 *Co.* 76.)”

“If the master in his correction be so barbarous as to exceed all bounds of moderation, and thereby occasion the apprentice’s death, it is *manslaughter* at the least ; and if he make use of an instrument improper for correction, and apparently endangering the apprentice’s life, it is *murder*, (1 *Hawk*, c. 29, s. 5.)”

“Under the provisions of the (5 *Eliz.* c. 4), and (20 *Geo.* II. c. 19,) if the master neglect to instruct, or shall misuse or ill-treat his apprentice, or the apprentice shall have just cause to complain: the Justices at Sessions may discharge the apprentice, and have a power of ordering a restitution of the premium.”

“And by the (20 *Geo.* II. c. 19,) *two Justices* are authorised, in case of a parish apprentice, or any other, where more than £5 (*increased to £25*, by 4 *Geo.* IV. c. 29) has not been paid as a premium, to discharge the apprentice, in case the master has been guilty of any misuse, refusal of necessary provisions, cruelty, or other ill-treatment, towards his apprentice.”

“But the Justices cannot administer punishment to *masters* for their faults, but only *discharge* their appren-

tices under this Act. The master is only liable for a breach of his covenant, for improperly correcting his apprentice."

"An indictment at common law may be supported against a master for not providing sufficient food for an apprentice, or servant of tender years, and under his dominion or control, whereby the infant becomes sick. *Russ & Ryan, C. C. 20.*"

"An apprentice cannot be assigned to another master without his consent; and though Justices have power to discharge on complaint, as before mentioned, they cannot turn him over to a fresh master, *that*, being beyond their jurisdiction. 1 *Strange, 48.*"

"The master during the term of the apprenticeship has an absolute and an exclusive right to the service of his apprentice; and if an apprentice whose master has not received £10 premium runs away, he is bound by the stat. 6 Geo. III. c. 25, to complete the term of his apprenticeship at any time within seven years after the expiration of it. Ch. L. App. p. 64. As incidental to the right of the master to the service of his apprentice, he is entitled to all the earnings and gains which an apprentice who runs away may acquire by his labor, either in the service of another, or in employment on his own account. 1 *Harg. Co. Litt. 117, Note a.*"

"The master has no power to send or take his apprentice out of the colony. 1 *Hob. 134.* The sea service, of course, excepted."

"If an apprentice be unwell, and there be any probability of his recovery, so as to be able at all to attend to his employment, he has a right to insist on his master providing for him, for the master takes him *for better or for worse*, and is to provide for him in sickness and in health. 1 *Strange 99.*"

APPRENTICE.
(FORMS.)

SUMMONS OF MASTER FOR MISUSING HIS APPRENTICE.

New South Wales, }
to Wit. } To

Constable, of

Whereas complaints and informations have been made unto me,
one of Her Majesty's Justices of the Peace for the said Colony, by A. B.,

Apprentice to C. D., of _____, in the said Colony, that the said C. D. hath misused and illtreated him the said A. B. by cruel punishment, and beating him the said A. B. without just cause (or), "by not allowing the said A. B. sufficient meat, drink (or), apparel" (as the case may be.) These are therefore to command you in Her Majesty's name to summon the said C. D. to appear before me at _____, on the _____ day of _____, at the hour of _____, to answer the said complaint, and be further dealt with according to law. Herein fail not.

Given under my hand and seal, the _____ day of _____, &c.

SUMMONS OF APPRENTICE ON COMPLAINT OF THE MASTER.

New South Wales, }
to Wit. } To _____ Constable.

Whereas complaint and information have been made to me _____, one of Her Majesty's Justices of the Peace for the said Colony, by C. D., of _____, in the said Colony, that A. B., now being an Apprentice to him, the said A. B. is negligent, stubborn, and disorderly (or as the case may be), and doth not his duty to him, the said C. D., his master. These are therefore to command (as in the last.)

DISCHARGE OF AN APPRENTICE BY TWO JUSTICES.

New South Wales, } Whereas, complaint hath been made before us, two of
to Wit. } Her Majesty's Justices of the Peace, for the said Colony,
by A. B., apprentice to C. D., of _____, in the said Colony, that he, the said C. D., hath misused and illtreated him, the said apprentice, and particularly (as the case may be.)* And whereas the said C. D. hath appeared before us, in pursuance of our summons, but hath not cleared himself of, and from the said accusation and complaint; but, on the contrary, the said A. B. hath made full proof of the truth thereof, and the said C. D. now stands duly convicted before us, upon oath of the same. We, therefore, by these presents, discharge the said A. B. of, and from his apprenticeship, made between them, or otherwise, however, to the contrary, notwithstanding.

Given under our hands and seals,
the _____ day of _____, &c.

OR IF HE DOES NOT APPEAR.

(Thus from the asterisk.)—And whereas it hath been duly proved before us, as well upon the oath of _____, constable, as otherwise, that the said C. D. was duly summoned to appear before us, at a reasonable time, in the summons specified; but, notwithstanding the same, he, the said C. D., hath not appeared before us, according to such summons. We, therefore, having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us, upon oath, do discharge (as in the foregoing form to the end.)

COMMITMENT OF AN APPRENTICE TO THE HOUSE OF CORRECTION ON COMPLAINT OF HIS MASTER, BY TWO JUSTICES.

New South Wales } To _____ the Constable of _____, in the said
to wit. } Colony, and to the Keeper of (the House of Correction)
at _____, in the said Colony. Whereas complaint hath been made before
us A. B. and C. D., two of Her Majesty's Justices of the Peace for the said

Colony, upon the oath of E. F., that G. H., apprentice of the said E. F., hath committed divers misdemeanors against him the said E. F., his master, particularly (as the case may be.) And whereas upon examination thereof, and upon hearing the allegations of both parties having come before us for that purpose, and upon the consideration thereof, it manifestly appears to us, that the said A. B. is guilty of the premises charged against him as aforesaid:—We do therefore command you, the said Constable to take and convey the said G. H. to the said (House of Correction), and deliver him to the said Keeper thereof together with this warrant; And we do hereby command you the said Keeper of the said (House of Correction) to receive the said G. H. into your custody in the said (House of Correction) for the space of

Given under our hands and seals, &c., &c.

CONVICTION FOR ILLUSING AN APPRENTICE.

New South Wales, } Be it remembered, that, at a Special (or Petty) Sessions,
to Wit. } holden at , in the said Colony, on the
day of , in the year of Our Lord , A. B., of , in the said
Colony, (labourer,) came before us, J. P., and L. M., two of Her Majesty's
Justices of the Peace for the said Colony, and informed us, on behalf of J. Y.,
an apprentice, (upon whose binding out not more than the sum of twenty-five
pounds was paid), that C. D., of , in the said Colony, shoemaker, to
whom the said J. Y. was bound, as an apprentice, as aforesaid, did, on the
day of , in the Year aforesaid, at , in the said Colony, illuse the
said J. Y., by ("state how"), contrary to the form of the statute in such case
made and provided: Whereupon the said C. D., after being duly summoned,
appeared, &c. (See general form of a Conviction, under title "Conviction")

APPROVER.

By the ancient law, if a man, indicted for treason or felony, confessed the indictment, the Court might admit him to become an approver against all other persons who were jointly concerned with him in the commission of the offence; in which case he lodged his appeal against his companions with the Coroner, and if he succeeded in convicting them, he was usually pardoned; but if he failed in his appeal, judgment was immediately given against him upon the indictment. See 2 *Hawk*, c. 24.

From this has originated the modern practice of admitting accomplices to give evidence against their fellows, particularly in cases of felony. This is done usually by application to the Court before whom they are to be tried.

If however *the Justice* before whom the offenders are

brought, under the circumstances of the case think it right to receive the evidence of the accomplice, he should not make any promise to him of pardon, or impunity, either as to the offence in question, or any other of which the accomplice may be guilty. If the latter act fairly, make a full and unequivocal confession of his and his companion's guilt, and give his evidence in a fair ingenuous manner, he will have an *equitable* claim to a pardon, or to a commutation of punishment, for that offence. *R. v. Rudd, Coup.* 331; but not with respect to other offences committed. *R. v. Duce*, 1 *Phil. Ev.* 37. *R. v. Lee, Id.* *R. West, Id.*

ARMS.

Being found with fire-arms, and unable to account for the same, on a free person—*misdemeanor*: 5 W. IV. No. 9, s. 3. *Callaghan*, vol. 1, p. 506. On a convict—*felony*: 3 W. IV. No. 3, s. 12. *Callaghan*, vol. 2, p. 697.

ARREST.

This title is to be understood as relating to criminal cases only, and not to civil cases.

An arrest is the apprehending or restraining of one's person in order to be forthcoming to answer an alleged or suspected crime. To this arrest all persons are in general liable, without any distinction. 4 Bl. Com. 289.

By the 9th Geo. IV. c. 31, s. 23, (*Callaghan*, vol. 1, p. 324.) Clergymen are protected from arrest or civil process while *performing* divine service, or *going* to perform the same, or returning from its performance; but this does not prohibit the arrest of Clergymen in criminal cases, and they may be arrested like other individuals.

A married woman may be arrested on a criminal charge the same as if she were a *feme sole*. 1 Hawk. C. 1.

When the party to be proceeded against *criminally* is in custody on a civil action, the practice is for the magistrate before whom the complaint is laid, to take the information of the accuser and witnesses, and to issue his warrant, which is lodged with the keeper of the place of confinement where the defendant is in prison. This officer on the termination of the civil imprisonment, sends for a constable, who takes the party before a Magistrate, by whom the accuser, witnesses, and prisoner are examined, and the latter is discharged, bailed or committed, as on an original accusation. 1 Ch. C. L. 63. The Supreme Court, however, will grant a *Habeas Corpus* to take the body of a confined debtor before a Magistrate, to be examined from time to time respecting a charge of felony or misdemeanor. 5 Barn. and Ald. 730.

When the party is already in gaol on a criminal charge, and fully committed for trial, it is not usual to bring him from his first custody before a Magistrate on a subsequent charge, but the examination of witnesses is taken as in ordinary cases, and a warrant of detainer is sent to the gaoler, in whose custody he remains. By this means it will appear on the calendar that he is charged with two offences, and if acquitted on that for which he was first committed, his discharge will be prevented. 1 Ch. C. L. 63.

[*Where a party found actually committing an offence.*] By the common law, any person may do anything reasonably necessary to prevent the perpetration of a crime, and he may detain the offender until it may be fairly presumed he has changed his purpose. 1 Hale, 589. Any person may apprehend a thief in the *mainour*, that is, with stolen goods actually in his possession, or the like. Shower, 24. If a man be found committing a felony in the night, any one may apprehend

hend and detain him until he can be brought before a Magistrate. R. and M. C.C. 93. But no person can in general be apprehended without warrant for a mere *misdemeanor* unattended with violence, as Perjury or Libel, (2 Wills, 159.) And it seems that no private person can without a warrant apprehend another for a bare breach of the peace after it is over, nor could a Constable do so at common law unless the breach were in his view. 2 Hawk. c. 12 s. 21.

ARREST UNDER A WARRANT.—In all cases in which a Justice of the Peace may legally issue a warrant to arrest a person, the constable or person to whom it is directed may legally execute it, by making the arrest; and this, whether the party be guilty or innocent of the offence mentioned in it, or whether such offence have in fact ever been committed or not. 2 Hawk, c. 13, s. 11. If the warrant be directed to a constable, he is bound to make the arrest, if he can, and is punishable for not doing so; but if directed to a private person, he may make the arrest, but he is not punishable for neglecting or refusing to do so. *Id.* s. 27. If the warrant be directed to a particular constable or person by name without any general words, he must be acting in the arrest, although others may assist him in making it. *Id.* s. 29; if directed to two or more, any one of *them* may execute it; if directed to all constables, &c., generally any constable within the jurisdiction of the Justice granting the warrant, may execute it; or, if directed to one person by name, “and to all other peace officers in the said Colony,” &c., generally, or the like, any such peace officer within the jurisdiction of the Justice may make the arrest.

OPPOSING ARREST.—He who knowingly opposes an arrest of another for treason is guilty of treason; if he oppose an arrest of another for felony, he will be an accessory after the fact. 1 Arch. J. P. 116.

ARREST BY A CONSTABLE WITHOUT A WARRANT.—If a constable, or indeed any private person, see

another commit treason or felony, he may apprehend him (1 *Hale*, 587); and in fact it is his duty to do so; and of course whatever a private individual may do in this respect, (*vide infra*), a constable may also do, the only difference being, that the constable must take the offender before a Magistrate, but a private person may discharge himself of the offender by giving him in custody to the constable. 2 *Hawk*, c. 13, s. 7. So a constable may apprehend any person whom he shall see actually engaged in an affray (*Id.* 18), or other breach of the peace. So a constable may apprehend any person who encourages a prisoner in his custody to resist (*White v. Edmunds, Peake*, 89), or otherwise obstructs him in the execution of his duty. *Levy v. Edwards*, 1 *C. & P.* 40.

If a reasonable charge of felony against a person be made to a constable, the constable will be justified in arresting him, *without a warrant*, although it afterwards turn out that the person was perfectly innocent, or that no felony in fact had been committed. *Samuel v. Payne, Doug.* 359; *Hobbs v. Branscomb*, 3 *Camp.* 420; *Davis v. Russell*, 5 *Bing.* 354; *Cowles v. Dunbar, Moo. & M.* 37; *R. v. Ford, R. & Ry.* 329. So on complaint to a constable that a man has threatened to kill another, the constable will be justified in arresting the party complained of, and detaining him till he can conveniently take him before a Magistrate. 2 *Hale*, 88. But it has been holden that a constable is not justified in apprehending a person as a receiver of stolen goods, on the mere assertion of the principal felon. *Isaacks v. Brand*, 2, *Stark*, 167. Nor is a constable justified in taking a person into custody for a mere assault, without a warrant, unless he himself were present at the time the assault was committed. *Copley v. Henley*, 2 *Esp.* 540; and the same as to all other breaches of the peace out of his view. 2 *Hawk*, c. 13, s. 8. Or if a constable have a reasonable suspicion that a man has committed felony, he may apprehend him. *Ledwith v. Catchpole*,

Cald. 291. *Lawrence v. Hedger* 3, *Taunt.* 14. *Nicholson v. Hardwick*, 5 *C. and P.* 495. *Beckwith v. Philby*, 6 *B. and C.* 635. So may a private individual. The difference between the authority of the constable, and the private person, in this respect is, that the latter is justified only in case it turn out that a felony was in fact committed; but the constable may justify the arrest and detention, whether in fact a felony were committed or not. *Id. per Lord Tenterden, C. J.* And the ordinary grounds of justifiable suspicion are thus enumerated by Hawkins:—1st. THE COMMON FAME OF THE COUNTRY. 2nd. LIVING A VAGRANT, IDLE, DISORDERLY LIFE, WITHOUT ANY VISIBLE MEANS TO SUPPORT IT. 3rd. BEING IN COMPANY WITH KNOWN OFFENDERS AT THE TIME THE OFFENCE WAS COMMITTED, OR AT OTHER TIMES. 4th. BEING FOUND UNDER CIRCUMSTANCES INDUCING A STRONG PRESUMPTION OF GUILT, AS FOR INSTANCE, HAVING STOLEN GOODS IN HIS POSSESSION, AND NOT BEING ABLE TO GIVE AN ACCOUNT OF HIS HAVING HONESTLY COME BY THEM, OR THE LIKE. 5th. BEHAVING IN SUCH A MANNER AS TO BETRAY A CONSCIOUSNESS OF GUILT, AS BY MAKING NO ANSWER WHEN CHARGED WITH THE OFFENCE, OR ABSCONDING, OR THE LIKE. 2 *Hawk*, c. 12, s. 9, 14. See 1 *Arch. J. P.* 117.

ARREST BY A PRIVATE PERSON WITHOUT WARRANT.—All persons present when a felony is committed, or a dangerous wound given, not only may apprehend the offender, but they are bound to do so. 2 *Hawk*. c. 12, s. 1; and see *Handcock v. Baker*, 2 *B. and P.* 260, *R. v. Hunt, Ry. and M.* 93. And the same as to treason. Also, if a private person see another on the point of committing treason or felony, or doing an act which would manifestly endanger the life of another, he may lay hold on him, and detain him, until it may be presumed that he has changed his purpose. *Id.* s. 19. So it has been holden, that he may arrest one whom he sees cheating with false dice. *Id.* s. 20. So if he be present at an affray he may stay the affrayers until the

heat is over, and then deliver them over to the constable, and he may stop others coming to join either party. *Id.* c. 13, s. 8. But after the affray is ended, the parties cannot be arrested without warrant. *Id.* 2; *Inst.* 52.

So upon a case of strong suspicion a private person may justify the apprehending of another *for felony*, if in fact such a felony *were* committed. See *Beckwith v. Philby*, 6 B. and C. 635.

But a suspicion that a party has committed a misdemeanor on a former occasion, will not justify a private person in giving him in charge to a constable; and there is no distinction in this respect between one kind of misdemeanor and another. *Fox v. Gaunt*, 3 B. and Ad. 798.

Any person found committing an offence punishable either by indictment or upon summary conviction, by Stat. 7 and 8 G. IV. c. 29 (the Larceny Act), or Stat. 7 and 8 G. IV. c. 30 (the Malicious Injuries Act), (except the offence of angling in the day time), may immediately be apprehended without warrant by any peace officer, or the owner of the property with respect to which the offence was committed, or by his servant, or by any person authorised by him, and forthwith taken before some neighbouring Justice of Peace. 7 and 8 G. IV. c. 29, s. 63; 7 and 8 G. IV. c. 30, s. 23. The offender in these cases must be either taken in the very act of committing the offence, or on a quick pursuit. *Hanway v. Boulton*, 1 Moody and R. 15, *R. v. Curran*, 3 Car. and P. 397.

So by the Vagrant Act, 6 W. IV. No. 6, s. 5, any person may apprehend a party found offending against that Act and deliver him to a constable. In this case also the party must be taken either in the act of committing the offence, or upon fresh pursuit. *R. v. Howarth*, 1 Ry. and M. 207.

ARREST BY PRIVATE PERSON UPON HUE AND CRY.—
Upon hue and cry raised or levied, a private person may

arrest the alledged offender, (2 *Hawk*, c. 12, s. 4—14), although no other circumstance of suspicion attach to him. 2 *Inst.* 52

ARREST BY A MAGISTRATE.—In all cases where a constable or private person may arrest without warrant, a Magistrate of course may do so. 2 *Hawk*. c. 13, s. 13 So he may lawfully by word of mouth authorize any one to arrest a person who is guilty of a felony or an actual breach of the peace in his presence. *Id.* s. 14; 2 *Hale*, 86. And such command is a good warrant without writing. 2 *Hale*, 86.

ARREST WHEN TO BE MADE.—An arrest without warrant may be made at any time, even on a Sunday; also as a warrant in ordinary cases is not returnable at any particular time, no time is in fact limited for making the arrest under it, but it should be made without any unnecessary delay: Where a warrant required the constable to arrest the party, to the end that he might become bound to appear at the next sessions, &c. This was holden to mean the next sessions after the arrest, and not merely the next sessions after the granting of the warrant, and that therefore an arrest after the latter sessions was good. *Mayhew v. Parker*, 8 *T. R.* 110. By *Stat.* 29, C. 2, c. 7, s. 6, an arrest *under a warrant* cannot be made on a Sunday, “except in cases of treason, felony, or breach of the peace”; but a very liberal construction is put upon these latter words; and therefore it has been holden that a warrant to apprehend a man, that he might find sureties for his good behaviour, was not within the Act, but rather within the exception, and that the party therefore might be taken on a Sunday. *Johnson v. Colston*, *L. Raym.*, 250. But it has been decided that a warrant for penalties, under the Lottery Act, at the suit of a common informer, being merely in the nature of an execution in a civil action, could not legally be executed on a Sunday. *R. v. Myers*, 1 *T. R.* 265. The arrest with or without warrant may be made in the night time as well as in the day. 9 *Co. Rep.* 66.

WHERE.—An arrest without warrant may be made anywhere; an arrest under a warrant anywhere within the jurisdiction of the Justice granting or backing it. See *Post. Tit. "Warrant."*

How.—An arrest is usually made by actually laying hands on the party and detaining him. But if the officer or other person say to him "I arrest you," and the party acquiesce and go with him, this will be a good arrest (see *Russen v. Lucas*, 1 *Car. and P.* 153); although it would be otherwise if instead of submitting he had escaped. *Id.* And merely showing him the warrant, and his then voluntarily accompanying the officer to a Magistrate, would not be in law an arrest. *Arrowsmith v. Lesurier*, 2 *New Rep.* 211. If the party arrested demand to see the warrant, the constable, if he be a known officer, and acting within his precinct, is not bound to show it to him; but *otherwise*, where the arrest is by a constable out of his precinct, or by a private person (2 *Hawk. c.* 13 *s.* 28.), and where the arrest is without warrant, it is sufficient for a constable to state merely that he arrests the party in the Queen's name (1 *Hale*, 589); but a private person if required must, it should seem, state to him the cause of the arrest. If the party to be arrested be in a house, and the doors be fastened, then, according to Hawkins the doors may be broken open to arrest him, (after first demanding admittance and being refused), in the following cases:— 1st. Upon a *Capias* on an Indictment. 2nd. Upon a Warrant, on a Conviction, or for the purpose of his finding sureties for the peace or good behaviour. 3rd. Where one known to have committed treason or felony, or to have given another a dangerous wound, is pursued by a constable, or a private person with or without warrant. 4th. Where an affray is made in a house in the view or hearing of a constable, or where affrayers fly to a house and are immediately pursued by the constable. 5th. Where a person lawfully arrested escapes and flies to a house. In these several cases, the doors

of the house may be broken open, to arrest the party or to suppress the affray, if upon demand made for the purpose, the parties within refuse to open them. 2 *Hawk.* c. 14. s. 1—9. And the same upon a warrant on a charge or suspicion of felony. 2 *Hale*, 117. So where a private person without warrant broke open the door of a house, and imprisoned the occupier, to prevent him from murdering his wife, he was holden to be justified. *Handcock v. Baker*, 2 *B. and P.* 260. And it is immaterial whether it be the party's own house, or the house of a stranger, except that in the latter case the officer is justified only in case the party he seeks be actually in the house at the time. 2 *Hale*, 117.

Where a party may lawfully be arrested for felony, and he knowing the cause flies or resists, so that he cannot be taken otherwise than by killing him, the constable pursuing him will be justified in killing him; or a private person will in like manner be justified, if he can prove that the deceased was actually guilty of the felony. 2 *Hale*, 118, 119. But where the offence, for which the party is to be arrested, is a misdemeanor only, even a constable will not be justified in killing him, although he cannot otherwise be taken. *Id.* 117, unless, indeed, he assault the officer for the purpose of escaping from him, in which case, if the officer, in standing on his guard (for he need not retreat as in ordinary cases of *se defendendo*) kill him, this will not be felony. *Id.* 118. Where a party is arrested upon a charge or suspicion of crime, if the arrest be made by a constable, he should take him before a Justice of the Peace, as soon as it is possible for him to do so. See *Wright v. Court*, 4 *B. and C.* 596. And in the mean time he should keep him safely in his custody. 2 *Hale*, 120. And the same where the arrest is by a private person under a warrant. But if the arrest be by a private person without warrant, he may deliver the party to a constable, or he may take him to the common gaol, or before a Justice of the Peace. 1 *Hale*, 589. And the party

arrested should not be treated with any unnecessary harshness, beyond what is actually necessary for his safe custody: and, therefore, it has been holden, that a constable has no right to handcuff a person whom he has apprehended on a suspicion of felony, unless he have attempted to escape, or it be necessary to prevent him from escaping. *Wright v. Court. Supra.*

ARSON.

Arson or house-burning is *felony*. 1 Vict., c. 89: (*Callaghan*, vol. 1. p. 340.) See post, "Burning."

ASSAULT AND BATTERY.

AN ASSAULT is an attempt, or offer with force and violence, to do a corporal hurt to another, whether from malice or wantonness, as by striking at him with or without a weapon, though the party striking misses his aim; so, drawing a sword, throwing a bottle or glass, with intent to wound or strike, presenting a gun at a person at the distance to which the gun will carry; or pointing a pitchfork at a person within reach; holding up one's fist at him, in a threatening or insulting manner, or with such other circumstances as denote at the time an intention (coupled with a present ability,) of using actual violence against his person, will amount to an assault. 1 *Hawk.* c. 62, s. 1, 2.

A BATTERY is more than an attempt to do a corporal hurt to another; but any injury whatsoever, be it ever so small, being actually done to the person of a man, in an angry or revengeful, or rude or insolent manner, such as spitting in his face, or in any way touching him in anger, or violently jostling him out of the way, is a battery in the eye of the law. For the law cannot draw the line between different degrees of violence, and,

therefore, totally prohibits the first and lowest stage of it, every man's person being sacred, and no other having a right to meddle with it in any the slightest manner. It should be observed that every battery includes an assault. 1 *Russell on Crimes*, 751, (1843.)

It is said that in cases where there is no actual violence, there must, in order to constitute an assault, be the means of carrying the threat used into effect. If, therefore, a party be advancing in a threatening attitude, *e. g.*, with his fists clenched, to strike another, so that his blow would almost immediately have reached such person, and he then stopped, it is an assault in law, if his intent were to strike such person, though he was not near enough at the time to have struck him. By *Tindal, C. J. Stephens v. Myers*, 4 *C. and P.* 349. The injury need not be effected directly by the hand of the party. Thus there may be an assault by encouraging a dog to bite; by riding over a person with a horse; or by wilfully and violently driving a cart, &c., against the carriage of another person and thereby causing bodily injury to the person travelling in it. And it seems that it is not necessary that the assault should be immediate; as where a defendant threw a lighted squib into a market-place, which being tossed from hand to hand by different persons at last hit the plaintiff in the face and put out his eye, it was adjudged that this was actionable as an assault and battery. *Scott v. Shepherd*, 2 *Blac. Rep.* 892, by three Judges. But see contrary opinion of *Blackstone J. 3, Wils.* 403, *S. C.* And the same has been holden where a person pushed a drunken man against another and thereby hurt him. *Short v. Lovejoy, Bul. Ni. Pri.* 16. But if such person intended doing a right act, as to assist the drunken man, and in so doing a hurt ensued, he would not be answerable. *Id.*

Where a defendant put some cantharides into some coffee, in order that a female might take it, and she did take it, and was made ill by it, it was held to be an assault. *R. v. Button*, 8 *C. and P.* 660.

(It has been doubted by the learned editor of the last edition of Russell on Crimes, (1843,) whether this decision be correct, as there was no force, either directly or indirectly, used by the defendant, and the act which caused the injury was the act of the party taking the coffee; but it appears to me that the fraud practised, whereby resistance to taking the coffee was prevented, was sufficient to constitute this an assault; thus where a man had connection with a married woman, under pretence of being her husband, and under circumstances which caused her to suppose that he was her husband, it was an assault. *R. v. Williams*, 8 C. and P. 286. *R. v. Saunders*, *Id.* 265.)

There may be an assault also by exposing a person to the inclemency of the weather, as where a mistress exposed her servant. *R. v. Ridley*, 2. *Camp.* 650.

Taking indecent liberties with a girl, though she do not resist, is an assault if she does not consent; *R. v. Nichol*, *Russ. and Ry.* 130; *R. v. Rosinski*, *Ry. and Mood.* C. C. 19, S. C. 1 *Lew.* 11. But if she does consent it is no assault; attempting therefore to have connection with a girl under twelve years of age, if done with the girl's consent, is not an assault. *R. v. Meredith* 8 C. and P. 589; *R. v. Banks*, *ibid* 374; *R. v. Martin*, 9 C. and P. 213, 2 *Moo.* C. C. R. 123; See also 1 *Russell on Crimes*, 696, 753 (1843). In the first case above cited it was held that to support a charge of assault it must be proved that there was such an assault as could not be justified if an action were brought and leave and license pleaded.

An unlawful imprisonment is also an assault; for it is a wrong done to the person of a man, for which besides the private satisfaction given to the individual by action, the law also demands public vengeance, as it is a breach of the Queen's peace, a loss which the State sustains by the confinement of one of its members, and an infringement of the good order of society; 4 *Blac. Com.* 218. To constitute the injury of false imprison-

ment, there must be an unlawful detention of the person. With respect to the detention, it may be laid down that every confinement of the person, whether it be in a common prison, or in a private house, or by a forcible detaining in the public streets, will be sufficient. 3 *Blac. Com.* 127.

If one of two persons who are fighting, strike at the other and hit a third person unintentionally, this is a battery, and cannot be justified on the ground that it was accidental. *James v. Campbell*, 5. *C. and P.* 372.

In some cases force used against the person of another may be justified, and will not amount to an assault and battery. Thus, if an officer having a warrant against one who will not suffer himself to be arrested, beat or wound him *in the attempt to take him*; or if a parent, *in a reasonable manner*, chastise his child; or a schoolmaster his scholar; or if one confine a friend who is mad, and bind and beat him, &c., in such a manner as is proper in such circumstances; or if a man force a sword from one who offers to kill another therewith; or if a man gently lay his hands upon another, and thereby stay him from inciting a dog against a third person, no assault or battery will be committed by such acts. 1 *Russell on Crimes*, 755 (1843.) So if A. beat B. (without wounding him, or throwing at him a dangerous weapon), who is wrongfully endeavoring, with violence, to dispossess him of his lands, or of the goods, either of himself, or of any other person, which have been delivered to him to be kept, and will not desist upon A.'s laying his hands gently upon him, and disturbing him; or if a man beat, wound, or maim, one who is making an assault upon his own person, or that of his wife, parent, child, or master; or if a man fight with, or beat one who attempts to kill a stranger; in these cases also it seems that the party may justify the assault and battery. See 1 *Russell on Crimes*, 756, (1843.) But in all such cases the force used must be only so great as is necessary for the purpose of effecting

the object in view, and if there be an excess of violence the party will be guilty of an assault. If, therefore, a constable is preventing a breach of the peace, and any person stands in the way, with intent to prevent him from so doing, the constable is justified in taking such person into custody; but not in striking him. See *Levy v. Edwards*, 1 *C. and P.* 40.

An officer is entitled to the possession of the warrant under which he acts; and if he deliver it to the party against whom it is issued, and he refuse to re-deliver it, the officer may use so much force as is necessary to get it again. See *R. v. Milton*, *M. and Mal.* 107.

It should be observed, with respect to an assault by a man on a party endeavouring to dispossess him of his land, that where the injury is a mere breach of a close, in contemplation of law, the defendant cannot justify a battery without a request to depart; but it is otherwise where any actual violence is committed, as it is lawful in such case to oppose force to force; therefore if a person break down the gate, or come into a close, *vi et armis*, the owner need not request him to be gone, but may lay hands on him immediately; for it is but returning violence with violence. *Greene v. Goddard*, 2 *Salk.* 641. If a person enters another's house, with force and violence, the owner of the house may justify turning him out (using no more force than is necessary,) without a previous request to depart; but if the person enters quietly, the other party cannot justify turning him out without a previous request. *Tulley v. Read*, 1 *C. and P.* 6. So if one come forcibly, and take away another's goods, the owner may oppose him at once, for there is no time to make a request. But in general, unless there be violence in the trespass, a party should not, either in defence of his person, or his real or personal property, begin by striking the trespasser; but should request him to depart or desist, and if that is refused, should gently lay his hands upon him in the first instance, and not proceed with greater force than is

made necessary by resistance. *Weaver v. Bush*, 8 *T. R.* 78. Thus, where a Churchwarden justified taking off the hat of a person who wore it in Church, at the time of Divine Service, the plea stated that he first requested the plaintiff to be uncovered, and that the plaintiff refused. *Hawe v. Plomer*, 1 *Saund.* 13. And in all cases where the force used is justified, as not amounting to an assault, under the particular circumstances of the case, it must appear that it was not greater than was reasonably necessary to accomplish the lawful purpose intended to be effected; therefore, though an offer to strike the defendant, first made by the prosecutor, is a sufficient assault by him to justify the defendant in striking, without waiting till the prosecutor had actually struck him first; yet even a prior assault will not justify a battery, if such battery be extreme, and it will be matter of evidence whether the retaliation by the defendant were excessive, and out of all proportion to the necessity or provocation received. See 1 *Russell on Crimes*, 758, (1843.)

By Statute 9 W. IV. c. 31, s. 27, *Callaghan*, vol. 1. p. 327, in common assaults and batteries two Justices of the Peace may summarily adjudicate, and order the offender, if convicted before them, to pay a penalty not exceeding (with costs if ordered) five pounds. And if the penalty be not paid immediately, or within such period as the said Justices shall at the time of conviction appoint, they are to commit the offender to the common gaol or house of correction, to be imprisoned for any time not exceeding two calendar months, unless such fine and costs be sooner paid. But they are to dismiss the charge in the following cases.

1st.—IF THEY DEEM THE OFFENCE NOT PROVED.

2d.—IF THEY CONCEIVE THE ASSAULT OR BATTERY TO HAVE BEEN JUSTIFIED.

3d.—OR SO TRIFLING AS NOT TO DESERVE ANY PUNISHMENT.

And if the charge be dismissed they are forthwith to

give a certificate of discharge to the party complained against.

Justices are to abstain from adjudication if they conceive the assault to be a fit subject for a prosecution by indictment, and on the following occasions their power of decision is taken away.

1. WHERE THE ASSAULT IS TO COMMIT FELONY.
2. WHERE ANY QUESTION SHALL ARISE IN A CASE OF ASSAULT AS TO THE TITLE TO ANY LANDS, &c., OR ANY INTEREST THEREON.
3. OR AS TO ANY BANKRUPTCY OR INSOLVENCY.
4. OR ANY EXECUTION UNDER THE PROCESS OF ANY COURT OF JUSTICE. *Id.* s. 29.

ASSAULTS ON any SEAMAN, KEELMAN, OR CASTER, to prevent him from working, and assaults with intent to obstruct the buying or selling of grain or its free passage, are punishable before two Magistrates with imprisonment and hard labour in the common gaol or house of correction, for any term not exceeding three calendar months. *Id.* s. 26.

PROCEEDINGS IN THE CASE OF SUMMARY CONVICTION IN COMMON ASSAULTS.—The charge must be made on oath; it may be made to one Justice of the Peace, and he may thereupon issue his summons for the party's attendance before *two* Justices. 9 G. IV. c. 31, s. 33. If the party attend, two or more Justices may then proceed to hear and determine the complaint. If he do not attend, then, "upon proof of the due service of the summons upon such person, the Justices may either proceed to hear and determine the case *ex parte*, or may issue their warrant for apprehending such person, and bringing him before them; or the Justice before whom the charge shall be made, may, if he shall so think fit, issue such warrant in the first instance, without any previous summons. *Id.* The prosecution must be commenced (that is, the charge must be made) within three calendar months after the commission of the offence. *Id.* s. 34.

AS TO AGGRAVATED ASSAULTS.—Aggravated assaults are such as from their nature and the circumstances attending them amount to a more serious offence against the good order and well-being of society, than mere common assaults. Thus assaults with intent to commit murder, or to do some grievous bodily harm (See post “Murder” attempts to), assaults with intent to commit rape, &c., and assaults with intent to commit any felony, also assaults occurring in the obstruction of officers of Justice executing any process, and assaults in effecting a rescue, or in the obstruction of revenue officers, are all indictable offences and invariably punished severely. So also are assaults committed in pursuance of any conspiracy to raise the rate of wages. 9 G. IV. c. 31, s. 25. *Callaghan*, vol. 1, p. 327.

ASSAULTS ON MAGISTRATES, Officers, and others lawfully authorised, on account of the exercise of their duty, when endeavouring to preserve vessels in distress, or effects, wrecks, &c., are punishable with transportation for seven years, or imprisonment, with or without hard labour. *Id.* s. 24.

Assaults in some instances become aggravated, from the place in which they are committed, as assaults in a Church, or Church-yard, or Chapel; and assaults in Courts of Justice, &c.

Assaults aggravated by the mere degree of violence, do not differ in kind from common assaults, unless they amount to some felonious act, as stabbing, maiming, or wounding. See *Dick. Quar. Sess.* 261.

FORMS.

FORM OF COMMITMENT FOR ASSAULT AND BATTERY.

on the day of , in the year of our Lord one thousand
eight hundred and thirty-eight, at , in the said Colony, did assault and
beat one C. D. And you the said keeper, &c.

COMMITMENT FOR ASSAULTING CONSTABLES OR REVENUE OFFICERS.

on the day of , in the year of our Lord one thousand
eight hundred and at in the said Colony, in and upon one C. D.,

(a constable" [or] "an officer of excise," [or] "an officer of the customs), did make an assault, and him the said C. D. did beat, he the said C. D. being then in the execution of his duty as such (constable," [or] "officer of excise," or, "officer of the customs) as aforesaid: against the form of the statute in that case made and provided. And you the said keeper," &c.

See Stat. 9 Geo. IV. c. 31, s. 25.—Callaghan, vol. 1, p. 326.

COMMITMENT FOR ASSAULT WITH INTENT TO COMMIT FELONY.

on the day of , in the year of our Lord one thousand eight hundred and , at , in the said Colony, unlawfully did assault one C. D. with intent" (here state the felony generally): "against the form of the statute in that case made and provided. And you the said keeper," &c.

See Stat. 9 Geo. IV. c. 31, s. 25.—Callaghan, vol 1, p. 326.

WARRANT FOR AN ASSAULT.

New South Wales } To , Constable, and others whom it
to Wit. } may concern.

Whereas complaint hath been made before me one of Her Majesty's Justices in and for the said Colony, on the oath of N. M., of in the said Colony, that C. D., of in the said Colony, did violently assault and beat him the said N. M.

These are therefore in Her Majesty's name to command you to apprehend the said C. D. and him to bring before me to answer the said complaint and be further dealt with according to law. Herein fail not.

Given under my hand and seal this day of

FORM OF COMMITMENT FOR AN ASSAULT UPON PEACE OR REVENUE OFFICERS.

on at unlawfully did assault and beat one C. D., being then and there a (peace officer, to wit, a constable of the said parish" [or] "revenue officer, to wit, an officer of Her Majesty's Excise), and in the due execution of his duty as such (constable [or] revenue officer) then and there being: Against the form of the Statute in such case made and provided. And you the said Keeper, &c." If the assault were upon a person who was acting in aid of the constable, &c., say "he the said C. D. then and there acting in aid of one E. F., a peace officer, &c." (as above.)

FORM OF COMMITMENT FOR ASSAULT TO PREVENT APPREHENSION.

on at unlawfully did assault and beat one C. D., with intent thereby, then and there to resist and prevent the lawful apprehension ([or] detainer) of him the said A. B., for (having feloniously stolen the goods of one J. K.): Against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR ASSAULT, IN PURSUANCE OF CONSPIRACY TO RAISE WAGES.

on at unlawfully did assault one A. B., in pursuance of a conspiracy between him the said C. D., and others, to raise the rate of their wages, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF CONVICTION.

New South Wales, } Be it remembered, that on at C. D.
to Wit. } is convicted before us, E. F. and G. H., two of Her Majesty's Justices of the Peace for the said Colony, for that he the said C. D., (on at did unlawfully assault and beat one A. B.,) and we the said Justices adjudge the said C. D. for his said offence, to forfeit and pay the sum of (five pounds,) and also to pay the sum of for costs; and in default of immediate payment of the said sums, to be imprisoned in the for the space of unless the said sums shall be sooner paid, (or if time be given for the payment of the penalty, &c.,) we order that the said sums shall be paid by the said C. D., on or before the day of , and we direct that the said sum of (five pounds) shall be paid to J. K., of aforesaid, in which the said offence was committed, to be by him applied, according to the directions of the Statute in that case made and provided: And we order that the said sum of for costs, shall be paid to the said A. B. Given under our hands the day and year first above mentioned.

E. F.
G. H.

FORM OF CERTIFICATE OF COMPLAINT HAVING BEEN DISMISSED.

New South Wales }
to Wit. }
We, A. B. and B. C., two of Her Majesty's Justices of the Peace for the Colony of New South Wales, do hereby certify, that on the day of , in the year at the Police Office (or Court) at in the said Colony, R. O., of in the said Colony, was brought before us the said Justices, and charged with having unlawfully assaulted and beaten J. K. on the day of at in the said Colony, and that we the said Justices dismissed the said complaint upon the hearing thereof.
Given under our hands and seals the day of

A. B.
B. C.

FORM OF CONVICTION FOR ASSAULTING A CONSTABLE, &c.

New South Wales }
to Wit. }
Be it remembered that on at C. D., is convicted before us, E. F. and G. H., two of Her Majesty's Justices of the Peace for the said Colony, for that he the said C. D. did on at unlawfully assault, (&c. as the case may be) one C. D., he the said C. D. then and there being a special constable, duly appointed in that behalf, and in the due execution of his office as such special constable, then and there being: Against the form of the Statute in such case made and provided. And we do adjudge that the said C.

D. shall for the said offence forfeit the sum of _____ and shall pay the same (immediately [or] on [or] before the _____ day _____) to T. W., to be by him applied according to the directions of the Statute in that case made and provided. Given under our hands the day and year first above written.

E. F.
G. H.

FORM OF CONVICTION FOR AN ASSAULT TO PREVENT SEAMEN OR KEELMEN, &c., FROM WORKING.

Be it remembered that on _____ at _____ C. D. is convicted before us E. F. and G. H. Esquires, two of Her Majesty's Justices of the Peace for the said Colony, for that he the said C. D. on _____ at _____ unlawfully did beat one A. B., a keelman, (or as the case may be) with intent thereby then and there to deter and hinder him the said A. B. from working at or exercising his said lawful trade, business, and occupation of keelman as aforesaid, against the form of the Statute in such case made and provided; And we the said Justices adjudge the said C. D. for his said offence to be imprisoned in the _____ and there kept to hard labour for the space of _____. Given under our hands the day and year first above mentioned.

E. F.
G. H.

FORM OF CONVICTION FOR AN ASSAULT TO PREVENT THE FREE SALE OR CONVEYANCE OF CORN, &c.

for that he the said C. D., on _____ at _____ unlawfully did beat one A. B., with intent thereby then and there to deter and hinder him the said A. B. from selling (or buying) certain wheat in the market of _____ in the said Colony. [Or] for that he the said C. D., on _____ at _____ unlawfully did beat one A. B., (he the said A. B. then and there having the care and charge of certain wheat, whilst on its way to the market town of _____ in the Colony aforesaid,) with intent thereby then and there to stop the conveyance of the said wheat.

ASSIZES.

“All Justices of the Peace of the County or District, where the Judges hold their Assizes, are bound to be present. In default thereof, the Judges may fine them for neglect.” 4 *Bl. Com.* 276.

ATTEMPTS TO COMMIT CRIMES.

The general principle with regard to *attempts* seems to be that those which are obviously crimes of themselves, by their alarm to persons, their injury to pro-

perty, their shock to the feelings, or the like; notwithstanding that the final object of the criminal has not been accomplished, are *punishable*, though not so highly punishable as the actual commission of the crime intended.

ATTEMPTS TO MURDER, MAIM, &c.

(SEE ALSO "MURDER.")

ATTEMPT TO MURDER BY POISON.—"Whosoever shall administer to, or cause to be taken by, any person, any poison or other destructive thing," with intent to commit murder, shall be guilty of felony, and suffer death. 1 Vic. c. 85, s. 2. To bring a case within this section, it must appear that the poison was actually taken into the stomach. See *R. v. Cadman, Ry. and M.* 114, and *per Park, J. in R. v. Harley, 4 Carr. and P.* 369. It is not sufficient that it should be merely offered or tendered to the party, or left for him in order that he might take it. See *R. v. Lewis, 6 C. and P.* 161. *R. v. Harley, Supra.* If the evidence leave this doubtful, the offender may be committed for an attempt to poison, as shall presently be mentioned. And "Whosoever shall attempt to administer to any person any poison or other destructive thing" with intent to commit murder, shall, although no bodily injury be effected, be guilty of felony, and shall be transported for life, or for not less than fifteen years, or be imprisoned with or without hard labour for not more than three years. 1 Vic. c. 85, s. 3. *Callaghan*, vol. 1, p. 329.

ATTEMPT TO MURDER BY STABBING, SHOOTING, &c.—Whosoever shall "stab, cut, or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life" with intent to murder, shall be guilty of felony and suffer death. 1 Vic. c. 85, s. 2. A contused wound caused by a piece of metal

or the like, not used for cutting, is not a cutting within the Act, *R. v. Adams*, 1 *Russ.* 597, but it is a wound within the meaning of it, and where such an instrument, though not commonly used for the purpose, was capable of cutting, and actually did give the prosecutor an incised wound, it was holden to be a cut within the meaning of the Act. *R. v. Hayward*, *R. and Ry.* 78. *R. v. Atkinson*, *Id.* 104. But a wound within the meaning of the Act, may be inflicted with a hammer or bludgeon, or other blunt instrument, if it break the skin and draw blood. *R. v. Withers*, *Ry. and M.* 294. *R. v. Payne*, 4 *C. and P.* 558. *R. v. Wood and M'Mahon*, *Ry. and M.* 278. So knocking a man down, kicking him in the face with great violence, breaking the skin, and drawing blood, has been holden to be a wounding. *R. v. Shadbolt*, 5 *C. and P.* 504. The violence with which the act is committed is to be considered more with reference to the intent with which it is done. But it is immaterial in what part of the body the wound is given, if it otherwise appear to have been given with the intent mentioned in the Statute. See *R. v. Griffith*, 1 *C. and P.* 298.

And whosoever 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" with intent to murder, shall, although no bodily injury shall be effected, be guilty of felony, and be transported for life or not less than 15 years, or be imprisoned with or without hard labour, for not more than three years. 1 *Vic. c.* 85, s. 3. Where the prisoner had but the barrel of a percussion gun detached from the stock and lock, but by striking the percussion cap which was on the nipple of the barrel, he fired it at and shot B, this was holden to be a shooting within the meaning of the Act. *R. v. Coates*, 6 *C. and P.* 394. This clause of the Statute however relates more particularly to shooting without wounding, shooting and wounding being within the second section ante. As to the attempt to shoot it has been holden that

the gun or pistol at the time the trigger is drawn, &c., must be in a state to effect the injury intended, and therefore where the pistol, though loaded, was not primed (*R. v. Carr, R. and Ry.* 337), or where although loaded and primed, yet the touch-hole was plugged up so that it could not be fired (*R. v. Harris, 5 C. and P.* 159), it was holden not to be a case within the Act.

ATTEMPT TO MURDER, BY ATTEMPTING TO DROWN, SUFFOCATE, &c.—Whosoever shall “attempt to drown, suffocate, or strangle any person,” with intent to murder, shall, although no bodily injury shall be effected, be guilty of felony, and be transported for life, or for not less than fifteen years; or be imprisoned with or without hard labour for not more than three years. 1 Vic. c. 85, s. 3.

ATTEMPT TO DO BODILY INJURY, &c., BY SHOOTING, STABBING, &c.—“Whosoever unlawfully and maliciously 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, or shall stab, cut, or wound any person,” with intent to maim, disfigure, or disable such person, or to do him some other grievous bodily harm; or with intent to resist, or prevent, the lawful apprehension, or detainer of any person, shall be guilty of felony, and be transported for life, or for not less than fifteen years, or be imprisoned with or without hard labour, for not more than three years. 1 Vic. c. 85, s. 4. Where a pistol loaded with powder, and the wadding only was fired at a woman, and so close to her, and in such a direction that it was capable of doing her grievous bodily harm, the Court held it to be within the Statute. *R. v. Kitchen, R. and Ry.* 95. As to the attempt to shoot, and as to stabbing, cutting, and wounding, see ante. A wound inflicted by biting, has been holden not to be within the Statute, that being intended to apply only to a wounding by some instrument, and not to a wounding by the teeth or hands, or the like. *R. v. Harris, 7 C. and P.* 446.

As to the intent it may be inferred from the conduct or expressions of the party, before or at the time of committing the act, or afterwards, from the nature of the wound itself; but the latter is not in all cases to be depended upon as a test of the intent, for the wound may be slight, and yet the intent of the party inflicting it evidently such as is mentioned in the Statute. *R. v. Hunt, Russ.* 93. Cutting a female child's private parts, for the purpose of enlarging them, has been holden to be a grievous bodily harm, within the meaning of the Statute, and to have been done with that intent, although the hymen was not injured, and the wound not deep or dangerous. *R. v. Cox, R. and Ry.* 362. As to what apprehension is lawful, that subject has been already treated of under the title "Arrest;" and see *R. v. Hems, 7 C. and P.* 312. *R. v. Dyson, 1 Stark.*, 246. *R. v. Ricketts, 3 Camp.*, 68. *R. v. Taylor, 7 C. and P.* 266. *R. v. Whalley, Id.* 245. Malice is also made an ingredient in this offence by the words of the Statute. But this must not be understood to mean a preconceived malice against the individual, which, if death had ensued, would have rendered the offence murder; but that kind of malice which may be inferred from the party's purposely committing the offence, with any one of the intents stated in the Statute, and not in the necessary defence of his person or property. See *Arch. Cr. St.* 30, 31. Also if a man shoot at or cut A., imagining he is doing so to B., and out of malice to B., he may be stated to have done so with intent to maim or disable A., and the facts will be considered as proving that statement. *R. v. Hunt, Ry. and M.* 93.

DOING BODILY INJURY BY EXPLOSIVE SUBSTANCES OR CORROSIVE LIQUIDS.—"Whosoever shall unlawfully and maliciously 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 shall cast or throw upon or otherwise apply to any person any corrosive fluid or other destructive matter 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, and whereby in any of the cases aforesaid any person shall be burnt, maimed, disfigured, or disabled, or receive some other grievous bodily harm, "shall be guilty of felony, and be transported for life or not less than 15 years, or imprisoned with or without hard labour for not more than 3 years." 1 Vic. c. 85, s. 5.

This offence of sending explosive substances to persons for the purpose of doing them some bodily injury by the explosion, was holden not to be an attempt to discharge loaded arms, within the repealed clause of *Stat. 9 G. IV. c. 31*, on that subject, see *R. v. Mountford*, 7 C. and P. 242: nor is it within the above clause of this Statute, unless the party be actually burnt or otherwise injured by it; but it would evidently be indictable as a misdemeanor at common law, as an attempt to commit a felony. If sent to A. and it come into the hands of B. and injure him it will be an offence within the Act: and it may be stated to have been sent to B. with intent to injure him. See *R. v. Hunt*, *ante*.

AS TO THROWING CORROSIVE FLUIDS, &c.—The doing so with intent to spoil or burn the clothes of any person was formerly made felony by *Stat. 6 G. I. c. 23, s. 11* (now repealed by *Stat. 7 G. IV. c. 64, s. 32*); and on that Statute it was holden that if the Act were done for the purpose of injuring the person, and not the clothes of the party, it was not a case within the meaning of it. *R. v. Williams*, 1 Leach, 529. And as under this Act the offence must be committed with intent to injure the person, not the clothes of the party, if a man intending to spoil the clothes only, also, in doing so, injure the person of the party, it is probable that it would not be deemed an offence within this Act, unless it appear clearly that the necessary or very probable consequence of attempting thus to injure the clothes, would be attended with an injury to the person also. If, on the

other hand, it appear clearly that the offender intended to injure the person, but succeeded only to the extent of injuring the clothes, it is probable that he might be indicted for it, as for an attempt to commit a felony, which is a misdemeanor at common law. See 1 *Arch. J. P.* 141.

ATTEMPTS TO COMMIT OTHER OFFENCES. — Every attempt to commit a felony, not specially provided for and made punishable by some particular Statute, is punishable as a misdemeanor at common law, whether committed with force or otherwise. See *R. v. Higgins*, 2 *East.* 5 ; and in like manner every attempt to commit a misdemeanor either at common law or created by Statute, is itself a misdemeanor at common law. *R. v. —. R. and Ry.* 107, *per Le Blanc. J. R. v. Butler*, 6 *C. and P.* 368, *per Patteson. J. R. v. Roderick*, 7 *C. and P.* 795. *R. v. Ball*, 1 *C. and M.* 249. The punishment is by fine or imprisonment or both. 1 *Arch. J. P.* 140.

FORMS.

FORM OF COMMITMENT FOR ADMINISTERING POISON, &c.

on at did feloniously administer to one A. B. one ounce weight of a certain poison called white arsenic, (or did feloniously attempt to administer to, &c., as above, and stating the particulars of the attempt) with intent then and there, and thereby feloniously, wilfully, and of his malice aforethought the said A. B. to poison, kill, and murder: against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR STABBING, &c.

on at did feloniously stab and wound one A. B. in and upon the right side of the belly, and other parts of the belly, (or) cause unto one A. B. a certain bodily injury dangerous to life, To wit. , by then and there feloniously (here state the act done), with intent then and there, and thereby feloniously, wilfully, and of his malice aforethought, the said A. B. to kill and murder: against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR SHOOTING AT.

on at with a certain gun, loaded with powder and divers leaden shot, feloniously did shoot at and against one A. B., with intent then and

46 ATTEMPTS TO MURDER, MAIM, ETC.—FORMS.

thereby feloniously, wilfully, and of his malice aforethought the said A. B. to kill and murder: Against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR ATTEMPTING TO SHOOT.

on at certain loaded arms, to wit: a pistol, then and there loaded with powder and one leaden bullet, at and against one A. B., feloniously did present, point and level, and then and there by drawing the trigger of the said pistol (or as the case may be) feloniously did attempt to discharge the same at and against the said A. B. with intent (&c., as in the last form.)

FORM OF COMMITMENT FOR ATTEMPTING TO DROWN, &c.

on at feloniously did attempt, to drown, ([or] suffocate, or strangle) one A. B. by then and there (&c., stating how) with intent then and there and thereby feloniously, wilfully, and of his malice aforethought the said A. B. to kill and murder: Against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR ATTEMPT TO DO BODILY INJURY, &c.

The Commitment as that for stabbing, shooting, &c. ante, but stating the intent thus:—with intent then and there and thereby [to maim the said A. B. or to disfigure, or disable, (or) to do some grievous bodily harm to the said A. B., (or) to resist and prevent the lawful apprehension and detainer of him the said C. D. (or) of one E. F. (as the case may be), against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR SENDING EXPLOSIVE SUBSTANCES, &c.

on at unlawfully, maliciously, and feloniously did send to one A. B. (two drachms weight) of a certain explosive substance (here describing the thing sent) with intent then and there, and thereby to burn (or as the case may be) him the said A. B. and whereby the said A. B. was then and there grievously burnt: against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR THROWING CORROSIVE FLUIDS, &c.

on at unlawfully, maliciously and feloniously did cast and throw upon one A. B. half a pint of a certain corrosive fluid and destructive matter called oil of vitriol, with intent then and there, and thereby to burn (or as the case may be) him the said A. B., and whereby he the said A. B. was then and there grievously burnt: against the form of the Statute in such case made and provided. And you the said keeper, &c.

ATTORNEY-GENERAL.

By the General New South Wales Act (9 G. IV. c. 83, s. 5), the Attorney-General is invested with the functions of a Grand Jury, in respect to finding bills, or more properly informations. As this important discretion is now exercised by him, all Depositions, Examinations, Confessions, &c., are to be forwarded to the Attorney-General's Office. In his Office are also filed all proceedings on Coroner's Inquests, &c.

ATTORNEY.

In all cases of summary conviction the party charged may make his defence and have all witnesses examined and cross-examined by Counsel or Attorney. 4 Vic. No. 27, s. 2. *Callaghan*, vol. 1, p. 347. But upon examinations for felony or misdemeanor, with a view of committing the party for trial, it is otherwise. It was decided (in the case of the *King v. Borrow*, 3 *Barn and Ald.* 432), that an Attorney has no right to be present during the investigation of a charge of felony before a Justice.

It was also decided (in the case of *Cox, gent., one, &c., v. Coleridge, Esq.*, 1 *Barn and Cress*, 37) that a prisoner on his examination before a Magistrate on a charge of felony, is not entitled as a matter of *right* to have any person skilled in the law present to advocate for him.

The rule which seems to be now established by the decided cases is thus: An Attorney has no *right* to interfere as advocate or otherwise for or against a prisoner charged before a Magistrate with felony or indictable misdemeanor, indeed he has no right even to be present, for this being merely a preliminary proceeding, to ascertain whether there are sufficient grounds for sending the prisoner to his trial before a Jury, it is similar to the inquiry before the

Grand Jury, and no person has a right to interfere, nor is the Justices' room upon such an occasion deemed an open Court. *Cox v. Coleridge*, 1 *Barn and C.* 37. For the same reason an Attorney has no right to act for the prosecutor in making a charge of felony, or indictable misdemeanor, against a person not in custody for the purpose of obtaining a warrant against him. *R. v. Borron*, 3 *B. and Ald.* 43. But where Justices proceed upon an information in a case where they may summarily convict, their room is then to be deemed an open Court, and an Attorney as well as the rest of the public has a right to be present. *Danbury v. Cooper*, 10 *Barn and C.* 237. But although he has now the right to act for the defendant in such a case, (*Supra. pl. 1.*) yet he still has no right to act as advocate for the complainant unless the Justices consent to it. *Collier v. Hicks*, 2 *Barn and Adolph.* 663. He may advise and make suggestions to his client, but he cannot without leave interfere in the course of the proceedings. *Id.* In all these cases, however, the Justices may, and frequently do allow Attorneys to act for the prisoner or prosecutor, and even sometimes allow a case to stand over until the prisoner's Attorney is in attendance. This must, however, be considered a matter of courtesy, not of right. But considering the benefits which frequently arise from the communication of facts as they transpire, and the jealousy with which private enquiries are naturally regarded, the most experienced Magistrates refrain from exerting this discretionary power of exclusion, except when the necessity is clear.

AUCTION.—(AUCTIONEERS.)

See Act of Council 9 G. IV. No. 13. *Callaghan*, vol. 2, p. 726. "An Act to regulate the licensing of Auctioneers, and the collection of duties on properties

sold by auction." (A new bill is now under the consideration of the Council. See Appendix.)

AWARD OR ARBITRATION.

"Criminal cases cannot be referred to arbitration; but minor offences, such as assaults, libel, conspiracy, nuisance, &c., and all other cases where the party has a remedy by action, as well as by indictment, may be referred. But if an *indictment* has been preferred, the leave of the Court must be obtained to sanction a reference to arbitration."

BAIL.

7 G. IV. c. 64, *Callaghan*, vol. 1, p. 343, amended and extended by 10 Vict. No. 6. *Callaghan*, *Sup.* 2, p. 1626. Bail is the delivery of a person out of custody upon the undertaking of one* or more persons that the person so delivered shall appear, at a day limited, to answer and be justified by law. 1 *Hale*, Sum. 96.

In all cases of misdemeanor one Justice may take bail.

In cases of felony two Justices (one being the committing Magistrate) may admit the offender to bail, even although he may have confessed the fact, or the Justices shall think that the circumstances raise a strong presumption of guilt. 10 Vict. No. 6.

Before this Act was passed, if a prisoner were charged with felony, and there were either positive and credible evidence of the fact, or such evidence as if not explained or contradicted raised a strong presumption of guilt, Magistrates could not bail him.

PERSONAL RECOGNIZANCE.—By section 2, of above

* Two are in general required, but on a Habeas Corpus the Supreme Court require four. *R. v. Shaw*, 6 D. and R.

Act, (10 Vict., No. 6,) it is enacted, "That whenever any person, charged with any felony or misdemeanor, shall be in custody on any such charge, and shall be brought before any Justice of the Peace for examination, and such Justice shall think fit to remand any such person for further examination, it shall be lawful for any two or more Justices of the Peace to suffer any such person to go at large, upon his personal recognizance, (with or without sureties,) in such amount as such Justices shall in their discretion think fit; and every such recognizance shall be conditioned for the appearance of such person before the same or some other Justices of the Peace for further examination, at a day and place to be therein mentioned; and the said Justices, or any other two or more Justices of the Peace shall be at liberty, from time to time, to enlarge every such recognizance to such further time as they shall appoint; and every such recognizance which shall not be enlarged, shall be discharged without fee or reward, when the party shall have appeared according to the condition thereof."

This section is a most important one, as it gives Magistrates the power of admitting prisoners to bail on their own recognizance only, or with sureties in case they wish to remand them for any length of time for re-examination.

There is no fixed amount for which the bail should become bound in their recognizance. It is at the discretion of the Justices, to be regulated according to the rank and affluence of the prisoner, and the nature and enormity of the offence. *2 Hawk. c. 15.*

"For a capital offence the amount should not be less than *forty pounds*. Every housekeeper possessed of a sufficient property, to answer the required responsibility, may be bail. The Justices may examine on oath the party proposed as bail as to the value of his property."
3 M. and S. 1.

"A married woman cannot be admitted as adequate bail (*2 Hawk, c. 15*), neither can a minor. It is said

that Justices may take, as a substitute for bail, money *in deposit.*" *Cro. Car.* 446.

"By the declaration of rights, *excessive bail* should never be required."

"Upon the recognizance being taken, if the prisoner be then in attendance, in custody or otherwise, he may be discharged; but if he be in prison, the Justices, on application, issue their warrant, called *liberate*, to the Gaoler."

"The recognizance should always be transmitted with the depositions to the Attorney-General's Office." See title *Post* "*Recognizance.*"

"A Justice *refusing* bail, where a party ought to be bailed, is liable to an action and indictment. A Justice taking bail where he ought not, or taking insufficient bail, and the party does not appear, may be struck out of the Commission."

"Caution should be observed, that under the pretence of demanding sufficient sureties, the Magistrates do not require bail to such an amount, as is equivalent to an absolute refusal of bail, and in its consequences leads to a protracted imprisonment."

"*Power of Bail.* The bail have a right to seize the person of the principal at any time (even on a Sunday) or at any place (6 *Mod.* 231.), because the party bailed is considered in law as in custody of his sureties. If they fear his escape and take him before the Justice or Court (and by whom he may be committed), the bail may be discharged from their recognizance. But he is at liberty in such case to find new sureties." 2 *Hale*, 124. 7.

ACKNOWLEDGING BAIL in the name of another not privy or consenting thereto—*Felony.* 11 G. IV. and 1 W. IV. c. 66, s. 11. *Callaghan*, vol. 1, p. 321.

"It seems that whenever Justices of Peace have jurisdiction of a crime, they may bail the person indicted before them of such crime, upon such circumstances for which other Courts may bail the person so

indicted before them, for that it seems to be a good general rule, that so far as any persons are Judges of any crimes, so far they have power of bailing a person indicted before them of such crime." 2 *Hawk.* c. 15, s. 54.

BANKS.—(SEA, RIVER, &C.)

1. Unlawfully and maliciously to break or cut down any sea-bank, or sea-wall, or the bank or wall of any river, canal or marsh, whereby lands may be overflowed or damaged or in danger of being so.—*Felony.* 7 and 8 G. IV. c. 30, s. 12.

2. Unlawfully and maliciously to throw down, level, or destroy any lock, sluice, floodgate, or other work on a navigable river or canal.—*Felony. Id.*

For Forms of Commitment see post "Malicious Injuries."

BAKERS.

(See POST "BREAD.")

BASTARD.

A BASTARD is a person begotten and born out of lawful matrimony. The child of a woman who has never been married is a bastard. The child of a woman whose marriage is unlawful and void is a bastard; as for instance, where the person to whom she was married had at the same time another wife living, in such case the children of the second marriage are bastards, whether born during the lifetime or after the death of the first wife. A child born of a widow at such a time after her husband's death

that the husband could not have been the father of it, is a bastard; but if born within the time of gestation, viz., 40 weeks after the husband's death, it is otherwise. On the other hand, if the woman be married at the time the child is born, the child will be deemed legitimate, although it were begotten before marriage, and although there be every reason to believe that the husband was not the father of it. *Co. Lit.* 244; and *a fortiori*, where the woman was married during the whole time of gestation. In this latter case, however, if it can be proved that the husband could not have been the father of it, as for instance, that he had not access to his wife, during the time when by the laws of nature he might have been the father, the child will be deemed a bastard. See *Head v. Head*, 1 *Sim. and St.* 150. 1 *Turn. and Russ.* 138. *R. v. Luffe*, 8 *East*, 193. *Pendrel v. Pendrel*, 2 *Str.* 925. *R. v. St. Bride's*, 1 *Str.* 51. *R. v. Bedall*, 2 *Str.* 1076. But access will be presumed, unless the contrary be plainly proved; and if access be proved, or presumed sexual connexion between the parties will also be presumed, unless the impossibility of it by reason of the impotency of the husband, or otherwise, be clearly established. See *Cope v. Cope*, 1 *Moody and R.* 269. *Lomax v. Holmden*, 2 *Str.* 946.

Where sexual intercourse between the husband and wife may be presumed, proof of her adultery with other men will not affect the legitimacy of her offspring. See *Morris v. Davies*, 3 *C. and P.* 215, 427. *Bury v. Philpott*, 2 *Mylne and K.* 349.

If a woman, who is divorced from her husband *à mensà et thoro*, have a child, it must be presumed to be a bastard; for the Court will presume a due obedience to the sentence of the Court, until the contrary be proved. *St. George's v. St. Margaret's, Westminster*, 1 *Salk.* 123. But if she live separate from her husband without such sentence, access shall be presumed until the contrary be proved. *Id. Archbold's Justice of the Peace*, vol. 1, p. 150.

A father is bound to support his illegitimate child, though the Justices before whom the case may come may make an order for the mother, if able to contribute to the support. If the mother alone have ability to support, the Justices may make an order in respect of her alone. See 4 Vic. No. 5, s. 8. *Callaghan*, vol. 2, p. 1305.

No man shall be taken to be the father of any illegitimate child upon the oath of the mother *only*. *Id.*

Justices may bind an illegitimate child apprentice. *Id.* s. 12. See "*Apprentice.*"

BATHING.

It is an established principle that whatever outrages public decency and is injurious to public morals is a misdemeanor at common law. 4 *Bl. Com.* 65. It is therefore indictable for a person to bathe in an indecent manner near a highway or place publicly resorted to, or in any part of a public river. *B. J.*

The Sydney Police Act (sec. 21) declares it to be unlawful to bathe in any part of Sydney Cove, or near any public wharf or quay in Darling Harbour, between the hours of six in the morning and eight o'clock in the evening.

BENEVOLENT SOCIETY.

(OF SYDNEY, 3 W. 4. *CALLAGHAN*, VOL. 2, P. 1185.)

(OF HAWKESBURY, 4 VIC. NO. 3. *CALLAGHAN*, VOL. 2, P. 1200.)

Inmate wasting goods or materials, or taking any away without consent, may be sent to the common gaol, there to be kept on bread and water for any time not exceeding one month, by two Justices of the Peace, s. 5.

BIGAMY.

BIGAMY.—*Felony.* 9 G. IV. c. 31, s. 22. *Callaghan*, vol. 1, p. 324.

The first wife or husband cannot be a witness. The second may *when* the first marriage is proved.

FORM OF COMMITMENT FOR BIGAMY.

on at feloniously did marry and take to wife one E. F., C. B., his former wife, to whom the said A. B. was previously married, being then alive; against the form of the Statute in such case made and provided. And you the said Keeper, &c.

BLASPHEMY AND PROFANENESS.

“All Blasphemies against God, as denying his being or providence; and all contumelious reproaches of Jesus Christ; and all profane scoffing at the Holy Scriptures, or exposing any part of them to contempt or ridicule; Impostors in Religion, as falsely pretending to extraordinary Commissions from God, and terrifying or abusing the people with false denunciation of Judgment; are punishable by fine and imprisonment; and also such corporal punishment as to the Court shall seem meet, according to the heinousness of the crime.”
1 *E. P. C.* 3.

“It is not lawful even to publish a correct account of the proceedings in a Court of Justice, if such account contain matter of a scandalous, blasphemous, or indecent nature.” *R. v. Carlisle*, 3 *B. and A.* 167.

FORM OF COMMITMENT FOR A BLASPHEMOUS LIBEL.

on at unlawfully and wilfully did compose, print and publish a certain scandalous, impious, blasphemous, and profane libel (of and concerning the Holy Scriptures and the Christian religion.) And you the said Keeper, &c.

BOAT (STEALING FROM).

(See Post “SHIP.”)

BOATMEN—(LICENSED).

Every boatman desirous to ply for hire in Sydney Cove or Darling Harbour shall register his name and place of abode at the Police Office, and receive a badge, which he shall wear on the left breast of his coat or jacket, for which he shall pay five shillings. Boatmen plying without such license, or, being licensed, without such badge, shall forfeit ten shillings for every such offence. 4 W. IV. No. 7, s. 58. *Callaghan*, vol. 2, p. 913.

Licensed boatmen to have their name and place of abode painted in letters one inch long on the inside of the gunwale of the stern sheets of their boats, and their number on the inside of the gunwale of the fore sheets, or forfeit one pound. Any person not licensed, plying with a boat numbered &c. as aforesaid, shall forfeit one pound. *Id.* s. 59.

Justices to determine on complaints as to fares, &c. *Id.* s. 61.

Any unlicensed person wearing badge as licensed, and any licensed boatman lending his badge, &c., to forfeit one pound. *Id.* s. 62.

Any licensed carter, porter, or boatman, found guilty of dishonest or improper conduct, shall be deprived of his license. *Id.* s. 63.

 BOUNDARY.

Defacing or injuring boundary mark of the City of Sydney, penalty not exceeding forty shillings. 6 Vict. No. 3, s. 10. *Callaghan*, vol. 1, p. 259. The same penalty for defacing or injuring boundary mark of the Town of Melbourne. 6 Vict. No. 7, s. 10. *Callaghan*, vol. 1, p. 227.

BRANDS—(ON CATTLE.)

By Act of Council, 5 W. IV. No. 1, s. 9, 10. *Callaghan*, vol. 2, p. 736, it is enacted, "That if any person shall cut out, burn, or otherwise destroy or deface, any brand which shall have been upon any skin, or shall be in possession of any such skin from which the brand shall have been cut, or burnt, or otherwise destroyed or defaced, without being able to give a satisfactory account thereof, every such person shall, upon conviction of every such offence, forfeit and pay a fine of ten pounds."

"That every tanner, or other person, purchasing a raw hide or skin, from which any brand shall have been cut or burnt out, or destroyed, or otherwise defaced, shall upon conviction of any such offence forfeit and pay a fine of ten pounds."

BREAD.

(BAKERS, MILLERS, &c.)

See Act of Council 6 W. IV. No. 1. *Callaghan*, vol. 1, p. 24.—"An Act to regulate the making and sale of Bread and to prevent the adulteration thereof, and of Meal and Flour."

Proceedings before Justices under this Act are to be regulated by the 5 W. IV. No. 22. See post "Summary Jurisdiction."

All complaints must be made within forty-eight hours next after the offence has been committed. See s. 16.

BREAD OF WHAT, AND HOW, MADE.—Bread for sale may be made of flour or meal of wheat, barley, rye, oats, buck wheat, Indian corn, peas, beans, rice, or potatoes, or any of them; and with any common salt, pure water, eggs, milk, barm, leaven, potatoe or other yeast, and mixed in such proportions as may be thought fit. 6 W. IV. No. 1, s. 1. All bread to be well made; and no

alum or mixture in which alum is an ingredient, or any other mixture or ingredient whatsoever other than before mentioned, may be put into or in anywise used in making bread for sale, on penalty not more than ten pounds nor less than forty shillings. *Id.* s. 2.

WEIGHT.—Making for sale, selling, or offering for sale, bread of other denomination or size (except fancy bread,) than the standard weight of one, two, or four pounds: penalty—not less than forty shillings, nor more than five pounds. *Id.* s. 3.

Selling or offering for sale, bread deficient in weight, (except fancy bread,) baked within twenty-four hours next preceding sale, or offer for sale, (proof thereof to be on the baker or seller,) the same penalty. *Id.*

STANDARD WHEATEN BREAD.—Bread made of the flour of wheat, without any mixture or division, the whole produce of the grain, the bran or hull only excepted, and two-thirds the weight of the wheat. *Id.* s. 4.

HOUSEHOLD WHEATEN BREAD.—Wheaten bread, made of any meal or flour, of an inferior quality to the flour used for *Standard wheaten bread*, to be marked with a large Roman H, or penalty ten shillings for every pound of such bread made for sale, or sold, or exposed for sale. *Id.* s. 5, 7.

MIXED BREAD.—Bread made, wholly or partially of the meal or flour of any other sort of corn or grain than wheat, or of the meal or flour of any peas, beans, or potatoes, to be marked with a large Roman M, or penalty the same as above. *Id.* s. 6, 7.

SUNDAY.—No baker to make or bake any bread, rolls, or cakes, at any time on a Sunday, or penalty not more than three pounds, nor less than twenty shillings. *Id.* s. 8.

Bread, rolls, and cakes may be sold in the bake-house and shop, before ten in the forenoon, and between one and two in the afternoon; and meats, puddings, pies, tarts, or victuals may be baked and delivered before two o'clock in the afternoon; but not otherwise, or penalty

the same as above. The same penalty is imposed on any person bringing to, or taking from, a bakehouse any meat, pie, tart, or victuals, during the time of Divine Service. Baker may prepare dough, &c., for the following day's baking; but not otherwise to exercise his trade, or penalty as above. *Id.* s. 8.

SCALES AND WEIGHTS TO BE KEPT BY BAKERS, AND CARRIED IN THEIR CARTS.—Bakers and sellers of bread are required, under a penalty of not more than five pounds, nor less than one, to have proper weights and scales in their shops and in their carts, and to weigh any bread when required to do so by a customer. *Id.* s. 9, 10.

SEARCH MAY BE MADE FOR LIGHT BREAD, &c.—Any Justice of the Peace, or any duly appointed examiner of weights and measures, when directed by any Justice, or any constable authorised by a warrant of a Justice, may at seasonable times in the daytime, enter any baker's shop, bakehouse, &c., and search for, view, weigh, and try all bread there, baked within twenty-four hours previously, (the proof of the time of baking to lie on the baker or seller.) Penalty—five shillings for every ounce deficient in weight, on the average of the whole weight of all loaves of the same denomination, and the bread may be seized, unless it be proved on the oath of any respectable housekeeper that the deficiency arose from accident, or through a confederacy to injure the party accused. *Id.* s. 11.

ADULTERATING MEAL OR FLOUR.—The 12th section imposes a penalty of not more than twenty nor less than five pounds for putting any ingredient or mixture whatever, not being the real and genuine produce of the corn or grain into any corn, meal, or flour, ground, dressed, bolted, or manufactured for sale; and the like penalty for selling flour of one sort of corn as the flour of another. Materials used for cleansing corn or grain from smut, weavils, &c., are excepted.

SEARCH may be made by a Justice or by his warrant for adulterated bread, meal, flour, &c., and if any be

found it may be seized and disposed of as the Justice may direct. *Id.* s. 13. And every miller, baker, &c., in whose possession ingredients for adulteration are found (if the same be adjudged to be there for the purpose of adulteration) shall pay for the first offence any sum not exceeding forty shillings, for the second any sum not exceeding five pounds, and ten pounds for every subsequent offence, unless it be made to appear that the ingredients for adulteration were deposited there without his knowledge or privity. *Id.* s. 14.

OBSTRUCTING SEARCH.—The 15th section imposes a penalty of any sum not exceeding ten pounds on any person wilfully obstructing or hindering, opposing or resisting, any search or seizure by authority of the Act.

FORM OF CONVICTION FOR ADULTERATING BREAD. (Section 2.)

did use a certain ingredient called _____ in certain bread, which he the said A. B. then and there made for sale: against the form of the Statute in such case made and provided. And I do adjudge, &c.

FORM OF CONVICTION FOR SELLING BREAD OTHERWISE THAN BY WEIGHT. (Section 3.)

did sell to one C. D., a certain loaf of bread, otherwise than by weight, that is to say, for the sum of _____ for the said loaf, the said loaf not being then and there such bread as is usually sold, under the denomination of French or fancy bread or rolls: against the form of the Statute in such case made and provided. And I do adjudge, &c.

FORM OF CONVICTION FOR SELLING MIXED BREAD, NOT BEING MARKED. (Section 6.)

for that he the said A. B. on _____ at _____ being then and there a baker, then and there did expose for sale certain bread, to wit, ten loaves of bread, of the weight of (forty) pounds, made partly of (rye meal), the said loaves and each and every of them, not being then and there marked with the letter M.: against the form of the Statute in such case made and provided. And I do adjudge him to pay and forfeit for the same the sum of _____ for every pound, being in the whole the sum of _____ . Given, &c.

FORM OF CONVICTION FOR BAKING, &c., ON SUNDAY.
(Section 8.)

For that he the said A. B. on the Lord's day, commonly called Sunday, to wit on _____ at _____ did bake _____ loaves of bread (or as the case may be) against the form of the Statute in such case made and provided. And I do adjudge &c.

**FORM OF CONVICTION FOR NOT HAVING WEIGHTS AND SCALES
IN SHOP. (Section 9.)**

did not fix or cause to be fixed in his shop there any beam and scales, or other sufficient balance, and did not then and there provide and keep for his use proper beam and scales or balance (or as the case may be) against the form of the Statute in such case made and provided. And I do adjudge, &c.

**FORM OF CONVICTION FOR ADULTERATING FLOUR.
(Section 12.)**

For that the said A. B. on at did expose for sale certain flour with a certain ingredient called mixed therewith (or as the case may be) against the form of the Statute in that case made and provided. And I do adjudge, &c.

**FORM OF CONVICTION FOR HAVING ON PREMISES INGREDIENTS
FOR ADULTERATION. (Section 14.)**

did have in his bakehouse there a certain ingredient called and which after due examination, I hereby adjudge to have been deposited there for the purpose of being used in adulterating bread (or as the case may be) against the form of the Statute in such case made and provided. And I do adjudge, &c.

**FORM OF CONVICTION FOR OBSTRUCTING EXAMINATION, &c.
(Section 15.)**

did obstruct and hinder one C. D. in making search in the bakehouse of him the said A. B. for mixtures and ingredients, other than are allowed by the Statute in such case made and provided, and which then and there were intended for the adulteration of bread (or as the case may be) against the form of the statute in such case made and provided. And I do adjudge, &c.

BREWERS.

BREWERS are to have their names, and a description of their premises and of the utensils used in brewing, registered in the office of the Clerk of the Peace, at the nearest Court of Quarter Sessions, under a penalty of thirty pounds, if not so registered; to be recovered in a summary way, before two or more Justices of the Peace. 9 Vict. No. 26, s. 57, 58. *Callaghan, Sup.* p. 1569.

BRIBERY.

BRIBERY is the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity. 1 *Hawk.* c. 67, s. 2. It is a misdemeanor at common law, punishable, both as to the party receiving, and as to the party giving, or even offering the bribe, with fine or imprisonment, or both. *Id.*

Bribery at elections for Members of Council, by any person not the agent of any candidate or member, *misdemeanor.* 6 Vict. No. 16, s. 52. *Callaghan*, vol. 1, p. 489.

BRIDGES (PUBLIC.)

Unlawfully and maliciously pulling down, or in anywise destroying any public bridge, or doing any injury with intent, and so as thereby to render such bridge or any part thereof, dangerous or impassable, *felony.* 7 and 8 G. IV. c. 30, s. 13. *Callaghan*, vol. 1, p. 331.

EVIDENCE.—The bridge must be shown to be a *public bridge*, and the injury to it done by the prisoner, and his wilful intention to injure or destroy it. The *local situation* of the bridge must be accurately proved, or there may be a variance between the indictment and evidence. The Magistrate should therefore be cautious in taking down the proper description and name of the place where the bridge lies.

FORM OF COMMITMENT.

on the day of in the year of our Lord at in
the said Colony, a certain public bridge there situate, unlawfully, maliciously,
and feloniously did pull down and destroy: against the form of the Statute in
that case made and provided. And you the said Keeper, &c.

BUILDINGS IN SYDNEY.

(SEE ACTS OF COUNCIL, 8 VIC. NO. 6. CALLAGHAN, VOL. 1, P. 59. 2 VIC. NO. 25. ID. P. 89, AND 9 VIC. NO. 5. ID. SUP. 1500.)

The provisions of the above Acts are very numerous, and it is deemed unnecessary to set them out at length in this work. Notice is to be given to the City Surveyor of all intended buildings, either by the master workman, or the person building.

The last Act, 9 Vic. No. 5, s. 3, gives jurisdiction in a summary way to Justices of the Peace for the City over all fines, forfeitures, and penalties, which may be incurred under the above mentioned Acts. The informer to be a competent witness, s. 5.

BURGLARY AND HOUSEBREAKING.

(SEE 1 VIC. C. 86, (CALLAGHAN, VOL. 1, P. 313), AND 7 AND 8, G. IV. C. 29. ID. P. 296.)

BURGLARY is the breaking and entering the mansion of another in the night with intent to commit some felony, within the same, whether such felonious intent be executed or not. 1 *Hale, Sum.* And the night time as relates to burglary, commences at nine o'clock in the evening, and concludes at six in the morning. 1 Vict. c. 86, s. 4. Breaking *out* of a dwelling house, having entered with a felonious intent in the night, is also burglary. 7 and 8 G. IV c. 29, s. 11. To constitute burglary, there must be a breaking, but it may be by actual force or by construction of law. 2 *Russ. on Crimes*, 786. (1843.)

BURGLARY AND ASSAULT.—Whosoever shall burglariously break and enter a dwelling-house, and assault any person therein, with intent to murder him, or shall stab, cut, wound, beat, or strike him, shall be guilty of felony: (*death*). 1 Vict. c. 86, s. 2.

HOUSEBREAKING.—Breaking and entering a dwelling-house, and stealing therein—*felony*. 7 & 8 G. IV. c. 29, s. 12, 13.

Breaking and entering other buildings, within the same curtilage with a dwelling-house, (but not being privileged as a part thereof), and stealing therein—*felony*. *Id.* s. 14.

Breaking and entering a shop, warehouse, or counting-house, and stealing therein—*felony*. *Id.* s. 15.

FORMS.

WARRANT TO APPREHEND A BURGLAR, WHEN HE ACTUALLY STOLE GOODS.

Colony of
New South Wales } To the Constable of
to Wit. }
Forasmuch as A. T. of in the Colony aforesaid, yeoman, hath this day made information and complaint, upon oath, before J. P., Esq., one of Her Majesty's Justices of the Peace of said Colony, that yesterday, in the night, the dwelling-house of the said A. T., at aforesaid, was feloniously and burglariously broken open, and (mention what) of the value of of the goods and chattels of him, the said A. T. were feloniously and burglariously stolen, taken, and carried away from thence; and that he hath just cause to suspect, and doth suspect, that A. O., of late of (Labourer), the said felony and burglary did commit.
These are, therefore, in Her said Majesty's name, to command you, that immediately upon sight hereof you do apprehend the said A. T. (Conclude as usual.)

COMMITMENT FOR A LIKE OFFENCE.

Commencement as usual.
on, &c. at, &c., about the hour in the night, at in the the dwelling-house of A. B., there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said A. B., in the said dwelling-house, then and there being, then and there feloniously and burglariously to steal, take, and carry away, and then and there in the said dwelling-house of the goods and chattels of the said A. B., then and there feloniously did steal, take, and carry away. And you, the said Keeper. (Conclude as usual.)

COMMITMENT FOR BREAKING OUT OF A HOUSE IN THE NIGHT.

Commencement as usual.
on at being in the dwelling-house of A. B., there situate of the goods and chattels of the said A. B., in the said dwelling-house, then and

there being found, then and there, in the said dwelling-house, feloniously did steal, take, and carry away; and that the said C. D. so being in the said dwelling-house as aforesaid, and having committed the felony aforesaid on the day and year aforesaid, about the hour of twelve in the night, of the same day, at in and burglariously did break out of the said against the form of the statute in that case made and provided. (Conclude as usual.)

FORM OF COMMITMENT FOR BURGLARY AND ASSAULT.

and that the said A. B. then and there in the said dwelling-house in the night time as aforesaid, feloniously did (assault one E. F. in the said dwelling-house, then and there being with intent in so doing, him the said E. F. then and there and thereby feloniously, wilfully, and of his malice aforethought to kill and murder; (or) stab, cut, and wound, one E. F. in the said dwelling-house then and there being;) against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR HOUSEBREAKING—BREAKING AND ENTERING A DWELLING-HOUSE.

on at the dwelling-house of C. D. there situate, feloniously did break and enter; and (two pewter dishes) of the goods and chattels of the said C. D., in the said dwelling-house then and there being, feloniously did steal, take and carry away against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR BREAKING AND ENTERING A BUILDING WITHIN THE CURTILAGE.

on at a certain building of C. D., there situate, feloniously did break and enter (the said building being then within the curtilage of the dwelling house of the said C. D. there situate, and by the said C. D. then and there occupied therewith, and there being then and there no communication between the said building, and the said dwelling house, either immediate or by means of any covered and inclosed passage leading from the one to the other.) And the said A. B. then and there in the said building (one silver watch) of the goods and chattels of the said C. D. feloniously did steal, take, and carry away against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR BREAKING AND ENTERING A SHOP, WAREHOUSE, &c.

on at the shop of C. D. there situate, feloniously did break and enter, and (two silk handkerchiefs) of the value of two shillings, of the goods and chattels of the said C. D., then and there in the said shop, feloniously did steal, take, and carry away, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

BURNING.—(ARSON, &c.)

Unlawfully and maliciously setting fire to a dwelling-house any person being therein, *felony—Death*. 1 Vict. c. 89, s. 2. *Callaghan*, vol. 1, p. 340.

Setting fire to a church or chapel, or to a house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hopoast, barn, granary, or building used in trade or manufactures, *felony*. *Id.* s. 3.

Setting fire to a mine of coal or cannel coal, *felony*. *Id.* s. 9.

Setting fire to a stack of corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, or wood, *felony*. *Id.* s. 10.

Setting fire to a crop of corn, grain or pulse, or to any part of a wood, coppice, or plantation, or to any heath, gorze, furze, or fern, growing, *felony*. 7 and 8 G. IV. c. 30, s. 17. *Callaghan*, vol. 1, p. 334.

Maliciously setting fire to or otherwise destroying a ship or vessel, with intent to murder, or whereby the life of any person shall be endangered, *felony—Death*. 1 Vict. c. 89, s. 4.

Maliciously setting fire to, casting away or otherwise destroying a ship or vessel with intent to prejudice the owner of the ship, or goods, or the underwriters, *felony*. *Id.* s. 6.

A Justice of the Peace, by virtue of his Commission, may bind over all persons to keep the peace who threaten to fire houses ; and for want of surety he may commit them to prison until they find security.

FORM OF COMMITMENT FOR BURNING A CHURCH OR CHAPEL.

on at unlawfully, maliciously, and feloniously did set fire to a certain (Church) there situate, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR BURNING A DWELLING HOUSE ANY PERSON BEING THEREIN.

on at unlawfully, maliciously, and feloniously

did set fire to a certain dwelling-house of C. D. there situate, one E. F. being at the time of the committing of the said felony in the said dwelling-house; against the form of the Statute in such case made and provided. And you the said Keeper, &c.

**FORM OF COMMITMENT FOR BURNING HOUSE, OUTHOUSE,
MANUFACTORY, &c.**

on at unlawfully, maliciously, and feloniously, did set fire to a certain (dwelling-house) of C. D. there situate, with intent then and there [to injure the said C. D. (or) to defraud a certain Insurance Company called]; against the form of the Statute in such case made and provided. And you the said Keeper, &c.

**FORM OF COMMITMENT FOR BURNING SHIPS, WHEREBY LIFE
IS ENDANGERED, &c.**

on at unlawfully, maliciously, and feloniously did (set fire to) a certain ship called the the property of C. D. (upon the high seas) then and there being (with intent in so doing one E. F. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder, or whereby the life of one E. F. was then and there greatly endangered; against the form of the Statute in such case made and provided. And you the said Keeper, &c.

**FORM OF COMMITMENT FOR BURNING SHIPS WITH INTENT
TO DESTROY THEM.**

on at unlawfully, maliciously, and feloniously did (set fire to) a certain ship called the the property of C. D. (upon the high seas then and there being) with intent thereby then and there to prejudice (the said C. D. the owner thereof, [or] one E. F., the owner of certain goods on board thereof, [or] one G. H. and I. K., who had before then severally underwritten a certain policy of insurance upon .) Against the form of the Statute in such case made and provided. And you the said Keeper, &c.

**FORM OF COMMITMENT FOR BURNING STACKS OF CORN, HAY,
WOOD, &c.**

on at unlawfully, maliciously, and feloniously did set fire to a certain stack of (wheat), the property of C. D. then and there being: against the form of the Statute in such case made and provided. And you the said Keeper, &c.

**FORM OF COMMITMENT FOR BURNING CROPS OF CORN, OR
PULSE, TREES, FURZE, &c.**

on at unlawfully, maliciously, and feloniously did set fire to a certain (crop of wheat) the property of C. D., then and there standing and growing: against the form of the Statute in such case made and provided. And you the said Keeper, &c.

BUSHRANGER.

See Act of Council 5 W. IV. No. 9, 1834 (known as the Bushrangers' Act). *Callaghan*, vol 1, p. 505, continued by various Acts (except as to section 6, relating to time of passing and executing sentence of death, repealed by 1 Vict. No. 2), and extended by 9 Vict. No. 31, 1846, to 31st August, 1848, with a proviso that no person shall be removed to Sydney to be examined, unless apprehended within the Police District of Sydney, or unless there be strong grounds (by information on oath) for suspecting such person to be a transported felon or offender illegally at large.

Any persons suspected to be transported felons unlawfully at large may be apprehended by any constable or any free person whatever, and taken before a Justice of the Peace, such persons must prove themselves free or be detained, s. 1, 2.

Any person found with *fire-arms* or any *weapon* under suspicious circumstances, may be apprehended and taken before a Justice of the Peace, by any constable or any free person whatever. Such person, if a transported felon or offender, unlawfully at large, and unable to prove that such fire arms or weapon was intended to be used for a lawful purpose—*guilty of felony*; and may be transported to some penal settlement for term of his natural life. See 3 W. IV. No. 3, s. 12. *Callaghan*, vol. 2, p. 697. "And every person (so found) who shall be proved to be free, and shall not show to the satisfaction of such Justice that the fire arms or other weapons found in his possession were intended for a legal or innocent purpose, shall be committed on a charge of misdemeanor, and may be imprisoned, on conviction before the Supreme Court or Court of Quarter Sessions, for any time not exceeding three years," s. 3.

Any person suspected of having fire arms or other weapons concealed about him, may be searched by any constable, or any free person whatever; and if fire arms,

&c.; found on him, he may be taken before nearest Justice, s. 4.

Section 5, authorises any Justice having credible information that any convict illegally at large, or a robber or housebreaker is concealed or harboured in any house or place in the district in which he may be or reside, to grant a *search warrant* to search such house or place; but such house or place *must be* or be *reputed to be within the county or the district* that the Justice so granting it shall be then resident in, and it must so appear on the face of such warrant. It can be executed in *the night* as well as the day, and if the constables to whom it is directed cannot otherwise gain admittance, they can break open the doors; but to make this lawful, they must *first demand* admittance and be refused, or not allowed to enter. When admittance is obtained, the constables have power to apprehend all persons therein, whom they may *strongly suspect* to be convicts illegally at large, or robbers or housebreakers, whether *free or not*.

They can seize all fire-arms or other weapons found in such house, and also all goods therein which they shall suspect to be stolen; but THIS only in case they *first find* in the house, either a convict illegally at large, or a robber or housebreaker

They shall also apprehend all persons found in or about any *such house or place*, whom they shall suspect to have concealed or harboured any such robber or housebreaker; but they are not authorised by this section to apprehend any such person under the circumstances therein mentioned, that they suspect to have concealed or harboured a *convict illegally at large*, unless they also have reason to suspect *that he committed a robbery or broke into a house*.

All persons, fire arms and goods, found and seized under the foregoing circumstances, are to be brought *immediately* by the constables before the Magistrate, that he may examine them, and deal with them as the law directs.

Persons may be called on to assist constables and others in executing this law. Penalty for refusing—a sum not exceeding five pounds over and above other punishment, s. 7.

FORM OF WARRANT TO SEARCH FOR AND APPREHEND A
BUSHRANGER.

County of _____ or)
District of _____ in) To A. B.
the Colony of New South (name him or them) Constable of
Wales.

Whereas it appears to me, J. P., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, and being in (or residing in) the said County (or the said District) in the said Colony, having credible information, that B. C. (if the name be known, state it) a transported felon or offender, unlawfully at large, or "robber," or "a housebreaker" (as the case may be, if his name is not known, say) whose name is not yet known, is concealed in the dwelling house, tenement, or place, of E. F., or in the dwelling house of G. H., or of I. K., or of K. L., &c. (describe the house by its situation where the owner is not known) situate at _____ within or reputed to be within the said County of _____ or "the said District of"

"These are, therefore, to authorise and require you, or either of you, with necessary and proper assistants, to enter into the said dwelling house (or dwelling houses, tenements, or places aforesaid, or any of them), and them diligently search for the said B. C. (the party suspected), the said dwelling house (or each of the houses, tenements, or other places as aforesaid.) And if on such search the said B. C. (the party suspected) or any other person or persons be found, whom you or any of you shall have strong grounds for suspecting to be a transported felon or offender, unlawfully at large (or a "robber" or "housebreaker") that you shall apprehend him or them. And also seize and detain all fire arms and other weapons which you shall find in any such house, tenements, or places as aforesaid, wherein the said B. C. (the party suspected), or any transported felon or offender unlawfully at large (or a robber or housebreaker) shall be found, and all goods whatsoever, which you or any of you shall have reasonable ground for suspecting and believing to be stolen. And also to apprehend all persons found in or about the said dwelling house (or any of the said houses, tenements, or places as aforesaid) whom you or any of you may have good and reasonable grounds for suspecting and believing to have concealed or harboured any such robber or housebreaker. And all such persons, arms, and goods, so apprehended, found and seized as aforesaid, you are hereby required forthwith to bring before me for examination, and to be further dealt with according to law.

Given under my hand and seal this _____ day of _____ in the year _____ (Seal.)

J.P.

BUTCHER.

(SEE "SLAUGHTERING." POST.)

Butcher selling or killing victual on the Sabbath, shall forfeit 6s. 8d. 3 Ch. 1, c. 1. *Callaghan*, vol. 2, p. 1206.

Butcher or other person slaughtering, or exhibiting for sale, sheep infected with scab or catarrh, to forfeit not less than five shillings, nor more than twenty pounds, and the convicting Justices to have power to order the destruction of the infected meat. 10 Vict., No. 8, s. 8. (1846).

CARRIERS.

Carriers travelling on a Sunday, with horse or waggon, &c., shall forfeit 20s. 3 Ch. 1, c. 1. *Callaghan*, vol. 2, p. 1205.

CARTERS.—(IN SYDNEY.)

Carters plying for hire, (in the City of Sydney,) to be registered at the Police Office, and receive a license, for which two shillings and sixpence shall be paid. Carters plying without such license, to forfeit for every such offence one pound. 4 W. IV. No. 7, s. 54. *Callaghan*, vol. 2, p. 912. Justices (for the City of Sydney,) to appoint proper places where licensed carters may stand, and ply for hire. Carters plying at any other place shall forfeit for every such offence ten shillings. *Id.* s. 55.

CARTERS TO HAVE THEIR NAMES, &C. PAINTED ON THEIR CARTS.—The name, place of abode, number of license, and the words "LICENSED CART" or "DRAY" (as the case may be) to be painted in letters one inch long upon the right or off side of such cart or dray, or penalty one pound. Persons not licensed plying a cart or dray whereon the words "LICENSED CART" (or) "DRAY" are painted, to forfeit one pound. *Id.* s. 56.

Justices at Quarter Sessions in April and October, to regulate the rates and fares to be charged by licensed carters, &c., and also the distances they shall be liable

to go. Carter charging higher rates than so fixed, shall forfeit one pound; or refusing to carry a good and sufficient load, or refusing to hire his cart or dray when thereto required, shall forfeit a sum not exceeding one pound nor less than five shillings. *Id.* s. 60.

COMPLAINTS, &c.—Justices (of Sydney) to determine complaints as to distances licensed carters, porters, or boatmen, may be entitled to charge; costs to be paid by party against whom decision may be given. *Id.* s. 61.

Any licensed carter, porter, or boatman, found guilty of dishonest or improper conduct shall be deprived of his license. *Id.* s. 63.

CATTLE.

(See "IMPOUNDING" and "SLAUGHTERING.")

Cattle-stealing, *felony*; 7 and 8 G. IV. c. 29, s. 25. *Callaghan*, vol. 1, p. 300. Transportation for life substituted for punishment of death for this offence, 2 and 3 W. IV. c. 62. *Callaghan*, vol. 1, p. 312.

Killing cattle with intent to steal carcase or skin, *felony. Id.*

Maliciously killing, maiming, or wounding cattle, *felony. Id.* s. 16.

It has been decided that asses (*R. and M.* 3) and pigs (*R. and R.* 77) are included under this Act.

FORM OF COMMITMENT FOR KILLING CATTLE WITH INTENT TO STEAL.

on at one ewe (or as the case may be—"horse, mare, gelding, colt, filly, bull, cow, ox, heifer, calf, ram, ewe, sheep, [or] lamb") of the goods and chattels of C. D., wilfully and feloniously did kill with intent feloniously to steal, take, and carry away the carcase (or "the skin," or "a certain part of the carcase, that is to say [the inward fat]) of the said (ewe): against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR STEALING CATTLE.

on at one gelding (or as the case may be—"horse, mare, gelding, colt, filly, bull, cow, ox, heifer, calf, ram, ewe, sheep, [or] lamb") of the

goods and chattels of C. D., feloniously did steal, take, and carry away : against the form of the Statute in such case made and provided. And you the said Keeper, &c.

CERTIORARI.

A *Certiorari* is a writ issuing out of the Supreme Court, directed in the Queen's name to the Judges, Justices, or Officers of inferior Courts, commanding them to *certify*, or return the records of a cause, depending before them (Com. Dig.) So necessary has this writ been considered for the furtherance of justice, that it *cannot be taken away*, but by the express words of a Statute or Act of Council. *Cowp.* 523.

When this writ issues, and is delivered to the inferior Court, for removing any proceedings, it *supersedes* the jurisdiction of any inferior Court, and renders all subsequent proceedings of the inferior Court *illegal*, unless the record be again sent back. *Dick Q. S.* 630.

It may be granted to remove convictions from individual Magistrates, as well as proceedings from the Quarter Sessions. The Justices are bound to obey this writ, on its production, even though they may suspect it to have been issued irregularly. *Id.*

A *Certiorari* does not lie to remove any but *judicial acts* ; and even if Justices should exceed their authority, the remedy is not by means of this writ. *Id.*

By Statute 13 G. II. c. 18, s. 5—

“No writ of *Certiorari* shall be granted to remove any conviction or other proceedings had before any Justice of the Peace or Quarter Sessions, unless applied for within six months after such proceedings be had.”

And it is necessary that the Justice or Justices should have, at least, *six days' notice*, to shew cause against the issuing of the writ, if they think fit.

The Justice, or other person to whom the writ is directed, must make his return. The record itself, or

the tenor of it, according to the direction of the writ, must be returned, and *that* without any extraneous matter or explanation. *Dick. Q. S.* 638. If the writ is not complied with, a rule issues for the return, and on disobedience, an *attachment*. 1 *East*, 298.

It has been held, that it is necessary to make the return on parchment. But, it is presumed, that the Judges of the Supreme Court would not deem this absolutely necessary; but it should be under *seal*. *Hawk*, b. 2, c. 27, s. 65.

The proper mode of making the return, is to endorse on the back of the writ as follows :

“ *The Execution of this writ appears in a certain Schedule hereunto annexed ;*” and then to send the Schedule, on a distinct piece of parchment, annex it to the record, and transmit them together.

FORM OF RETURN FROM A SINGLE JUSTICE.

Colony of New South Wales,	}	I (A. B.) one of the Justices assigned to keep the Peace within the said Colony, and also to hear and determine to wit,
		divers felonies, trespasses, and misdemeanors in the same committed by virtue of this writ to me delivered, do, under my seal, return to Her Majesty's Supreme Court of New South Wales the conviction (or as the case may be) of which mention is made in the same writ, together with all matters touching the same. In witness whereof I, the said A. B., have to these presents set my seal. Given at in said Colony, the day of in the year, &c.

CHAIRMAN OF QUARTER SESSIONS— (ELECTION OF.)

The Chairman of the Quarter Sessions is elected annually by the Justices of the Peace. The mode of election is pointed out by 3 Vict. No. 10. (*Callaghan*, vol. 2, p. 708. Justices of the Peace are required to attend at Petty Sessions (except those held in the district of Port Phillip or other district where Chairman is appointed by the Governor) between twelve and four o'clock on the first Monday in September, and there

declare in writing (see form annexed to the Act) which of the several Justices of the Peace for the Colony they severally and respectively desire to have appointed such Chairman for the ensuing year. By this Act any Justice of the Peace for the Colony is qualified to be elected Chairman ; but it is usual to elect a barrister.

CHALLENGE TO FIGHT.

(MISDEMEANOR.)

It is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge. 1 *Hawk.* c. 63, s. 3 ; or even barely to provoke another to send a challenge or to fight, by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight, &c. *R. v. Phillips*, 6 *East.* 464. *R. v. Rice*, 3 *East.* 581. This offence is punishable by fine or imprisonment, or both. See *Archbold's J. P.*, vol. 1, p. 215.

It is also a misdemeanor at common law, punishable in like manner to provoke a man to any other breach of the peace, either by letter or otherwise. *Id.*

Provocation, however great, is no excuse or justification on the part of the defendant. *R. v. Rice*, 3 *East.* 581.

FORM OF COMMITMENT FOR A CHALLENGE TO FIGHT.

on the day of , in the year of our Lord one thousand eight hundred and , at , in the said Colony, wickedly, willingly, and maliciously did write, send, and deliver, to one C. D., a certain letter and paper writing containing a challenge to fight a duel with and against him the said A. B. And you the said Keeper, &c.

Misdemeanor at Common Law.

FORM OF COMMITMENT FOR PROVOKING A MAN TO SEND A CHALLENGE.

on the day of , in the year of our Lord one thousand eight hundred and at in the said Colony, wickedly, wilfully, and

maliciously did utter, pronounce, declare, and say to and in the presence and hearing of one C. D., certain provoking and scandalous words, with intent to instigate, excite, and provoke the said C. D. to fight a duel with and against him the said A. B. And you the said Keeper," &c.

CHEAT.

I. CHEATS AND FRAUDS AT COMMON LAW.

The fraudulent obtaining the property of another, by any deceitful and illegal practice or token (short of felony,) *which affects or may affect the public—misdemeanor.* See 2 *Russell on Crimes*, 275, (1843.)

The making use of a false instrument, in order to pervert the course of justice. *R. v. Mawbey*, 6 *T. R.* 619, 635. *Omealy v. Newell*, 8 *East.* 364. The selling of unwholesome provisions. 4 *Black. Com.* 162, 2 *East. P. C. c.* 18, s. 4, p. 821. *R. v. Dixon*, 3 *M. and S.* 11. (In this case it was holden by Lord Ellenborough to be an indictable offence for a baker to sell bread containing alum, in a shape which renders it noxious, although he gave directions to his servants to mix it up in a manner which would have rendered it harmless.)

Using false weights or measures, *Pinckney's case*, 2 *East, P. C. c.* 18, s. 3, p. 820. *Young's case*, 3 *T. R.* 104. Using false dice, *Leesen's case* (though this is punishable under 9 Anne, c. 14). A case is reported (*Groenvelt's case*, 1697. 1 *Ld. Rayan*, 213) where the Court of King's Bench held that the *mala praxis* of a physician is a great misdemeanor and offence at common law (whether it be for curiosity and experiment or by neglect).

It is said to have been resolved by all the Judges that writers of *false news* are indictable and punishable: and that probably at this day the fabrication of news likely to produce any public detriment would be considered as criminal. 2 *Russell on Crimes*, 278. See also *Stark on Lib.* 546. *Hale Sum.* 132, *et per Scroggs, C. J. R. v. Harris*, 7 *St. Tri.* by *Howell*, 930.

Conspiracies for the purpose of cheating or defrauding are indictable offences at common law. See *Mackarty and Fordenborough's case*, 2 *Lord Raym.*, 1184, 2 *East P. C. c.* 18, s. 1, p. 824. See also *R. v. Orbell*, 6 *Mod.* 42, cited in the note to 1 *Hawk, P. C. c.* 71, s. 1, where a person was convicted of a charge of having run a foot race fraudulently and with a view to cheat a third person, by a previous understanding with the running competitor to win.

II.—OBTAINING MONEY, &c., BY FALSE PRETENCES:—

See 7 and 8 G. IV. c. 29, s. 53. *Callaghan*, vol. 1, p. 306: Obtaining by false pretence any chattels, money, or valuable security, with intent to cheat or defraud any person—*misdemeanor*.

Under this Act frauds of a private nature are punishable.

FORM OF COMMITMENT. (Under the 7 & 8 G. IV. c. 29, s. 53.)

on at unlawfully did falsely pretend to one C. D., that (here set out the pretence) by means of which said false pretence, the said A. B., then and there, unlawfully did obtain from the said C. D. of the goods and chattels of him the said C. D., with intent then and there to cheat and defraud the said C. D. of the same, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

CHILD STEALING.

1. Stealing any child under the age of ten years, with intent to deprive the parent or other person having lawful possession of the child—*felony*. 9 G. IV. c. 31, s. 21. *Callaghan*, vol. 1, p. 326.

2. Stealing any child under the age of ten years, with intent to steal any article on the person of such child—*felony*. *Id.*

3. Receiving or harbouring such child, knowing it to have been stolen—*felony*. *Id.*

This statute does not extend to persons taking their illegitimate children, nor to such as have a right to the possession of the child in question.

FORM OF COMMITMENT FOR CHILD STEALING.

on the day of in the year of our Lord one thousand eight hundred and , at , a certain male child, under the age of ten years, to wit, of the age of seven years, named H. N., the son of one J. N., then and there feloniously and maliciously, by force and fraud, did lead, take, and carry away, with intent, by concealing and detaining the said child from the said J. N., its parent, to deprive the said J. N. of the possession of the said child : against the form of the Statute in that case made and provided. And you the said Keeper, &c.

CHILDREN.

(ABUSING.)

1. Carnally knowing or abusing any woman child under the age of ten years, *felony—Death.* 9 G. IV, c. 31, s. 17. *Callaghan*, vol. 1, p. 325.

2. Carnally knowing or abusing any woman child above the age of ten and under the age of twelve, *misdemeanor.* *Id.*

If the offence be committed it is immaterial whether the child consent or not ; but if the child do consent the offender cannot be convicted of a common assault. See *R. v. Banks*, 1 C. and P. 574. There is however a great difference between consent and submission, especially in the case of a girl of tender years when in the power of a strong man, and mere submission in such a case by no means shews a consent in point of law. See *R. v. Day*, 6 C. and P. 722, by *Coleridge J.* It is requisite in cases of this kind that the precise age of the child should be proved.

As the proof of the offence in most cases rests principally on the evidence of the child, it is most material that she should have a clear knowledge of the nature of an oath, be capable of distinguishing between good and evil, and have a belief in God, and of a future state of rewards and punishments. If such be not the case, it is the duty of the Magistrate committing, to have her instructed by a minister of Religion, or other person competent.

It appears to have been allowed that the fact of the child's having complained of the injury recently after it was received, is confirmatory testimony (*Brazier's Case*, 1 *East*, P. C. 443); but where the child is not fit to be sworn, it is clear that any account it may have given to others ought not to be received. *R. v. Guttridge*, 9 *C. and P.* 471.

A boy under fourteen years of age cannot be convicted of this offence; he may however be convicted of aiding and abetting another. See *R. v. Jordan*, 9 *C. and P.* 118.

COMMITMENT FOR CARNALLY KNOWING A GIRL UNDER TEN YEARS.

on the day of , in the year of our Lord one thousand eight hundred and , at , in the said Colony, feloniously did assault one C. D., a girl under the age of ten years, to wit, of the age of nine years, and her the said C. D. then and there feloniously did unlawfully and carnally know and abuse: against the form of the Statute in that case made and provided. And you the said Keeper," &c.

CARNALLY KNOWING A GIRL BETWEEN TEN AND TWELVE.

Same as the last, only omitting "feloniously," and describing her as "a girl above the age of ten years, and under the age of twelve years, to wit, of the age of eleven years."

CHILD BIRTH.

(CONCEALMENT OF.)

Lord Lansdowne's Act, 9 Geo. IV. c. 31, s. 14,) enacts—

"That if any woman shall be delivered of a child, and shall, by secret burying, or otherwise disposing of the dead child, endeavour to conceal the birth thereof, every such offender shall be guilty of a misdemeanor.

"PUNISHMENT.—Imprisonment, with or without hard labour, for any term not more than two years."

["And it shall not be necessary to prove whether the child died before, at, or after its birth."]

Then follows a proviso, “that if any woman be tried for the murder of her child, and be acquitted of the murder; but it appear on the trial, that she *concealed the birth* the Jury may *find that verdict*, and the Court pass sentence *accordingly*.”

EVIDENCE.—The delivery of the woman must be proved, and that the child was dead at the time of committing the offence, and the means employed by the prisoner to conceal the birth.

On the part of the prisoner, proof may be adduced that the woman made preparations for her confinement, that she communicated circumstances of her pregnancy to persons not implicated in the concealment.

It has been held, that the throwing of a bastard child down a *privy*, was evidence of an endeavour to conceal the birth. *R. and R. 337.*

FORM OF COMMITMENT FOR CONCEALING CHILD BIRTH.

on at in the said Colony, being then and there delivered of a certain child, did, by secretly burying the same, (or otherwise, according to the facts,) unlawfully endeavour to conceal the birth thereof: against the form of the Statute in such case made and provided. And you, the said Keeper, &c.

CLERGYMEN.

Arresting a clergyman, upon *civil* process, whilst performing, or going to perform, or returning from performing Divine Service—*misdemeanor*. 9 G. IV. c. 31, s. 23. *Callaghan*, vol. 1, p. 326.

CLERKS.

(EMBEZZLEMENT BY. SEE POST “SERVANT.”)

COAL.

The Act of Council, 9 Vict. No. 8, (*Callaghan*,

p. 1507,) directs that all coal sold in Sydney, or in the Port of Sydney, or within five miles of the Obelisk in Macquarie-place, shall be sold by weight, and not by measure, s. 1.

Any seller or dealer, knowingly selling one sort of coal for another sort, or selling wet coal, to increase its weight, in Sydney, or within five miles of the Obelisk, to forfeit ten pounds for every ton, s. 2.

Seller to deliver ticket with coal, under penalty not exceeding twenty pounds. Carman or driver refusing or neglecting to deliver such ticket, to forfeit not exceeding twenty pounds, s. 3.

(For form of ticket, see Act of Council.)

Coal in any quantity exceeding five hundred and sixty pounds, to be delivered in sacks, each containing one hundred and twelve, or two hundred and twenty-four pounds nett, except coal sold in bulk from vessel, s. 4.

Sections 5 and 6 of this Act have been repealed by 10th Vict. No. 11, which directs carts, &c., delivering coal, to have weighing machine, s. 2.

Section 3 inflicts a penalty, not exceeding twenty pounds, on carman or driver, and not less than twenty, nor exceeding one hundred on employer, for using light weights or unjust weighing machine.

Section 7 of 9th Vic. No. 8, inflicts a penalty not exceeding twenty pounds nor less than five, on carman or driver refusing to weigh any of the sacks when required by purchaser or his servant, or driving away without weighing, if required so to do.

All the coal sent, to be weighed if desired by the purchaser or servant, or penalty not exceeding twenty pounds. s. 8.

Purchaser must procure the attendance of a constable, police officer, or other indifferent and credible person, if desirous of having all the coal weighed. s. 9.

No quantity of less weight than five hundred and sixty pounds to be sold without being weighed, and if

required, in presence of purchaser or servant, or penalty not exceeding five pounds. s. 10.

Penalties or fines, not exceeding twenty pounds, may be recovered in a summary way before two or more Justices of the Peace, and exceeding twenty pounds, by action of debt in Supreme Court: one half of fine or penalty to be paid into Colonial Treasury, and the other to the person suing. s. 11.

Penalties incurred by carman or driver may be recovered from the employer, who may recover back from carman or driver. s. 12.

FORM OF CONVICTION UNDER THE COAL ACT.

Be it remembered that on the day of in the year of Our Lord
 A. B. is convicted before us two of Her Majesty's Justices of
 the Peace for that [here specify the offence and the time and place when and
 where committed, as the case may be] contrary to an Act of the Legislative
 Council of New South Wales, passed in the ninth year of the reign of Her
 Majesty Queen Victoria, intituled [here insert the title of this Act].

Given under our hands and seals the day and year first above written.

C. D. (L.S.)
 E. F. (L.S.)

COIN.

By an old Statute 25 Ed. III. s. 4, counterfeiting, impairing, or clipping of the King's *coign*, is made high treason. The laws relating to coin are now consolidated and amended by Act of Council 9 Vict. No. 1, (*Callaghan, Sup.* p. 1515) adopting Imperial Act, 2 W. IV. c. 34.

Transportation for life, or for any term not less than seven years, to be substituted for the punishment of death for certain offences relating to coin. 9 Vict. No. 1, s. 1.

Counterfeiting the current gold or silver coin, *felony*. *Id.* s. 2.

Gilding or silvering counterfeit coin, to make it resemble the current coin, *felony*. *Id.* s. 3.

Gilding or silvering blanks with intent to make counterfeit coin of them, *felony. Id.*

Gilding silver coin to make it resemble the gold coin, *felony. Id.*

Gilding or silvering the copper coin to make it resemble the gold or silver coin, *felony. Id.*

Impairing or diminishing the current gold or silver coin, *felony. Id. s. 4.*

Selling, buying, putting off, receiving, &c., counterfeit coin at a less value than it imports, *felony. Id. s. 5.*

Knowingly importing counterfeit coins, *felony. Id.*

Uttering counterfeit gold or silver coin, *misdemeanor. Id. s. 6.* Uttering such coin, and knowingly having other counterfeit coin in his possession, *misdemeanor. Id.* Uttering twice within ten days, *misdemeanor.* Uttering after a former conviction for the same offence, *felony. Id. s. 7.*

Having three or more pieces of counterfeit coin with intent to utter, *misdemeanor.* Such offence after a former conviction, *felony. Id. s. 7-8.*

Counterfeiting the current copper coin, or buying, selling, receiving, putting off, &c., counterfeit copper money at a less value than it imports, *felony. Id. s. 10.* Uttering counterfeit copper coin or having three or more pieces with intent to utter them, *misdemeanor. Id.*

Making, mending, or having coining tools, *felony. Id. s. 9.*

Coin suspected to be diminished, or counterfeit, may be cut by any person to whom it is tendered ; but if it be of due weight, and of lawful coin, such person shall receive the same at the rate it was coined for, and if any dispute arise any Justice of the Peace may determine in summary manner. *Id. s. 11.*

Colonial Treasurer and his deputies, &c., may cut, &c. *Id.*

Any person discovering any counterfeit coin, or coining tools, is required to seize and to carry the same forthwith before some Justice of the Peace. *Id. s. 12.*

Any Justice of the Peace may issue a warrant, on information on oath, to search for counterfeit coin or coining tools, &c., either in the day time, or in the night. *Id.*

FORM OF COMMITMENT FOR COUNTERFEITING GOLD OF SILVER COIN.

on at feloniously did falsely make and counterfeit ten pieces of coin (resembling) and apparently intended to resemble and pass for certain of the Queen's current gold coin called (sovereigns), against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR GILDING OR SILVERING COIN.

on at feloniously did gild a certain piece of coin (resembling and) apparently intended to resemble certain of the Queen's current gold coin called a half-sovereign, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR IMPAIRING THE COIN.

on at feloniously did impair, diminish, and lighten, six pieces of the Queen's current (gold) coin called (sovereigns), with intent thereby then and there feloniously to make the said pieces of coin so impaired, diminished, and lightened, to pass for the Queen's said current gold coin called sovereigns as aforesaid, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR BUYING, SELLING, OR IMPORTING COUNTERFEIT COIN.

on at feloniously did sell and put off five certain pieces of false (or) counterfeit coin (resembling) and apparently intended to resemble and pass for certain of the Queen's current gold coin called sovereigns, at and for a lower rate and value than the same then and there by its denomination did import, and was coined and counterfeited for, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR UTTERING COUNTERFEIT COIN.

on at unlawfully did utter and put off a certain piece of false (or) counterfeit coin (resembling and) apparently intended to resemble and pass for certain of the Queen's current silver coin, called a half-crown, he the said A. B. then and there knowing the same to be false and counterfeit: against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR UTTERING AND HAVING OTHER BASE COIN IN POSSESSION,

May be the same as the last form, adding before the words "Against the form,

&c.” “And he the said A. B., at the time he so uttered and put off the said false and counterfeit coin, having in his possession, besides the false and counterfeit coin so uttered and put off as aforesaid, five other pieces of the like false and counterfeit coin (resembling and) intended to resemble and pass for certain of the Queen’s current silver money called shillings: against the form of the Statute in such case made and provided. And you the said Keeper, &c.”

FORM OF COMMITMENT FOR UTTERING TWICE WITHIN TEN DAYS,

May be the same as the common form of commitment for uttering, adding a statement of the second offence in like manner, thus—“And that the said A. B. afterwards, and within the space of ten days then next ensuing, to wit, on at unlawfully did utter and put off a certain other piece of false and counterfeit coin, resembling, &c., as before.”

FORM OF COMMITMENT FOR UTTERING AFTER A FORMER CONVICTION,

May be the same as for a common uttering, but stating it to have been done “feloniously,” adding “He the said A. B. having before then on at been duly convicted for having before then on at ” (stating the offence) against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR HAVING SUCH COIN WITH INTENT TO UTTER IT.

on at unlawfully had in his custody and possession ten pieces of false and counterfeit money (resembling and) apparently intended to resemble and pass for certain of the Queen’s current silver coin called shillings, with intent then and there to utter and put off the same, he the said A. B., then and there well knowing the same to be false and counterfeit: against the form of the Statute in such case made and provided. And you the said Keeper, &c.

COMMITMENT.

“COMMITMENT signifies the committing or sending a person to prison, by a warrant or order, on account of some offence committed, or suspected to have been committed by him.” *B. J.*

There are two species of commitment by Magistrates. 1. Commitment *in execution*, under summary conviction; and 2. Commitment *for safe custody*.

1st. IN EXECUTION.—(See post “Conviction;” also

“Summary Jurisdiction.”) A commitment in execution is used as an original punishment, or as the means of enforcing payment of a pecuniary fine or penalty, or enforcing obedience to any sentence of a Justice or the Sessions. The power of making commitments of this nature is, for the most part, derived from statutory provisions.”

“In the case of a *Conviction*, the commitment is in general made by the Justice who convicted the offender. By 3 Geo. IV. c. 23, s. 2, however, a *commitment may in all cases* be made by *one Justice*, even in cases where the conviction must be by *two*; and it is immaterial whether the Justice who makes the commitment, be one of the Justices before whom the *conviction was made*.”*

How commitment to be framed.] “The commitment should correspond in every material particular with the conviction. In a late case it was held that though the conviction may be correct, yet if the commitment be for a different offence, or do not disclose any offence at all, the Magistrate is liable to an action for the imprisonment under it.” 3 *B. and C.* 409, and *D. and R.* 222.

“It is not, however, necessary to state the conviction in a precise and technical form; but only to shew, that the party has been convicted of *some specific offence*, and by a person *having competent authority for that purpose*.” 1 *Pal. Con.* 253.

“When a commitment is only inflicted by a statute, as an *alternative punishment*, for want of a sufficient distress, *such want should be stated in the commitment*. 1 *Str.* 263. The *time* during which the defendant is to be imprisoned, and the *manner* of the imprisonment, must be stated accurately, and according to the directions of the law or statute from which the authority to

* There is an exception to this, by express provision in the Summary Punishment Act, 3 Wm. IV. No. 3, 1832. The 24th section of that Act makes it lawful for two or more Justices, by warrant under their hands, to forward immediately on conviction, prisoners sentenced to iron gangs. “Provided always that every such warrant shall be signed by at least two Justices who tried and sentenced the offender.”—CALLAGHAN, vol. 2, p. 700.

commit is derived, and in this respect, more accuracy is required than in commitments 'for safe custody.'"

"Where a statute appoints imprisonment, but limits no time, in such case it is at the discretion of the Court. *Dalt.* c. 170. If a statute order 'hard labour,' it must be signified in the commitment. The condition, if any, upon which the defendant may be discharged, must be distinctly stated in the commitment. *B. J.* If the commitment be 'till payment of a penalty,' the sum must be stated and fixed. Thus, a Conviction and Commitment for a forcible entry, 'there to remain until they have paid a fine to the Queen.' The Justices not having fixed, or stated any fine, was held bad. *Str.* 794. It must appear from some part of the commitment, who is the party entitled to the penalty. 3 *M. and S.* 331. If a commitment is bad in part, it is bad for the whole." *B. and C.* 90.

"The copy of the commitment must be given, if required, by the prisoner.

"A commitment in execution does not, like a commitment for safe custody, in any case admit to bail." *B. J.*

"If the commitment be until payment of a penalty, it follows that the party is to be set at liberty immediately on payment or tender thereof to the gaoler or officer entrusted with the execution of the commitment." 1 *Pal. Con.*

2ND. FOR SAFE CUSTODY.—All persons apprehended for offences which are not bailable, See *tit. "Bail,"* and also all persons who neglect to offer or complete bail for offences which are bailable, must be committed. 2 *Hawk.* c. 16, s. 1.

Dangerous lunatics may also be committed for safe custody. See *post "Lunatics"*; also witnesses who refuse to enter into recognizance to give evidence. See *Bennett v. Watson*, 3 *M. and S.* 1.

COMMITMENT FOR SAFE CUSTODY FOR INDICTABLE OFFENCES.—When a complaint is made before a Justice of the Peace of an indictable offence, whether treason,

felony, or misdemeanor, having been committed within the district to which his commission extends, it is his duty to have the offender brought before him; and for this purpose he issues a summons or warrant, as shall be mentioned presently. As soon as the party appears before him he then examines the witnesses produced, hears whatever the accused party may say in his defence, and then discharges the party, or remands him for further examination,* or commits him to prison, according as he judges that a sufficient case has been made out against him or not, or instead of committing him, &c., he may take bail for his appearance at the next sessions or assizes. See *ante* "*Bail*."

Under this head therefore it may be convenient to treat of these various steps preliminary to the commitment, as well as of the commitment itself, in the following order:—

1. THE COMPLAINT OR INFORMATION.
2. THE SUMMONS OR WARRANT.
3. THE EXAMINATION, REMANDING, &c.
4. THE COMMITMENT.

1. THE COMPLAINT OR INFORMATION.—The complaint or information laid before a Justice of the Peace, previously to his issuing a summons or warrant against a party accused is sometimes merely verbal, sometimes taken down in writing, sometimes on oath, sometimes not, according to circumstances. In *R. v. Fearnshire*, 1 *Leach. C. C.* 202, where upon an indictment for a misdemeanor, parol evidence was tendered of the information on which a warrant to apprehend the defendant had been granted, Lord Mansfield, in rejecting the evidence, is reported to have said, that it was the indis-

* By a recent Act, the 10th Vict. No. 6, (See *ante*, p. 49.) a most beneficial power is given to Magistrates, of admitting to bail (either with or without sureties) in cases where, from the absence of witnesses or other causes, it becomes necessary to remand the prisoner for any length of time. The recognizance must be taken before two or more Justices, and the condition must be to appear for further examination before the same or some other Justices at a day and place to be therein mentioned.

pensable duty of every Justice of the Peace to take all charges of whatever nature, kind, or complexion they might be, in writing: That the presumption therefore was, that the Magistrate had done so in that case, and therefore parol evidence of it could not be received. This, however, is not uniformly the case in practice. There must be an information however, otherwise the Magistrate will not be justified in issuing a warrant. *Stephens v. Clark*, 1 *Car.* and *M.* 509. And before a Justice of the Peace grants a warrant for the apprehension of an offender it is prudent in all cases, especially in cases of felony, to examine the person requiring the warrant, or his witness, upon oath; and in a recent case the Court of Queen's Bench seemed to think that there must be an information on oath, in all cases where a warrant is granted. *Caudle v. Seymour*, 1 *Ad.* and *El.* *N. C.* 889. And the information must be taken by the Justice himself or in his presence, so that he may have an opportunity of putting to the complainant such questions as he may think proper; and where it appeared that the Justice and his Clerk went to the house of the complainant, and the Justice remained in a room below, whilst the Clerk went up stairs to a room where the complainant was in bed, took her deposition or information in writing, and swore her to it, after which the Justice granted a warrant against the party complained of: the Court held that he could not justify, in an action brought for the arrest under the warrant; and Coleridge J. said that it was by far too common a practice for the Clerk to examine the witness apart, take down his evidence, and then read it over to him in the Magistrate's presence, whereas the Magistrate, who has a discretion to exercise, ought to examine the witness, hear his answers, and judge of the manner in which they are given. *Caudle v. Seymour*, 1. *Ad.* and *El.* *N. C.* 889.

But in slight cases of misdemeanor, where the Justice may deem a summons sufficient to bring the party before

him, a written information is seldom taken, but the Magistrate merely makes a memorandum of his having granted the summons, against whom, for what offence, and at what time, the parties are required to attend before him.

2. THE SUMMONS OR WARRANT.—IN WHAT CASES.—

When a complaint is made to a Justice of the Peace, that an indictable offence has been committed by any person within the district to which his commission extends, his duty is to issue a summons or warrant to bring the party before him, in order that he may examine and enquire into the matter of the charge, and commit, or bail, or discharge the party. In strictness a Justice of the Peace may in all cases issue his warrant in the first instance, whether the offence imputed to the party be treason, felony, or misdemeanor (*Butt v. Conant*, 1 *Erod. and Bing*, 548.), except, it seems, in the case of perjury at common law (*R. v. Bartlett*, 12 *Law Journal*, 127 *m.*), and forgery at common law, over which they have no jurisdiction, judicial or ministerial. *Id.* per *Wightman J.*

It was decided in the Supreme Court last term, in the matter of an application for a *mandamus* to Police Magistrate Windeyer, *in re* John Terry Hughes, that Justices have jurisdiction in cases of fraudulent insolvency; and it seems that the only offences over which they have no jurisdiction are those above-mentioned, viz., perjury at common law, and forgery at common law.

It is not usual, however, in cases of misdemeanor to issue a warrant, in the first instance, unless in aggravated cases, or where there is a likelihood of the party's absconding, if he be apprised of the complaint being made against him. In ordinary cases it is usually deemed sufficient to issue a summons in the first instance, and if that be disobeyed then to issue a warrant.

The summons should be served upon the party personally, if possible. But if after due diligence used to

effect a personal service, it be found impracticable, from the party's concealing himself or causing himself to be denied, or the like, the summons may in such cases be left for him at his usual place of abode; and if he do not afterwards attend at the time and place specified in the summons, the Justice, upon being satisfied of these facts, will grant his warrant.

WARRANT.—A warrant is a precept, under the hand and seal of a Justice of Peace, reciting that a certain criminal charge has been made against a party therein named, and commanding the person to whom it is directed to apprehend such party, and bring him before the same or some other Justice to answer to the charge. This warrant may be directed to any person. But it is usually directed to the constable of the district in which it is to be executed; for he alone can be punished for neglecting or refusing to execute it.

Sometimes it is directed to the constable or constables by name, and if directed to two or more, any one of them may execute it. It is usually directed, however, to the constable of the district, generally, without naming him, "and all other peace officers in the said colony." In which case the constable of the district, 5 G. IV. c. 18, s. 6, or any other constable within the extent of the jurisdiction of the justice may execute it within such jurisdiction. It must state the name of the party to be apprehended with certainty; a warrant to apprehend all persons suspected of an alleged offence, 2 *Hale*, 112, or to apprehend "the authors, printers, and publishers" of a libel, without naming them, *Moirey v. Leach*, 1 *W. Bb.* 555, or the like, would be bad, and might subject the person issuing or executing it to an action for false imprisonment. And it must state the name truly; for where the warrant was against the party by a wrong Christian name, and an action was brought against the constable for the arrest, the Court of Common Pleas held that the defendant could not justify the arrest under the warrant. *Hoyle v. Bush*. 10 *Law Journal*, 168 *m.*

The warrant must recite the information, or at all events, must state the offence to have been committed; and, therefore, where it commanded the constable to apprehend A. B., and bring him before the Justice "to answer to all such matters as on His Majesty's behalf shall be objected against him on oath" by C. D., for an assault committed on her, it was holden bad, and the Justice holden liable to an action by A. B., who had been arrested under it. *Caudle v. Seymour*, 1 *Ad. and El. N. C.* 889.

The description of the offence may be in the same form as in a commitment. *See form of commitment, post, and the different forms throughout this work.* It should at all events be stated with sufficient certainty, to show that it is a matter within the jurisdiction of the Justice.

It may require the person, to whom it is directed, to bring the offender before the same Justice, or any other Justice within the same district or jurisdiction. In the former case, the offender can be brought only before the Justice who signed the warrant: in the latter, before any Justice of the district, in the officer's discretion. 2 *Hale*, 112.

It is not returnable at any particular time, but remains in force until it is executed. *See Mayhew v. Parker*, 8 *T. R.* 110, and *Dickinson v. Brown, Peake* 234, per Lord Kenyon, C. J. It must be under the hand and seal of the Justice granting it. 2 *Hawk.* c. 13, s. 31.

As to the manner in which it is to be executed, see *ante* "Arrest."

WARRANTS, IN WHAT CASES REQUIRED TO BE ENDORSED.—By Act of Council, 6 Victoria, No. 18, s. 3, all warrants to arrest, detain, or imprison offenders or other persons, issued under the signature of one or more Justices of the Peace, not being Magistrates of the City of Sydney, or Town of Melbourne, shall be in full force and effect within the said city and town respectively, if endorsed by any Justice of the Peace, being a Magistrate of the said city or town respectively, which endorsement

any Magistrate of the said city or town is authorised to make, and *vice versá*.

It would seem that the Magistrate cannot exercise a discretion in the matter, but he must endorse the warrant if oath be duly made of the hand-writing of the Justice who granted it. See *R. v. Kynaston*, 1 *East*. 117.

3. THE EXAMINATION. — IN FELONY. — Justices of Peace, before they shall admit to bail, or commit to prison, any person arrested for felony, or on suspicion of felony, “shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing.” And every such Justice shall have authority to bind, by recognizance, all such persons as know or declare anything material touching any such felony or suspicion of felony, to appear at the next Criminal Sittings of the Supreme Court, or Gaol Delivery, or General Quarter Sessions of the Peace, at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused. And such Justices and Justice respectively shall subscribe all such examinations, informations, bailments, and recognizances, and deliver, or cause the same to be delivered, to the proper officer of the Court in which the trial is to be, before or at the opening of the Court. 7 G. IV. c. 64, s. 2. *Callaghan*, vol. 1, p. 344. And see s. 5, *infra*. See also tit. “*Bail*.”

IN MISDEMEANOR.—Also, every Justice of the Peace before whom any person shall be taken on a charge of misdemeanor or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison, or require bail from the person so charged; and in every case of bailment shall certify the

bailment in writing; and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver, or cause the same to be delivered, to the proper officer of the Court in which the trial is to be, before or at the opening of the Court, in like manner as in cases of felony. *Id.* s. 3.

And if any Justice shall offend in anything contrary to the true intent and meaning of these provisions, the Court, to whose officer any such examination, information, evidence, bailment, or recognizance, ought to have been delivered, shall, upon examination and proof of the offence in a summary manner, set such fine upon every such Justice as the Court shall think meet. *Id.* s. 5.

HOW TAKEN, &c.—As soon as the party accused is brought before the Justice, the latter, after informing himself of the nature of the charge, from the warrant or otherwise, calls upon the witnesses for the prosecution to give their evidence; and after them, the witnesses (if any) for the prisoner, and administers to each an oath as follows:—"You shall true answer make to all such questions as shall be demanded of you, touching the charge of _____, against A. B.; so help you God."

Or if the witness be a Quaker, or Moravian, he may affirm thus:—"I, A. B., being (one of the people called Quakers, or one of the persuasion of the people called Quakers, or one of the United Brethren called Moravians, as the case may be,) do solemnly, sincerely, and truly declare and affirm, that I shall true answer make to all such questions as shall be demanded of me."

Or if the witness be a Separatist, he may affirm thus: "I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of an oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect;

and I do also in the same solemn manner affirm and declare that I shall true answer make to all such questions as shall be demanded of me.”

The Justice then proceeds to examine the witnesses for the prosecution and also any witnesses the prisoner may call in his defence, and takes down the depositions in writing. See “Depositions.”

With regard to the examination of witnesses for the defence, (before committing), the following observations occur in *Russell on Crimes*, last edition, (1843), vol. 1, p. 898. “It is highly expedient to the furtherance of the ends of Justice, that whenever prisoners offer to produce witnesses before the Magistrate in answer to the charge made against them, such witnesses should be regularly examined on oath, and their statements taken down in writing and returned with the depositions. Whether the evidence so adduced be true or false, it is very important that it should be received and taken down. If it be true, it may be so clear, positive, and distinct, as to explain or contradict the evidence adduced in support of the charge, in such a manner as completely to satisfy the Magistrates that there is no sufficient ground for judicial inquiry into the guilt of the party charged, in which case he ought to be discharged; or the evidence adduced on behalf of the party charged may in the opinion of the Magistrates weaken the presumption of the party’s guilt, but there may, notwithstanding, appear to them to be sufficient ground for judicial enquiry into the party’s guilt, in which case the Magistrates should admit the prisoner to bail.”

And even if the evidence so adduced should not produce either of these results, still it is important for the sake of the prisoner that his witnesses should be examined and their depositions returned, as he is thereby freed from the suggestion often made at the trial, that the case endeavoured to be proved before the Jury has been concocted since the examination before the Magistrate; and if as has been suggested, the deposition of a

witness examined on behalf of a prisoner before the Magistrate would be admissible in evidence for the prisoner on his trial, in case of the death of such witness it is but reasonable that the prisoner should have the depositions of his witnesses taken, in order to be used in case of such an event. On the other hand, if the evidence adduced be false, it is essential for the ends of Justice that it should be heard and taken down, in order that the prosecutor may have the means before the trial of investigating the facts deposed to, and the opportunity of testing the statements of the witnesses, by comparing those made on the trial with those made before the Magistrates; and moreover, the taking the depositions would serve as a check upon the prisoner against setting up a different defence on the trial, and upon the witnesses against improving their tale between the time of their examination before the Magistrate and the trial.

The examinations, &c., must be signed by the Justice or Justices before whom they are taken, who must cause them to be delivered, together with any bailment or recognizances taken in the same matter, to the officer of the Court in which the trial is to be had, before or at the opening of the Court. 7 G. IV. c. 64, s. 2, 3. And he should send the depositions of all the witnesses examined, although he may consider some of them immaterial (*R. v. Fuller*, 7 Car. and P. 269); and the several examinations of the same witnesses taken at different times, if such be the case. *R. v. Simons*, 6. Id. 540. Also, each deposition should contain the whole of what the witness stated which was at all relevant to the charge. *R. v. Grady*, per Lord Denman, C. J. Id.

The examination of the prisoner may be proved by the Magistrate or his clerk, or by any person who was present and attested the prisoner's signature to it (*R. v. Hopes*, 7 C. and P. 136); or by proof of the Magistrate's handwriting subscribed to it, and that it is the examination of the prisoner. *R. v. Mary Foster*. 7 C.

and *P.* 148. But parol evidence of it cannot be received, if it appear that the Magistrate took down anything which the prisoner said. *R. v. James Walker*, 7 *C. and P.* 267. And see *Leach v. Simpson*, 5 *M. and W.* 309.

The depositions of the witnesses may also be proved in like manner. And the deposition of a witness taken by a Magistrate, in the presence of the prisoner in pursuance of Stat. 7 *G.* IV. c. 64, s. 2, 3, 4, mentioned ante, may, when thus proved, be read at the trial of the prisoner, if the witness in the mean time have died, *R. v. Smith*, *R. and Ry.* 339; *R. v. Osborne*, 8 *C. and P.* 113, or be bed-ridden and not likely ever to be able to attend at the Assizes, *R. v. Wilshaw*, 1 *C. and M.* 145, or have become insane, *R. v. Marshall*, 1 *C. and M.* 147, or be kept out of the way by or on behalf of the prisoner, *R. v. Gatteridges*, 9 *C. and P.* 471, per *Parke, B.*, or perhaps, if at the time of the trial he be unable to travel; 1 *Hale* 586; but otherwise, if it were taken *ex parte*. But even if taken in the prisoner's absence, yet if the witness be again sworn in his presence, his depositions read over to him slowly in the prisoner's hearing, so that the prisoner might have an opportunity of cross-examining him if he wished, if the witness afterwards die, his deposition may be read against the prisoner at his trial. *R. v. Smyth*, *Supra*. If a Magistrate upon a charge of which he has jurisdiction commit the accused upon insufficient evidence, he is not liable to any action for doing so, it will be deemed an error in judgment merely, and not the subject of an action. *Cave v. Mountain*, 9 *Law Journal*, 90 *m.* and 1 *Man. and G.* 257.

PRISONER MAY BE REMANDED.—If from the absence of witnesses or from any other reasonable cause it become necessary or advisable to defer the examination for any time, the Justice may do so. If the accused be in the custody of the constable under the warrant, and it be intended to resume the examination on the next

day, or within some other short period, a mere verbal order to the constable to bring the prisoner before the Justice at the time appointed, will be sufficient, and the prisoner remains in custody under the warrant in the mean time. See *2 Hale*, 120. But if it be necessary to remand him for any considerable period, he may be permitted by two or more Justices to go at large* on his own recognizance only, or with sureties to appear at a future day to be re-examined; or it may be prudent to commit him to prison in order that he may be brought up again for re-examination at a certain time. Care must be taken that he be not thus committed for re-examination for an unreasonable time, otherwise the Justice so committing him will be liable to an action of trespass for false imprisonment, (*Davis v. Capper*, 1 B. and C. 28,) the warrant in such a case being deemed wholly void. But whether the time be unreasonable or not is a question entirely for the Jury, in any action against the Magistrate as for false imprisonment. *Cave v. Mountain*, 1 Man and G. 257. Where a Magistrate committed a prisoner for re-examination for fourteen days without a sufficient cause, and in an action by the prisoner for false imprisonment, the Jury found the commitment to have been *bonâ fide*, and that it was not from an improper motive, but that it was for an unreasonable time, the Court held the Magistrate liable.

* This power is given to Magistrates by a recent Act of Council, the 10 Vict., No. 6, (1846). *Callaghan*, *Sup.* 2, p. 1626. The 2nd section of which enacts, "That whenever any person charged with any felony or misdemeanor, shall be in custody on any such charge, and shall be brought before any Justice of the Peace for examination, and such Justice shall think fit to remand any such person for further examination, it shall be lawful for any two or more Justices of the Peace to suffer any such person to go at large upon his personal recognizance, (with or without sureties,) in such amount as such Justices shall, in their discretion, think fit; and every such recognizance shall be conditioned for the appearance of such person before the same or some other Justices of the Peace, for further examination, at a day and place to be therein mentioned; and the said Justices, or any other two or more Justices of the Peace, shall be at liberty, from time to time, to enlarge every such recognizance to such further time as they shall appoint; and every such recognizance which shall not be enlarged, shall be discharged without fee or reward, when the party shall have appeared according to the condition thereof."

Id. and See *S. C. 4, C. and P. 134*. So where a prisoner, apprehended for some disorderly conduct on Sunday evening, was confined in a lock-up that night, and as the constable was taking him the next day to a Magistrate he met the Magistrate in the street and told him the matter, and the Magistrate ordered him to take the prisoner back, and he would see him on the morrow, which was done accordingly: *Patteson J.* held that the Magistrate was not warranted in doing this, and had subjected himself to an action for false imprisonment by doing so; he should either have gone into the matter on the Monday or have desired the prisoner to be taken before some other Magistrate. *Edwards v. Ferris, 7 C. and P. 542*. Upon the day appointed by the commitment, the keeper of the prison will cause the accused to be brought up before the committing Justice, who will then proceed in the examination of the witnesses in the manner already mentioned.

DYING DECLARATIONS.—The dying declarations of a deceased person are evidence against a prisoner in cases where the cause of the death of the deceased is the subject of enquiry, and the circumstances of the death the subject of the dying declaration, *R. v. Mead, 2 B. and C. 605*; *R. v. Lloyd &c 4 C. and P. 233*. And it must appear to have been made at a time when the deceased was perfectly aware of his danger and entertained no hope of recovery. See *2 Arch. Peel's Acts, 93, 94*; *R. v. Crockett, 4 C. and P. 544*; *R. v. Bonner, 6 C. and P. 386*; *R. v. Foster, Id. 325*; *R. v. Spilsbury et al. 7 C. and P. 187*; *R. v. Fagent, Id. 238*; *R. v. Woodcock, 1 Leach, 500*; *R. v. John, 1 East P. C. 357*. But it is only in cases where the deceased, if he had lived, could be received as a witness, that this evidence is receivable; and therefore the dying declaration of a child of four years old was holden not to be admissable. *R. v. Pike, 3 C. and P. 598*. If the declaration be in writing it must be produced. *R. v. Gay, 7 C. and P. 230*.

EXAMINATION OF THE ACCUSED, AND HIS CONFESSION.
 —The manner and form of taking the examination of the accused we have already treated of ante. Care should be had to take it down as nearly as possible in the words the prisoner uses, whether it amount to a confession or not, and to return it to the Attorney-General, along with the depositions. When the Magistrate asks a prisoner whether he has anything to say in his defence, he should in fairness at the same time state to him that he is not to expect any favour from confessing ; but that all he says will be taken down, and read in evidence against him at his trial : also, if any threat have previously been holden out to him, the Magistrate ought to caution him not to be influenced by it ; after which, it should be left entirely to the prisoner's own discretion whether he will make any statement or not, he should not be pressed to do so, or dissuaded from doing it. See *R. v. Green*, 5 C. and P. 312. It is true, that in strictness, a confession obtained, by means of questions from the Magistrate, may be read against a prisoner at his trial. *R. v. Ellis, Ry. and M. N. P. C.* 432. Yet such a mode of obtaining it is not very commendable, and should be avoided.

If any inducement, by promise of favour or by threat, be held out to the prisoner, as by telling him that he had better tell all he knows, *R. v. Kingston*, 4 C. and P. 387, or that he had better tell where he got the property, *R. v. Dunn*, 4 C. and P. 543 ; “ You had better split and not suffer for all of them ;” *R. v. Thomas*, 6 C. and P. 353. “ It would have been better if you had told at first ;” *R. v. Walkley and Clifford*, 6 C. and P. 175. “ That unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to Newcastle ;” *R. v. Parratt*, 4 C. and P. 570. “ It is of no use for you to deny it, for there are the man and boy who will swear they saw you do it ;” *R. v. Mills*, 6 C. and P. 146, or the like. Any confession the

prisoner may thereby be induced to make, cannot be given in evidence against him. And where an inducement was thus holden out to confess a certain offence, and the party in consequence of it not only confessed that offence, but another also which she had committed, and which appeared to be part of the same transaction, it was holden that the confession of the latter offence could not be given in evidence. *R. v. Hearn*, 1 *C. and M.* 109. But the threat or promise must be proved to have been holden out by some person concerned in the apprehending, examining, or prosecuting the prisoner. *R. v. Row*, *R. and Ry.* 153; *R. v. Gibbons*, 1 *C. and P.* 97; *R. v. Enoch*, 5 *C. and P.* 539; *R. v. Cooper*, *Id.* 535. Otherwise the confession will be evidence. There seems to have been at one time a difference of opinion among the Judges, upon this subject, *R. v. Spencer*, 7 *C. and P.* 776; but it appears that they have since considered, that the threat or inducement must be holden out by some person in authority as above mentioned, otherwise the confession will be receivable in evidence. *R. v. Sarah Taylor*, 8 *C. and P.* 733. But where a man was induced to confess that he was present at a murder, in consequence of a hand-bill offering on the part of the Government a reward and a pardon to any accomplice, Creswell J. held that the confession could not be given in evidence. *R. v. Sarah Taylor*, 8 *C. and P.* 733. Nothing short of a threat, or a promise of favour with respect to the offence, will have the effect of excluding evidence of a confession. See *R. v. Thornton*, *Ry. and P.* 77; *R. v. Gilhane*, *Id.* 186; *R. v. Lloyd*, 6 *C. and P.* 393; *R. v. Shaw*, *Id.* 372. The fact of the prisoner's being drunk at the time will not exclude his confession. *R. v. Spilsbury*, 7 *C. and P.* 187. Also, after an inducement, by threat or promise, has been holden out to a prisoner, and before any confession actually made, the prisoner be undeceived as to the promise or threat, and assured that he has nothing to hope from the one, or fear from the

other, any confession he makes afterwards will be receivable in evidence. *R. v. Cleeves*, 4 *C. and P.* 221 ; *R. v. Richards*, 5 *C. and P.* 318. Therefore, where constables had induced a prisoner to confess, by telling him that his companions had “split,” and he might as well do the same ; but afterwards, upon his appearing before the Magistrate who took the examination, he informed the prisoner that his confessing would do him no good, but that he would be committed to prison to take his trial, Lord Denman, C. J., held that a confession by the prisoner to the Magistrate, after this caution, was receivable in evidence. *R. v. Howes*, 6 *C. and P.* 404 ; *R. v. Hearn*, 1 *C. and M.* 109. But a person, in the presence of the prosecutor, merely saying that the party was not bound to say anything unless she liked, and that if she had anything to say, the prosecutor would hear her, will not be sufficient for that purpose. *R. v. Hewett*, 1 *C. and M.* 534.

But even in cases where the confession of a prisoner is not receivable in evidence, on account of its having been obtained by means of some threat or promise, any discovery made in consequence of it may be proved. *R. v. Warwickshall*, 2 *East. P. C.* 658 ; *R. v. Mosey*, 1 *Leach*, 265, *n.* ; and in such a case, the person who made the discovery may be asked whether in consequence of something he heard from the prisoner, he found anything, and where, &c., or the like ; and the witness in answer can only give evidence of the fact of the discovery. 1 *Arch. Peel's Acts*, 194.

Care must be taken that the prisoner be not examined on oath, otherwise his examination cannot be read, even where at the conclusion of an examination were the words “taken and sworn before me ;” Park J. not only refused to receive it in evidence, but refused to receive the evidence of the Magistrate’s Clerk, that in fact the prisoner was not sworn. *R. v. Rivers*, 7 *C. and P.* 177 ; *R. v. Pikesley*, 9 *C. and P.* 124. So where it was headed “*the information and complaint of A. B.*,”

Gurney, B., refused to receive it in evidence. *R. v. Bentley*, 6 *C. and P.* 148. But what the prisoner may have said on oath upon another occasion, particularly if said voluntarily, and not in pursuance of a summons or other process, will be admissible in evidence against him. *R. v. Tubby*, 5 *C. and P.* 530. See also, 1 *Arch. Peel's Acts*, 196, 197. It may be necessary to mention that the confession of one of two persons charged with a joint offence, cannot be received in evidence against the other, even although the latter were present when the confession was made, and did not deny it. *R. v. Appleby*, 3 *Stark.* 33; *R. v. Swinnerton*, 1. *C. and M.* 593; and see *R. v. Turner, Ry. and M.* 347; *Palin v. Andrews, Moo. and M.* 336.

SUMMONS OF A WITNESS.—If upon the prisoner being remanded, or indeed at any time before the examination is finally closed, the Justice be apprised that any person who can give material evidence against the prisoner will not voluntarily attend before him, he may grant a summons for his attendance, a copy of which should in strictness be served upon the witness, and the original at the same time shewn to him. 1 *Arch. J. P.* 252.

Whether a warrant can be issued, in case the witness fails to obey the summons, seems to be doubted. In *Evans v. Rees*, 12 *Ad. and El.* 55, 9 *Law Journal*, 83 *m.*, this was doubted by Littledale, Patteson, and Williams, J. J., but they refrained from giving an opinion upon the subject. Lord Denman, C. J., however intimated an opinion in favour of the legality of a warrant in such a case; he said that he had no doubt that Justices had sufficient power to do what was necessary to compel the attendance of a witness, who appeared to be material, either in case of misdemeanor or felony; and if the warrant in that particular case had authorised the constable to apprehend the witness, in order to bring him to give his evidence, he thought there was little doubt such a proceeding would be good. *Id.*

But as the warrant in the case above (*Evans v. Rees*)

required the constable to bring the witness before the Magistrate, "to find sufficient bail to appear and give his evidence at the next assizes," the whole Court held it bad. *Id.*

BINDING THE PARTIES TO PROSECUTE, &c.—If upon considering the evidence which has been given on the part of the prosecution, together with the examination of the accused, (and his witnesses if there be any), there appear to be no case made out against him, the Justice should discharge him; but if the evidence be such that the Justice thinks it should be submitted to a Jury to consider and decide upon it, it will then be his duty to bind the prosecutor or party grieved in a recognizance to prosecute and give evidence, and each of the witnesses to give evidence. See 7 G. IV. c. 64, s. 2, 3. This is done by stating to the prosecutor or witness the substance of the recognizance and condition, stating it, however, in the second person, "You acknowledge yourself to owe to our Sovereign Lady the Queen," &c. It is only the recognizance of the prosecutor or witness merely that can be required; the Magistrate cannot compel him to find sureties for his performance of his condition of the recognizance. The only seeming exception to this, is the case of a married woman; as she cannot enter into a recognizance herself she must procure her husband or some other person to enter into the recognizance for her. If the prosecutor or witness refuse to enter into the recognizance, or in case of a married woman, if she do not procure her husband or other person to enter into recognizance for her, the Magistrate may commit them until the Sessions, &c., or until such recognizance be given. See *Bennet v. Watson*, 3 *M. and S.* 1. A power, however, which should be exercised with great caution. 1 *Arch. J. P.* 253.

4. THE COMMITMENT.—Every person charged before a Magistrate with an indictable offence, must upon such charge being heard and examined into, be either discharged, or bailed, or committed.

WARRANT OF COMMITMENT.—The warrant of commitment must be in writing, and under seal. 1 *Hale*, 583, 2 *Hawk.* c. 16, s. 13. It must be directed to the Gaoler or Keeper of the prison to which the offender is committed. *Id.*

It should state the name of the party committed, if known ; but if that be unknown and the prisoner refuse to disclose it, it seems that in such a case it will be sufficient to describe the person by his age, stature, complexion, and the like, adding that he refuses to tell his name. 1 *Hale*, 577.

It must state the offence for which the party is committed, and with sufficient certainty to distinguish it from any other offence; if stated concisely, as for “burglary in breaking and entering the dwelling-house of J. S.,” or the like, it will be sufficient. If it state any material parts of the offence in the disjunctive it will be bad. *R. v. Evered, Cald.* 26.

It must have an apt conclusion, namely, that the party be detained “until he shall be thence delivered by law,” or “by due course of law,” (2 *Hale*, 123. 2 *Hawk.* c. 16, s. 18.) or words to that effect. 1 *Arch. J. P.* 256.

If the warrant be bad, another may afterwards be lodged with the Gaoler or Keeper of the prison, which will have the effect of detaining the prisoner, should he apply for a *habeas corpus* to discharge him on account of the defect in the first warrant. *R. v. Gordon*, 1 *B. and A.* 572. See 1 *Arch. J. P.* 256.

GENERAL FORM OF INFORMATION.

New South Wales }
 to wit. } The information and complaint of C. D. of
 yeoman, taken this day of in the year (&c.) before me E. F.,
 one of Her Majesty's Justices of the Peace for the said Colony, who being duly
 sworn, upon his oath saith, that (&c. stating the depositions as nearly as possible
 in the words of the party.)

FORM OF SUMMONS.

New South Wales }
 to wit. } To the constable of Whereas A. B. of
 labourer, hath this day been charged before me E. F., one of Her Majesty's

Justices of the Peace for the said Colony, on the oath of a credible witness, for that he the said A. B. on _____ at _____ did (&c. here state the offence) these are therefore to require you forthwith to summon the said A. B. to appear before me at _____ on (Wednesday [or as the case may be]) next, the day of _____ instant, at the hour of _____ in the forenoon of the same day, to answer the said charge, and to be further dealt with according to law; and be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal the _____ day of _____

GENERAL FORM OF SUMMONS.

New South Wales, }
 to wit. } To Mr. _____ Chief
 You are hereby commanded to summon A. B., of _____ to attend at the
 on _____ the _____ day of _____ at the hour of Ten in the
 forenoon, then and there to answer a complaint of C. D. for assault (or as the
 case may be.) Given under my hand, this _____ day of _____ one thousand
 eight hundred and _____

J. P.

FORM OF GENERAL WARRANT OF APPREHENSION.

To _____ Constable of _____ in the Colony of New South Wales, and all
 other Peace Officers in said Colony.
 Colony of New South Wales, } Forasmuch as _____ of _____ in the said
 to wit. } Colony (labourer) hath this day been charged
 before me, _____ one of Her Majesty's Justices of the Peace for the said Colony,
 on the oath of a credible witness. For that he the said _____ on the
 day of _____ in the year _____ at _____ in the said Colony. (Here state the
 offence, for which see the forms under the different titles throughout the
 Work.)

These are, therefore, to command you, in Her Majesty's name, forthwith to apprehend and bring before me or some other of Her Majesty's Justices of the Peace, in and for the said Colony, the body of the said _____ (or if his name be not known, then describe him as minutely as the nature of the case will allow—"as a man whose name is at present unknown, but whose person can be identified.")—to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, the _____ day of _____ in
 the year _____

J. P.

GENERAL FORM OF THE COMMENCEMENT AND CONCLUSION
 OF THE EXAMINATION.

New South Wales, Sydney, }
 to wit. } The examination of C. D. of _____ farmer, and
 S. T. of _____ labourer, taken on oath this _____ day of _____ in the year
 of our Lord one thousand, &c., before me E. F., one of Her Majesty's Justices
 of the Peace for the said Colony, in the presence and hearing of A. B., charged
 this day before me the said Justice, for that he the said A. B. on _____ at
 _____ (&c., describing the offence as in a warrant of commitment. See forms
 throughout the Work.)

This deponent C. D. upon his oath saith that (&c. stating the deposition of

the witness as nearly as possible in the words he uses. When his deposition is complete, let him sign it.)

And this deponent S. T., upon his oath saith, that (&c.)

And the said witnesses, C. D. and S. T., against the said A. B., upon the charge aforesaid, having been so examined in his presence and hearing as aforesaid, and the said charge being read over to him, he the said A. B. is now asked by me, the said Justice, if he wish to say anything in his own behalf; whereupon the said A. B. saith (here state whatever the prisoner may say as nearly as possible the very words he uses. [He should be asked to sign his statement, but it must not be taken on oath, if he refuse to sign, still it may be read against him at his trial. R. v. Lamb, 2 Leach. 625.] If he call any witnesses they should be examined. 1 Russ. on Crimes, 898.) (1843.)

Taken before me at the day of in the year above mentioned.

FORM OF WARRANT TO REMAND PRISONER.*

New South Wales.—E. F., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, to the constable of in the said Colony, and to the Keeper of the Common Gaol, at in the said Colony. These are to command you, the said constable, in Her Majesty's name, forthwith to convey and deliver into the custody of the said Keeper of the said Common Gaol, the body of A. B., charged this day before me, the said Justice, on the oath of C. D., on suspicion that the said A. B., on at (&c., describing the offence as in the warrant of apprehension.) But inasmuch as G. H., a material witness against the said A. B., resides at a distance of miles from the said dwelling-house of the said C. D., (or as the case may be,) and the said C. D. hath not been able to procure the attendance of the said G. H., but will use his best endeavour to do so, on the day of instant, you, the said Keeper, are hereby required to receive the said A. B. into your custody, in the said Common Gaol, until next, the day of instant, when you are hereby required to bring the said A. B. before me, at in the said Colony, or before such others of Her Majesty's Justices of the Peace for the said Colony as shall be then and there present, to be re-examined and further dealt with according to law. Herein fail you not. Given under my hand and seal, the day of

GENERAL FORM OF COMMITMENT FOR SAFE CUSTODY.

Colony of New South Wales, }
 to wit. }
 Majesty's Justices of the Peace for the said Colony, Esquire, one of Her
 To Constable of
 in the said Colony, and to the Keeper of the Common Gaol at in the said
 Colony,

These are to command you, the said Constable, in Her Majesty's name, forthwith to convey and deliver into the custody of the said Keeper of the said Common Gaol, the body of D. C., this day charged before me, the said Justice, on the oath of A.B. (labourer;) for that he, the said D. C., on the day in the year at in the said colony did (stating the offence concisely as advised in the different forms under the particular titles off offences.)

* By a recent Act he may be admitted to bail. (See "Bail.")

And you the said Keeper are hereby required to receive the said D. C. into your custody, in the same Common Gaol, and him safely keep until he shall be thence delivered by due course of law. Herein fail you not.

Given under my hand and seal, the _____ day of _____
in the year _____

J. P.

FORM OF SUMMONS OF A WITNESS.

New South Wales, }
to wit. } To the Constable of _____ in the said Colony,
Whereas information hath been made before me J. P., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, that A. B., late of _____ in the said Colony, on the _____ day of _____ in the year, (&c.) at _____ (&c., describing the offence as in a warrant or commitment.) And that C. D. of _____ in the said Colony, farmer, is a material and necessary witness to be examined concerning the same. These are therefore to require you to summon the said C. D. to appear before me at _____ on the _____ day of _____ at the hour of _____ in the _____ noon of the same day, to testify his knowledge concerning the premises. Herein fail you not.
Given under my hand and seal, the _____ day of _____

(A copy of the summons should in strictness be served on the witness, and the original at the same time shewn to him.)

FORM OF RECOGNIZANCE TO PROSECUTE AND GIVE EVIDENCE.

New South Wales }
to wit. } Be it remembered that on the _____ day of _____ in the _____ year of the reign of Queen Victoria, C. D, of _____ in the Colony aforesaid, yeoman, personally came before me, J. P., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, and acknowledged himself to owe to our Sovereign Lady the Queen the sum of £ _____ of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he the said C. D. shall fail in the condition hereon endorsed (or hereunder written).

J. P.

The condition of the within (or above) written recognizance is such, that if the within (or above) bounden C. D. shall personally appear at the next General Quarter Sessions of the Peace (or the next General Criminal Sessions of the Supreme Court, or Gaol delivery) to be holden at _____ in and for _____ in the said Colony, and then and there give evidence as he knoweth upon an information to be filed against A. B., of _____, for feloniously (state shortly the offence) and not depart thence without the leave of the Court, then this recognizance to be void, or else to remain in its full force.

FORM OF RECOGNIZANCE FOR PARTY BAILED TO APPEAR TO TAKE TRIAL.

The parties to sign. _____ of _____ street, Sydney, £40.
_____ of _____ ditto ditto £20.
_____ of _____ ditto ditto £20.

New South Wales, City }
of Sydney, to wit, } Be it remembered, that the above-named Persons ac-

knowledge themselves bound to our Sovereign Lady the Queen, Her Heirs and Successors, in the Penal Sums expressed against each of their respective names, Conditioned, if the above-named (here insert the name or names of the persons committed for trial) doth appear at such Court of Criminal Judicature as H. M. Attorney-General may direct, there to take his trial for . Then this Recognizance to be null and void, otherwise to remain in full force and virtue in law. Taken and acknowledged before me, one of Her Majesty's Justices of the Peace for the City of Sydney, in the Colony of New South Wales, at in the said Colony, this day of one thousand eight hundred and forty-

NOTICE OF RECOGNIZANCE ENTERED INTO BY A WITNESS.

New South Wales }
to wit.

Take notice, that you, A. B., of are bound in the Sum of £40 (Forty Pounds), conditioned that you appear before the next Court of to be assembled at there to give evidence in a case of larceny, Regina versus C. D., and unless you appear accordingly, the recognizances entered into by you will be forthwith levied on you.

Dated this day of one thousand eight hundred and forty-

Justice of the Peace.

NOTICE TO BAIL.

New South Wales }
to wit.

Take Notice, That you, A. B., of are bound in the Sum of Twenty Pounds, as Surety, together with C. D. of Pounds, conditioned that E. F. of doth appear at the next Court of to be holden for the District of there to take his Trial for and unless the said E. F. doth personally make his appearance accordingly, the Recognizances entered into by him and yourself, and C. D., his Securities, will be forthwith levied on him, and each of you, his Bail.

Dated this day of One thousand eight hundred and forty-

Justice of the Peace.

NOTICE TO PARTIES TO APPEAR TO TAKE TRIAL.

New South Wales }
to wit.

Take Notice, That you, A. B., of are bound in the Sum of Tweny Pounds, and your Sureties C. D. of and E. F. of in the Sum of Ten Pounds each, conditioned that you appear at the next Court of to be holden at there to take your Trial, for and unless you appear accordingly, the Recognizances entered into by yourself and Securities will be forthwith levied on you and your Bail.

Dated this day of One thousand eight hundred and forty-

Justice of the Peace.

COMPOUNDING FELONY, &c.

This offence, called in our old books *theftbote*, is where a person, whose goods have been stolen, takes his goods again, or other amends, not to prosecute. 1 *Hawk.* c. 59, s. 5. But it is no offence merely to take back one's goods, which have been stolen, unless some favour be shown to the thief. *Id.* s. 7.

The offence is a misdemeanor, punishable with fine or imprisonment, or both; unless where it is accompanied with that degree of maintenance of the thief, which may make the party an accessory after the fact to the felony. *Id.* s. 6. See "Accessory."

REWARDS FOR HELPING TO STOLEN GOODS — "Every person who shall corruptly take any money or reward, directly or indirectly, under pretence, or upon account of helping any person to any chattel, valuable security, or other property, which shall, by any felony or misdemeanor, have been stolen, taken, obtained, or converted, shall (unless he cause the offender to be apprehended, and brought to trial for the same,) be guilty of felony. 7 & 8 G. IV. c. 29, s. 58. *Callaghan*, vol. 1, p. 307.

Advertising a reward, for the purpose of getting back stolen property, without prosecuting the offenders, &c., subjects the party to a penalty of £50. *Id.* s. 59.

FORM OF COMMITMENT FOR TAKING REWARDS FOR HELPING TO STOLEN GOODS.

on at feloniously and corruptly did take and receive from C. D. certain money and reward, to wit, the sum of (Ten Pounds) of the monies of the said C. D. under pretence of helping the said C. D. to certain goods and chattels of him the said C. D., which had before then been feloniously stolen, taken and carried away (or before then been unlawfully obtained from the said C. D. by false pretences) (or as the case may be), he the said A. B. not having caused the person by whom the said goods were so (stolen, taken, and carried away) as aforesaid, to be apprehended and brought to trial for the same, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

CONFESSION.

A free and voluntary admission of guilt made by a prisoner is admissible in evidence; but a confession in order to be admissible must be free and voluntary: *that is*, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. Constables are often apt to endeavour to induce prisoners in their custody to make a confession. This is no part of their duty, and should be particularly guarded against. The merely telling a prisoner that it would be better for him to split, (*R. v. Thomas*, 6 *C. and P.* 353) or that it would be worse for him if he did not confess, or that what he said would be used *for him* or against him at his trial (*Drew's case*, 8 *C. and P.* 140), have been held sufficient to render confessions inadmissible. See 2 *Russ. on Crimes*, 824 to 872. See also *ante* p. 100.

Whatever statement a prisoner does make should be taken down in writing, and transmitted to the Attorney-General with the depositions.

CONSPIRACY.

(MISDEMEANOR.)

If two or more persons conspire to do an unlawful act, or to do a lawful act by unlawful means, it is an indictable offence, punishable with fine or imprisonment, or both; whether any overt act be done in furtherance of the conspiracy, by any of the parties to it or not. 1 *Hawk. c.* 72 s. 2.; *R. v. Gill and Henry*, 2 *B. and A.* 204; and see *R. v. Fowle and Elliott*, 4 *C. and P.* 592; *R. v. Biers, et. al.* 1 *Ad. and El.* 327. A conspiracy, by false reports of the death of Buonaparte, to raise the price of the public funds, was holden an indictable

offence, even if it had not been pursued to its consequences, or the parties had not been able to carry it into effect. *R. v. De Berenger, et. al.* 8 *M. and S.* 67. So is a conspiracy to extort money from a man by charging him falsely with the commission of an act, whether such act be criminal in itself or not. *R. v. Ripsal*, 1 *W. Bl.* 368; 3 *Burr.* 1320. And see *R. v. Aldridge*, 1 *Nev. and M.* 776. So is a conspiracy to obtain money for an appointment to an office under Government. *R. v. Pollman*, 2 *Camp.* 229. So is a conspiracy to obtain from others their goods under false pretences, and by subtle means and devices. *R. v. Parker, et. al.* 11 *Law Journal*, 102. So a conspiracy by the master of a female apprentice, an attorney, and a gentleman, to assign the apprentice to the latter, though with her own consent, for the purpose of prostitution, was holden indictable. *R. v. Delaval*, 3 *Burr.* 1344; 1 *W. Bl.* 410, 439. But an indictment will not lie for a conspiracy to commit a mere civil trespass. *R. v. Turner*, 13 *East*, 228.

EVIDENCE.—A conspiracy is proved either expressly, or by proof of facts from which it may fairly be implied. It is seldom proved expressly; nor can a case easily be imagined in which that is likely to occur, unless where one of the persons implicated consents to be examined as a witness for the prosecution. In nearly all cases, therefore, the conspiracy is proved by what is usually termed circumstantial evidence, namely, from the proof of facts from which it may be implied. The acts done by each of the parties, or by some or all of them jointly, in furtherance of their common purpose, are termed overt acts; and when once the concert between the parties is proved, the overt act of each is deemed evidence against all, no matter where committed, whether in the county, or elsewhere. And if there be not express proof of the conspiracy itself, such of these overt acts, which tend to prove it, should first be collected and proved; and then the remaining overt acts

may be given in evidence. See *R. v. Murphy and Douglas*, 8 C. and P. 297.

If two be charged with a conspiracy, and there be not sufficient evidence against one, the other must be discharged; for one person alone cannot be guilty of a conspiracy. 1 *Hawk. c. 72*, s. 8. And for the same reason, a husband and wife cannot alone be indicted for a conspiracy, for they are but one person in law. *Id.* But if two be indicted for having conspired with others who are not tried, then if one be acquitted the other may still be convicted. *Id.* Or if two be indicted for, or charged with, conspiracy, and one die, the survivor may be convicted. *R. v. Nichols*, 2 *Str.* 1227.

FORM OF COMMITMENT FOR CONSPIRACY.

on the day of , in the year of our Lord one thousand
 eight hundred and , at , in the said Colony, did, amongst them-
 selves, unlawfully conspire, combine, confederate, and agree together [feloni-
 ously to, &c., describing the offence generally.] And you the said Keeper, &c.
 Misdemeanor at Common Law.

CONSTABLE.

(See 21 James I. c. 12; and 24 G. II. c. 44; Callaghan, vol. 2, p. 714, 715.)

CONSTABLES and other peace officers are invested with large powers and extensive authority at common law, for the purpose of preserving the peace, preventing the commission of crimes and misdemeanors, apprehending offenders, and executing the warrants of Justices of the Peace. Every high and petty constable within the limits of their districts, are Conservators of the Peace at common law. *Dalt. c. 1.* It is their duty therefore to do all that they can to preserve the peace within their respective constablewicks, and for this purpose they not only may, but ought to apprehend any person who shall make an affray, or assault upon another in their pre-

sence; or who shall threaten to kill, beat, or hurt another; or shall be ready to break the peace in their presence; and may take such persons before a Justice of the Peace, in order that they may find surety for the peace. *Dalt.* c. 1. So also by the common law, the Sheriff, Under-sheriff, Constable, or any other peace officer, may and ought to do all that in them lies towards the suppressing of a riot; and in order the better to enable peace officers to preserve the peace, they have authority to command all other persons to assist them in endeavouring to appease such disturbances as take place in their presence. *Dalt.* c. 1.

In all cases of felony a peace officer has not only authority to apprehend a felon while committing the felony, but also upon pursuit or information at any time afterwards. And he may even justify apprehending an innocent person if he have reasonable ground to suspect that he is guilty of felony, and this although no felony have been committed. *Beckwith v. Philby*, 6 B. and C. 638. See also *Ex parte Krans*, 1 B. and C. 261, per *Abbott, C. J.* In all cases of misdemeanor a peace officer may apprehend the party while committing the offence; and it should seem upon fresh and immediate pursuit in some instances. But the general rule is, that if a misdemeanor be committed in the absence of a peace officer he cannot afterwards apprehend the party who committed it. It has been said that a constable may take those before a Justice who were arrested by such as were present at an affray, but this may well be doubted. But a constable may arrest, if a witness to an affray gives one of the affrayers in charge to the constable on the spot where it was committed, and whilst there is a reasonable apprehension of its continuance. *Timothy v. Simpson*, 5 Tyrw. 244. So a constable may apprehend a person while attempting to commit a felony; *R. v. Hunt, Ry. and M.* 93. Or it should seem even upon fresh pursuit, after he has desisted from the attempt. *R. v. Howarth, R. and M. C. C. R.* 207.

If an officer hear a disturbance in a public-house in the night, and the door be open, he may enter. *R. v. Smith*, 6 *C. and P.* 136, *Tindal, C. J.* But he has no authority to turn any one out of a public-house, unless the party had committed some offence punishable by law. *Wheeler v. Whiting*, 9 *C. and P.* 262. Nor to prevent a guest from going into a room in such house, unless a breach of the peace was likely to occur. *R. v. Mabel*, 9 *C. and P.* 474. But if a person makes such a disturbance in a public-house as is calculated to alarm the neighbourhood, a policeman may apprehend him. *Howell v. Jackson*, 6 *C. and P.* 723. It is to be observed that the authority of a constable or other peace officer, to act without a warrant, is confined by the common law to the district for which he is an officer, and consequently he cannot legally act as an officer in any other district. The constable is the proper officer to the Justice of the Peace, and bound to execute his warrants; and therefore, where a Statute authorises a Justice of the Peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to execute such warrant (2 *Hawk*, c. 10, s. 35); and inasmuch as the office of constable is wholly ministerial, and no way judicial, it seems that he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself. 2 *Hawk*, c. 10, s. 36.

At common law, where a warrant was directed to officers as individuals, they might execute it anywhere within the extent of the Magistrate's jurisdiction who granted it; but where it was directed to persons by the name of their office, it was confined to the districts in which they were officers. If, therefore, a warrant was directed to "the constable of the parish of S.," such constable had no authority at common law to execute it out of the parish of S., and if he attempted so

to do, he was a trespasser. *R. v. Weir*, 1 *B. and C.* 288. But now by the 5 G. IV. c. 18, a constable in such a case may execute a warrant out of his precinct at any place within the jurisdiction of the Magistrate who granted it. If a warrant be good upon the face of it, and for an offence within the jurisdiction of the justice, the falsity of the charge will not prevent the execution of the warrant from being legal, but if the warrant be bad upon the face of it, as if the name of the person on whom it is to be executed be insufficiently stated, or the name of the officer who is to execute it be inserted after the warrant is issued, the officer will not be justified in acting under it. So a constable cannot justify an arrest by virtue of a warrant which appears on the face of it to be for an offence whereof a Justice of the Peace has no jurisdiction, or to bring the party before him at a place out of the District for which he is a Justice. 2 *Hawk.* c. 13. s. 10; or by virtue of a blank warrant. A constable in executing a warrant, must act in strict conformity with the warrant, otherwise he is a trespasser. He cannot therefore justify apprehending Richard H. under a warrant to apprehend John H. *Hoye v. Bush*. 1 *M. and Gr.* 775. So in executing a search warrant he cannot justify seizing any goods except the goods specified in the warrant, unless, perhaps, in a case where they would furnish evidence of the identity of the goods stolen. *Crozier v. Cundey*, 6 *B. and C.* 232; see also, *Parton v. Williams*, 3 *B. and Ald.* 330; *Smith v. Wilshire*, 2 *B. and B.* 619; *Theobald v. Crichmore*, 1 *B. and A.* 227.

In all cases where officers are authorized to act, they must exercise their authority in a proper manner; and if they exceed the reasonable bounds of what is required for the due performance of their duties, they become wrong doers. Thus, if a constable arrest a man upon suspicion of felony, he must take him as soon as he reasonably can before a Magistrate for examination; and if he keep him in custody for an unreasonable time, as

for instance, three days before he does so, he becomes a trespasser. *Wright v. Court*, 4 *B. and C.* 596. So a constable is bound to treat a prisoner, while in his custody, with no greater severity than is necessary to prevent his escape; if, therefore, he handcuff a prisoner, where it is not necessary, in order to prevent his escape, or where he has not attempted to escape, he is a trespasser. *Wright v. Court*, 4 *B. and C.* 596. So although a constable may be justified in removing from Church a person who attempts to read a notice in the Church, and detaining him until the service is over, he cannot legally detain him afterwards, in order to take him before a Magistrate. *Williams v. Glenister*, 2 *B. and C.* 699; *Russell on Crimes*, (1843,) vol. 1. p. 771 to 773.

“When the constable has done an act in obedience to the warrant of a Magistrate, he cannot be sued; but only the Magistrate, who has exceeded his jurisdiction, provided the constable give a copy of his warrant within six days, (in pursuance of the 24 G. II. c. 44, s. 6.) But where a constable has acted beyond his authority, then *he* is liable for the excess.”

CONTEMPT.

The Justices assembled in General or Quarter Sessions have an undoubted power to commit, for any contempt in the face of the Court, *for the period of their Session*, for this is a power incident to every Court of Justice. *Such contempts* are rude and contumelious behaviour, violent and obstinate expressions of disapprobation or applause, arresting a suitor in the face of the Court, refusal to be sworn, breach of the peace in open Court, prevarication in the witness box, or any gross manifestation of a want of that respect on which the satisfactory administration of justice depends. *Dick, Q. S.* 47. A *Single Justice* may also commit the offender for his

contempt (7 *Taunt.* 63), but he must do so by warrant, *in writing*, and for a time certain. 5 *B. and Ald.* 894.

CONVICTION.

When an information or complaint is laid before a Justice of the Peace, of an offence punishable merely upon a summary conviction, having been committed within the district to which his commission extends, it is his duty to have the offender brought before him, to hear the parties and their witnesses, to determine the matter, and to punish or discharge the defendant according to the directions of the Statute or Act of Council upon *the subject*. And it may be observed, that Justices have no authority whatever to proceed against an offender, by way of summary conviction, except in cases where it is given to them, either expressly or by necessary implication, by some particular Statute or Act of Council, as, therefore, not only the conviction itself, but also the preliminary and subsequent proceedings, namely, the information, the summons or warrant, the proceedings at the hearing, and the warrant of distress or commitment, form material parts of this subject, we shall consider them in the following order :—

1. THE INFORMATION, p. 119.
2. THE SUMMONS OR WARRANT, p. 122.
3. THE PROCEEDINGS AT THE HEARING, p. 124.

Before whom, p. 124.

Appearance or default of the defendant, p. 125.

Evidence, p. 125.

Conviction, p. 127.

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Costs, p. 128.

4. THE CONVICTION p. 129.

Recital of the Information, p. 129.

Summons and appearance, &c., p. 130.

Evidence, p. 131.

Conviction, p. 132.

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Conviction to be returned to the Sessions, p. 134.

5. THE WARRANT OF COMMITMENT, &c., p. 135.

Of Commitment where the punishment is by imprisonment, p. 135.

——— in default of immediate payment of penalty, p. 135.

Of Commitment in default of payment within a limited time, p. 135.

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Of Commitment for want of distress, p. 137.

6. CONVICTIONS, &c., HOW REVIEWED, p. 138.

By appeal, p. 138.

By certiorari, &c., p. 141.

1. THE INFORMATION.—An information is the first proceeding against an offender, punishable upon a summary conviction. In practice, however, where it is not expressly directed to be in writing by the Statute creating the offence, it is never required to be drawn up in form, except in cases where the proceedings are at the suit of a common informer, for a penalty, in which cases, whether the informer be entitled to the whole of the penalty, or to a moiety of it only, the Magistrate always requires an information in writing, drawn up in regular form, to be lodged with him before he will grant the prosecutor a summons against the offender. In all other cases the Magistrate usually requires no more than a mere verbal statement of the case by the prosecutor, before the summons is granted, or a statement of it upon oath before he grants a warrant. It is not actually necessary, however, that it should be upon oath, unless the Statute or Act of Council creating the offence require it. *Basten v. Carew*, 3 *B. and C.* 649. We shall, therefore, confine our observations under the present

head, to informations at the suit of a common informer. An information, at the suit of a common informer, must state the offence, with the same certainty and precision as an indictment. It must state the name of the informer, in order that he may not afterwards be called as a witness, unless such be allowed by the Statute or Act under which the information is lodged. It must state the time at which the information purports to be lodged, and the time when the offence was committed, in order that it may appear upon the face of the information that the prosecution has been commenced within the time limited for that purpose by law ; but it is not essential that this time should be stated truly. If there afterwards appear to be a variance, in this respect, between the information and the evidence, it will be immaterial, if it appear from the evidence that the prosecution was actually commenced in due time.

It must state the place, namely, the parish and county, &c., within which the offence was committed, in order to shew that it was committed within the jurisdiction of the Justice before whom the information is preferred; See *R. v. Hazel*, 13 *East*, 139. But here also, although the information must state the county or other extent of jurisdiction of the Justice truly, it is not necessary that it should be correct as to the parish or other place, where the offence is alleged to have been committed, unless indeed it be an information for an offence, where the Statute creating it gives a part of the penalty to the poor of the parish in which it is committed, in which case a material variance between the parish laid and that proved would be fatal. And lastly, it must state all the facts and circumstances which constitute the offence, according to the definition of it in the Statute or Act of Council on which the information is framed. It is not sufficient however to state the offence generally, in the words of the Statute or Act, unless the Statute or Act be sufficiently specific in itself; but the particular acts done must be set out, in order that it may be seen whe-

ther they amount to an offence within the Statute or Act, or not. *R. v. James, Cald.* 458. And if the Statute or Act in the definition of the offence, use any adverbs of intent, &c, as “maliciously,” “wilfully,” “knowingly,” “unlawfully,” or the like, care must be taken to use the same, in charging the offence in the information, otherwise it will be bad. See *R. v. Jukes*, 5 *T. R.* 536; See also *Carpenter v. Mason, et al.* 12 *Ad. and El.* 629. Also the information must state all these facts with certainty and precision, with time, place, &c. And it must not state any part of the offence in the alternative, (*R. v. Pain*, 5. *B. and C.* 251; *R. v. Sadler*, 2 *Chit.* 519; *R. v. North*, 6 *D. and R.* 143.) unless indeed both parts of the alternative be the same in substance, as for instance charging the defendant with doing an act, or causing it to be done. If there be any exception in the same clause of the Statute or Act which creates the offence, the information must show, negatively, that the defendant or the subject of the information does not come within the exception. See 1 *T. R.* 141, 15 *East*, 456. But if an exception or proviso be in a subsequent Clause or Statute, or Act (See *R. v. Hall*, 1 *T. R.* 320.), or although in the same section, yet if it be not incorporated with the enacting clause by any words of reference (1 *B. and A.* 94.), it is in that case matter of defence for the other party, and need not be negatived in the information.

If the information do not state all the facts and circumstances which constitute the offence, as defined by the Statute or Act; or if it do not state them with sufficient certainty and precision: or if it do not negative the exceptions in the Statute or Act when it ought;—the defendant may object to it on these grounds, and the Justice should dismiss the complaint.

In general it will be sufficient to state the offence in the same manner as in a conviction: the forms of which the reader will find under their proper heads throughout the Work.

By Statute 31 Eliz. c. 5, s. 5, informations at the suit of an informer, where the penalty is limited to the Queen, and to any person who will sue for the same, must be brought within one year from the time the offence was committed. In many cases, however, a less time is limited by the Statute or Act creating the offence.

By Stat. 18 Eliz. c. 5, s. 1, the informer must exhibit his information in person, and shall not "have or use any deputy or deputies at all."

2. THE SUMMONS OR WARRANT.—SUMMONS.—As soon as the information is lodged, if it state an offence cognizable by a Justice of Peace, punishable upon summary conviction, and committed within the jurisdiction of the Justice to whom it is preferred, the Justice will immediately grant a summons requiring the defendant to appear before him; and this is in all cases necessary where the party complained of will not appear voluntarily. See *R. v. Allington*, 2 Str. 678; *R. v. Venables*, Id. 630; *R. v. Hall*, 6 D. and R. 84; *Painter v. Liverpool Gas Company*, 3. Ad. and El. 433.

The summons may be directed either to the party accused or to the constable or other third person. It should state a particular time and place for the party's attendance, and a reasonable time should intervene between the granting of the summons and the time appointed for the party's attendance, in order that he may have an opportunity of collecting his witnesses and preparing for his defence. See *R. v. Mallinson*, 2 Bur. 679. One Justice may grant it even in cases where the conviction must be by two or more Justices. 3 G. IV. c. 23. s. 2.

Where the Statute or Act creating the offence contains no directions as to the form of the summons, and manner of serving it, it may be directed either to the party accused, to appear, &c., or to the constable of the district, to summon to appear, &c.; and it may be directed in the name the party accused is known by, whether such be the real name, or only an assumed

name. And if the party cannot be served personally, the summons may be left at the usual place of abode of such party, or a copy may be attached to the door or some other conspicuous part on the outside of such abode, and upon proof thereof on oath, and also of an endeavour, without effect, to serve the party personally, such service will be deemed a legal and effectual service. 5 W. IV. No. 22, s. 2. *Callaghan*, vol. 2, p. 706. See tit. "Summary Jurisdiction," post. If the Statute or Act creating the offence contain no directions as to the time of serving the summons, it should be served a reasonable time before the day appointed for the hearing; but if it contain any such directions, care must be taken to pursue them strictly. Where the Statute required that the summons should be served "ten days at the least" before the time of hearing, and it was served on the 20th September, and the conviction was on the 30th, the defendant not appearing, the Court held that the "ten days at the least" meant ten days, exclusive of the day of service and of the day of the hearing, and that, therefore, on the 30th, the Magistrates had no jurisdiction to convict, and that having issued a distress warrant upon the conviction, under which the defendant's goods were taken, they were liable to an action of trespass. *Mitchell v. Foster*, 9 *Law Journal*, 95 m. If the party appear, his appearance will cure every defect in the summons. *R. v. Stone*, 1 *East*, 649; *R. v. Johnson*, 1 *Str.* 261.

WARRANT.—A Justice of Peace cannot grant a warrant upon an information, unless expressly authorized to do so by Statute or Act of Council. And even in cases where such authority is given, a warrant is seldom granted in the first instance, unless in cases where it is likely that the party will abscond as soon as he hears that the complaint has been lodged against him. Nor is it usual to grant it after a personal service of the summons; for in that case the Justice may proceed to hear and determine the case, whether the party

only as to
the service.

accused appear before him or not. See *R v. Simpson*, 1 *Str.* 44, *Arch. Peel's Acts*, 172, 250. But if the party cannot be personally served with the summons, and there be reason to think that he keeps out of the way in order to avoid a personal service of it ; or if under the peculiar circumstances of any case, a warrant be deemed advisable, in order to prevent the party's absconding before the case can be heard, or the like, then in cases where a warrant may legally be issued, the Justice, upon application, and upon the matter of the information or complaint being substantiated before him upon oath, will grant a warrant, requiring the person to whom it is directed to apprehend the party complained of, and bring him before the same or some other Justice of the Peace, to answer the charge against him. It is not returnable at any particular time ; but remains in force until executed. *Dickenson v. Browne, Peake*, 234.

3. PROCEEDINGS AT THE HEARING.—BEFORE WHOM.—In some cases the Statute or Act of Council creating the offence, allows the conviction to be by one Justice ; in other cases it requires it to be made by two ; in others (as in *Peel's Acts* for instance), although the conviction may be by one Justice, yet if it be before two or more, an additional punishment may be adjudged to the defendant. This subject however is entirely regulated by the Statute or Act which gives cognizance of the offence to Justices of Peace in each particular case ; and to which the reader is referred. If the Statute or Act allows one Justice to convict, the conviction may be by two or more ; but where the Statute or Act requires the conviction to be by two Justices, a conviction by one would be *Coram non judice* and void, and the Justice making the conviction, and the constable executing it, would be liable to an action of trespass, if the party's goods were distrained upon, or himself committed.

It may be necessary to mention that the room or place in which the Magistrate sits to hear and determine a matter of complaint thus in a summary way, is in law

a public and open Court, to which the public generally may have access. And the party accused shall be admitted to make his full answer and defence, and to have all witnesses examined and cross-examined by Counsel or Attorney. 4 Vict. No. 27, s. 2; *Callaghan*, vol. 1, p. 347.

APPEARANCE OR DEFAULT OF DEFENDANT.—Upon the accused party's appearing before the Justice, either in obedience to the summons, or upon being apprehended, and brought there under a warrant, or where, after personal service of the summons, the party does not attend at the time and place appointed by it, and oath is duly made of the service, the Justice then proceeds to the hearing of the case.

The information (if one have been drawn up in form) is first read to the defendant, or if no information have been drawn up, then the charge is read to him from the summons or warrant, and he is asked what he has to say to the charge thus made against him. If he confess that he committed the offence, nothing remains for the Justice to do, but to convict the defendant, and award the punishment, assigned by the Statute creating the offence, and a minute should be taken of this, in order that a conviction in form may be drawn up from it afterwards, and returned to the Sessions. But if he say that he is not guilty, or say nothing, or refuse to enter upon any defence; see *R. v. Crowther*, 1 *T. R.* 127; *R. v. Benwell*, 6 *T. R.* 75; or, if he does not appear at all, but make default, then the Justice must proceed to examine the witnesses and adjudge of the guilt or innocence of the accused party accordingly.

By appearing the party waives all objections to the summons, or for want of one. *R. v. Johnson*, 1 *Str.* 261; *R. v. Stone*, 1 *East.* 649.

EVIDENCE.—The evidence must prove the offence with which the defendant is charged: the time when it was committed, in order to shew that the information or complaint was lodged within

the time limited for that purpose by Statute or Act of Council. See *R. v. Woodcock*, 7 *East*, 146; and in the case of an information by a common informer, that the offence was committed before the information was lodged, see *R. v. Fuller*, 1 *Ld. Raym.* 509; the place where it was committed, in order to shew that it was committed within the limits of the Justice's Jurisdiction, see *R. v. Jeffries*, 1 *T. R.* 241; *R. v. Edwards*, 1 *East*, 276; *R. v. Hazell*, 13 *East*, 139; and every fact and circumstance necessarily constituting the offence; for if any one of these be not proved, or cannot fairly be presumed from other facts or circumstances which have been proved, the defendant should not be convicted. But where a Statute or Act in the same clause creating the offence, contains some exception or proviso, which must be negatived by the information;—although the information in such a case would be bad if it did not negative such exception (see *ante*, p. 121), yet it is not necessary for the prosecutor to prove the negative (*R. v. Turner*, 5 *M. and S.* 206), but the defendant may prove the affirmative if he will in his defence.

If any person be summoned to attend as a witness, in cases of Summary Jurisdiction, and neglect to attend, without a reasonable excuse, such person shall forfeit a penalty of not less than two pounds, nor more than twenty, which may be recovered in a summary way, before any one Justice of the Peace. 5 *W. IV.* No. 22, s. 4. *Callaghan*, vol. 2, p. 707. The witnesses who attend are called and examined; first the witnesses for the prosecution, and (if the defendant appear,) then the witnesses for the defence; and each witness, after his examination in chief, may be cross-examined by the opposite party, or by some professional person on his behalf. See 4 *Vict.* No. 27, s. 2 *Callaghan*, vol. 1, p. 347; and *Cox v. Coleridge*, 1 *B. and C.* 37. And, therefore, it is that where the defendant appears, each witness must be sworn and examined

in his presence, that he may have an opportunity of cross-examination. *R. v. Crowther*, 1 *T. R.* 127. A minute should be carefully taken of the testimony of each witness, both in his examination in chief, and in his cross-examination ; and as nearly as possible in the words the witness uses, in order that it may be inserted in the conviction, if necessary, when a conviction is afterwards drawn up in form, to be transmitted to the Sessions.

ADJOURNMENT.—If either party, but particularly the defendant, show a reasonable ground for adjourning the hearing to some other day, the Justice may do so if he will, and in such a case the hearing at such subsequent day will proceed, at the stage at which it was broken off at the time of the adjournment.

CONVICTION.—In summary proceedings before a Justice of Peace, he is substituted for a Jury as far as it relates to the conviction, that is to the finding of the party guilty, or not guilty. He should judge, therefore, of the guilt or innocence of the defendant from the evidence, in the same manner as if he were upon a Jury. If the evidence be such as to leave no reasonable doubt upon his mind of the guilt of the defendant he should convict him, if otherwise he should acquit him.

ADJUDICATION.—The adjudication is analogous to the judgment in a Court of Law. In some cases the Statute is peremptory as to the punishment ; giving no discretion to the Justice to alter or vary it ; and in such case the Justice of course can only pursue the directions of the Statute or Act of Council. In other cases the punishment is left in some measure in the discretion of the Justice, as to the nature of the punishment, its duration, or extent ; in such cases he should guide his discretion as to the nature of the punishment, according to the circumstances of the case and the condition in life of the defendant ; and as to the extent of the punishment, according to the circumstances of aggravation or extenuation, under which the offence is proved to have

been committed. If any part of this adjudication, when drawn up, be bad, the conviction will be deemed bad altogether, and may be quashed. *R. v. Petchett, 5 East, 339.*

COSTS.—The Statute or Act creating the offence, usually gives authority to the Justices to award costs to the party in whose favour they decide. Where the Statute, however, contains no provision of that description, it is provided by Stat. 18 G. III. c. 19, s. 1, that where any complaint shall be made before any of H. Majesty's Justices of the Peace, and any warrant or summons shall issue in consequence of such complaint, it shall and may be lawful to and for any Justice of the Peace, who shall have heard and determined the matter of the said complaint, to award such costs to be paid by either of the parties, and in manner and form as to him or them shall seem fit, to the party injured; and in case any person so ordered by the said Justice to pay such sums of money as aforesaid, shall not forthwith pay down or give security for the same to the satisfaction of the Justice, it shall and may be lawful for the said Justice, by warrant under his hand and seal, to levy the said sum or sums by distress and sale of the goods and chattels of such person so refusing or neglecting; and where goods and chattels of such person cannot be found, to commit such person to the house of correction of the county, &c., wherein such person shall reside, there to be kept to hard labour, for any time not exceeding one month, nor less than ten days, or until such sum or sums of money, together with the expenses attending the commitment of such person to such house of correction, be first paid, provided, nevertheless, that upon the conviction of any person or persons upon any penal Statute, where the penalty shall amount to or exceed the sum of £5, the said costs shall be deducted by the said Justice, according to his discretion, out of the said penalty, so that the said deduction shall not

exceed one-fifth part of the said penalty; and the remainder of the said penalty shall be paid to or divided among the person or persons who would have been entitled to the whole of the penalty in case this Act had not been made. Sec. 2.

And by sec. 3, it is further enacted, that the several forms to this Act annexed, shall and may in the respective cases be used and observed. See *Forms* post.

4. THE CONVICTION.—A CONVICTION is the record of a summary proceeding before a Magistrate, drawn up in form. It should perhaps in all cases be written upon parchment; and in practice it usually is so, particularly when returned to a *Certiorari*. Where a form is given by the Statute or Act which creates the offence, it is usually very short, seldom stating more than the conviction and adjudication, and usually leaving a blank for the statement of the offence, which blank must be filled up with as much certainty as in an ordinary conviction or information. If in such a case any form not warranted by the Statute or Act be adopted, the conviction will be illegal and void. *Danson v. Gill*, 1 *East*. 64; *Goss v. Jackson*, 3 *Esp.* 198; but if it contain all that is in the Statute or Act, and something more, the superfluous matter shall not vitiate it. *R. v. Jefferies*, 4 *T. R.* 767. And a trifling variance in setting out the title of the Act, such as the omission of a word, will not vitiate the conviction. *Nixon v. Nunney*, 1 *Ad. and El. N. C.* 747.

In all other cases, where the Statute or Act creating the offence does not give a form, the conviction first recites the information; it then states that the defendant being summoned, appeared and pleaded, or confessed, or failed to appear, as the case may be; it then states the evidence given on both sides; then it states the conviction, and lastly the adjudication. We shall examine these several parts of a conviction a little more particularly.

INFORMATION.—The conviction recites the information, but in the past tense (*R. v. Hall*, 1 *T. R.* 320.) to the

words "contrary to the form of the Statute in such case made and provided." In convictions or informations by a common informer, the information must be set out exactly as it is drawn, and ought not to be altered or varied from in the slightest degree, except merely that it must be recited in the past, and not in the present, tense. But in all other cases of convictions, this part of them, usually in practice, states the offence, not perhaps exactly as it was described in the summons or warrant, but as it was proved by the evidence before the Magistrate.

All objections that can be taken to an information, (See *ante* p. 120, 121,) and which are not merely for a defect in form, may be taken also to this part of the conviction. Where a conviction on the excise laws, instead of stating the names of the defendants, stated merely the name of their firm, H. & Co., it was holden that it could not be supported. *R. v. Harrison*, 3 *T. R.* 508.

SUMMONS AND APPEARANCE, &c.—The conviction usually states that the defendant was summoned, and it must do so, in cases where the defendant did not actually appear at the hearing, or where it is not shewn on the face of the conviction that he was present at the time of the proceeding before the Justice, otherwise the conviction may be quashed. *R. v. Allington*, 2 *Str.* 678; *R. v. Venables*, 2 *Str.* 630. And see *R. v. Stone*, 1 *East*, 649; *R. v. Johnson*, 1 *Str.* 261. And where a Statute required the party to be summoned ten days at least before the day of hearing, and it appeared on the face of the conviction that he was summoned on the 20th to appear on the 30th, and in default of his appearance on the 30th, the Justices adjudicated; the Court held the conviction to be void, and the Justices liable to an action for an arrest under it. *Mitchell v. Foster, et al.* 12 *Ad. and El.* 472.

The conviction also states whether the party accused appeared before the Justice or not. If he did not appear, the conviction states the default, then states the

evidence against the defendant, and then the conviction and adjudication, in the same manner as if the defendant had appeared and pleaded not guilty. *R. v. Simpson*, 1 *Str.* 44. If the defendant appear, his appearance is stated in the conviction, and it is stated also whether (having heard the charge contained in the information) he pleaded not guilty, or neglected or refused to make any defence, in either of which cases the conviction states the evidence, and then proceeds to the conviction and adjudication. But if the defendant appear and confess that he is guilty of the offence imputed to him, the appearance and confession are recorded in the conviction; and then if it be a confession of the entire offence, instead of stating any evidence, which of course would be unnecessary in such a case, the Justice may at once proceed to the conviction and adjudication, but if it be a confession merely of a fact which forms but a part of the offence charged, the conviction then, after stating the confession in the words of the defendant, proceeds to state the evidence as to the other facts and circumstances constituting the offence charged, and lastly states the conviction and adjudication. See *R. v. Gage*, 1 *Str.* 546; *R. v. Hall*, 1 *T. R.* 320; *R. v. Little*, 1 *Burr.* 613; *R. v. Smith*, 3 *Burr.* 1475.

EVIDENCE.—The conviction must set out the evidence in all cases, except where the defendant confesses that he is guilty of the offence charged against him. This is done, in order that the Supreme Court, if the conviction be removed there by *certiorari*,* may see upon the face of it whether the evidence be sufficient to warrant it or not. *R. v. Killett*, 4 *Burr.* 2063; *R. v. Read*, 2 *Doug.* 486; *R. v. Clarke*, 4 *T. R.* 220. Therefore stating merely the result of the evidence and not the evidence itself, (*R. v. Lovett*, 7 *T. R.* 152,) as

* Clauses are now usually inserted in Acts giving Magistrates summary jurisdiction, declaring that no process shall be quashed for want of form, or removed by *certiorari* into the Supreme Court.

+ Such specific acts as amount in law to the offence
vide Paley Sum. Law

for instance, stating that the offence was "fully and duly proved," or that the witness swore that the defendant was "guilty of the premises," (*R. v. Theed*, 2 *Str.* 919; *R. v. Baker*, 1 *Str.* 316), or the like would be bad. Care must be taken also to set out the evidence correctly. See *R. v. Pearce*, 9 *East*, 358; *Re Rix*, 4 *D. and R.* 352; *R. v. Warnford*, 5 *D. and R.* 489. And if the defendant appeared, it must be alleged to have been given in his presence. *R. v. Benwell*, 6 *T. R.* 75; *R. v. Vipont*, 2 *Burr.* 1163; see *R. v. Kempson*, *Cowp.* 241; *R. v. Thompson*, 2 *T. R.* 18.

If the conviction be removed into the Supreme Court, and there appear to have been no evidence to prove a material part of the offence charged, that Court will quash the conviction. *R. v. Smith*, 8 *T. R.* 588.

But if, on the other hand, it appear that the Justices have acquitted the defendant upon evidence apparently sufficient to convict him, the Supreme Court will not interfere; *R. v. Reason*, 6 *T. R.* 375; for the defendant may possibly have been acquitted, because the witnesses were not credited by the Magistrate.

CONVICTION.—This part of the record is analogous to the verdict of a Jury, and merely declares that the party accused is guilty of the offence or offences imputed to him. If the information be for two or more offences and the Justice find him guilty of all, the conviction must state him to be guilty of the "offences" charged upon him in the information: if, on the other hand, the Justice find him guilty of one of the offences only, the conviction should state that offence specially thus: "that he, the said E. F., is guilty of the offence firstly above charged upon him in the said information, for that he, the said E. F., on at did," &c., stating the offence as in the information: if the conviction in such a case were to state that the defendant was guilty of the "offence" charged, &c., it would be quashed, because it would be uncertain of which of the offences he was guilty. *R. v. Solomons*, 1 *T. R.* 249.

But if the Justice should be of opinion that the evidence is not sufficient to convict the defendant, he must acquit him ; and in such a case the defendant, in strictness, is entitled to have his acquittal recorded, and transmitted to the Sessions, in order that he may be enabled to give it in evidence, as a bar to any other subsequent information for the same offence. The record in that case may be the same as the record of a conviction to the end of the evidence, and then thus, "*Therefore, it manifestly appearing unto us, that he, the said E. F., is not guilty of the offence charged upon him in the said information, we do hereby acquit him of the offence aforesaid, and do adjudge that he do go thereof, quit without delay. Given under our hands and seals, this day of _____, in the year of our Lord _____.*"

See ante p. 128 as to costs.

ADJUDICATION, &c.—The adjudication is the judgment passed upon the defendant for his offence, and it must form a part of every conviction, otherwise the conviction may be quashed. See *R. v. Hawkes*, 2 Str. 858 ; *R. v. Vipont*, 2 Burr. 1163 ; *R. v. Harris*, 7 T. R. 238. Care must be taken also that it be such an adjudication as is warranted by the Statute or Act creating the offence, otherwise it will be fatal, and the Court upon application will quash the conviction. See *R. v. Hall*, Cowp. 60 ; *R. v. Elwall*, 2 Ld. Raym. 1514. And if two persons be convicted of an offence, punishable with a penalty, each must be severally fined. *Morgan v. Brown*, 6 Nev. and M. 57. In adjudicating the costs the amount must be mentioned. *R. v. Payne*, 4 D. and R. 72. (As to costs see ante p. 128.) The manner in which the penalty was to be distributed must formerly have been specified. *R. v. Dimpsey*, 2 T. R. 96 ; *R. v. Seale*, 5 East, 568 ; but it is now sufficient to order it to be distributed according to the form of the Statute in that case made and provided. It is not necessary, however, to adjudge that if the penalty be not forthwith paid, the defendant shall be committed ; but if it be

A "show cause summons" should be issued

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not in fact paid, the Justice may commit him without any such adjudication, and this even after the conviction has been confirmed upon appeal. *R. v. Helps*, 3 *M. and S.* 331. The conviction must be dated. A mistake in the date, however, will not vitiate a conviction, which is otherwise complete. *R. v. Picton*, 2 *East*, 195.

CONVICTION TO BE RETURNED TO THE SESSIONS.—The conviction must in all cases be drawn up in form and returned to the Sessions, whether appealed against or not. *R. v. Eaton*, 2 *T. R.* 285. In cases of convictions under Peel's Acts, for larceny or malicious injuries to property, it is enacted that every Justice of the Peace before whom any person shall be convicted of any offence against these Acts, shall transmit the conviction to the next Court of General or Quarter Sessions, which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court. 7 and 8 *G. IV. c. 29*, s. 74; 7 and 8 *G. IV. c. 30*, s. 40. The conviction thus returned, however, may be in a more formal shape than it was when at first drawn. *R. v. Barker*, 1 *East*, 186; *Gray v. Cookson and Clayton*, per *Ld. Ellenborough*, *C. J.*, 16 *East*, 21. But, although a Magistrate may thus draw up a conviction in a more formal manner than was done in the first instance, and may return the amended form as his conviction to the Sessions, or to the Supreme Court upon a *certiorari*, or probably he may return an amended conviction to the Sessions, even after having before returned an erroneous one, (*Selwood v. Mount*, 9 *C. and P.* 75,) yet he cannot do this after the first conviction has been quashed, either upon appeal or by the Supreme Court, or after the defendant has been discharged by the Supreme Court by reason of a bad conviction, being recited in the warrant of commitment. *Chaney v. Payne*, 1 *Ad. and El. N. C.* 712; 10 *Law Journal*, 114, *m.*

If the defendant demand a copy of the conviction, the Justice should give it to him. *R. v. Midlam*, 3 *Burr.*

1720. But as the defendant will not be allowed to object that the conviction afterwards returned to the Sessions is in another, and more correct, form than that of which the copy has been given to him, as just now mentioned, (*R. v. Barker*, 1 *East*, 185; and see *R. v. Allen*, 15 *East*, 332), it may be imprudent to depend much upon the copy thus obtained, or to appeal against the conviction, or remove it by *certiorari*, for any formal defect appearing in such copy, because the same defects may probably not appear in the conviction transmitted to the Sessions.

5. WARRANT OF COMMITMENT, &c. — If the defendant be convicted, the conviction must next be executed: that is to say, the defendant must be compelled to pay the penalty, or undergo the punishment inflicted by law for the offence, and awarded by the conviction. This is either a corporal punishment by imprisonment, &c., or a pecuniary penalty, and in default of immediate payment, imprisonment, &c.; or a pecuniary penalty, and in default of payment within a limited time, imprisonment, &c.; or a pecuniary penalty, and in default of the same being realized by warrant of distress and sale, imprisonment, &c. In this respect the execution must be in exact conformity with the Statute or Act creating the offence. It may be necessary perhaps to mention that a warrant of distress or commitment may in all cases be granted by one Justice, even in cases where the conviction must be by two; and it is immaterial whether the Justice who grants the warrant be one of the Justices before whom the party was convicted or not. 3 G. IV. c. 23, s. 2. But it must in all cases show before what Justice the defendant was convicted, (*R. v. York*, 5 *Burr.* 2684); and the place where the offence was committed, or such other circumstances as may be necessary to show that the Magistrate had jurisdiction. *Johnson v. Reid*, 6 *M. and W.* 124; *Re Peerless*, 1 *Ad. and El. N. C.* 143. It must also recite the conviction on which it is founded, in order to show that the Justice

had jurisdiction to grant it. See *Lock v. Selwood*, 1 *Ad. and El. N. C.* 736; *R. v. King*, 13 *Law Journal*, 43 *m.* And the Court will not presume a conviction to be good, which according to the recital in the commitment appears to be otherwise. *R. v. King*, *supra*.

The warrant must *in all cases* be in writing; and any imprisonment of the party convicted without a written warrant, except during the period necessary to prepare it would be illegal. *Hutchinson v. Lowndes*, 4 *B. and Ad.* 118. And in such a case the irregularity was holden not to be cured by drawing up a commitment on a subsequent day, dated as of the day of the imprisonment. *Id.* It must also be dated, if it be a warrant of commitment for a time certain. *Re Fletcher*, 13 *Law Journal*, 16 *m.* As to the execution of the warrant, see ante "*Arrest.*"

6. WARRANT OF DISTRESS, &c.—In many Statutes and Acts, by which a pecuniary penalty is inflicted for offences punishable upon a summary conviction, the penalty is directed to be levied by distress and sale of the goods and chattels of the offender: and in default of sufficient distress, the offender to be imprisoned, &c. In such cases after conviction, a warrant of distress first issues, and upon the constable, to whom it is directed, returning that the defendant has no sufficient distress upon which he can levy the penalty, a commitment then issues to take the defendant and imprison him.* In every such case it "shall be lawful for the Justice at his discretion, to order the offender, so convicted, to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such offender

* By the 5th Wm. IV. No. 22, s. 1 (see post "Summary Jurisdiction"), it is directed that the period of commitment shall not exceed fourteen days, where the whole sum to be levied and remaining unpaid, together with costs, shall not exceed ten shillings; one calendar month where the said sum and costs shall not exceed one pound; two calendar months where the said sum and costs shall not exceed five pounds; and three calendar months where the said sum and costs shall be of any greater amount.

shall give sufficient security to the satisfaction of such Justice for his appearance before him on such day as shall be appointed for the return of the warrant of distress, such day not being more than eight days from the time of taking such security, and such security the said Justice is hereby empowered to take, by way of recognizance or otherwise, as to him shall seem right or proper. Or in case it shall appear to the satisfaction of such Justice, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such Justice sufficient whereon to levy all such penalties and forfeitures, costs, and charges, such Justice may, at his discretion, without issuing any warrant of distress, commit the offender for such period of time, and in such and like manner, as if a warrant of distress had been issued and *nulla bona* returned thereon. 5 G. IV. c. 18, s. 1.

And by section 2, reciting that by some Acts certain penalties are to be recovered before a Justice or Justices of the Peace, and he or they are authorized to issue a warrant for levying such penalties, by distress and sale of the goods of the offender ; but no further remedy is provided in case no sufficient goods can be found whereon to levy such penalties, it is enacted " that if it appear, either upon the return to a warrant of distress, or by the confession of the offender, or otherwise, that there are no sufficient goods whereon to levy the penalty, &c., the Justice may commit the offender to the common gaol, for any term not exceeding three calendar months, unless the sum adjudged to be paid, and all costs and charges of the proceedings shall be sooner paid, provided always that the amount of such costs and expenses shall be specified in such warrant of commitment."

And where an offender is committed for non-payment of a penalty, &c., " if he shall at any time during the period of his imprisonment, pay, or cause to be paid, to the keeper of the prison, the full amount of the penalty, costs, and charges, it shall be lawful for such keeper, and

he is hereby required forthwith to discharge such offender from his custody." *Id.* s. 3.

By Section 4, reciting that whereas cases may occur where the recovery of such penalty by distress and sale may appear to the Justice to be attended with consequences ruinous to the offender and his family: it is enacted, "That Justices shall be empowered, and they are hereby authorized, in all cases and upon all such occasions as to them shall seem fit, and where such consequences are likely to arise, to cause to be withheld the issue of any warrant of distress, and to commit the offender, immediately after conviction and in default of payment of the penalty, &c., to the common gaol or house of correction, for such time and in such manner as in that behalf is mentioned and directed by Statute: provided it be by the desire and with the consent, in writing, of the party upon whose property the penalty would otherwise be to be levied."

By Stat. 27 G. II. c. 20, s. 1, in a warrant of distress, "it shall be lawful for the Justice to order and direct the goods to be sold within a certain time to be therein limited, so as such time be not less than four days, nor more than eight days, unless the penalty, together with the reasonable charges of taking and keeping such distress be sooner paid." And by Sect. 2, the officer may deduct the expenses of taking, keeping, and selling the distress.

If the commitment be good upon the face of it, the Supreme Court, upon a *habeas corpus*, will not inquire into the validity of the conviction. *Re Richards, et al.* 13 *Law Journal*, 147 *m.* And on the other hand, if the commitment be bad upon the face of it, the Court will not intend a good conviction to support it. *Re Lordoff*, 13 *Law Journal*, 145 *m.*

CONVICTIONS, &c., HOW REVIEWED.—1. BY APPEAL.—An appeal against a conviction is by no means a matter of common right; it will not lie, unless given by the express words of some Statute or Act of Council.

R. v. Hanson, 4 *B. and A.* 519. There is no general statute upon the subject. The appeal, when given, is to the Quarter Sessions, stated in the margin of the conviction. Whether it is to be to the next Sessions after the conviction, or within a certain time after the conviction, or within what other time it must be lodged, must depend entirely upon the wording of the Act, by which the appeal is given. As to notice of appeal or recognizance: whether a notice of appeal shall be given, or a recognizance entered into, or what notice or recognizance will be sufficient, must depend entirely upon the words of the Statute or Act by which the appeal is given, or is regulated. In some cases the Statute requires a recognizance only, and in that case a notice of appeal need not be given. *R. v. Justices of Kent*, 6 *M. and S.* 258; *R. v. Justices of Essex*, 4 *B. and A.* 276. In some cases a notice of appeal alone is required, and in that case of course a recognizance need not be entered into: in some cases both are required, and both must be given. Whatever is required in this respect by the Statute or Act is deemed a condition precedent to the party's appealing, and the Sessions have no jurisdiction whatever of the appeal, they cannot even allow it to be entered, until the directions of the Statute in this respect have been complied with. *R. v. Justices of Oxfordshire*, 1 *M. and S.* 446. But where a Statute, giving an appeal against a conviction, required that the Magistrate, at the time of the conviction, should inform the party of his right of appeal, and that the party, at the same time, should give the Magistrate a written notice of appeal, and should enter into a recognizance to try it with effect; a party being convicted, the Magistrate told him of his right to appeal, and he entered into the necessary recognizance, but the Magistrate did not tell him of the necessity of his giving him a written notice of appeal: and at the Sessions, the Magistrates, thinking they had no jurisdiction for want of this notice being given, refused to receive the appeal: the Court

of King's Bench, upon application, granted a *mandamus* to the Sessions, commanding them to receive and hear the appeal, Lord Kenyon, C. J., saying, that it was the duty of the Magistrate, when he informed the party of his right to appeal, to inform him also of the necessity of his giving a written notice, otherwise the party would be deluded by the act of the Justice in taking the recognizance. *R. v. Justices of Leeds*, 4 *T. R.* 583. The Statute also directs to whom the notice shall be given—sometimes to the Justice, sometimes to the prosecutor, sometimes to both. Where it is to be given to the Justice, if there be more than one, it must be given to all. Where three persons were convicted of unlawfully fishing, upon a joint hearing, and they gave a joint notice of appeal against the conviction; but the Sessions refused to hear the appeal, because three separate convictions, one against each, and not one joint one against the three appellants, were returned: the Court, upon application awarded a *mandamus* to the Sessions to enter continuances and hear the appeal. *R. v. Justices of Oxfordshire*, 12 *Law Journal*, 40 *m.*

In an appeal against a conviction under the English Vagrant Act, for an obscene exposure of the person, it was holden a sufficient ground of appeal to state that the party was not guilty of the offence, although the offence consisted of three ingredients,—the exposure of the person, that it was done in a place of public resort, and for the purpose of insulting some female. *R. v. Justices of Newcastle-upon-Tyne*, 1 *B. and Ad.* 933.

The Sessions may either quash the conviction for defects appearing upon the face of it, or quash or confirm it upon the merits. If they try the case upon the merits, the respondent must again prove the facts necessary to sustain the conviction: but neither he nor the appellant is confined to the evidence given before the convicting Magistrate, unless otherwise directed by the Statute giving the appeal. The judgment is merely that the conviction be confirmed or quashed with or without costs.

Whether the Sessions can award costs will depend entirely upon the Statute regulating the appeal, giving authority to do so: there is no general Statute upon the subject. See *R. v. Justices of Hunts.* 1 *B. and Ad.* 654.

2ND. BY CERTIORARI, &c.—In all cases where the *certiorari* is not taken away by Statute or Act of Council, a summary conviction by a Magistrate may be removed by it into the Supreme Court, for the purpose of having it quashed for any errors appearing upon the face of it. But where it appears by the conviction that the defendant appeared before the Magistrate and pleaded, and the merits have been tried, and that the defendant has not appealed against the conviction (where the appeal is allowed), or if appealed against, such conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever; but the construction shall be such a fair and liberal construction as will be agreeable to the Justice of the case. 3 G. IV. c. 23, s. 3. This Statute, however, does not cure the omission of a circumstance necessary to constitute the offence. *R. v. Walsh*, 3 *Nev. and M.* 632.

A conviction cannot be amended. *R. v. Jukes*, 8 *T. R.* 625. The Magistrate, however, before he returns it to the Sessions, or upon a *certiorari*, may draw it up in a more formal manner than he had at first drawn it. Ante p. 134.

If the commitment be bad upon the face of it, the party may apply for a *habeas corpus*, and thereupon be discharged. In several Statutes creating offences punishable on summary convictions, (Peel's Acts for instance, 7 & 8 G. IV. c. 29, s. 73, and 7 & 8 G. IV. c. 30, s. 39,) a clause is inserted that 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. But there is no general enactment upon the subject; and where the Statute creating the

offence does not contain such a clause, a good conviction will not help a bad commitment. *Wickes v. Clutterbuck*, 2 Bing. 483.

But if instead of convicting the defendant, the Justice refuse to convict him, and dismiss the case, there is no mode of reviewing his decision : the Court will neither grant a *mandamus*, requiring the Magistrate to re-hear the case, nor award a *certiorari* to bring up the proceedings. *Ex parte British and Foreign Patent Invention Company*, 7 Dowl. 614.

3RD. BY ACTION.—If a Justice of the Peace convict in a case in which he has no jurisdiction, or if the conviction be bad upon the face of it, the party may maintain an action of trespass against him for any distress or commitment under it : for the conviction in such a case can be no justification. So, if a Justice of the Peace commit a party to prison upon a conviction, and the warrant of commitment be bad upon the face of it, he will in like manner be subject to an action of trespass, even although there be a good and valid conviction, unless indeed it be aided by some clause in the Statute or Act creating the offence, as already mentioned. *Supra*.

GENERAL FORM OF INFORMATION QUI TAM.

Sydney, to wit : Be it remembered that on the day of , in the year of our Lord , at , in the said city, C. D. of , in the city aforesaid, labourer, who, as well for our Sovereign Lady the Queen (or, as the statute may be), as for himself, doth prosecute in this behalf, personally cometh before me, J. P., one of Her Majesty's Justices of the Peace for the said city, and [as well for our said Lady the Queen as for himself], informeth me that A. B., late of the parish of , in the city aforesaid, labourer, within the space of [one year, or whatever time is limited by statute] "now last past, to-wit, on the day of , in the year aforesaid, at the parish of , in the city aforesaid [here state the facts and circumstances constituting the offence, as defined by the statute creating it;] contrary to the form of the statute in such case made and provided : Whereby, and by force of the statute in such case made and provided, the said A. B. hath forfeited for his said offence the sum of . Wherefore the said C. D., who sueth as aforesaid, prayeth the consideration of me the said Justice in the premises, and that the said A. B. may be convicted of the offence aforesaid, and that one moiety of the said forfeiture may be adjudged to [our said Lady the Queen], and the other moiety thereof to the said C. D., according to the form of the Statute in that case made and pro-

vided; and that the said A. B. may be summoned to appear before me and answer the premises, and make his defence thereto.

Where a statute gives the whole penalty to the informer, an information can readily be framed upon it from the above precedent, by merely omitting those parts of it which are applicable only to an information *qui tam*.

There is no objection to an information charging the defendant with several offences. *R. v. Swallow*, 8 T. R. 286. In such a case, after the words, "hath forfeited for his said offence the sum of _____," you may state the second, or subsequent offence, thus: "And also that the said A. B. on _____, at _____," &c. stating the offence to the words "hath forfeited for his said last mentioned offence the sum of _____": concluding the information in the above form, "wherefore the said C. D." &c.

One Justice of Peace may receive the information, and grant a summons or warrant upon it, in all cases, even in those in which the conviction must be by two or more Justices. 3 G. IV. c. 23, s. 2.

GENERAL FORM OF SUMMONS.

City of Sydney,)

to wit.) To A. B., of _____ in the said City, labourer.

Whereas you have this day been charged before me, J. P., one of her Majesty's Justices of the Peace for the City aforesaid, on the oath of [one] credible witness, for that you, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at _____, in the City aforesaid, did [&c., here state the offence as in the information, or in the form of conviction in such a case]: "These are therefore to require you to appear before me, at _____, in the said City, on [Wednesday] next, the [third day of July instant], at the hour of eleven in the forenoon of the same day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the _____ day of _____ in the year of our Lord

J. P.

GENERAL FORM OF WARRANT.

City of Sydney: To the constable of _____, and all other peace-officers in the said city.

Forasmuch as A. B., of _____, in the city aforesaid, labourer, hath this day been charged before me, J. P., one of her Majesty's justices of the peace for the city aforesaid, on the oath of a credible witness, for that he the said A. B., on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____ at _____, in the city aforesaid, did" [&c. here state the offence as in the information, or in the form of conviction in such a case]: "These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace in and for the said city, the body of the said A. B., to answer unto the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the _____ day of _____, in the year of our Lord

J. P.

GENERAL FORM OF CONVICTION, WHERE THE DEFENDANT APPEARS AND PLEADS NOT GUILTY.

New South Wales: Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____, A. B. of _____, labourer, personally came before me, J. P., one of her Majesty's justices of the peace for the said colony, and informed me, that C. D. of _____, on the _____ day

of _____, in the year aforesaid, at _____, in the said _____, did" [here set forth the fact for which the information is laid]; "contrary to the form of the statute in such case made and provided: Whereupon the said C. D., after being duly summoned to answer the said charge, appeared before me on the day of _____, instant, at _____, in the said _____; and having heard the charge contained in the said information [declared he was not guilty of the said offence," or, "did neglect and refuse to make any defence against the said charge]: Whereupon I the said justice did proceed to examine into the truth of the charge contained in the said information; and on the _____ day of _____ aforesaid, at _____ aforesaid, one credible witness, to wit, E. F. of _____, upon his oath deposeth and saith, in the presence of the said C. D., that" [here state the evidence, and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each, thus:] "And one other credible witness, to wit, G. H. of _____, upon his oath deposeth and saith, in the presence of the said C. D., that" [&c. stating his evidence]; "And also a witness, produced and examined on the part of the said C. D., to wit, I. K. of _____, upon his oath deposeth and saith, that, " [&c. stating his evidence]: "Therefore, it manifestly appearing to me that he the said C. D. is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid, and do declare and adjudge* that he the said C. D. hath forfeited the sum of _____ of lawful money of Great Britain, for the offence aforesaid, to be distributed" [or, "paid," as the case may be] "according to the form of the statute in that case made and provided; [and also that the said C. D. shall forthwith pay unto the said A. B., the further sum of _____, for his costs and charges, by him the said A. B., about the prosecution in this behalf expended. Given under my hand and seal, the _____ day of _____, in the year of our Lord _____

J. P.

* Or if imprisonment and hard labour be the punishment assigned by the Statute, then the adjudication may be thus: "I do declare and adjudge that the said A. B., for his said offence, be imprisoned in the _____, [there to be kept to hard labour], for the space of _____ calendar months. Given under my hand and seal, the _____ day of _____, in the year of our Lord _____." Care must be taken that this part of the conviction correspond strictly with the Statute upon which the conviction is framed.

GENERAL FORM OF CONVICTION WHERE THE DEFENDANT APPEARS AND CONFESSES.

New South Wales, }
to wit, } Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____ A. B. of _____, labourer, personally came before me, J. P., one of Her Majesty's Justices of the Peace for the said Colony, and informed me, that C. D. of _____, on the _____ day of _____, in the year aforesaid, at _____ did" [here set forth the fact for which the information is laid]; contrary to the form of the Statute in such case made and provided: Whereupon the said C. D., after being duly summoned to answer the said charge, appeared before me on the _____ day of _____ instant, at _____, and having heard the charge contained in the said information, acknowledged and voluntarily confessed the same to be true: Therefore, it manifestly appearing" [&c. as in the last form, to the end.

GENERAL FORM OF CONVICTION WHERE THE DEFENDANT DOES NOT APPEAR.

New South Wales }
to Wit. } Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____, in the county of _____, A. B. of _____, labourer, personally came before me, J. P., one of Her

Majesty's Justices of the Peace for the said Colony, and informed me, that C. D. of , on the day of , in the year aforesaid, at did " [here set forth the fact for which the information is laid]; " contrary to the form of the Statute in such case made and provided: Whereupon the said C. D., after being duly summoned to answer the said charge, did not appear before me pursuant to the said summons: Nevertheless I, the said Justice, did proceed to examine into the truth of the charge contained in the said information; and on the day of aforesaid, at aforesaid, one credible witness, to wit, E. F. of , upon his oath deposed and saith, that " [here state the evidence, and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each, thus]: " And one other credible witness, to wit, G. H. of , upon his oath, deposed and saith, that " [stating his evidence]: "Therefore, it manifestly appearing" [&c. as in the last form but one, to the end.]

GENERAL FORM OF COMMITMENT WHERE THE PUNISHMENT IS BY IMPRISONMENT.

New South Wales, } To the constable of , in the said Colony, and to
 to wit. } the keeper of the house of correction at , in the
 said colony.

Whereas C.D., late of , in the said colony, labourer, was on this day duly convicted before me, J.P., one of Her Majesty's Justices of the Peace for the said Colony, for that he the said C. D." [&c. stating the offence, as in the conviction], "against the form of the Statute in that case made and provided; and I the said J. P. thereupon adjudged the said C. D., for his said offence, to be imprisoned in the House of Correction at , in the said colony, [and there kept to hard labour], for the space of calendar months: These are therefore to command you the said constable of aforesaid, to take the said C. D., and him safely to convey to the House of Correction at aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said House of Correction, to receive the said C. D. into the said House of Correction, there to imprison him [and keep him to hard labour] for the space of calendar months; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, at , in the colony aforesaid, this day of , in the year of the reign of our Sovereign Lady Queen Victoria.

J.P.

GENERAL FORM OF WARRANT OF DISTRESS FOR PENALTY, AND CHARGES OF DISTRESS.

Colony of } To (A. B.) Constable of in said Colony, and to
 New South Wales, } all other Constables in and for said Colony.
 To wit.

Whereas C. D., late of in said Colony (labourer), was on this day (or on the day of) duly convicted before me, J. P., one of Her Majesty's Justices of the Peace for said Colony, for that he, the said C. D. [state the offence, as in the conviction] against the form of (the Statute or Act of Council) in such case made and provided. And the said J. P. thereupon adjudged the said C. D. for his said offence, to [set out the adjudication as in the conviction.] And whereas the said C. D. being so convicted as aforesaid, and being required to pay the said sum, hath not paid the same, or any part thereof, but therein hath made default.

These are, therefore, to command you, forthwith, to make distress of the goods and chattels of the said C. D., and if within the space of—(see ante p. 138,

and 27 Geo. II. c. 20, s. 2)—days next after making of such distress, the said sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid; that, then, you do sell the said goods and chattels, so by you distrained, and out of the money arising by such sale, that you do pay one moiety of the said sum of £ so forfeited as aforesaid, together with the said sum of for costs unto A. B. who hath informed me of the said offence, and the said other moiety of the said sum of so forfeited as aforesaid (unto the use of Her Majesty, or according as the Statute or Act of Council directs), rendering the overplus, on demand, unto the said C. D. the reasonable charges of taking, keeping, and selling, the said distress being first demanded. And if no such distress can be made, that then you certify the same unto me. To the end that such other proceedings may be had therein, as to the law doth appertain.

Given under my hand and seal, this day of
in the year, &c. J. P.

—————

CONSTABLE'S RETURN THERETO, WRITTEN ON THE BACK.

Colony of I, B. R., Constable of in the Colony aforesaid,
New South Wales, } do hereby certify unto J. P., Esq., one of Her Majesty's
To wit. } Justices of the Peace for said Colony, that by virtue of this
warrant, I have made diligent search for the goods and chattels of the within-
named C. D., and that I can find no sufficient goods and chattels of the said
C. D. whereon to levy the sums within mentioned.

Witness my hand this day of &c.

B. R.

—————

GENERAL FORM OF COMMITMENT FOR WANT OF DISTRESS.

Colony of To the Constable, &c.
New South Wales, } and to the Gaoler (or Keeper of the House of Correction.)
To wit. }

And whereas afterwards, on the day of in the year aforesaid, I, the said J. P., issued a warrant to the Constable of commanding him to levy the said sums by distress and sale of the goods and chattels of the said C. D. And whereas it appears to me, as well by the return of the said Constable to the said warrant of distress, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress can be found whereon to levy the same.

These are, therefore, to command you, the said Constable of aforesaid, to take the said C. D., and him safely convey to the Gaol (or House of Correction) at aforesaid, and there to deliver him to the said Gaoler (or Keeper) thereof, together with this precept. And I do command you, the said Keeper, to receive the said C. D. into the said (Gaol or House of Correction), there to imprison him (and keep him to hard labour) for the space of calendar months, unless the said sums shall be sooner paid; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal this day of
in the year, &c. J. P. (Seal.)

—————

FORM OF AWARD OF COSTS.

New South Wales, } I, J. P., one of Her Majesty's Justices of the Peace for
to wit. } the Colony aforesaid, in pursuance of an Act made in
the eighteenth year of His late Majesty King George the Third, intituled "An

Act for the payment of costs to parties, on complaints determined before Justices of the Peace, out of Sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony." On the complaint of _____, (here state the names of the parties, and the offence generally, and the date,) against _____, for _____, which said complaint was heard and determined by (me) on the _____ day of _____ instant, do award the following costs to be paid by _____, videlicet (here state the costs).

Given under my hand and seal, this _____ day of _____

J. P.

CORPORATION.

By Act of Council, 6 Vict. No. 3, (*Callaghan*, vol. 1, p. 255,) Sydney is declared a City, and the inhabitants constituted into a body corporate and politic. By a similar Act, 6 Vict. No. 7, (*Callaghan*, vol 1, p. 227,) the town of Melbourne is also incorporated.

It is deemed unnecessary in this work to notice the various clauses of the above Acts, which do not refer to Justices of the Peace generally.

The Mayor of Sydney is *ex officio* a Justice of the Peace for the City of Sydney during office, and for one year next succeeding, s. 62. So likewise the Mayor of Melbourne for the town of Melbourne.

The Governor may appoint Justices of the Peace for the city of Sydney and for the town of Melbourne respectively, s. 64.

Justices for the territory may act in Sydney or Melbourne in any matter done or committed out of the boundaries of the said city and town, but they are expressly forbidden (as likewise constables under them) "to act or intermeddle in any matters or things arising within the said city or town, in any manner whatsoever." 7 Vict. No. 25, s. 3; *Callaghan*, vol. 2, p. 712. Warrants issued by Magistrates for the territory into the city of Sydney or town of Melbourne, must be endorsed by a Magistrate of the said city or town respectively, and *vice versa*. 6 Vict. No. 13, s. 2; *Callaghan*, vol. 2, p. 710.

The Corporation Council (both for Sydney and Melbourne) may make *bye laws*, for regulating their proceedings and for the *good rule* and *government* of the said city or town respectively. 6 Vict. No. 3, and No. 7, s. 92. But such bye laws are not to be repugnant to the laws of the Colony. *Id.*

CUSTOMS.

See Act of Council, 9 Vict. No. 15, (*Callaghan*, sup. p. 1527,) "An Act to provide for the General Regulation of the Customs in New South Wales."

Any penalty incurred or imposed by this or any other Act relating to the Customs or to trade or navigation, not exceeding one hundred pounds, may be recovered by information before any two or more Justices of the Peace for the Colony, s. 108.

Upon information one Justice may issue summons (in fact, he is required to do so) for the appearance of the party charged before two Justices. The summons must be left at the party's place of residence, or on board any ship or vessel to which he may belong.

Upon the appearance or default of any party so summoned two Justices may hear the case, and convict the party in the penalty or penalties sued for by the information, either upon confession or upon the oath of one or more credible witness or witnesses; and in case of non-payment the penalty may be levied by distress. If the goods are not sufficient the party may be imprisoned for any time not exceeding six months, unless the penalty with costs of distress be sooner paid, s. 112. The warrant of commitment must be under hand and seal, and may be executed in any part of the colony. *Id.* s. 113.

Informations before Justices of the Peace must be exhibited within six calendar months after the date of the offence committed.

FORM OF INFORMATION (BEFORE JUSTICES OF THE PEACE, WHERE A PECUNIARY PENALTY IS INFLICTED UNDER THE CUSTOMS ACT.)

New South Wales, } Be it remembered that on the _____ day of _____ in
 to wit. } the year of our Lord _____, A. B., officer of Customs, who is directed by the Collector (or other principal officer of Her Majesty's Customs, as the case may be), to prefer this information, gives us Esquires, two of Her Majesty's Justices of the Peace for the said Colony, to understand and be informed that C. D. on the _____ day of _____ in the year of our Lord _____ (here state the offence), contrary to the form of the Act, in that case made and provided, whereby the said C. D. hath forfeited the sum of _____

FORM OF CONVICTION TO BE USED FOR AN OFFENCE AGAINST THE CUSTOMS' ACT, WHERE A PECUNIARY PENALTY IS INFLICTED.

New South Wales, } Be it remembered, that on the _____ day of _____, in
 to wit. } the year of our Lord _____, an information was exhibited by A. B., officer of Customs, before us, _____, Esquires, two of Her Majesty's Justices of the Peace of the said Colony, against C. D., which said information charged that the said C. D., on the _____ day of _____, in the year of our Lord _____ (here state the offence as in the information,) contrary to the form of the Act in such case made and provided, which offence has been duly proved before us, the said Justices: We do therefore convict the said C. D. of the said offence, and do adjudge that the said C. D. hath forfeited for his said offence the sum of _____. Given under our hands and seals, this _____ day of _____, in the year of our Lord _____.

FORM OF WARRANT OF DISTRESS.

New South Wales, } To A. B.
 to wit. } Whereas C. D. has been duly convicted before us Esquires, two of Her Majesty's Justices of the Peace of the said Colony, of the offence of having (here state the offence as in the information). And whereas the said C. D. hath forfeited for his said offence the sum of _____ which said sum of _____ has not been paid: These are therefore to command you, the said A. B., to levy the said sum of _____ by distress and sale of the goods and chattels, so to be distrained, to be sold, and disposed of within _____ days after such distraint, unless the said sum of _____ for which such distress shall be made, together with the reasonable charges of taking and keeping, such distress shall be sooner paid: And you the said A. B. are hereby commanded to certify to us the said Justices, on the _____ day of _____ next ensuing, what you shall do by virtue of this warrant.
 Given under our hands and seals, at _____ the _____ day of _____ in the year of our Lord _____.

FORM OF WARRANT OF COMMITMENT TO GAOL FOR A PENALTY UNDER THE CUSTOMS ACT.

New South Wales, } To A. B., Officer of Customs, and to E. F., the gaoler or
 to wit. } keeper of the _____, in the _____, Whereas C. D. has been duly convicted before us, _____, Esquires, two of Her Majesty's Justices of the Peace for the said Colony, of having (here state the offence as in the in-

formation.) And whereas we the said Justices did adjudge that the said C. D. hath forfeited for this said offence, the sum of _____; and whereas it appears to us, the said Justices, that the said C. D. has not sufficient goods or chattels whereon to levy the sum of _____, and which sum of _____ has not been paid. These are therefore to require you, the said A. B., forthwith to take, carry, and convey the said C. D. to the _____, at _____, in the _____, and to deliver him into the custody of the gaoler or keeper of the said _____; and we, the said Justices, do hereby authorise and require the said E. F., the gaoler or keeper of the said _____, to receive the said C. D. into his custody, and him safely to keep for the period of six calendar months, unless he shall sooner pay the said sum of _____, or otherwise be delivered by due course of law.

Given under our hands and seals, at _____,
in the _____ this _____ day of _____, in the
year of our Lord _____

DEPOSITIONS.

The Magistrate before whom any prisoner is brought on a charge of felony or misdemeanor, is to "take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same or as much thereof as shall be material into writing." 7 G. IV. c. 64, s. 2, 3; *Callaghan*, vol. 1, p. 344.

All depositions are to be signed by the Magistrate before whom they are taken (*Id.*), and transmitted to the Attorney-General's Office.

It is a general principal of evidence that to render a deposition of any kind admissible against a party, it must appear to have been taken on oath in a judicial proceeding, and that the party should have had an opportunity to cross-examine the witnesses. By *Hullock B.* in *Attorney-General v. Davison*, 1 *M'Clel. and Y.* 169. The following observations from the last edition of *Russell on Crimes*, (1843) vol. 2, p. 898, will be found to deserve the attention of Magistrates.

"The 7 G. IV. c. 64, s. 2, provides that Magistrates shall take the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same or as much thereof as shall be material

into writing, consequently a Magistrate is not bound by law to return all that is stated, but only all that is material to the felony." *Per Alderson, B. R. v. Coveny, 7 C. and P. 667.* However, since the passing of the Prisoners' Counsel Bill, it has become of great importance that the depositions of witnesses should be as fully and accurately taken as they conveniently may be, in order that the witnesses may neither be liable to the imputation of having made a different statement in Court from what they made before the Magistrate, nor of having stated facts in Court, which were not mentioned before the Magistrate. In a case where several witnesses were cross-examined as to minute variances between their testimony in Court and their depositions taken before the Magistrates, Parke, B., observed, "Magistrates are required by law to put down the evidence of witnesses, or so much thereof as shall be material. They have hitherto in many cases confined themselves to what they deemed material, but in future it will be desirable that they should be extremely careful in preparing depositions, and should make a full statement of all the witnesses say upon the matter in question, as the experience we have already had of the operation of the Prisoners' Counsel Bill has shewn us how much time is occupied in endeavouring to establish contradictions between the testimony of witnesses and their depositions, in the omission of minute circumstances in their statements made before the Magistrates, as well as in other particulars." *R. v. Thomas, 7 C. and P. 817.*

Where a Policeman stated a conversation between himself and a prisoner, which was material to the charge, and made against the prisoner, and stated that he had told the Magistrate the same conversation, though it did not appear in the depositions, and the counsel for the prisoner complained of this as unfair, as it did not give the prisoner what the law intended it should, viz., an account of the whole evidence against him given before the Magistrate; Lord Denman, C. J., said that

he thought the observation well founded with respect to the omission in the depositions, and that the Magistrate ought to have returned all that took place before him with respect to the charge, as the object of the Legislature in granting prisoners the use of the depositions was to enable them to know what they had to answer on their trial. *R. v. Grady*, 7 *C. and P.* 650. If the prisoner or his counsel cross-examine the witnesses when before the Magistrate, the answers of the witnesses to the cross-examination ought to be taken down by the Magistrate and returned to the Judge. *R. v. Potter*, 7 *C. and P.* 650, note; *Gasely, J., and Vaughan, B.* It is the duty of Magistrate to return to the Court at which the prisoner is to be tried, all depositions that have been taken at all the examinations that have taken place respecting the offence which is to be the subject of the trial. Where a witness was examined before a Magistrate several times, at the first examination no person was specifically charged with the offence, but what was said was taken down in writing, and this witness was taken into custody, and while in custody as an accused person, he made another statement, which was also taken down by the same Magistrate, and on a subsequent day the present prisoner having been apprehended, the witness was again examined as a witness. Alderson, B. observed, I have none of these depositions but the last. Every one of them ought to have been returned to me, as it is of the last importance that the Judge should have every deposition that has been made, that he may see whether or not the witnesses have at different times varied their statements, and if they have to what extent they have done so. Magistrates ought to return to the Judge all the depositions that have been made at all the examinations that have taken place respecting the offence which is to be the subject of the trial. *R. v. Simmons*, 6 *C. and P.* 540. And it is equally the duty of the Magistrate to return the depositions of witnesses

who are not bound over; as for instance, the depositions of witnesses called by the prisoner to prove an alibi. *R. v. Fuller*, 7 *C. and P.* 269, *per Vaughan, J.* But if the deposition of a witness has been taken, after the prisoner has been committed, and in his absence, such examination ought not to be returned as one of the depositions; for nothing should be returned as a deposition against a prisoner, unless the prisoner had an opportunity of knowing what was said, and an opportunity of cross-examining the person making the deposition. *Per Lord Denman, C. J., R. v. Arnold*, 8 *C. and P.* 621.

DISORDERLY HOUSE.

Every *bawdy house* is necessarily a disorderly house, but every *disorderly house* is not necessarily a brothel; and, though the proof of *one* may fail, the evidence may be sufficient to maintain a charge of the *other*.

Although adultery, whoredom, incest, or any other uncleanness are, properly, punished by the *ecclesiastical* law; yet the offence of keeping a bawdy house cometh also under the cognizance of the law *temporal*, as a *common nuisance*; not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. 1 *Hawk.* c. 74.

Any number of persons may be included in the same indictment, for keeping different disorderly houses, stating that they severally kept, &c. 8 *East.* 47. A wife may be indicted with her husband, and punished with him for keeping a bawdy house; for this is an offence, as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. *B. J.*

EVIDENCE.—It must be proved that the house in question, or a room, or rooms in it, were let out for the purposes alleged. If a lodger let her apartment for the purpose of indiscriminate prostitution, it is as much a bawdy house as if she held the whole house. 2 *Ld. Raym.* 1197. It is not necessary to prove *who* frequents the house, for that may be impossible; and if any unknown persons are proved to be there, behaving disorderly, it is sufficient to support the indictment. 1 *T. R.* 754. Evidence of *particular instances* may be given under the general charge. It must be proved that the defendants “acted, or behaved, as master or mistress, or as the persons having the care, and government, or management of the house in question,” which is sufficient evidence that they kept the house.

The *local situation* of the house must be accurately stated and proved. Offenders of this kind are punishable, not only with fine and imprisonment, but also with such infamous punishment as to the Court, in its discretion, shall seem proper. 1 *Hawk. c. 5, s. 5.*

FORM OF COMMITMENT FOR KEEPING A DISORDERLY HOUSE.

on the day of , in the year of our Lord one thousand eight hundred and , at , in the said Colony, unlawfully did keep and maintain a certain common, ill-governed, and disorderly house: and did cause certain persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together in the said house, and there to be and remain drinking, tippling, whoring, and misbehaving themselves. And you the said Keeper,” &c.

Misdemeanor at Common Law.

DISTILLATION.

A new Bill for the regulation of distilleries and for the prevention of illicit distillation is now under the consideration of the Legislative Council. See *Appendix*.

DISTRESS.

By Justice's warrant, see tit. "Conviction," ante p. 136. For Rent, see *post Appendix*, "Landlord and Tenant."



DOGS.

See Act of Council, 6 W. IV. No. 4. "An Act for abating the nuisance occasioned by dogs in the streets of certain towns and on highways in New South Wales." *Callaghan*, vol. 1, p. 474.

DOGS TO BE REGISTERED.—All dogs above six months old, and kept for a longer period than fourteen days, in any town to which this Act extends (either by enactment or proclamation, see section 19) must be registered, with description, at the police office, or penalty on the owner or keeper of not less than ten nor more than twenty shillings. The registry is to be renewed in the month of September in every year, s. 1, 2. In proceedings under this Act, the proof of registration rests on the defendant, s. 5. The Clerk of the Police Office or Petty Sessions is required to keep a list of the names of all persons who have registered dogs during the current year; and all persons applying for particulars of registry are entitled to receive the same on payment of sixpence, s. 6.

All dogs not registered may be seized by any person and killed by order of a Magistrate upon the owner being summoned, and failing within a reasonable time to claim the same.

All dogs at large without collars, with name and address of owner, or without being in the immediate control of some competent person; and all bull-dogs and mastiffs, and mongrels of either, at large without proper muzzles, in addition to collar, with name and

address of the owner, may be immediately killed or destroyed; "and all persons are hereby (by above Act) authorised, and all constables especially ordered and required to seize, kill, and destroy, every such dog so found at large accordingly." s. 7.

If any dog in a street, or any highway, in any part of the Colony, rush at or attack any person or horse or bullock, whereby the life or limbs of any person shall be endangered, or property injured, the owner or keeper shall forfeit and pay a penalty of not less than twenty shillings, nor more than five pounds, for every such offence, over and above the amount of damage done. s. 8.

A reward of two shillings and six-pence for every dog seized and destroyed as aforesaid (the body to be immediately removed from the street and buried,) s. 9.*

OWNERSHIP.—The person in occupation of house where dog kept to be taken as the owner (unless reasonable proof be shown to the contrary.) If dog kept by servant, the master or employer liable. s. 10.

SHEEP-DOGS, &c.—This Act does not apply to sheep-dogs, or any dog accompanying a cart, &c., through a town, if securely chained and muzzled, unless the dog be usually kept in the town. s. 11.

NEGLECT OF CONSTABLES.—Constables having charge of divisions, districts, &c., of any town, and neglecting to report to the Police Magistrate or Justices of Petty Sessions unregistered dogs, or neglecting to destroy dogs improperly at large: penalty—not less than ten, nor more than twenty shillings. s. 12, 13.

Constable wilfully and maliciously destroying any dog not improperly at large, to pay the owner the full value thereof, and also a penalty of not less than twenty shillings, nor more than five pounds. s. 14.

APPROPRIATION OF FEES.—As directed by 4 W. IV. No. 6. See post "Fines, &c."

* Suspended.

JURISDICTION.—All offences under this Act are to be heard and determined in a summary way before any Justice of the Peace, as directed in 5 W. IV. No. 22. See post “Summary Jurisdiction.” Complaint must be made within one month after committing of the offence. s. 17.

No *certiorari*. Appeal allowed if penalty exceed five pounds. *Id.*

Fees to be paid on the registration of dogs.

	s.	d.
For one dog, if only one be kept.....	1	0
For each dog, if two only be kept.....	2	0
For each dog, if three only be kept.....	2	6
For every dog above three.....	5	0

DOGS.—NUISANCE AT COMMON LAW.—If a man have a dog, which he knows to be of a savage nature, and addicted to bite mankind, and he allow it to go in any frequented place without being muzzled, or otherwise guarded, so as to prevent injury from it, it seems that he is indictable for it as a common nuisance. See 1 *Arch. J. P.* 380; also *Burn's Justice*, tit. Nuisance; and 1 *Russ. on Crimes*, 303.

DOG STEALING.—The law takes notice of a mastiff, hound, and spaniel as valuable things. 1 *Saund.* 84. Other dogs were not considered in law of any intrinsic value, and at common law are not the subject of larceny. 4 *Bl. Com.* 236.) But now the property in them is protected against theft, and Magistrates have jurisdiction under the 7 & 8 G. IV. c. 29, s. 31. *Callaghan*, vol. 1, p. 301.

1. Stealing dogs; or stealing beasts or birds ordinarily kept in a state of confinement, not being the subject of larceny at common law, (conviction before one Justice): penalty—for first offence, any sum not exceeding twenty pounds, over and above the value of the dog, &c.; second offence, imprisonment and hard labour for any term not exceeding twelve calendar months, and (if a male, and convicted before two Justices,) whipping. s. 31.

2. Persons in whose possession such dog or beast, or the skin thereof, or such bird, or the plumage thereof, shall be found, upon search warrant (knowing the same to have been stolen), penalty and punishment for first and second offence, as above, and the dog, &c., to be restored to the owner. s. 32.

The Statute will punish the taking of animals or birds, originally *feræ naturæ*, if they have been put into a state of confinement, or be tamed and domesticated, such as kangaroos, emus, parrots, &c. See Forms of Conviction under "Larceny."

DRUNKENNESS.

If a person shall be drunk, and thereof be convicted before one Justice, on view, confession, or the oath of one witness, he shall forfeit for the first offence five shillings, to be paid within one week after conviction; and if he refuse or neglect to pay the same, it may be levied by distress; or if the offender be not able to pay, he shall be committed. And if he be convicted a second time, he shall be bound in a recognizance with two sureties in the sum of £10, conditioned to be thenceforth of good behaviour. 21 *Jac.* 1, c. 7, s. 1, 3. Voluntary drunkenness is no excuse whatever for crime, but the party shall be punished in precisely the same manner as if he were sober at the time he committed the act. *Co. Lit.* 247; 1 *Hawk.* c. 1. s. 6.; and see *R. v. Carroll*, 7 *C. and P.* 145; *R. v. Meakea*, *id.* 297.

DUELLING.

(See ante "CHALLENGE.")

If two persons deliberately fight a duel and one of

them be killed, the other and both the seconds are guilty of murder, (*Reg. v. Young*, 8 C. and P. 654.) no matter how grievous the provocation, or by which party it was given. 3 *East*, 581.

DWELLING-HOUSE.

(See ante "BURGLARY and HOUSEBREAKING.")

EMBEZZLEMENT.

(See "AGENT," "CHEAT," and "LARCENY.")

Embezzlement by persons employed in the service of Her Majesty, *felony*. 9 Vict. No. 2; *Callaghan Sup.* p. 1520. Embezzling the Queen's stores, *felony*. 31 Eliz. c. 4, s. 1; 22 *Car.* 2, c. 5; 4 G. IV. c. 53. Embezzlement by Clerks of the Post-office of letters containing bank-notes, *felony*. 52 G. III. c. 143, s. 2; 5 and 6 W. IV. c. 81.

Embezzling money received for postage, *felony*. 5 G. III. c. 25, s. 19.

Embezzlement by clerks and servants, deemed *larceny*. 7 and 8 G. IV. c. 29, s. 47; *Callaghan*, vol. 1, p. 305.

A female servant is within this Act, (*R. v. Smith*; *R. and Ry.* 267); so is an apprentice, (*R. v. Mellish*; *R. and Ry.* 80); and it is immaterial whether the clerk or servant be paid by wages or by a per-centage on the profits arising from his labour (*R. v. Hartley*; *R. and Ry.* 139; *R. v. Carr.*, *id.* 198); or whether his employment be permanent or occasional only. *R. v. Spencer*, *R. and Ry.* 299; *R. v. Hughes*, *Ry. and M.* 370. And a clerk of a joint-stock bank may be convicted of embezzling the money of the Company, although he be a shareholder or partner in the Company. *R. v. Atkinson*, *Car. and M.* 525. It must appear that the servant or clerk was authorised to receive either

the particular money, &c, which he has embezzled; or money generally for his master. *R. v. Smith, R. and Ry.* 516; *R. v. Beechey, id.* 319; *R. v. Williams, 6 C. and P.* 626. But if money be paid to a servant, who was never entrusted by his master to receive any money; and he embezzle it, it will not be a case within the Statute. *R. v. Thorley, Ry. and M.* 343; *R. v. Mellish, R. and Ry.* 80; *R. v. Hawtin, 7 C. and P.* 281; and see *R. v. Wilson, 9 C. and P.* 27. The embezzlement is usually to be implied from circumstances: as that having received the money, he ran away without accounting for it, (*R. v. Williams, 7 C. and P.* 338); or, although he may have continued in the service, that he denied the receipt of the money, &c. (*R. v. Hobson, R. and Ry.* 56; *R. v. Taylor, id.* 63); or did not account with his master for that particular money when he accounted for others received at the same time or afterwards. *R. v. Hall, R. and Ry.* 463; and see *R. v. Jackson, Car. and K.* 384. But merely not accounting for money received, which the clerk or servant had authority to receive, or not entering it in the books, will not of itself be sufficient to convict him of embezzlement, if he did not deny the receipt of it, (*R. v. Jones, 7 C. and P.* 833), and the case be unattended by any other circumstance proving an intent to defraud the master of it. Or, if instead of denying the appropriation, he in rendering his accounts, admit it, alleging a right, however unfounded, or an excuse, however frivolous, he is not deemed guilty of embezzlement, (*R. v. Norman, Car. and M.* 501), and the same, although he afterwards abscond. *R. v. Creed, Car. and K.* 63. And in one case it was holden by Vaughan, B., that where the prisoner had entered the sum as received in his master's book, but did not pay it over, this was not embezzlement. *R. v. Hodgson, 3 C. and P.* 422. But in a recent case, where the coachman of a stage-coach had to account for moneys received by him, from passengers, to the book-keeper at one of the stages, and had to pay

over the moneys to his master ; and on one particular occasion he returned the true sums to the book-keeper, and they were entered in the books accordingly ; but he paid to his master a less sum, as being all that he had received, Patteson J. held this to be embezzlement. *R. v. White*, 8 *C. and P.* 742. So, where a banker's cashier was indicted for embezzlement, it appeared that it was his duty to put all sums received by him into a box or till, of which he kept the key, and to enter them in the money book ; at the end of each day he balanced the book, and the balance formed the first item in his account on the following day ; the master having a suspicion of him, examined his money book, according to which there ought then to be £1,300 in the till and box, but on examining these, there was in fact but a sum of £345 in them, he having applied the rest to his own use, but when or in what sums, or from whom the particular moneys embezzled, were received, did not appear ; the Judges at the Central Criminal Court held this to be within the Statute, and the prisoner was convicted. *R. v. Grove*, 7 *C. and P.* 635 ; but see *R. v. Chapman, C. and K.* 119. So, where a servant, authorised to receive money, and whose duty it was to account every evening for what he so received, received three sums for his employer on different days, and neither accounted for them, nor paid them over : Coleridge J. held this to be embezzlement, although the servant never denied the receipt of these sums, nor rendered any account in which they were omitted. *R. v. Jackson, Car. and K.* 384. And the embezzlement may be deemed to have been committed, either in the county, &c., where the prisoner received the money, &c., or in that in which he ought to have accounted to his master, and did not. *R. v. Hobson, R. and Ry.* 56 ; *R. v. Taylor, id.* 63. If instead of receiving it from a third person, he take the money out of his master's stock, the offence is larceny, not embezzlement. *R. v. Murray, R. and M.* 276 ; *R. v. Wilson*, 9 *C. and P.* 27. See 1 *Arch. J. P.* 381.

In a case tried at the Central Criminal Court, Sydney,

on the 27th August, 1847, (*Reg. v. Townend*), the prisoner was the accountant of a bank, and on one occasion, during the temporary absence of the receiving-teller, officiated for him, and received a sum of money as a deposit, which he appropriated to his own use. It was proved that it was no part of his duty to officiate as teller during the absence of the proper officer, and that he had committed an act of irregularity in doing so; the Court held this not to be embezzlement, as the prisoner had accomplished his fraud, not by virtue of his employment, but in direct opposition to it.

As to embezzlement by agents, &c., see ante, p. 10, "Agent."

FORM OF COMMITMENT FOR EMBEZZLEMENT.

on _____, at _____, being then clerk (or servant) to C. D., did receive, and take into his possession, certain money, to the amount of ten pounds and upwards, for, and in the name, and on the account of the said C. D., his master, and the said money feloniously did embezzle: against the form of the Statute in such case made and provided. And you, the said Keeper, &c.

If the property embezzled consist of money, bank notes, bills of exchange, &c., or other valuable security, it may be described as "*certain money*," as in the above form; but where goods or chattels have been embezzled, they must be described shortly, as in larceny. See 7 and 8 G. IV. c. 29, s. 48.

EMBRACERY.

Embracery is an attempt to corrupt or influence jurors to give their verdict in favour of a particular party. All attempts, whatsoever, to corrupt, influence, or instruct a Jury, or in any way to incline them to be more favourable to one side than to the other, by money, promises, letters, threats, or persuasions, or in any other way than by the strength of the evidence, and the arguments of counsel at the trial, in open Court, is an

act of embracery, (1 *Hawk.*, c. 85, s. 1,) and is punishable by indictment at common law, as a misdemeanor, with fine, or imprisonment, or both, (*Id.* s. 7, and c. 83, s. 38); and with fine or imprisonment by some ancient Statutes. 5 Ed. III. c. 10; 34 Ed. III. c. 8; and 38 Ed. III. c. 12.

And by Act of Council, 2 W. IV. No. 3, s. 36, (*Callaghan*, vol. 1, p. 651,) continued till Dec. 1847, by 9 Vict. No. 32, it is enacted, "That any person guilty of the offence of corruptly influencing, or attempting to influence, any such juror as aforesaid, (see Act,) or jurors consenting thereto, may be punished with fine and imprisonment, on conviction before the said Supreme Court."

ESCAPE.

AN ESCAPE is, where one who is arrested gains his liberty before he is delivered by due course of law, (1 *Russ*, 367,) and it may be by the party himself, either without force before he is put in hold, or with force after he is restrained of his liberty; or it may be by others, and this also, either without force by their permission or negligence, or with force by the rescuing of the party from custody.

When the liberation of the party is effected either by himself or others *without force*, it is more properly called an *escape*. Where it is effected by the party himself *with force* it is called *prison-breaking*, and when it is effected by others *with force*, it is commonly called a rescue. 1 *Hale*, 590.

By the Statute 4 G. IV. c. 64, s. 44, "In any prosecution for escape, prison-breaking, and rescue, a certificate of the clerk of assize, or other clerk of the Court in which the offender shall have been convicted, shall, with due proof of the identity of the person, be sufficient evidence to the Court and Jury of the nature

and fact of the conviction, and of the species and period of confinement to which such person was sentenced."

As there must be an *actual* arrest, it has been holden that if any officer having a warrant to arrest a man see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 2 *Hawk.* c. 10, s. 1.

The aiding and assisting a prisoner to escape out of a prison, by whatever means it may be effected, is an offence of a mischievous nature, and an obstruction to the course of justice; and the assisting a felon in making an actual escape, is an offence of the *degree of felony*. *Rea v. Tilley*, 2 Leach, 671.

The Statute 25 G. II. c. 37, s. 9, declares, "That persons rescuing or attempting to rescue any person convicted of murder, shall be taken and adjudged guilty of felony, and shall suffer death." *Callaghan*, vol. 1, p. 213.

The Statute 9 G. IV. c. 83, s. 34, enacts, "That any person or persons who shall in any manner aid or assist in the escape or intended escape from any part of New South Wales or Van Diemen's Land, or the Dependencies thereof, of any person or persons being under or by virtue of any judgment or sentence of transportation for any term not then expired, or of any judgment or sentence pronounced in any Court of competent jurisdiction in the said Colony or its Dependencies, shall be guilty of a misdemeanor, and be liable to a fine not exceeding five hundred pounds, or imprisonment for any time not exceeding two years, or both (at the discretion of the Court.) And such misdemeanor may be tried and inquired of by the Supreme Court of New South Wales and Van Diemen's Land respectively, or by the King's Bench at Westminster, or by any Court of Record in any of His Majesty's Colonies, Plantations, or Foreign Dominions."

Whenever an officer having a party lawfully in his custody on a charge of felony *voluntarily* permit him to

escape, the officer is involved in the legal guilt of the crime charged on his prisoner. 2 *Hawk.* c. 19, s. 40. Where he *negligently* permits a prisoner to escape he is guilty of a misdemeanor, and he is guilty in this degree if a prisoner in his charge commits suicide. *Dalt.* c. 159. If a gaoler or other officer shall license his prisoner to go abroad for a time and to come again, *this is an escape*, even though the prisoner return again. *Id.*

FORM OF WARRANT TO APPREHEND A PERSON ESCAPING.

New South Wales, } To the constable of _____, and all other peace officers
to wit. } of the said Colony.

Forasmuch as J. H., keeper of the Gaol at _____, in the said Colony, hath this day made information and complaint before me, J. P., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, that A. O. hath unlawfully and wilfully escaped from the said Gaol at _____, and from and out of the custody of the said J. H., keeper thereof as aforesaid, before the expiration of a certain term for which he the said A. O. was ordered to be imprisoned (or as the case may be) therein. These are therefore to command you, and each and every of you, to apprehend and bring before me or some other of Her Majesty's Justices of the Peace for the said Colony, the body of the said A. O., to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, this _____ day
of _____, &c.

J. P. (L. S.)

FORM OF COMMITMENT OF OFFICER FOR ALLOWING ESCAPE.

_____ on _____ at _____, having one C. D. in his custody under and by virtue of a warrant of G. H., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, for having feloniously stolen the goods of E. F., did unlawfully and (negligently [or] voluntarily) permit the said C. D. to escape and go at large. And you the said keeper, &c.

FORM OF COMMITMENT FOR AIDING PRISONERS TO ESCAPE.

For that one C. D., on _____ at _____, being lawfully in custody of one E. F., a constable, in order to carry him the said C. D. to Gaol under and by virtue of a warrant of G. H., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, for having feloniously stolen the goods of J. K.; he the said A. B. feloniously and unlawfully did then and there assist the said C. D. in attempting to escape from the custody of the said E. F., against the form of the Statute in such case made and provided. And you the said keeper, &c.

EVIDENCE.

“It is a general rule that the *best* evidence the nature of the case will admit must be produced, *if it be possible* to be had; but if *not possible*, then the *next best*

evidence that can be had. For if it appear that there is any better evidence existing than that which is produced, the very non-production of it creates a presumption that if produced it would have detected some falsehood which at present is concealed. 3 *Bl. Com.* 268. Thus the *best* evidence of *the contents* of a deed, or other written instrument, is the written instrument itself; but if it be proved that the original instrument is lost or destroyed, or in the possession of the opposite party, then the secondary evidence will be admitted, that is the *second* best evidence. A *copy*, if a copy be in existence, if not, parol evidence of its contents can be received.

So, no evidence of a discourse with another will be admitted, but the man himself must be produced; for it is also a general rule that *hearsay* is *no* evidence, and for two reasons: 1st, What the other said was not upon oath. 2nd. Because the party who is to be affected by it had no opportunity of *cross-examining* him. *Gilb. Ev.* 149. To this rule, however, there are some exceptions, arising from necessity.

1. Hearsay is admitted to prove the death of a person beyond the sea; or in questions of pedigree, the common reputation of the family in such matters is received. *B. N. P.* 294.

2. Declarations made by a person who has received a mortal injury, and who is under the apprehension of *immediate* death, and had *given up all hopes of recovery*, are admissible. 2 *Leach*, 566.

3. What a witness has been heard to say at another time may be given in evidence, in order to invalidate or confirm the testimony he gives in Court. 2 *Hawk.* c. 46, s. 14.

A witness must speak from his own knowledge and recollection; although, to refresh his memory, he is allowed to refer to any written entry or memorandum made, or at least *examined* by himself; either at the time the fact occurred, or very recently afterwards. But, he is not allowed to give evidence of his opinions, except in some particular cases,—as those of science, skill,

trade, or others of the same kind, where persons of skill, such as *medical men*, are allowed not only to speak as to facts, but also to give their *opinions* in evidence. 1 *Ph. Ev.* 275.

Witnesses of whatever religion or country that have the use of their reason are to be received and examined. Atheists are excepted; but by a recent Statute (6 and 7 Vict. c. 22; *Callaghan Sup.* 1499.) laws or ordinances made by the Legislatures of British Colonies for admission of the evidence of barbarous and uncivilized people, destitute of the knowledge of God and of any religious belief, residing therein, shall have the same effect as other Colonial laws.

Witnesses are not incapacitated by crime or interest from giving evidence. 8 Vict. No. 1; *Callaghan*, vol. 1, p. 494.

“Husband and wife cannot be witnesses either for or against each other.” *Co. Litt.* 6, b. There are two exceptions to this rule, 1st, in high treason husband and wife may be witnesses against each other; 2nd, in cases of personal injury to each other. Whether a woman who cohabits with a man as his wife is on that account an incompetent witness, where he is concerned, was at one time a doubtful question. *Campbell v. Twemlow*, 1 *Price*, 81. But in a late case the Court of Common Pleas held that a woman who had merely lived with the defendant as his wife, and passed by his name, might be called as a witness for him. *Bathews v. Galindo*, 4 *Bing.* 610. So a woman whose marriage is void by reason of her having a former husband. *Wells v. Fisher*, 1 *M. and Rob.* 99; *Roscoe on Evidence*, last ed. p. 121. So also in cases of abduction and forcible or fraudulent marriage. *Wakefield's case*, 2 *Lew.* 279.

Competent in civil cases -

Accomplices are competent as witnesses; but their evidence should be confirmed.

A Justice of the Peace may take the voluntary confession of a prisoner in writing; but such confession taken under a promise of being admitted evidence for the Crown, is not a *voluntary confession*.

Want of discretion is a good reason for rejecting a witness ; but an infant of the age of fourteen years may be sworn as a witness, being as to this purpose of the age of discretion ; and if under that age, if it appears that the infant hath a competent discretion, he may be sworn. *Arch. Rob.* p. 77.

Counsel, solicitors, and attorneys are privileged from giving (indeed they should not be permitted to give,) evidence of any matter confided to them by their client in their professional capacity. *Id.*

One credible witness is sufficient to prove a fact, except for *perjury* and *treason*.

Witnesses cannot be compelled to answer any questions whatever which may tend to subject them to penalties,* or any kind of punishment ; or to a criminal charge : nor are they bound to answer irrelevant questions, which may tend to degrade their character, although it seems that such questions are legal. *Cook's case*, 13 *How St. Tr.* 334 ; *Cundell v. Pratt, M. and M.* 108 ; See *Phill. Ev.* 269.

In the Criminal Court, Sydney, August 24th, 1847, the Chief Justice, Sir Alfred Stephen, intimated that the three Judges had held a consultation with a view of settling the practice of the Court with respect to questions put to witnesses, the answers to which in the affirmative would tend to degrade them : and that after fully weighing the question in all its bearings, they had decided that the safer and better plan would be not to allow such questions to be put, or if put not pressed upon the witness.

If the witness choose to answer the question his answer is conclusive. *Watson's case*, 32 *How St. Tri.* 488, 490 ; see also *Rose v. Blakemoor, R. and M.* 383. But where the object of the enquiry is to prove that the witness has endeavoured to corrupt another to give false testimony in the cause, his denial of the fact, or refusal

* If the time limited for the recovery of the penalty has expired, the witness may be compelled to answer. *Roberts v. Allatt, M. and M.* 192.

to answer, will not preclude the party from proving it by other evidence. *Queen's case*, 2 *B. and B.* 311. A witness must answer questions that are relevant to the matter; although the answer to such questions may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit. 46 *G. III. c.* 37. But he cannot be compelled to answer questions which may subject him to a forfeiture of his estate. 1 *Phill. Ev.* 264.

EXAMINATION.

(See "COMMITMENT," p. 100, and "CONVICTION," p. 125.)

EXCISE AND CUSTOMS.

(9 *Vict. No. 15*, (*Callaghan*, p. 1527,) and 10 *Vict. No. 9*.)

Justices of the Peace are not called on to interfere either judicially or otherwise, in recovering any *excisable duties* in this Colony. *Penalties* not exceeding one hundred pounds, under the above Acts, may be sued for before two or more Justices of the Peace, sitting in Petty Sessions, in the district where the offence has been committed. 10 *Vict. No. 9*, s. 11. Half the penalty, after deducting expenses, to be paid into Colonial Treasury, and the other half to the seizing officer, or the person suing. *Id.* s. 12. (See "Customs.")

EXTORTION.

(See "ACCUSING," ante.)

Extortion by an officer of justice—*misdemeanor*. And it is equally extortion where a greater fee is exacted than what is legally due, as where money is exacted as a fee where none whatever is payable, (see 2 *Salk.* 680; 1 *Hawk. c.* 68, s. 1); punishable with fine or imprisonment, or both. *Id.*

FORM OF COMMITMENT FOR EXTORTION.

on at being then a constable, unlawfully, corruptly, extorsively, and by colour of his said office, did extort and receive of and from one C. D., then in the custody of the said A. B., the sum of as and for a fee due to him the said A. B. as such constable (or as the case may be.) And you the said Keeper, &c.

FALSE IMPRISONMENT.

(See "ASSAULT.")

False imprisonment is a *misdemeanor* at common law, punishable with fine or imprisonment, or both.

And every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets. 2 *Inst.* 589; *Cro. Car.* 210; *Com. Dig. Imprisonment.* (G.)

FORM OF COMMITMENT FOR FALSE IMPRISONMENT.

on at did assault and beat one C. D., and did then and there unlawfully and injuriously, and against the will of the said C. D., and without any legal warrant, authority, or reasonable or justifiable cause whatsoever, imprison the said C. D. And you the said Keeper, &c.

FALSE PRETENCES.

(See ante "CHEAT.")

Obtaining money, goods, &c., by means of false pretences, misdemeanor. 7 and 8 G. IV. c. 29. s. 53. *Callaghan*, vol. 1, p. 806.

FORM OF COMMITMENT FOR OBTAINING, &c., UNDER FALSE PRETENCES.

on at unlawfully did falsely pretend to one C. D. that (here set out the pretence) by means of which said false pretence the said A. B. then and there unlawfully did obtain from the said C. D. of the goods and chattels of him the said C. D., with intent then and there to cheat and defraud the said C. D., of the same, against the form of the Statute in such case made and provided. And you the said keeper, &c.

FEES.

All fees to be taken by the Clerks of the Benches throughout the colony are regulated by the Act of Council, 4 W. IV. No. 5. *Callaghan*, vol. 1, p. 494. "An Act for appointing the fees to be taken in the several Courts of Police and Petty Sessions, and by the Clerks of Justices acting singly in the Colony of New South Wales.

FENCES.—(STEALING, DESTROYING, &C.)

The 7 and 8 G. IV. c. 29, s. 40, enacts—(*Callaghan*, vol. 1, p. 303,)—"That if any person shall steal, cut, break, or throw down, with intent to steal, any part of any live or dead fence, or any wooden post, pale, or rail, set up, or used as a fence, or any stile, or gate, or any part thereof respectively, every such offender, on being convicted before a Justice of the Peace, shall, for a *first* offence, forfeit such sum of money as to the Justice shall seem meet, not exceeding *five pounds*, over and above the value of the article or articles stolen, or the amount of injury done. A *second* offence is punishable with imprisonment and hard labour, not exceeding *twelve calendar months*; and if the *subsequent* conviction take place before *two Justices*, they may, in addition to such imprisonment, order such offender (if a male) to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction."

BREAKING DOWN OR DESTROYING FENCES.—The 7 and 8 G. IV., c. 30, s. 23, enacts—*Callaghan*, vol. 1. p. 335, "That all persons who 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, &c., they shall incur the same and like penalties as mentioned in the foregoing section."

FENCE FOUND IN POSSESSION OF ANY PERSON.—The 7 and 8 G. IV., c. 29, s. 41, enacts—*Supra*. “That 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, rail, stile, or gate, or any part thereof, being of the *value of two shillings* at the least, shall, by virtue of a search warrant, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, on being carried before a Justice of the Peace, 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, not exceeding *two pounds*.

In conviction for a first offence, in stealing fences, gates, &c., contrary to the 40th Section of the Larceny Act, *first* mentioned in this title, state the offence thus:—

FORM OF CONVICTION UNDER THE ABOVE ACT.

(Commencement as usual.)

For that he, the said A. B., on &c., at &c., (part of a live, or dead fence, or any wooden post, pale, or rail, set up or used as a fence, or any stile, or gate, or any part thereof, respectively, as the case may be) of the value, to wit, of (one) shilling, the property of B. C., then and there being cast, set up, and used as a dead fence, [unlawfully did steal, take, and carry away, against the form of the Statute, &c.] I, the said J. P., do therefore adjudge the said A. B., for his said offence, to forfeit and pay the sum of five pounds over and above the value of the said (mention the thing stolen) so stolen as aforesaid, and the further sum of one shilling, being the value of the said and also to pay the sum of shillings for costs. And in default, &c. [conclude as in general form.]

Conviction under foregoing Section, 23, 7 and 8 G. IV. c. 30, the same as foregoing form, but between the crotchets state the offence thus:—

“Then and there, unlawfully, and maliciously, did cut, break, and throw down, and destroy (as the case may be) thereby then and there doing injury to the said (owner) to the amount of one shilling, against the form of the Statute, &c.”

It will be easy to frame Warrants, &c., by following the words in Conviction.

FENCES.—(DIVIDING.)

The Colonial Act, 9 G. IV. No. 12, 1828, is intituled,

“An Act to regulate the dividing of fences of adjoining Lands.” *Callaghan*, vol. 1, p. 539.

THE OWNER OF ADJOINING LAND TO PAY FOR HALF THE FENCE.—“The owner or owners of lands adjoining or abutting upon any other lands, and having no sufficient dividing fence, can require, by writing under his or their hands, the owner or owners, or person or persons legally possessed of and holding such lands adjoining (except they be held of the Crown, by temporary occupation only), or his or their agents, to assist in equal proportions, to make or repair any or all the dividing fences between such lands respectively.

“And in case the owners of such adjoining land, or persons legally possessed of and holding the same, or their agents, shall refuse or neglect to assist, or fail to use due diligence in making or repairing such dividing fences, for the space of *six months* after receiving such requisition or notice (or, if a sufficient and reasonable excuse for not assisting in the making of such fence and enclosure), then, and in either such case, the owner or owners of such adjoining lands, after giving such requisition or notice as aforesaid, and having completed his or their share of such dividing fence, may contract for the completion or repair of such dividing fence; and such owners giving notice as aforesaid, and their servants, and the person or persons contracting to execute such fencing, and his or their servants may cut upon the farm or lands of the person or persons so neglecting or refusing as aforesaid, all such indigenous timber and other indigenous trees, (those planted or preserved for ornament excepted) and materials as shall be necessary for executing and completing or repairing such fencing and enclosing as aforesaid; and such owner or owners, contractor or contractors, or his or their servants respectively, shall not be answerable for any act of trespass committed in cutting or carrying away such indigenous timber as aforesaid: And in case a sufficient quantity of the materials necessary for such purpose cannot be ob-

tained on such adjoining lands, the same may be procured and purchased: And all sums of money so expended and laid out, shall be recoverable as for money laid out for the benefit of the owner or owners of such lands." s. 1.

LANDS ADJOINING NOT BEING PRIVATE PROPERTY.—
“Persons who shall enclose their lands before the lands immediately adjoining as aforesaid shall be duly granted by the Crown, or otherwise held as private property, shall be authorized to claim and recover from the future proprietor of such lands *one half* the value of the wall, hedge, or fence, forming the dividing line; such value to be ascertained immediately, or as soon as may be after such land shall be granted, or otherwise held as private property as aforesaid, by *the arbitration* of two persons mutually chosen by the parties. And the amount awarded under such arbitration, as *one half* of the value of such dividing fence, shall be recoverable by due course of law, if not paid within twelve months after the date of such award. Provided, that in case such two arbitrators cannot agree in such amount, within one calendar month after such reference shall be made to them, the said arbitrators shall nominate, by writing under their hands, an umpire, and the decision of such umpire shall be conclusive. Provided also, that if either of the parties in difference shall neglect or refuse, for the space of one calendar month after notice in writing, given by the other party for that purpose, to join in the appointment of such arbitrators as aforesaid, it shall and may be lawful for the arbitrator chosen by the party giving such notice, to make an award *ex-parte*, which shall be binding and conclusive, in like manner as if the party neglecting or refusing had chosen an arbitrator, who had actually joined and made an award therein.” s. 2.

ARBITRATION.—“In all cases where there shall be natural boundaries between adjoining lands, or where any dispute or difference shall arise between the

respective owners or persons legally possessed of such adjoining lands, as to the necessity or sufficiency of any dividing fence as aforesaid, *then* the same shall be referred to arbitration, in like manner, and shall be subject to the like award and final decision as hereinbefore provided with respect to the value of dividing lines or fences as aforesaid." s. 3.

FINES.

Statements of all fines, &c., paid or unpaid, to be forwarded to the clerk of the Peace for the nearest Court of Quarter Sessions, by the Justice by whom the same were imposed, together with the names, profession, &c., of the parties fined. 2 Vic. No. 8, s. 1. *Callaghan*, vol. 2, p. 1025.

All fines not paid according to Justice's order, to be levied by distress and sale of goods. 6 G. IV. No. 19. *Callaghan*, vol. 1, p. 540.

Whenever any English law or statute appoints a penalty for the use of the poor, and there is no benevolent or charitable society in the district, it shall be paid towards the support of the Benevolent Society of Sydney. 2 Vic. No. 23. *Callaghan*, vol. 1, p. 541.

All fines for drunkenness, not exceeding five shillings, to be paid to the Benevolent Asylum, or other charitable institution in the district; if no such in the district, then to the Benevolent Society of Sydney. If exceeding five shillings, then in such proportion, not exceeding one-half, to the informer as the Justice or Justices may in his or their discretion direct, and the residue to such Benevolent Asylum or Society as aforesaid. 6 Vict. No. 13. *Callaghan*, vol. 1, p. 542.

FIRE.

In case of any chimney taking fire within the limits of the City of Sydney, from the occupier of the house or building omitting to cause such chimney to be regularly swept and cleaned, or from any other neglect, such occupier shall, on conviction before any Police Magistrate* of Sydney, forfeit and pay any sum not exceeding forty shillings, to be recovered by distress and sale of goods. 8 W. IV. No. 6, s. 69. *Callaghan*, vol. 1, p. 86.

Servants, through negligence or carelessness, causing fires within the City of Sydney, on conviction on oath of one or more credible witnesses before Justices for the City in Petty Sessions assembled (if free), to forfeit and pay any sum not exceeding one hundred pounds, to be paid to said Bench of Magistrates, to be distributed among the sufferers by such fire; and in case of default or refusal immediately to pay, to be committed under hands and seals of two or more Justices to common gaol or house of correction, for any time not exceeding eighteen months, there to be kept at hard labour, and, if convict male, to be worked in irons not exceeding eighteen months; female, to be confined in female factory or house of correction, not exceeding eighteen months. *Id.* s. 72.

Constables (not upon patrol, escort, or other express duty,) and beadles to repair immediately to buildings on fire, with staves and other badges of their authority, and assist in extinguishing fire, and causing people to work at the engines, and in preventing goods being stolen, and to apprehend all evil-disposed persons stealing or pilfering, and to give their utmost assistance to help the inhabitants to remove their goods. *Id.* s. 73. By the same Act, s. 68, the following fees are directed to be paid by and at the discretion of the Police Magistrates of Sydney, or any one of them:—

* Or any Justice of the Peace for the City of Sydney. See 9 Vict. No. 6, s. 3. *Callaghan*, Sup. 1600.

To the turncock belonging to the waterwork, whose water shall be found on, and shall first come into the main or pipe where any plug shall be opened, at any fire within the limits aforesaid, any sum not exceeding ten shillings.

To the engine keeper who first brings a parish or other large engine to help to extinguish fire within the limits aforesaid, if in good order and complete, with a socket, hose leather pipe, stand cock, and suction pipe, any sum not exceeding thirty shillings.

To second engine in order, and complete, any sum not exceeding twenty shillings.

And to third engine in order, and complete, any sum not exceeding ten shillings.

FIRE-ARMS.

(SEE "BUSHRANGER.")

FISH.

By Section 34 of 7 and 8 G. IV. c. 29—

“Any person taking or destroying fish, in any water situate in land belonging to a dwelling-house, may be convicted as for a misdemeanor. And if taken in any private fishery, not belonging to a dwelling-house, a Justice of the Peace can convict, in any sum not exceeding *five pounds* over and above the value of the fish. Provided that nothing hereinbefore contained shall extend to any person angling in the day time; but if any person angling in the day time shall take or destroy fish in water belonging to a dwelling-house, a Justice of the Peace may convict such angler, in a sum not exceeding five pounds; and if in a private fishery elsewhere, in a sum not exceeding two pounds.”

N

By the 35th Section—

“The tackle of fishers may be seized by *the owner* of the grounds, water, or fishery, his servants, or any person authorised by him. *Provided*, that if the tackle of an angler, in the day time, be so taken, he is then exempted from payment of damage or penalty for such angling.”

The measures of punishment are therefore as follows :

For taking fish by day or night, or attempting to take fish from water belonging to a dwelling-house, *the penalties of a misdemeanor.*

For taking, or attempting to take it, by day or night, from other private water, *five pounds penalty.*

For taking fish by day, or attempting to do so, by angling in water adjoining a dwelling-house, *five pounds penalty.*

For angling in other private waters, *two pounds penalty.*

COMMITMENT FOR MISDEMEANOR FOR TAKING FISH, &c.
(NOT BY ANGLING.)

Commencement as usual.

on &c. at &c. unlawfully and wilfully did take and destroy a number of fish, in a water (running through) or (being land) adjoining (or belonging to the dwelling-house of one A. B.) situate in the place aforesaid, the said A. B. being also the owner of the said water (and having a right of fishing therein) against the form, &c. And you, the said keeper, &c. End as usual.

CONVICTION FOR TAKING FISH IN WATER NOT ADJOINING,
&c., A DWELLING-HOUSE.

(on, &c. at &c.) in a certain pond (or stream) of water there situate, the private property of A. B. (or wherein A. B. then had a private right of fishery) the said water not being then running through, or being in any land adjoining or belonging to the dwelling-house of the said A. B. or any person being the owner of such water (or having a right of fishery therein) fish called (as the case may be) then and there being found, then and there in the said water unlawfully and wilfully did take and destroy (or “attempt to take and destroy”) not by angling in the day time, against the form, &c. I, the said J. P., do therefore adjudge the said for his said offence, to forfeit and pay the sum of (five pounds) over and above the value of the said fish so taken as aforesaid, and the further sum of (shillings) being the value of said fish, and also to pay the sum of (shillings) for costs. And in default of immediate payment of the said sums, to be imprisoned in the (and there kept to hard labour) for the space of—(as to the time of imprisonment, see s. 67, Larceny Act)—

calendar months, unless the same sums shall be sooner paid. And I direct that the said sum of (five pounds) shall be paid to J. R. (see s. 66, of Larceny Act,) of aforesaid, in which the said offence was committed, to be by him applied according to the direction of the Statute, &c. And that the said sum of (shillings) shall be paid to the said A. B. (or if he was examined in proof of the offence), then thus, "also to the said J. R. the said A. B. having been examined in proof of the offence aforesaid." And I order that the said sum of (shillings) for costs, shall be paid to (the complainant.)

Given under my hand and seal the day and year first above-mentioned.

J. P.

THE LIKE FOR ANGLING IN WATER BELONGING TO A DWELLING HOUSE.

For that the said C. D. on, &c. about the hour of (as the fact may be) of the same day, at _____, in a certain stream (or pond) of water, there situate, then and there running through (or being in) certain land to wit, (a certain garden) adjoining, (or) belonging to the dwelling-house of one A. B., the said A. B. then and there having a right of fishery in the said water, (or if not a running stream) being owner of the said water, fish called (as the case may be) of the said A. B., of the price and value of _____, then and there being found, then and there in the said water, by angling, unlawfully and wilfully did take, (or destroy, or attempt to take or destroy) : against the form of the Statute in such case made and provided. And you the said keeper, &c.

FISH-POND.

Maliciously destroying dam of fish-pond, or other water, being private property, for the purpose of taking fish, or putting lime or other noxious material in such water, for the purpose of destroying fish—*misdemeanor*. 7 & 8 G. IV. c. 30, s. 15. *Callaghan*, vol. 1, p. 333.

(For form of commitment, see "Malicious Injuries.")

FIXTURES.

Stealing, or ripping, cutting, or breaking, with intent to steal any glass or woodwork belonging to any building whatsoever, or any lead, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material respectively, fixed in or to any building whatever, or any thing made of metal fixed in any land,

being *private property*, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place, dedicated to public use or ornament—*felony*. 7 & 8 G. IV. c. 29, s. 44. *Callaghan*, vol. 1, p. 304.

NOTE.—The larceny of glass as a fixture was introduced by this Act.

FORCIBLE ENTRY

AND DETAINER.

“ A forcible entry or detainer is committed, by violently taking or keeping possession of lands and tenements, with menaces, force and arms, and without the authority of law.” 4 *Bl. Com.* 148.

It is immaterial, in order to create this offence, whether the party had a *right* to enter, or not, for the offence consists in asserting the right, *in a forcible way*, to the breach of the peace. The statutes, however, do not extend to a case where the party ousted had the bare custody of the premises for the defendant, but they extend to the forcible entry of one joint tenant in common, by another, 1 *Haw.*; and to all cases where the party in possession has some estate therein.

It may be considered a good general rule, that the statutes extend to all hereditaments to which the defendant, if he had a right, might have asserted that right by a peaceable entry. *Arch. C. P.* An entry “ with a stong hand,” or “ with multitude of people,” is the offence described in the statute. Therefore, an entry by breaking the doors or windows, &c., whether any person be in the house or not, especially if it be a dwelling-house, is a forcible entry. *Hawk.* So an entry where personal violence is done to the prosecutor, or to any of his family, or servants, or to any person keeping possession for him; or even when it is accompanied with such threats of personal violence (either actual or to be implied from the actions of the defend-

ant, or from his being unusually armed, or attended, or the like) as were likely to intimidate the prosecutor or his family, is a forcible entry. If an entry be effected by threats *to destroy the owner's cattle or goods* merely, and not by threats of personal violence, it is not a forcible entry. 1 *Hawk.* A mere trespass, which is the subject of a civil action, cannot be a forcible entry within the statutes.

The same circumstances that make an entry forcible, will make *a detainer* forcible also; and *a detainer may be forcible whether the entry were forcible or not.* 1 *Hawk.* c. 64, s. 32.

A lessee who, after the end of his term, keeps arms in his house to oppose the entry of the lessor, though no one attempt an entry, or a lessee at will, detaining *with force* after the will is determined, will be guilty of this offence; so will *a lessee*, resisting with force a distress for rent. *Com. Dig.* So will a *mortgagor*, detaining with force after the mortgage is determined, and such like. But the mere denying possession in these cases would not amount to a forcible detainer. *Id.**

An action at law is given for forcible entry and detainer, by statute 8 Hen. VI. c. 9, and treble damages.

The party may be indicted before the Justices at the General Sessions, and they may grant him *a writ of restitution*, to restore him to his possession. *Id.*

By the same statute *one Justice alone* may proceed in such cases. Yet if the time for viewing the force will suffer it, it may be advisable for him to take one or more Justices with him. As to the power of *one Justice*, it is enacted as follows:

“After complaint made to such Justice, by the party grieved, of such forcible entry made into his lands,

* By a case reported in 4 B. and Ad. 304, it appears that a forcible detainer can only be, where it is preceded by a forcible entry. It was there held “that the Statute 8 Henry VI. was intended to give a summary jurisdiction in cases of forcible detainer after an unlawful entry. And that a conviction by Justices on that Statute, merely stating an entry and a forcible detainer was insufficient.”

tenements, or other possessions, or forcibly holding thereof, he shall, within a convenient time, at the costs of the party grieved (*without even examining or standing upon the right or title of either party*) take sufficient power of the county, and go to the place where such force is made." *Dalt.* c. 44. Also such Justice or Justices ought to make a *record** of such force, by him or them viewed, which record will be a sufficient conviction of the offenders, and the parties will not be allowed to traverse it, and the offenders shall be put in the next gaol† there to abide the conviction by such record, until they make fine and ransom to the King. This is only concerning the removing *the force*; but the party ousted cannot *be restored to his possession* by the Justices' view of the force, nor unless the same force be found by a Jury. And in order to make the inquiry by a Jury, the Justice shall make *his precept*‡ to the Sheriff to summon a Jury; and the 8 Hen. VI. c. 9, s. 3, enacts, "If such forcible entry or detainer be found before such Justice, then the said Justice shall cause to re-seize the lands and tenements so entered or holden, and shall restore the party put out to the full possession of the same." The Justice may break open the house by force to re-seize the same; and so may the Sheriff do, having the Justices' warrant. *Dalt.* c. 130. The defendant may plead *three years' possession*, and if his estate is not ended, no restitution can then be awarded. 31 Eliz. c. 11. It has been holden that such plea is good, without shewing under what title, or of what estate such possession was, because it is not the title but *possession* only which is material in this case. 1 *Hawk.* c. 64. If a forcible entry or detainer shall be made by *three* or more persons, it is also a *riot*, and may be proceeded against as such, if no injury has been made of the force. *Dalt.* 44.

* See Form 1.

† See *Mittimus*, Form 2.

‡ See Form 3.

No. 3.—PRECEPT TO THE SHERIFF TO RETURN A JURY.

Colony of } J. P. one of the Justices of our Lady the Queen,
 New South Wales, } assigned to keep the Peace in said Colony, and also to hear
 To wit. } and determine divers felonies, trespasses, and other misde-
 meanors, in said Colony committed. To the Sheriff of the said Colony, Greeting :—
 On behalf of our said Lady the Queen, I command you, that you cause to come
 before me at in the Colony aforesaid, on the day of next
 ensuing, twenty-four sufficient and indifferent free men, of the neighbourhood of
 aforesaid, to enquire upon their oaths for our said Lady the Queen, of
 a certain entry made with strong hand (as it is said) into the messuage of one
 A. B. in the Colony aforesaid, against the form of the statute, &c. And have you
 then there this precept, and this you shall in nowise omit, upon the peril that
 shall thereupon ensue. Witness the said J. P. at aforesaid, in the
 Colony aforesaid, the day of in the year

J. P.

No. 4.—JURORS' OATH.

You shall true inquiry and presentment make of all such things as shall come
 before you concerning a forcible entry (or "detainer") said to have been lately
 committed in the dwelling house of A. B. at in this Colony. You shall
 spare no one for favour or affection, nor grieve any one for hatred or ill will, but
 proceed herein according to the best of your knowledge, and according to the
 evidence that shall be given to you. So help you God.

The oath that A. B. your foreman, hath taken on his part, you and every of
 you shall truly observe and keep on your parts. So help you God.

No. 5.—INQUISITION, OR FINDING OF THE JURY.

Colony of } An inquisition for our Sovereign Lady the Queen, in-
 New South Wales, } dented and taken at in said Colony, the
 To wit. } day of in the year by the oaths of—
 (names of Jurors to be inserted)—good and lawful men of said Colony, before
 J. P. Esquire, one of the Justices of our said Lady the Queen, assigned to keep
 the Peace in said Colony, and also to hear and determine divers felonies, tres-
 passes, and other misdemeanors in the said Colony committed, who say upon
 their oaths aforesaid that B. C. of (labourer) long since was lawfully
 and peaceably seized in his demesne, as of fee (if it is not freehold, then say
 possessed) of and in one messuage with the appurtenances at aforesaid,
 in the Colony aforesaid, and his said possession (and seisin) so continued until
 A. D. late of (labourer), D. C. late of the same place (labourer), and
 C. F. late of same place (labourer), and other malefactors unknown, on the
 day of last past, with strong hand and armed power, into the messuage
 aforesaid, with the appurtenances aforesaid, did enter, and him, the said B. C.
 thereof disseised, and with strong hand expelled, and him, the said B. C. so
 disseised and expelled from the said messuage with the appurtenances aforesaid,
 from the said day of until the day of the taking of this
 inquisition, with like strong hand and armed power did keep out, and do yet
 keep out, to the great disturbance of the peace of our said Lady the Queen, and
 against the form of the statute in such case made and provided. We whose
 names are hereunto set, being the Jurors aforesaid, do upon the evidences now
 produced before us, find the inquisition aforesaid true.—(The names of all the
 Jurors to follow.)

No. 6.—WARRANT TO THE SHERIFF FOR RESTITUTION.

Commencement as in form ante, No. 3, to the word Greeting.

Whereas by an inquisition taken before me, the Justice aforesaid, at in the Colony aforesaid, on this present of in the year upon the oaths of and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that D. C. of A. D., late of, &c., on the day of now last passed, into a certain messuage with the appurtenances of B. C. of in the Colony aforesaid, situate, lying, and being at aforesaid, in the Colony aforesaid, with force and arms did enter, and him the said B. C. thereof then with strong hand did disseise and drive out, and him the said B. C. thus driven out from the aforesaid messuage with the appurtenances, from the day of aforesaid to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth on record. Therefore, on behalf of our Sovereign Lady the Queen, I charge and command you, that taking with you the power of the County (if it be needful) you go to the said messuage and other the premises, and the same with the appurtenances you cause to be resealed, and that you cause the said B. C. to be restored and put into his full possession thereof, according as he, before the entry aforesaid, was seised, according to the form of the said statute. And this you shall in no wise omit, on the penalty thereon incumbent.

Given under my hand and seal at in said Colony,
the day of in the year

J. P. (Seal.)

FORM OF COMMITMENT FOR FORCIBLE ENTRY.

on at forcibly and with strong hand did enter into a certain messuage with the appurtenances there situate, of which one C. D. was then [seised in his demesne as of fee (or) possessed for a certain unexpired term of years] and the said C. D. from the peaceable possession of the said messuage, with the appurtenances aforesaid, forcibly and with strong hand did expel and put out; against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR FORCIBLE DETAINER.

on at unlawfully did enter a certain messuage with the appurtenances there situate, of which one C. D. was [seized in his demesne as of fee, (or) possessed for a certain unexpired term of years], and the said C. D. from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there did unlawfully expel and put out; and that the said A. B. then and there, and from thence hitherto, the said C. D. from the possession of the said messuage, with the premises aforesaid, with force and arms and with strong hand, unlawfully and injuriously did keep out, and the said messuage and appurtenances and the possession thereof then and there unlawfully and forcibly did hold and detain, and still doth hold and detain from the said C. D. against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORESTALLING, &c.

Forestalling, or the buying up of dead victual on its

way to market; engrossing or the buying of the like in gross, for the purpose of again selling in gross; and re-grating or the purchasing the like in a market for the purpose of afterwards selling the same in the same market, or other market in the immediate neighbourhood: if this be done for the purpose of raising the price of the article, or if any other similar device be resorted to for the like purpose, the party will be guilty of a misdemeanor at common law, and punishable with fine or imprisonment, or both. 1 *Hawk.* c. 80; see *R. v. Waddington*, 1 *East*, 143—166.

FORGERY.

Forgery may be defined to be the false making or altering of any instrument with intent to defraud; and when we speak of an instrument it necessarily means one which purports on the face of it to be good and valid for the purposes for which it was created. Serjeant Hawkins says that forgery is the fraudulent making or alteration of a writing to the prejudice of another man's right. And it seems agreed, that if an instrument be genuine, and the forging or altering be done with a fraudulent intention, the crime is accomplished.

Forgery is punished by the common law as well as by statute. It is said that forgery by the common law is the falsely and fraudulently making or altering any matter of *record*, or any other authentic matter of a *public nature*. The law having given the highest credit to all *records*, it is of the utmost ill consequence that they should be forged or falsified. 1 *Hawk.* c. 70.

But more recently it has been defined as "a false making *malo animo*, of any written instrument for the purpose of fraud and deceit." See 2 *Russell on Crimes*, 318. (1843.)

It was at one time held doubtful whether the counter-

feiting any writing of an inferior nature was forgery at common law, but it was clearly settled in an important case (*Ward's case*, 2 *Lord Raym.* 1461; 2 *East P. C.* c. 19, s. 7, p. 861; and see 2 *Russell on Crimes*, 358,) that the counterfeiting *any writing* with a fraudulent intent, whereby another may be prejudiced, is forgery at common law.

Forgery is a misdemeanor at common law, but by statute it is felony. The punishment of death however is now abolished in all cases of forgery. 4 W. IV. No. 3, *Callaghan*, vol. 1, p. 317; and 9 Vict. No. 3, *Callaghan Sup.* 1522. It is said that Justices have no jurisdiction, judicial or ministerial, over forgery at common law. *R. v. Bartlett*, 1 *Dowl. and Lowndes*; and 12 *Law Journal*, 127 m. per *Wightman J.*

BY ACT OF COUNCIL.—Forging or counterfeiting, or uttering, or publishing, knowing the same to be forged or counterfeited, the Great Seal of the Colony of New South Wales, or any document or writing, bearing or purporting to bear the signature of the Governor, or of the Colonial Secretary, or of any principal or under-Secretary of State for the Colony, or of any Commissioner of Customs—*felony*. 5 W. IV. No. 4, s. 6. *Callaghan*, vol. 1, p. 317.

Forging, or uttering, knowing to be forged, the signature of the Principal Superintendent of Convicts—*felony*. *Id.* s. 7.

Inserting or causing or permitting to be inserted in any register of baptisms, marriages, or burials kept by the officiating minister of any parish, district, or chapelry of New South Wales, any false entry of any matter relating to any baptism, marriage, or burial, or uttering any writing, as and for a copy of an entry in any such register of any such matter, knowing such writing to be false, forged, or altered; or uttering any entry in any such register of any such matter, knowing such entry to be false, forged, or altered; or wilfully destroying, defacing, or injuring, or causing, or per-

mitting to be destroyed, defaced, or injured, any such register, or any part thereof—*felony*. 4 W. IV. No. 4. s. 2. *Callaghan*, vol. 1. p. 317.

Officiating minister may correct an error in entry within one month after discovery, in presence of the parents of the child, or of the parties married, or of two persons who attended the burial, or in case of death or absence of such parties, in presence of the churchwardens, or of two respectable inhabitants of the parish or district. *Id.* s. 3.

Forging, or uttering forged bank notes, East India bonds, exchequer bills, or indentures, any will or codicil, orders, undertakings, or warrants for payment of money, bills of exchange, or promissary notes—*felony*. 11 G. IV. and 1 W. IV. c. 66, s. 3. *Callaghan*, vol. 1, p. 320.

Forging, or uttering a forged bond, court roll, or copy of court roll, deed, order, request, or warrant for the delivery or transfer of goods, receipt or acquittance for money or goods, or accountable receipt for money or goods—*felony*. *Id.* s. 10.

Knowingly purchasing, receiving, or having forged bank notes—*felony*. *Id.* s. 12.

Forging foreign securities, punishable in like manner. *Id.* s. 30; and see 4 W. IV. No. 4, s. 5. *Callaghan*, vol. 1, p. 318.

Engraving a note or bill of a banker, or any part thereof, on a plate, &c., or having such plates, or uttering or having paper on which the same is printed—*felony*. *Id.* s. 18.

Engraving plates for foreign bills, notes, orders, &c.—*felony*. *Id.* s. 19.

Acknowledging any recognizance, or bail, or any fine, recovery, cognovit, judgment, or deed, enrolled in the name of another, without privity and consent—*felony*. 11 G. IV. and 1 W. IV. c. 66, s. 11.

FORM OF COMMITMENT FOR FORGING THE GREAT SEAL OF
THE COLONY.

on _____ at _____ the Great Seal of the said Colony of New South
Wales to a certain instrument purporting to be a (state what it was) falsely,

deceitfully, and traitorously, did forge and counterfeit against the duty of his allegiance to our Sovereign Lady the Queen, and against the form of the Statute in such case made and provided. And you the said Keeper, &c.

GENERAL FORM OF COMMITMENT FOR FORGERY.

on at feloniously did forge a certain Bill of Exchange for £50, purporting to be drawn by W. D. upon, and accepted by C. D. (or as the form of the instrument may be) with intent then and there and thereby to defraud the said C. D. against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR UTTERING, &c.

on at feloniously did offer, utter, dispose of a certain (as the case may be) with intent then and there to defraud the said C. D., he the said A. B. at the time he so offered, uttered, disposed of and put off the said forged (Bill of Exchange) as aforesaid, then and there well knowing the same to be forged, against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FRIENDLY SOCIETIES.

See Act of Council, 7 Vict. No. 10. *Callaghan*, vol. 2, p. 1187. "An Act to regulate Friendly Societies in the Colony of New South Wales."

The Legislature is favourable to the formation of Friendly Societies, for the purpose of "raising by voluntary subscription of the members thereof, separate funds for the mutual relief and maintenance of the members of such societies, their wives, children, relations, or nominees, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency, whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal." s. 1.

SECRET SOCIETIES, having signs, &c., and trade societies, are not entitled to the benefit or deemed within the provisions of the above Act. s. 1.

GAMING

Taken in any light, gaming is an offence of a most alarming nature, tending by necessary consequence to

promote public idleness, theft, and debauchery among those of a lower class : and among persons of a superior rank it hath frequently been attended with the sudden ruin and desolation of ancient and opulent families, an abandoned prostitution of every principle of honour and virtue, and too often hath ended in self-murder." *Blac. Com.* v. 2.

Playing at cards and dice, and the like, are not prohibited by the common law, neither are they *mala in se* of their own nature, but only prohibited by statute. *Dalt.* c. 46. Cock-fighting is illegal and indictable.

To restrain the pernicious effects of gambling, the 33 Henry VIII. c. 9, s. 11, and the 33 Geo. III. c. 24, enact—

“ That no person, of what degree, quality, or condition soever, shall by himself or agent, for his gain, lucre, or living, keep any house for playing at any game prohibited by any statute, or any new unlawful game afterwards invented, on pain of forty shillings a day, and six shillings and eightpence for every person frequenting such house.”*

By the 16 Car. II. c. 7—

“ If any person by playing or betting at any game or pastime whatsoever other than for ready money, lose more than one hundred pounds at any one time or meeting, upon tick or credit, or otherwise, he shall not be compellable to pay the same ; and the winner shall forfeit treble the value, one moiety to the King, and the other to the informer.”

By 9 Ann, c. 14, s. 2—

“ If any person at any one† time or sitting, lose ten

* However, playing at an inn or tavern where the owner derives no benefit from it is not within the Act. *Dalt.* c. 46.

† As to the interpretation of the words “at any one time or sitting,” it was held in the case *Bines v. Booth* (2 Bl. Rep. 1226) where two persons played at cards from Monday evening to Tuesday evening without any interruption, except for an hour or two at dinner, and one of them won a balance of seventeen guineas, that it was won at one sitting within the statute.

(Nares I.) “The statute is remedial when the action is brought by the party injured, but penal when brought by a common informer.”

pounds at play, and shall pay the same, or any part thereof, he may recover it back from the winner; if the loser do not sue within three months, any other person may sue the winner for treble the sum so lost, one-half to himself, the other half to the poor."

Section 5—

"If any person by cheating at play, shall win any money or valuable thing, or, shall, at any one time or sitting win more than ten pounds, he may be indicted thereupon, and shall forfeit five times the value to any person who will sue for it; if found guilty of cheating, shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury."*

Section 6—

"Persons having no visible estate, and suspected of living by gaming, may be compelled by any two or more Justices, to give security for their good behaviour for twelve months; in default of sufficient surety, to be committed to the common gaol until such surety can be obtained."

And by the Act 6 W. IV. No. 6, s. 3, of 1835; *Callaghan*, vol. 2, p. 1281—

"Every person playing or betting at any unlawful game, and every person playing or betting in any street, road, highway, or other open or public place, at or with any table or instrument of gaming, at any game or pretended game of chance, may be apprehended, and shall be deemed rogues and vagabonds."

"PUNISHMENT.—Hard labour in House of Correction

* By 8 sec. 18 Geo. II. c. 34, "If any person shall win or lose, at play or by betting, at any one time, the sum or value of ten pounds, or within the space of twenty-four hours the sum or value of twenty pounds, such person shall be liable to be indicted for such offence within six months after it is committed, either before His Majesty's Justices of the King's Bench, Assize, Gaol Delivery, or Grand Sessions; and being thereof legally convicted, shall be fined five times the value of the sum so lost or won; which fine (after such charges as the Court shall judge reasonable allowed to the prosecutor and evidence out of the same) shall go to the poor of the parish or place where such offence shall be committed."

The latter part of this clause was introduced to prevent the necessity for an action for the fine which was necessary under the 9 Anne, c. 14, s. 5. [B. J.]

for any term not exceeding six calendar months." See tit. "*Vagrant*."

GAMING-HOUSE.

A common gaming-house is a public nuisance; and the party keeping it is punishable as for a misdemeanor at common law, with fine, or imprisonment with hard labour, (3 G. IV. c. 114.) or both, 1 *Hawk.* c. 25, s. 6. See *R. v. Rogier*, 1 *B. and C.* 272.

FORM OF COMMITMENT FOR FRAUDULENT GAMING.

on at by fraud, shift, cozenage, circumvention, deceit, and unlawful device and ill-practice in playing at a certain game at cards called with one C. D. unlawfully did win from the said C. D. a large sum of money, to wit, the sum of of the monies of the said C. D.; against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR KEEPING A COMMON GAMING HOUSE.

on at unlawfully did keep and maintain a certain common gaming-house; and in the said common gaming-house for lucre and gain, unlawfully and wilfully did cause and procure divers idle and evil-disposed persons to frequent and come to play together at a certain unlawful game of (cards) called and then and there in the said common gaming-house, unlawfully and wilfully did permit and suffer the said idle and evil-disposed persons to be and remain playing and gaming at the said unlawful game called for divers large and excessive sums of money. And you the said Keeper, &c.

GAOLER.

To prevent abuses by the extensive power which the law is obliged to repose in gaolers, it is enacted by the 14 Ed. III. c. 10, that if any gaoler, by too great duress of imprisonment, makes any prisoner that he hath in ward become an *approver* or an *appellor* against his will, that is, to accuse and turn evidence against some other person, it shall be *felony* in the gaoler. For it is not

lawful to induce or excite any man even to a just accusation of another, much less to do it by duress of imprisonment, and least of all by a gaoler to whom the prisoner is committed to safe custody. 4 *Blac. Com.* 128, 3 *Inst.* 91. And a gaoler may be discharged and fined for voluntarily suffering his prisoners to escape, or for barbarously misusing them. 1 *Hawk. P. C.* c. 66, s. 2. So a gaoler is indictable for refusing to receive a prisoner under the commitment of a Magistrate. *R. v. Cope*, 6 *A. and E.* 226 ; 7 *C. and P.* 720.*

If a prisoner die by reason of cruel and oppressive usage on the part of the gaoler, or any officer of his, it is murder. *Fost.* 321 ; 1 *Hale*, 465. A gaoler knowing that a prisoner infected with the small-pox lodged in a certain room in the prison, confined another prisoner against his will in the same room ; the second prisoner, who had not had the distemper, of which fact the gaoler had notice, caught the distemper, and died of it: this was holden to be murder. *Russ. 3rd Ed.* p. 546 ; and see *Fost.* 322, referring to the case of *Castell v. Bambridge and Corbet* (an appeal of murder), 2 *Str.* 854.

GAOLS.

4 VICTORIA, No. 29. *An Act for the regulation of Gaols, Prisons, and Houses of Correction in the Colony of New South Wales and its Dependencies, and for other purposes relating thereto.* [16th December, 1840.]

[Preamble.—What shall be the Public Gaols, Prisons, and Houses of Correction of the Colony.]

WHEREAS the laws now in force in England for regulating gaols and houses of correction, and for the classification, government, and instruction of the prisoners confined therein, are not applicable to the Colony in New South Wales, and it is expedient to make provision for the better regulation of gaols, prisons, and houses of correction in the said Colony and its dependencies: Be it therefore enacted by His Excellency the Governor of New South Wales, with the

* But to render him liable, the warrant of commitment must be in due form.—*Ed.*

advice of the Legislative Council thereof, That the said laws now in force in England shall not be construed to apply to the said Colony; and that from and after the passing and publication of this Act, all the houses, buildings, enclousures, or places now used, occupied, and supported by the government of the said Colony as public gaols, prisons, or houses of correction, and which are particularly specified in the schedule to this Act annexed, marked A, shall be, and are hereby declared to be, respectively, the public gaols, prisons, and houses of correction belonging to the said Colony of New South Wales and its dependencies, respectively, and shall be subject to the several provisions hereinafter made for the regulation, management, care and discipline of the same, and of the prisoners therein respectively confined.

[Governor may, by Proclamation, appoint places to be used as Public Gaols, &c.]

II. And be it enacted, That all buildings, erections, houses, and premises which shall hereafter be erected, built, purchased, enlarged, or maintained at the public expense, as and for public gaols, prisons, and houses of correction within the said Colony and its dependencies, and which shall, by proclamation to be from time to time published in *The New South Wales Government Gazette*, by order of the Governor for the time being of the said Colony, be declared and notified as such public gaols, prisons, or houses of correction shall, from and after the publication of such notification, be severally deemed and taken to be the public gaol, prison, or house of correction, of the place or district where the same is or shall be situated within the said Colony or its dependencies respectively, and shall be subject to the several provisions hereinafter made for the regulation, management, care, and discipline of the public gaols, prisons, and houses of correction belonging to the said Colony and its dependencies, and of the prisoners confined within the same.

[Sheriff to have control of all Gaols, &c., and custody of all Prisoners confined therein; and to appoint keepers, &c., subject to approval of the Governor.—Exempting from Sheriff's control the House of Correction at Carters' Barracks, &c.]

III. And be it enacted, That all the said public gaols, prisons, and houses of correction already established or used and hereby declared to be the public gaols, prisons, and houses of correction in the said Colony and its dependencies, and also all other public gaols, prisons, or houses of correction, which under the provisions of this Act shall hereafter be notified in manner aforesaid, to be, and to be used as such within the said Colony or its dependencies respectively, shall be, and are hereby declared to be (except as hereinafter excepted) under the charge, care, and direction of the sheriff of New South Wales, subject, however, to the control of the Governor for the time being of the said Colony; and that all prisoners committed for any crimes, offences, or misconduct to such public gaols, prisons, and houses of correction respectively, shall be deemed to be in the custody of the said sheriff; and that all the keepers and under keepers of the said public gaols, prisons, and houses of correction respectively and the assistants of such keepers or under keepers, and all other persons required and employed for the safety and care of the said public gaols, prisons, and houses of correction, and of the prisoners confined therein respectively, shall be nominated and appointed by the said sheriff, subject to the approbation of the Governor for the time being of the said Colony: Provided, however, that the house of correction now existing at or near the Carters' Barracks, in Sydney, shall be exempted altogether from the charge or control of the said sheriff; and that it shall be lawful for the Governor for the time being of the said Colony, to exempt from the control of such sheriff any other house of correction, which either is, or hereafter may be detached from any gaol or prison, or separated therefrom by a substantial wall, and that every such house of correction shall be exclusively under the control of the Visiting Justice or Justices, to be appointed in manner hereinafter directed.

[Power of Judges to order imprisonment of offenders in any Gaol or House of Correction.]

IV. And be it declared and enacted, That the Supreme Court of New South

Wales, and the several Judges thereof, shall have full power and authority to order and direct the imprisonment of any offender (whether with or without hard labour) to take effect in any particular gaol or house of correction whatever, whether the same be under the control of the sheriff, or any deputy sheriff, or not.

[All Gaols, &c., shall be governed by regulations made by the Governor.—Proviso as to regulations for management of Debtors' Prisons.]

V. And be it enacted, That all gaols, prisons, and houses of correction throughout the said Colony, shall be governed by such rules and regulations as shall from time to time be made for the good management of the same, by the Governor of New South Wales for the time being with the advice of the Executive Council: Provided always that it shall be lawful for the Judges of the Supreme Court at Sydney, and for the resident Judges at Port Phillip and New Zealand, respectively, to make all such rules and regulations for the management of all such gaols or buildings as now are or hereafter shall be appointed or set apart or used for the imprisonment of debtors: and to make such rules and regulations for the control of such debtors therein respectively confined, as to the said Judges respectively shall seem meet.

[Gaols to be also Houses of Correction unless otherwise appointed.]

VI. And be it enacted, That unless where it is otherwise provided by this Act, or the schedule annexed thereto, or where it shall be otherwise declared or appointed by the Governor under the authority of this Act, every public gaol shall be and be taken, for all purposes, as being equally a house of correction, and also a prison for debtors; and also, that every house of correction shall be taken to be a prison.

[Governor may appoint Visiting Justices; their duties.]

VII. And be it enacted, That it shall and may be lawful for the said Governor to nominate and appoint some fit and proper person, being a magistrate of the territory, to be the visiting Justice of each gaol, prison, or house of correction within the said Colony, and the said visiting Justice to remove or displace, and to appoint another or others in his stead; and every visiting Justice so appointed shall be required to visit such gaol, prison, or house of correction, at least once in every week, unless prevented by illness, or other sufficient cause, and shall from time to time make such reports to the Colonial Secretary as may be required by order of the said Governor: Provided, that nothing herein contained shall be taken to abridge or affect the power of any Judge of the Supreme Court to visit and examine any such gaol, house of correction, or prison, at any time, how and when he may think fit.

[Any Justice may visit Gaols, &c.—Penalty on Gaolers or others refusing admittance, &c.]

VIII. Provided also, and be it enacted, That it shall be lawful for any and every Justice of the Peace for the said territory of New South Wales, as often as he may think fit, to enter and examine any gaol, prison, or house of correction, within the said territory, and any gaoler, turnkey, or other person employed in any such gaol, prison, or house of correction, who shall refuse admittance to any said Justice of the Peace, or offer to him any hindrance or obstruction shall, on conviction of the same, before any other two Justices, forfeit and pay the sum of ten pounds.

[Persons imprisoned but not sentenced to hard labour, may be set to work by Sheriff or Visiting Justices, unless they have the means of supporting themselves.]

IX. And whereas persons convicted of offences are frequently sentenced to imprisonment, without being sentenced to hard labour; Be it enacted, That it shall be lawful for the sheriff or visiting Justice of any gaol, prison, or house of correction, to order all such persons, except such prisoners as maintain themselves, to be set to some work or labour, provided the same be not severe: Pro-

vided that no such prisoner who has the means of maintaining himself shall have any claim to be supplied at the public expense.

[Separate confinement of Prisoners.]

X. And be it enacted, That in order to prevent the contamination arising from the association of prisoners, any prisoner may be by order of the sheriff or visiting Justice, separately confined during the whole or any part of his, or her imprisonment; and such separate imprisonment shall not be deemed solitary confinement, within the meaning of any Act forbidding the continuance of solitary confinement for more than a limited time: Provided always, that no cell shall be used for the separate confinement of any prisoner, which is not of such a size and so ventilated and lighted that a prisoner may be confined therein without injury to health; and every prisoner so confined, shall have the means of taking air and exercise, at such times as shall be deemed necessary by the surgeon.

[Penalty on Persons introducing, or attempting to introduce, spirituous or fermented liquors into any Prison.]

XI. And be it enacted, That if any person whomsoever shall carry, bring, or attempt or endeavour to carry or bring, into any prison to which the provisions of this Act shall extend, any spirituous or fermented liquor, it shall be lawful for the gaoler, keeper, turnkey, or any of their assistants, to apprehend, or cause to be apprehended, such offender, and to take him or her before a Justice of the Peace, who is hereby empowered and required to hear and determine such offence in a summary way, and if the said Justice shall lawfully convict such person of such offence, he shall forthwith commit such offender to some common gaol or house of correction, there to be kept in custody for any time not exceeding three months, without bail or mainprize, unless such offender shall immediately pay down such sum of money, not exceeding twenty pounds, nor less than ten pounds, as the said Justice shall impose upon such offender, to be paid one moiety to the informer, and the other moiety to the Colonial Treasurer of New South Wales, for the public uses of the said Colony, and in support of the government thereof; and if such offender shall be a convict under a sentence of transportation then unexpired, it shall be lawful for the said Justice to sentence such offender to be worked in irons upon any public works in the said Colony for any term not exceeding two years.

[Powers of Visiting Justices to punish parties offending in Prison.]

XII. And be it enacted, That the visiting Justice shall have power to hear and determine all complaints touching any of the following offences:—that is to say, disobedience of the rules of the prison; assaults by one person confined in such gaol upon another, where no dangerous wound or bruise is given; profane cursing and swearing; any indecent behaviour; and any irreverent behaviour at or during divine service or prayer; all which are hereby declared to be offences under this Act, if committed by any description of prisoners whatsoever, confined within any such gaol, prison, or house of correction; and the said visiting Justice shall also hear and determine all complaints of idleness or negligence in work, or wilful mismanagement of work; which are also hereby declared to be offences under this Act, if committed by any prisoner under conviction for any crime; and if the party complained of shall be convicted of any of the offences aforesaid, it shall be lawful for the said visiting Justice to sentence such party to be confined in a solitary cell, on bread and water, for any term not exceeding seven days.

[Punishment for repeated offences, or offences not mentioned in previous section.]

XIII. And be it enacted, That in case any prisoner under sentence for any crime shall be guilty of repeated offences against the rules of the prison, or shall be guilty of any greater offence than hereinbefore mentioned, upon complaint thereof to two or more Justices of the Peace, of whom the visiting Justice may:

or may not be one, such Justices shall have power upon oath to inquire into, and to determine the matter of such complaint, and to order the offender, on conviction, to be punished by close confinement for any term not exceeding one calendar month, or by personal correction, in case of prisoners convicted of felony or sentenced to hard labour.

[Punishment for conveying into any Prison any disguise, instrument, or arms, to assist the escape of any Prisoner.]

XIV. And be it enacted, That if any person shall convey or cause to be conveyed into any prison or house of correction, any mask, visor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoner, and the same shall deliver, or cause to be delivered, to any prisoner in such prison, or to any other person therein for the use of any such prisoner, without the consent and privity of the keeper of such prison or house of correction, every such person shall be deemed to have delivered such visor or disguise, instrument or arms, with intent, to aid and assist such prisoner to escape, or attempt to escape; and if any person shall by any means whatsoever aid and assist any prisoner to escape or in attempting to escape from any prison or house of correction, every person so offending, whether an escape be actually made or not, shall be guilty of felony and being convicted thereof, shall be transported beyond the seas for any term not exceeding fourteen years.

[As to the removal of prisoners to allow of the repair or enlargement of Prisons, or in consequence of infectious diseases.—As to the removal of prisoners in any place or district to newly proclaimed Gaol or Prison for same.]

XV. And be it enacted, That whenever it shall appear to the Governor for the time being of the said Colony, that it is necessary that the debtors or other prisoners, or any of them, confined in any public gaol, prison, or house of correction within the said Colony or its dependencies, should be removed therefrom, in order that the same may be repaired, improved, enlarged, or re-built, or on account of any contagious or infectious disease therein, or of the over-crowded state of such gaol, prison, or house of correction, or for any of the purposes of this Act, and due and sufficient notice thereof, in writing, shall, by order of the said Governor, be given to the sheriff of the said Colony, it shall be lawful for the said sheriff to remove such debtors and other prisoners or any of them to such other gaol, prison, or house of correction, or other place of confinement within his jurisdiction, as the said Governor shall appoint and consign them to during the time such gaol, prison, or house of correction shall be repairing, improving, or re-building, or during the continuance of such contagious disease, on account of which the said prisoners were removed, or during such time as may be requisite for any purpose of this Act; and when such gaol, prison, or house of correction, shall be made fit for the reception and safe-keeping of such debtors and other prisoners, it shall be lawful for the said sheriff to remove back thereto all such prisoners as shall then be in his custody; and further, in case any newly erected gaol, or building previously used for other purposes, shall, by proclamation as aforesaid, be declared to be adopted and directed to be thenceforth appropriated and used as a public gaol, prison, or house of correction for any particular place or district, it shall be lawful for the said sheriff on the day of the publication of such proclamation, or at any time thereafter, to remove all prisoners in his custody in such place or district to such gaol, prison, or house of correction, according to the sentences of the respective prisoners.

[As to the removal of prisoners in cases of contagious disease, &c.]

XVI. And be it enacted, That whenever any contagious disease or other emergency shall render necessary the immediate removal of the prisoners, or any of them, confined in any gaol, prison, or house of correction, and that previous thereto it shall be impossible to obtain for that purpose the order of the Governor of the said Colony for the time being, it shall and may be lawful for the visiting Justices, or the Police Magistrate of the district in which such gaol,

prison, or house of correction, shall be situate, and he is hereby empowered to issue an order to the keeper of such gaol, prison, or house of correction, to remove such prisoners, or any of them, to such other prison or place of confinement within his jurisdiction, as shall be specified in such order: Provided always, That every such removal shall be subject to all such restrictions as to its duration, as are hereby required and directed in other similar cases of removal by order of the said Governor, and that every such order of the visiting Justice or Police Magistrate, together with the causes thereof, shall be forthwith notified to the said Governor, and also to the Sheriff of the said Colony: Provided further, That no such removal under this Act shall be deemed or taken to be an escape, and that nothing herein contained shall extend to discharge the sheriff or other officer from being answerable for the actual escape of any prisoner in his custody.

[As to the removal of prisoners from one Gaol to another, or to Hospital, if necessary.]

XVII. And be it enacted, That it shall be lawful for the sheriff or his deputy, and for the deputy sheriffs of Port Phillip and New Zealand respectively, to remove any prisoner whatever from any gaol under his or their control respectively, to any other gaol, being also under his or their control respectively, or in case of illness to any hospital or infirmary, as occasion shall seem from time to time to require: Provided that no such removal shall actually take place without the leave of a Judge of the Supreme Court, on application made to him for that purpose.

[Recovery and application of the penalties, &c.]

XVIII. And be it enacted, That all fines, forfeitures, and penalties imposed by this Act, or which shall be imposed by virtue of any rule to be made in pursuance thereof, shall, on conviction of the offender, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of the Justice or Justices before whom such conviction shall be had; and for want of sufficient distress, such offender shall be committed to the common gaol or house of correction, for such term, not exceeding six calendar months, as such Justice or Justices shall think proper: and all such fines, forfeitures, and penalties, the application whereof is not hereinbefore particularly directed, shall be paid to the Colonial Treasurer of New South Wales, for the public uses of the said Colony, and in support of the government thereof.

[Form of conviction.]

XIX. And for the more easy and speedy conviction of offenders: Be it enacted, That the Justice or Justices before whom any person shall be convicted of any offence against this Act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, which the case shall require, that is to say:—

‘ Be it remembered, that on the day of , in the year of our Lord
 ‘ , A. B. is convicted before me, C. D., Justice of the Peace for
 ‘ the territory of New South Wales and its dependencies, for that the said A. B.
 ‘ did (*specify the offence and the time and place when and where the same was com-*
 ‘ *mitted, as the case shall be*), and the said A. B. is for the said offence adjudged
 ‘ by me the said Justice, to forfeit and pay the sum of pounds, or to be
 ‘ imprisoned in for the space of (as the case may be).
 ‘ Given under my hand and seal the day and year first above written.’

[Appeal allowed.]

XX. Provided always, and be it enacted, That if any person shall think himself or herself aggrieved by any conviction of any Justice in pursuance of this Act, such person may appeal to the Justices of the Peace at any Quarter Sessions of the district wherein such conviction shall have taken place, within four calendar months after the cause thereof shall have arisen, such appellant first

giving, or causing to be given, to the Justice or Justices before whom the conviction shall have been had, and to the clerk of the peace of the district in which such conviction shall have been had, at least ten clear days' notice in writing, of his or her intention to bring such appeal, and of the matter thereof; and, within two days after such notice, entering into recognizance before some Justice of the Peace of such district, with two sufficient sureties, conditioned to try such appeal and abide the order of, and to pay such costs as shall be awarded by the Justices at such sessions; and the Justices at such session, upon due proof of such notice having been given, and of the entering into such recognizances as aforesaid respectively, shall hear and finally determine the matter of such appeal, in a summary way, and award such costs to the party appealing, or appealed against (as the case may require) as they, the said Justices, shall think proper: and the determination of such sessions shall be final, binding, and conclusive, to all intents and purposes.

[No "certiorari."—Distress not unlawful for want of form.]

XXI. And be it enacted, That no order made touching any of the matters in this Act contained, nor any conviction of any offender against this Act, shall be quashed for want of form, or be removed or removeable by *certiorari*, or by any other writ or process whatsoever, into the Supreme Court of the said Colony; and that where any distress shall be made for any fine, forfeiture, penalty, or sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor shall the party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall any party be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by the party distraining, but the party aggrieved by such irregularity, shall and may recover full satisfaction for the special damage (if any) in an action on the case: Provided that no plaintiff shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends shall have been made by or on behalf of the party distraining, before such action brought.

[As to actions against persons acting in pursuance of this Act.]

XXII. And be it enacted, That if any suit or action shall be prosecuted against any person for any thing done in pursuance of this Act, such person may plead the general issue, and give the special matter in evidence at any trial to be had thereupon, and shew that the same was done by authority of this Act; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit or discontinue his or her action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and although a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs given against the defendant, unless the Judge before whom the trial shall be had, shall certify his approbation of the action, and of the verdict obtained thereupon.

[Exempting from operation of Act all Prisons or Barracks used by Government exclusively for the confinement or security of offenders under sentence of transportation.]

XXIII. And be it enacted. That nothing in this Act contained shall extend to the prisons or barracks at Hyde Park, or to any other prison used or appropriated by the government of the said Colony exclusively for the confinement or security of offenders transported to the said Colony or its dependencies.

[Application of the word Sheriff.]

XXIV. And be it enacted, That wherever the word 'sheriff,' is used in this Act, the same shall, in and for the districts of Port Phillip and New Zealand respectively, be taken to intend, and be construed only as applying to the deputy sheriff of and for those places respectively, so soon any such officer shall be appointed for the same.

SCHEDULE REFERRED TO.

A.

Sydney	Gaol.
Ditto	House of Correction.
Parramatta	Gaol.
Windsor	do.
Bathurst	do.
Liverpool	do.
Campbelltown	do.
Berrima	do.
Newcastle	do.
Melbourne	do.

GENERAL RULES FOR GAOLS.

1. In all cases where the building will allow of separate classification, the Prisoners are to be divided into three classes :—

1. Debtors and others confined for contempt on civil processes.
2. Prisoners committed on charges of felony, or misdemeanour, or for want of sureties, and Prisoners convicted of misdemeanours.
3. Prisoners convicted of felony.

[Female Wards.]

2. There shall be separate wards for females, in which the foregoing classification shall be observed as far as possible; and in every prison where there are female wards, there shall be a Matron and such other female Officer as may be necessary.

3. In the Gaols where there are female wards, there shall be separate keys for such wards, and neither the Keeper of the Gaol, nor any of his male Turnkeys or other Officers, shall go into such wards except in company with the Matron.

[Infirmary.]

4. A convenient and suitable apartment, within the Gaol, shall be set apart and appropriated as an Infirmary for the reception of sick and diseased Prisoners, and a separate one for females.

[Cleanliness.]

5. The walls, ceilings, passages, and cells of every Prison, used by the Prisoners, shall be lime-washed at least once in each and every year, and oftener if requisite; and all the wards, cells, and passages, used by the Prisoners, shall be daily swept, cleansed, and ventilated, and all filth or rubbish removed to the place appropriated for the deposit of it.

[Health.]

6. All Prisoners confined within any Prison, shall be allowed as much air and exercise as may be deemed proper (consistently with their safe custody) for the preservation of health, and for such purpose places shall be allotted for the different classes respectively as circumstances will permit.

[No money to be given.]

7. No money or other valuable consideration, under the name of garnish, or under any other name, shall be taken from any prisoner on his or her entrance into, or departure from Prison, or for his or her accommodation in the Prison, or for the use of any furniture or utensils, or under any other pretence whatever.

[Admission of food and clothing for certain description of prisoners.]

8. Prisoners confined for debt, or committed for trial, shall be allowed to procure for themselves, and to receive at proper hours, any food, bedding, clothing, or other necessaries, subject to a strict examination by the Keeper of the said Prison, in order to prevent extravagance and improper indulgence within the said Prison, or the admission of fermented or spirituous liquors, or other prohibited articles; and all articles of clothing and bedding shall be examined in order that it may be ascertained that such articles are not likely to communicate infection or facilitate escape.

[No gaming to be allowed.]

9. No gaming shall be permitted in any Prison, and the Keeper shall seize and destroy all dice, cards, or other instruments of gaming.

[Wine or Tobacco not to be admitted.]

10. No Wine or Tobacco shall be admitted into any Prison, except by written order of the Surgeon, recorded in his Journal. No Spirituous Liquors shall be admitted within the outer walls of a Prison on any pretence whatever.

[Visitors.]

11. The Keeper of the Gaol shall admit, at proper times and seasons, and under proper restrictions, to be regulated by the Visiting Justice, persons with whom Debtors or Prisoners committed for trial may be desirous of communicating.

12. Visitors to Debtors shall be admitted to their wards or rooms from Ten o'clock in the morning, till Four o'clock in the afternoon, and not at any other time, without a special order from the Visiting Justice, or other person authorised to give such order, by No. 28 of these regulations; and on Sundays, Christmas Day, and Good Friday, the time shall be limited to Two Hours in the morning and Two Hours in the evening.

13. If any Visitors shall refuse to go out of the Prison, when required so to do, shall misbehave, or act improperly towards the Keeper, or other Officer of the Prison, the Keeper may compel them to go out, and refuse them admittance in future, till the facts shall be enquired into by the Visiting Justice, who shall have power to continue or take off such denial of admittance.

[Divine Service.]

14. All Prisoners confined shall attend Divine Service as often as thereunto required by the Chaplains appointed to attend the said Gaol.

[Religious consolation.]

15. Prisoners may, at all proper times and seasons, receive spiritual consolation, according to the faith they shall profess, and as they shall desire to have administered to them by the Ministers of their religion.

[Deaths to be reported.]

16. Upon the death of any Prisoner within any Gaol, notice thereof in writing shall be given forthwith by the Keeper thereof, to the Visiting Justice, and to the Coroner of the District, also to the nearest relative of the deceased, where practicable.

[Prisoners under sentence of death.]

17. Prisoners condemned to suffer death, shall remain in the condemned cells until the sentence be executed or commuted. Their friends shall have access to them at all seasonable times; their diet shall be the Prison allowance only, and they shall be allowed to walk a short time every day, under sufficient guard, in the yard attached to their cells.

[Prisoners' clothing.]

18. Every person committed to the Gaol shall on his admission, be searched, and all money or valuable property that may be found on him, shall be taken possession of by the Gaoler, and an account of it be entered by the Gaoler in his Journal. The Surgeon shall also examine every Prisoner who shall be brought into Prison, before he or she shall be passed into the proper ward, and no Prisoner shall be discharged from Prison if labouring under any acute or dangerous distemper, nor until, in the opinion of the Surgeon, such discharge is safe, unless such Prisoner shall require to be discharged. The wearing apparel of every Prisoner shall be fumigated and purified, if requisite, after which the same shall be returned to him or her, or in case of the insufficiency of such clothing, then other sufficient clothing shall be furnished; but no Prisoner, before trial, shall be compelled to wear a Prison dress unless his or her own clothes be deemed insufficient, or improper, or necessary to be preserved for the purposes of Justice; and no Prisoner who has not been convicted of felony, shall be liable to be clothed in a party-coloured dress; but if it be deemed expedient to have a Prison dress for Prisoners not convicted of felony, the same shall be plain; all Prisoners shall have their hair cut in a proper manner, but not so as to disfigure them.

[Surgeon to keep a Journal.]

19. The Surgeon of every Gaol shall keep a Journal, and in it he shall enter, day by day, and in the English language, an account of the state of each sick Prisoner, the name of his or her disease, a description of the medicine and diet, and any other treatment he may order for such Prisoner.

[Gaoler to keep a Journal.]

20. Every Gaoler shall keep a Journal, in which he shall record all punishments inflicted by his authority, or by that of the Visiting Justice, and the cause thereof, and the day when such punishment shall have taken place, and all other occurrences of importance within the said Gaol; and such other books, inventories, &c., as shall be required of him, particularly an inventory of all fixtures and furniture in the Gaol, an account of all expenses incurred for the Gaol, the number of persons daily rationed in it, and an account of all monies or other articles received for the use of the Prisoners, or taken from Prisoners on their entrance into the Gaol.

[Gaoler to visit the wards and cells daily.]

21. The Keeper of every Prison shall visit and inspect every ward and cell in it, once at least every twenty-four hours, or if he fail to do so, he shall state the cause of his omission in his Journal.

[Use of irons.]

22. No Prisoner shall be kept in Irons by any Gaoler except in cases of urgent and absolute necessity, and the particulars of every such case shall be forthwith entered in the Keeper's Journal, and notice forthwith given to the Visiting Justice; and the Keeper shall not continue the use of Irons on any Prisoner longer than forty-eight hours, without an order, in writing, from the Visiting Justice, specifying the cause thereof, which order shall be preserved by the Keeper as his warrant for the same.

[Demeanor of Gaoler.]

23. The Keeper of every Gaol shall exercise his powers with temper, and without favour, partiality, or personal resentment; he must not strike a Prisoner or use provoking language, and shall require and enforce humanity and good temper towards the Prisoners, from the Turnkeys and subordinate Officers.

[Turnkeys.]

24. The Turnkeys, or subordinate Officers of every Gaol, shall never be absent without leave from the Gaoler or Visiting Magistrate; they shall not strike any Prisoner, nor use any provoking language; they shall obey all orders given to them by the Gaoler; they shall bring nothing into the Gaol without his knowledge and permission; they shall neither give nor sell anything to any Prisoner, nor shall they convey to or from a Prisoner anything whatsoever without the knowledge of the Gaoler.

[Time for locking up and unlocking.]

25. The time for locking up and unlocking, also for giving air and exercise to the Prisoners, will be regulated in each Gaol by the Gaoler, with the approbation of the Visiting Magistrate.

[Custody of prisoners.]

26. The custody of the Prisoners will be vested in the Sheriff; and the Gaoler, who is the Officer of the Sheriff, will be held responsible for the same; but the Gaoler will, at each visit of the Visiting Magistrate, report to him all irregularities which may have occurred since his last visit, and he will report, in writing, to the Visiting Justice, any irregularity of a serious nature, immediately on its occurrence, as well as any sickness, accident, or other extraordinary event that may happen in the Gaol. The Gaoler will also communicate to the Visiting Justice all the orders that he may receive from the Sheriff.

[Gaoler to keep a Record of the Visits of the Visiting Magistrate, Surgeon, and Chaplain.]

27. A book shall be kept by the Gaoler in which every visit of the Visiting Magistrate, the Surgeon, Chaplain, and any other officers of the Gaol, not resident in it, shall be entered by the individual himself, also the visits of Magistrates, and of strangers.

[Special order necessary for leave to visit any Gaols.]

28. No persons, except Magistrates of the Territory, can be allowed to visit any Gaol without an order either from the Governor, Colonial Secretary, the Sheriff, or the Visiting Justice; Magistrates of the Territory may, however, personally introduce visitors without any such order.

[Neither Gaoler or Matron to sleep out of the Gaol.]

29. No Keeper of a Gaol, nor Matron thereof, shall sleep out of it without permission from the Visiting Magistrate.

[Persons not belonging to the Gaol not to sleep in it.]

30. No Gaoler shall permit any person, who does not belong to the Prison, to sleep within the walls of it, without permission from the Visiting Magistrate.

31. No Gaoler shall keep, or permit to be kept, within the walls of any Prison, either dogs, poultry, pigs, pigeons, rabbits, or goats, nor any other animal which can be in any way injurious to the cleanliness and good order of the establishment.

32. Requisitions for the service of the Gaol will be made by the Gaoler, and transmitted through the Sheriff to the proper department of Government; every such requisition must be submitted by the Gaoler to the Visiting Magistrate, and no requisition will be attended to that is not recommended by him.

INSTRUCTIONS TO VISITING MAGISTRATES.

1. The Visiting Justice of each Gaol will take care that a copy of the Act of Council, 4 Victoria, No. 29, be kept in the Gaol; that sections 5, (with the exception of the latter part of it) 7, 8, 9, 10, 11, 12, 13, and 14, of the same Act,

be hung up in two or more conspicuous places within the same, as also the Regulations which may, under the authority of the 5th section of the Act, be made by the Governor, with the advice of the Executive Council.

2. The principal duty of the Visiting Magistrate being to see that all these Regulations are duly enforced, he will for that purpose, in addition to the weekly visits which are required of him by the Act of Council, visit the Gaols at such uncertain times as may to him appear necessary.

3. He will, on the first of every month, make a report, in writing, to the Colonial Secretary, in which he will specify the general state of the Gaols, and how far the Regulations have been attended to, and the business of the Gaol properly conducted; and he will accompany his report with a return of all punishments inflicted by his own order, or by that of the Gaoler.

4. He will also report to the Colonial Secretary, any occurrence of an extraordinary nature, at the time of its happening, or anything that may seem to him proper to be brought under the immediate notice of the Government.

5. All Requisitions made by the Gaoler will be submitted to him, before they are forwarded by the Gaoler to the Sheriff, as well as all applications which, either directly or indirectly, may lead to any expenditure of public money. No requisition or application of this nature will be attended to, that is not recommended by the Visiting Magistrate, and the Visiting Magistrate will, consequently, be held strictly responsible that he recommends nothing that can reasonably be dispensed with.

6. He will report whenever repairs are required, and if possible, the probable expense of them.

7. He will be particular in carrying into effect the ninth clause of the Act of Council, which authorises the employment of the prisoners at any work they may be enabled to perform.

8. The Visiting Justice will not have power to release any person from confinement, or to order his or her discharge from the Gaol; but it will be one of his most important duties to satisfy himself, at every visit, that no persons are improperly or unnecessarily confined to Gaol, and he will bring every such case, or supposed case, immediately before the Government.

9. He will particularly take care that Prisoners of the Crown are not allowed to remain in Gaol, by the negligence of any Department of Government, or by the mistake of any officer; and if Prisoners of the Crown are ever committed to Gaol, there to await the decision of the Governor or Principal Superintendent of Convicts, he will instantly report the fact of their being in the Gaol to the Colonial Secretary, and he will continue his reports weekly until such persons shall be removed.

10. He will equally take care that persons sentenced to Transportation or Ironed Gangs, be not detained longer than may be absolutely necessary in Gaol; and as great inconvenience has heretofore been incurred from the improper detention of persons in prison, his attention is most particularly drawn to this portion of his duties.

HABEAS CORPUS.

The Habeas Corpus Act, 31, *Car.* 2nd, c 2, is the most highly remedial Act which stands upon the Statute book. It enacts—

“1st—That on complaint and request, *in writing*, by or on behalf of any person committed and charged with

any *crime (unless committed for treason, or felony, expressed in the warrant, or as accessory, or on suspicion of being accessory before the fact, to any felony, or upon suspicion of such felony plainly expressed in the warrant, or unless he is convicted, or charged in execution by legal process)*, any of the Judges in vacation upon viewing a copy of the warrant or affidavit that a copy is denied, shall (unless the party has neglected for two terms to apply to any Court for his enlargement) award a *Habeas Corpus* for such prisoner, returnable *immediately* before himself, or any other of the Judges, and upon the return made, shall discharge the party, if bailable, upon giving security to appear and answer to the accusation in the proper court of justice.

“ 2nd—That such writ shall be endorsed as granted, in pursuance of the Act, and signed by the Judge awarding it.

“ 3rd—That the writ shall be returned and the prisoner brought up within a limited time, according to the distance, not exceeding in any case twenty days.

“ 4th—That officers and keepers neglecting to make due returns, *or not delivering to the prisoner or his agent, within six hours after demand, a copy of the warrant of commitment, or shifting the custody of a prisoner from one to another without sufficient reason or authority*, shall, for the first offence, forfeit £100, and for the second £200, to the party grieved, and be disabled to hold office.

“ 5th—That no person, once delivered by *Habeas Corpus*, shall be re-committed for the same offence, on penalty of £500.

“ 6th—That every person committed for treason, or felony, shall, if he requires it, the first week of the next term, or the first day of the next session of *Oyer and Terminer* be indicted in that term or session, or else admitted to bail, unless the King's witnesses cannot be produced at that time, and if acquitted, or if not indicted and tried in the second term or session, he shall be dis-

charged from his imprisonment for such imputed offence.”

This is *the substance* of that great and important statute, which extends only to the case of commitments for such criminal charge as can produce no inconvenience to public justice by a temporary enlargement of the prisoner. *Bl. Com.*

By the 7 & 8 G. IV. c. 48, s. 17, “No writ of *Habeas Corpus* shall be granted for prisoners for offences against smuggling and the Customs, unless the objections to the proceedings be stated.”

The writ does not issue as a matter of course, but must be grounded on affidavit, upon which the Court will exercise their discretion. 3 *B. and A.* 420. The application should be supported by other affidavits than the prisoner’s. 1 *Leach*, 255. The Court will not grant the writ to bring up a prisoner under sentence of imprisonment for a misdemeanor, to enable him to shew cause in person against a criminal information. 3 *B. and Ald.* 579. n. The application for the writ must be *in writing, attested and subscribed by two witnesses*, and a copy of the warrant of commitment must be produced before the Court or Judge, or *on oath* made that such copy was refused.

The writ should be served on *the principal gaoler*, if he be present, but if not, *his deputy* may be served; and if the gaoler have no deputy, *then* in the absence of the deputy, service may be on the *turnkey*, or may be left at the gaol: for it is the duty of the gaoler to leave some person in his place.

When the body is returned by the officer to whom the writ is directed, he is to certify the day and cause of the *caption** and *detainer*, as in case of an excuse for not bringing the individual. *Vaugh.* 137. At the same time the magistrate, in obedience to a *certiorari* usually issued with the Habeas Corpus, returns the depositions

* See *quere*, if the cause of the *caption* need be shewn see 9, B. and Cr. 447.

upon which the commitment is founded, in order that the Court may be furnished with the means of judging in what way they should dispose of the prisoner. 3 *East*. 157. But when a party is in custody, under the sentence of a Court of competent jurisdiction, to try his offence, *it is sufficient to return that fact*, without stating the particulars of the original charge against him. 1 *East*. 306.

A neglect to make the return may be prosecuted by attachment. 5 *T. R.* 89. The *truth* of the return in *criminal cases* cannot be controverted. 2 *Hawk.* 113. It may in *civil cases*, as in an information for penalties for smuggling. 4 *B. and C.* 136.

When the Court think upon hearing the affidavits on the prisoner's behalf, that there is probable ground for his being discharged or bailed for a felony, if he be unable to defray the expense of being brought to Sydney for that purpose, the Court will grant a rule to shew cause why he should not be bailed by a magistrate in the country, with a *certiorari* to return the depositions before them. 6 *M and Sel.* 108.

Where a party whose testimony is desired, is detained in prison, or on board a ship, or in any *description of confinement*, a writ of *Habeas Corpus ad testificandum* may be obtained to procure his attendance. 1 *Ch. C. L.* 611. In order to obtain this writ, an affidavit must be made by the party applying, stating that the party is a material witness, that he is confined, and that the trial is to take place. *Id.*

And if he be at a great distance, the Court will expect it to be specially shewn *how* he is *material*, (*Tidd.* 109); and in case of his being on board a ship, that he is willing to attend. *Cowp.* 672.

HARBOUR.

Any person throwing any dead animal into Sydney

Cove or Darling Harbour, or leaving the same on the shores thereof, to forfeit and pay on conviction a sum not exceeding one pound nor less than five shillings; and all persons so offending may be apprehended. See *Sydney Police Act*, 4 W. IV. No. 7, s. 37, *Callaghan*, vol. 2, p. 909.

HARBOURING.

Harbouring, receiving, or concealing any robber or housebreaker, *felony*. 3 W. IV. No. 3, s. 13, *Callaghan*, vol. 2, p. 697.

HARBOURING CONVICT ILLEGALLY AT LARGE.—The Act of Council, 4 Vict. No. 10, s. 8, *Callaghan*, vol. 1, p. 503, enacts “That any settler, householder, or other free person in the Colony of New South Wales or its dependencies, who shall harbour in or about his or her house, lands, or otherwise, or in any manner employ any convict illegally at large, on conviction thereof before any one or more Justice or Justices of the Peace, shall for every such offence forfeit and pay a sum not less than one pound nor more than fifty pounds; Provided always, that if it be proved to the satisfaction of the Justice or Justices before whom such offence shall be tried, that the person complained against used due and proper diligence in ascertaining whether such convict, so illegally at large, was free or not, and that such person had reasonable ground for believing that such convict was free, it shall not be imperative on such Justice or Justices to impose any penalty on such person.”

HACKNEY CARRIAGES.

(See post APPENDIX.)

HAWKERS AND PEDLERS.

The Act of Council 5 W. IV. No. 7; *Callaghan*, vol. 2, p. 765, is intituled "An Act for licensing and regulating Hawkers and Pedlers." 25th July, 1834. This Act does not apply to persons selling, &c., goods in public markets, fairs, &c., legally established. s. 16. All hawkers and pedlers, and other persons acting as such, and going from town to town, or to other men's houses, either on foot, or with horse or other animal, to vend, sell, or barter any goods, wares, or merchandize, must be licensed by the Justices of the Court of Quarter Sessions of the district in which such hawkers or pedlers, &c., usually reside, and for every person so vending, selling, or bartering, without being duly licensed, penalty ten pounds; if not forthwith paid, commitment to nearest gaol or house of correction for any time not exceeding four calendar months, unless the penalty be sooner paid. ss. 1, 2, 13. Such license to be in force for one year only. s. 2.

PACKS, CARTS, &c. of hawkers, &c., are to have written on them, in large Roman letters, the words "LICENSED HAWKER," together with the number, name, or other mark of distinction, in the license. Penalty on the person making default not more than twenty nor less than five shillings; if not paid forthwith, commitment to the nearest gaol or house of correction for any time not exceeding one calendar month, unless the penalty be sooner paid. ss. 4, 13.

Persons not duly licensed using any pack, cart, &c. for goods, &c., with those words, or words to that effect, penalty five pounds; if not forthwith paid, commitment to nearest gaol or house of correction for any time not exceeding two calendar months, unless the penalty be sooner paid. ss. 5, 13.

LICENSE must be produced by hawker, &c., if demanded by any Justice of the Peace, or any constable or other person employed in the police, or proprietor or

occupier of any house at which he shall call with goods, or master, mistress, or overseer of any servants with whom he shall have dealt, or offered to deal, within twenty-four hours previous to demand; if he refuse to show it, or shall not have it ready to show, penalty two pounds, or commitment, if not forthwith paid, to nearest gaol or house of correction for any time not exceeding two calendar months, unless the penalty be sooner paid. ss. 6, 13.

For forging or counterfeiting, or using forged or counterfeited license, penalty twenty pounds or commitment, if not forthwith paid, to the nearest gaol or house of correction for any time not exceeding six calendar months, unless the same be sooner paid. ss. 7, 13.

Hawkers, &c., letting or lending their license, or any person hiring or borrowing a license, or using any license in which his own real name is not inserted, penalty five pounds, or commitment, if not forthwith paid, to the nearest gaol or house of correction for any time not exceeding two calendar months, unless penalty be sooner paid. ss. 8, 13. And any person convicted of so lending his license to forfeit such license, and to be utterly incapable of having a license again granted to him. s. 8.

Hawkers going to any establishment where there are convicts employed, must have the permission of the master or overseer before he commences dealing with any servant on the establishment, or penalty five pounds; or, if not forthwith paid, commitment to the nearest gaol or house of correction for any time not exceeding two calendar months, unless the penalty be sooner paid. ss. 9, 13. And if any hawker, &c., deal with any convict, knowing him to be such, without permission, penalty ten pounds; or if not forthwith paid, commitment to the nearest gaol or house of correction for any time not exceeding four calendar months, unless the penalty be sooner paid. ss. 10, 13.

Hawkers, &c., are not to purchase or receive goods from persons travelling on the roads or elsewhere, with-

out actual knowledge that such goods are the lawful property of such persons, or penalty five pounds; or if not forthwith paid, commitment to the nearest gaol or house of correction for any time not exceeding two calendar months, unless the penalty be sooner paid. And if on conviction there shall appear to the Justice or Justices reasonable grounds for believing any such goods to have been stolen, he or they may cause any such hawker, &c., to be detained till inquiry be made, and if the circumstances justify it, may commit him for trial in the usual way, for receiving stolen goods knowing them to be stolen, and in case of conviction he shall suffer such punishment as by law is awarded over and above the penalty. s. 11.

Hawkers or pedlers not to carry or have in their possession any fermented or spirituous liquor, under penalty of five pounds; if not forthwith paid, commitment to the nearest gaol or house of correction for any time not exceeding two calendar months, unless the penalty be sooner paid. ss. 12, 13.

In case any hawker or pedler be guilty of any breach of any of the provisions of the Act, any person entitled to demand the production of his license (see ante s. 6.) may apprehend the offender and take him before the nearest Justice of the Peace,* who upon proof either by confession of the party offending, or by the oath of one or more credible witness or witnesses, (which oath the said Justice is empowered to administer), that the party has offended against the Act, may convict. s. 13.

Any Justice or Justices of the Peace, before whom any person trading under a license granted in pursuance of the above Act is convicted of any offence against the Act, may take away and cancel such license, reporting the facts and transmitting the depositions taken to the Clerk of the Peace, to be laid before the next Quarter

* By this Section it would appear that the *nearest* Justice only can act.

Sessions, to be confirmed or disallowed as to the said Court shall seem fit. s. 14.

HAWKERS' BAGGAGE MAY BE SEARCHED BY WARRANT, UNDER CIRCUMSTANCES OF SUSPICION.—If any person have reasonable ground for suspecting that any missing property has been taken away by any hawker or pedler who has visited his house within forty-eight hours, or that any servants have been supplied by any such hawker or pedler with fermented or spirituous liquor within that time, and shall make oath before any Justice of the Peace, of such facts as shall satisfy the Justice that there is reasonable ground for suspicion, such Justice shall issue a search warrant, to examine the person, baggage, &c., of the hawker or pedler *therein* to be named or described, such warrant to continue in force only for such time as shall be therein mentioned. If any stolen property, or any fermented or spirituous liquors be found in possession of the hawker or pedler, he shall be dealt with according to law. s. 15.

APPEAL allowed to the Quarter Sessions, and execution of conviction to be suspended provided the person so convicted with two sufficient sureties shall immediately, before the Justice or Justices convicting, enter into a bond of recognizance to Her Majesty in double the amount of the penalty, conditioned to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the Court of Quarter Sessions, and to pay such costs as the Court shall award. s. 17.

No **CERTIORARI**, and no proceeding to be quashed for want of form *only*.

APPLICATION OF FINES.—One-half to the informer and the residue to the Queen. s. 20.

In case of actions for proceedings in pursuance of this Act the defendant may give special matter in evidence under the plea of the general issue. If a verdict go for the defendant, or if the plaintiff discontinue his action, the defendant shall be entitled to treble costs. s. 19.

FORM OF LICENSE TO TRADE AS A HAWKER AND PEDLER.

New South Wales, } Whereas A. B. of in the District of hath
to wit. } applied to us the Justices of the Peace for the said Colony
No. } assembled at the Court of Quarter Sessions for the above
District of } District, holden at in the County of in the
Colony aforesaid, on the day of in the year one thousand eight
hundred and to be allowed to trade as a hawker and pedler, and to have
a license for such purpose granted to him under and by virtue of an Act of the
Governor and Council passed in the fifth year of the reign of his late Majesty
King William the Fourth, intituled, An Act for licensing and regulating
Hawkers and Pedlers. Now, we the said Justices so assembled as aforesaid,
having enquired into the character of the said A. B., and being fully satisfied
that the said A. B. is a free person, and of good character and reputation, and a
fit person to be licensed to exercise the trade of a Hawker and Pedler, Do
hereby, under and by virtue of the powers vested in us by the aforesaid Act,
license, authorise, and empower the said A. B. to trade as a Hawker and Ped-
ler within the Colony of New South Wales, and to sell and retail his goods, wares,
and merchandises at such place or places within the limits of the said Colony,
prescribed for the location of settlers, as he the said A. B. shall think fit, subject
however to the several provisions and penalties in the said Act specified: And
this license shall continue in force for twelve months from the date hereof and
no longer, provided it be not forfeited in the mean time, according to the provi-
sions of the aforesaid Act in Council.

Granted by the Court at aforesaid, this day of
one thousand eight hundred and

GENERAL FORM OF CONVICTION OF A HAWKER OR PEDLER.

New South Wales, } Be it remembered, that on the day of , in
to wit. } the year of our Lord , at , in the said
Colony, A. B. came before me, C. D., one of Her Majesty's Justices of the
Peace for the said Colony, residing near the place where the offence hereinafter
mentioned was committed, and informed me that E. F., of (here set
forth the fact for which the information is laid,) whereupon the said E. F. being
duly summoned to answer the said charge, appeared before me (and having
heard the charge contained in the said information, acknowledged and volun-
tarily confessed the facts therein stated to be true,) but in his (or her) defence
alleged (here setting forth the substance of the defence) (or) voluntarily con-
fessed the said charge to be true, or did not make any defence against the said
charge, whereupon the same was fully proved on the oath of G. H., a credible
witness, (or) said that he (or she) was not guilty of the said offence whereupon
the same was fully proved on the oath of G. H. a credible witness, (or as the
case may be,) (or) did not appear before me pursuant to the said summons, but
the said charge was fully proved on the oath of G. H., a credible witness, (or
as the case may be,) and therefore, it manifestly appearing to me that the said
E. F. is guilty of the offence charged in the said information, I do hereby
convict him (or her) of the said offence, and do adjudge that he (or she) hath
forfeited the sum of , (or) his (or her) license, and the sum of
of lawful money of Great Britain, to be distributed as the law directs, according
to the form of the Act of Council in such case made and provided.

Given under my hand and seal, the day of

FORM OF CONVICTION FOR SELLING WITHOUT OR CONTRARY TO LICENSE.

That E. F. of on at being then and there a hawker
and pedler, and then and there travelling on (foot) and going from town to town;

(or) to other men's houses, did then and there trade as such hawker, pedler, or petty chapman, and did then and there carry to sell and expose to sale divers goods, wares, and merchandise, without any licence to him before then granted in that behalf: against the form of the Act of Council in such case made and provided. Whereupon the said E. F., &c.

CONVICTION FOR NOT HAVING THE WORDS "LICENSED
HAWKER" WRITTEN ON PACK, &c.

That E. F. of _____ in the said Colony of _____ on _____ at _____ being then and there a person to whom was granted a license to travel and trade as a hawker and pedler, under and by virtue of the Act of Council in such case made and provided, and who then and there did so trade with and under colour of such license, did not cause to be written, painted, or printed upon a certain pack, in which he then and there carried his goods, wares, and merchandise, the words "Licensed Hawker," (or as the case may be) but therein then and there, and whilst he was so licensed, as aforesaid, made default: against the form of the Act in such case made and provided. Whereupon the said E. F., &c.

FORM OF CONVICTION FOR HAVING THE WORDS "LICENSED
HAWKER" PAINTED AND NOT BEING LICENSED.

That E. F. of _____ on _____ at _____ not being then and there a person to whom was granted a license to travel and trade as a Hawker or Pedler under or by virtue of the Act of Council in such case made and provided, Did unlawfully cause to be painted on a certain pack of him the said E. F. for certain of his goods, wares, and merchandise, the words "Licensed Hawker," against the form of the Act in such case made and provided. Whereupon the said E. F., &c.

FORM OF CONVICTION FOR NOT SHOWING LICENSE WHEN
DEMANDED.

That E. F. of _____ on _____ at _____ being a person then and there trading as a Hawker and Pedler under and by virtue of a license before then duly granted to him on that behalf, did not then and there produce and show his said license to the said A. B. upon demand being then and there made by the said A. B. to the said E. F., that he the said E. F. should produce and shew the same to him the said A. B., he the said A. B. being then and there a constable and peace officer (or) a person to whom the said E. F. did then and there offer goods to sale, (or as the case may be), but the said E. F. then and there unlawfully refused to produce or show the same to him the said A. B.: Against the form of the Act of Council in such case made and provided. Whereupon the said E. F., &c.

HIGHWAYS.

"A highway is a right of passage for the public in general without distinction. There are three kinds of

ways, 1st, a *footway*; 2nd, a *foot and highway*; 3rd, a *foot, horse, and cartway*. A public footway or bridleway, is a highway for foot passengers or horse passengers. 13 *East*. 97.

“There is a distinction taken in some books concerning highways, which seems to be reasonable, viz., That every way from town to town may be called a highway, because it is common to all the Queen’s subjects, and consequently that a nuisance therein is a common nuisance, and punishable by indictment; but that a way to a parish church, or the common fields of a town, or to a private house, or perhaps to a township only, may be called a *private way*, but not a *highway*; because it belongeth not to all the Queen’s subjects, but only to some particular persons, each of whom may have an action on the case for a nuisance therein. 1 *Hawk*. c. 76, s. 1, 11; *Moore*, 354.

“A highway may be created by prescription, by dedication, by Act of Council, or by necessity.

“**PRESCRIPTION.**—If all persons without distinction have indiscriminately, for a considerable space of time, without interruption used and enjoyed a way, it will be *presumed* to be a highway. A much shorter period of possession will suffice to establish a *right in the public*, than a right in a private person to a way. 1 *B. and Al*. 63.

“**BY DEDICATION.**—A way may become a public highway by a *dedication* of it to the public by the owner in fee.

“With regard to an *express* dedication, it is said by Mr. Justice Chambre, (5 *Taunt*. 125.) ‘We know that in dedicating churches, there is, after the work is completed, a formal act of dedication, and, by analogy, not only until the work is completed, but until *the owner has shewn some intention* of dedicating the soil to the public, his right of excluding them still continues.’

“With respect to what is an *implied* dedication, Lord Ellenborough said, ‘generally, that if the owner of the

soil throws open a way, and marks by no visible distinction his intention to exclude the public, *a dedication will be presumed.*' 1 *Camp.* 260.

"Where the owners of the soil suffered the public to have the free passage of a street in London, though not a thoroughfare, *for eight years*, without any impediment (such as a bar across the street at pleasure) which would shew the limited right of the public; it was held a sufficient time for presuming a dedication of the way to the public. 11 *East.* 375 n.

"In a recent case an inference of dedication was allowed, where the way had been used but *for four or five years*, and was in an unfinished state, being only partly paved. 11 *Moore*, 354.

"A highway may be created *by Act of Council*, containing a specific enactment to that effect, and all persons are presumed to have consented to the Act of the Legislature.

"BY NECESSITY.—If a highway be impassable, the public have a right to pass on the adjoining ground. It is clear law established by a number of cases, that where a common highway is out of repair, by the overflowing of a river, or any other cause, *passengers* have a right to go on the adjacent ground. But the privilege of going on adjoining ground, is confined to *highways*; and the grantee has such privilege generally speaking." 4 *M. and S.* 287.

HOPBINDS.

Unlawfully and maliciously cutting or otherwise destroying any hopbinds growing on poles in any plantation of hops, *felony.* 7 and 8 G. IV. c. 3, s. 18, *Callaghan* vol. 1, p. 334. See Form under title "Malicious Injury."

HORSES.

(See "CATTLE.")

HOUSE OF CORRECTION.

By Act of Council 4 Vict. No. 29, s. 6, *Callaghan*, vol. 1, p. 545, "All common gaols are to be considered to all intents and purposes as houses of correction, as well as public gaols, unless specially declared otherwise."

IMPOUNDING.

(See ACTS OF COUNCIL, 4 W. IV. No. 3; (CALLAGHAN, VOL. 2, P. 968) AND 9 VICT. No. 7. ID. SUP. P. 1582.)

CATTLE, HOW AND WHEN MAY BE IMPOUNDED.—1st. IN PUBLIC POUND.—All cattle* trespassing on any land may be impounded by the owner of the land, or his agent, in the *nearest* public pound. 4 W. IV. No. 3, s. 8. Cattle found straying or tethered in the public streets may be impounded by any constable or other person in the nearest public pound. *Id.* s. 29.

2ND. ON THE PREMISES OF THE PERSON IMPOUNDING.—Any person or the agent of any person, on whose land cattle, the owner whereof is known to him, are found trespassing, may impound the same in any convenient place on his own lands if he think fit. But he must give written notice within twenty-four hours to the *owner*, specifying the number and kinds of cattle, the name of the owner, the place where the cattle were trespassing, and the amount of damages claimed for the trespass. He must also feed and maintain the cattle whilst so impounded, and if they be not released within three full days he must send them to the nearest public pound. Persons impounding on their own premises are not entitled to any payment for any damage which may

* The word cattle is declared to mean and include horses, mares, geldings, colts, fillies, asses, mules, bulls, cows, oxen, heifers, steers, calves, rams, ewes, sheep, lambs, goats, and swine, and any one animal of the same. See 4 W. IV. No. 3, s. 35.

be done by the cattle after they have been impounded. The only charge they can make is for feeding and maintaining, being the same as by law charged by the public poundkeeper. *Id.* s. 7.

DUTIES AND LIABILITIES OF THE PERSON IMPOUNDING. Persons impounding cattle in the public pound must specify to the keeper, at the time of delivering the same to him, the number and kinds of the cattle impounded, and the name of the owner, if he be known, or supposed owner, or that he is wholly unknown, the place where the said cattle were trespassing and the amount of damages claimed for the trespass; and if any owner or occupier of land, or his agent or overseer, shall impound any cattle in any pound or place not authorised by this Act, or in any manner contrary to the provisions thereof, every person so offending shall, upon conviction, forfeit and pay a fine not exceeding ten pounds, and not less than five pounds, for every such offence.

DUTIES AND LIABILITIES OF THE POUNDKEEPER.—The keeper of any public pound *must* receive and detain in his custody all cattle brought to him to be impounded, and he is responsible to the owner for any loss or damage sustained by the wilful act or neglect of himself or his servants; but not otherwise. He must keep the cattle impounded until they are replevied, in due course of law, or until the sum, for which they were impounded, together with all lawful fees and charges, be paid, or tendered or secured to be paid,* or until he shall receive

* The following is the form of the security or undertaking which the poundkeeper may take in lieu of immediate payment:—

I, A. B., (describing the residence of the owner of the cattle impounded,) hereby promise to pay, within thirty days from the date hereof, to C. D. (the poundkeeper,) at _____, (naming either the pound, or place of residence of the poundkeeper, as may be required,) the sum of _____, (specifying the full amount of the poundage, as well as the fees and charges thereon,) without any deduction whatever; and in default thereof, I consent that the said sum, together with the costs necessarily incurred by the said default, shall be levied by distress and sale of my goods and effects, wheresoever found. Dated at _____, this _____ day of _____, 18 _____.

(Signed) A. B.
or, "for" A. B.
C. D.

Overseer of the said A. B.

the written order of the person impounding such cattle to deliver the same, and his lawful fees and charges. *Id.* s. 11.

Any Justice of the Peace may issue summary process of distress and sale against the goods and effects of the owner of the cattle, upon failure of payment at the time, secured by the above undertaking, upon production of the undertaking, and the oath of the poundkeeper that the amount is still due, and unsatisfied. See s. 12.

The Poundkeeper is bound to deliver up the cattle impounded to the owner, or his overseer or authorised agent, on tender or payment of all lawful charges, or on security, as directed by the 12th section, being given; or on receiving the order of the person impounding, together with his own fees and charges, and if he refuse to do so he is subject to a penalty of not less than forty shillings nor more than five pounds.

The Poundkeeper must post a notice on the gate of the pound or other conspicuous place, of all cattle impounded, setting forth a description of them, and such notice must remain until the cattle are claimed or otherwise disposed of by due course of law. If he neglect he shall forfeit for every such neglect forty shillings. s. 13.

If cattle impounded be not claimed within twenty-four hours after being impounded, the poundkeeper must, as soon as possible thereafter send notice in writing to the owner, if he be known to him, and reside within ten miles of the pound, or to his agent if such there be residing within ten miles, if the owner reside at a greater distance. The notice must be served personally or left at the house of the owner or overseer, and must specify the number and kinds of the cattle impounded, the name of the owner, the place where the cattle were trespassing, and the amount of damages claimed, also the time and place where the cattle will be sold if not sooner released. If the owner, being known, or his agent or overseer reside more than ten miles from the pound, the poundkeeper may send

notice by post, and if neither the owner, agent, nor overseer be known, he must post the notice at the nearest Court-house, and also cause it to be inserted in the next *Government Gazette*.* But if the cattle consist of sheep, goats, swine, or calves, and be not more than two in number, the poundkeeper need only affix notice on the pound. *Id.* s. 14.

The poundkeeper is required to keep at or near the pound a copy of the Impounding Acts, also a pound book, in which are to be set down in a legible handwriting the particulars of all cattle lodged in the pound, specifying the day and hour as near as may be, and the cause for impounding, and the time and mode of notice, and also, if released, when, and in what manner, by whose order and to whom delivered; also the particulars of all sales and of the proceeds thereof, and by whose order the same were made. Such entries are to be made at the time the acts were done, and not after any dispute as to the entries shall have arisen.

The poundkeeper must exhibit a copy of the Act and the poundbook to any person requiring the same, at a reasonable time, on payment of *sixpence*; he is also bound to grant extracts (signed by himself,) from the pound-book, upon payment of one shilling for every such extract, not exceeding one hundred words, and for every subsequent number of words, not exceeding one hundred, *sixpence*. The poundkeeper must also file and preserve, for not less than twelve calendar months, all orders made by Justices, concerning any cattle impounded; "and if any poundkeeper shall neglect or refuse to produce a copy of this Act, or the said pound-book, for the inspection of any person desiring to see the same, upon his lawful fee for the same, being first paid, or offered to be paid, or shall neglect to make any lawful

* By the 4 Vict. No. 1, s. 1, the Governor may declare that any poundkeeper, instead of inserting notice in the *Government Gazette*, may do so in one or more of the public newspapers of the district.

entry therein, he shall forfeit and pay for every such default a sum not exceeding twenty shillings; and if any poundkeeper shall wilfully delay making any entry, or shall knowingly make any false entry in the said pound-book, or shall wrongfully erase or destroy any entry previously made therein, he shall forfeit and pay for every such offence a sum of ten pounds. *Id.* s. 9.

The poundkeeper must also keep in some conspicuous part of the pound, a board of all fees, &c., to be taken. *Id.* s. 10.

AS TO SALE OF UNCLAIMED CATTLE.—Where any impounded cattle shall not be released within seven days after notice has been given to the owner or agent or overseer, he delivering the same personally, or leaving it at his usual place of abode, or within twenty-one days after notice shall have been sent through the Post, or inserted in the *Government Gazette*, (which periods are to be reckoned exclusive of the day of notice) the poundkeeper may apply to the next Justice of the Peace, not being a party interested in the matter, for an order for the sale of the cattle. *Id.* s. 20. The cattle are to be sold on the tenth or the twenty-fourth day after notice to the owner or his agent, as the case may be. *Id.* s. 21.

WHO MAY NOT PURCHASE.—Neither the person who impounded the cattle, nor the keeper of the pound, nor his surety, nor the Justice who made the order for sale, shall either personally, or by any other, purchase any of the cattle, upon pain that every person offending therein shall forfeit and pay for every such purchase the sum of five pounds. *Id.* s. 21.

If any delay be caused in the sale through the neglect of the poundkeeper, he must pay for all costs and charges in feeding, maintaining, &c., arising from such delay. *Id.* s. 20. But if after any sale, the amount realised be not sufficient to satisfy the *lawful* fees and charges of the poundkeeper, the residue shall be paid by the person impounding. *Id.* s. 24.

REMEDY FOR TRESPASS WITHOUT IMPOUNDING.—Any

person on whose land cattle are found trespassing, may, instead of impounding them send them to the owner, &c., and demand the amount of damage according to the rate fixed by the Justices of the District, (see s. 5,) and if the same be not paid he may complain to the Justices in Petty Sessions nearest the place where the trespass was committed, who are required to summon the party complained against and to hear and determine the matter, and (if they so determine), to levy the amount. *Id.* s. 25.

JURISDICTION.—Justices of the Peace in Petty Sessions have summary jurisdiction over all fines, forfeitures, penalties, damages, and demands under the Impounding Act. See 9 Vict. No. 7. s. 2.

SPECIAL DAMAGE.—The owner of any land trespassed upon may waive the ordinary rate of damage estimated and allowed, and bring an action for special damage. But if he do not recover more than the ordinary rate of damage he will not be entitled to costs, and if the verdict go for the defendant, or if the plaintiff discontinue his action, or be non-suit, the defendant will be entitled to double costs. 4 W. IV. No. 3. s. 30.

POUND RESCUES OR BREACHES.—Rescuing any cattle lawfully seized for the purpose of being impounded, or breaking down, injuring, or destroying any pound legally constituted, whether any cattle be impounded therein or not, or committing any pound breach or rescue, whereby any cattle, of any description escape, or be enlarged from any such pound. *Misdemeanor.* *Id.* s. 26.

APPEAL allowed to Quarter Sessions where the sum to be paid on summary conviction exceeds five pounds. *Id.* s. 32.

INDECENCY.

INDECENT ASSAULTS.*—The taking any indecent free-

* See also "Appendix," post.

doms with the person of another, (not amounting to rape, &c., or to an attempt at rape, &c.), against the consent of such other person, or to which she or he submits merely, but does not consent, is an assault in law, and evidence of it will maintain an indictment for a common assault. See 2 *Arch. J. P.* 6. The commitment may be as for a common assault. *R. v. John Nichol, R. and Ry.* 130. See ante "Assault."

PUBLIC INDECENCY.—A person exposing himself naked in a public place, (*R. v. Sir Charles Sedley, Sid.* 168,) or stripping himself naked and bathing near to inhabited houses so that he may be distinctly seen from them. *R. v. Crunden, 2 Camp.* 89. *Misdemeanor.*

The Police Act 4 W. IV. No. 7, s. 22, (*Callaghan, vol. 2, p. 905,*) inflicts a penalty not exceeding ten pounds nor less than five, on conviction before any Justice of the Peace (for Sydney) of "any individual who shall offend against decency by the exposure of his or her person in any street or public place within the said town or in the view thereof." Police constables or other persons are authorised to apprehend any person whom they "may find in the act of committing any such offence, and him or her to convey before any Justice of the Peace, to be dealt with according to law." (The 2nd Vict. No. 2, s. 22, *Callaghan, vol. 2, p. 924,* regulating the Police in the towns of Parramatta, Windsor, Maitland, Bathurst, &c., inflicts the same penalty on persons offending in any of the said towns, and gives similar authority to Justices, constables, &c.) If the penalty be not paid forthwith, or within such time as the Justice may direct, he may issue distress warrant, and if no sufficient distress, he may commit to gaol or house of correction, for any time not exceeding four months,* unless penalty, together with costs, be sooner

* Two months, if offence be committed in country town. 2 Vict. No. 2, s. 60.

paid. Justice may commit, on conviction, if it appear by confession or otherwise that offender has not sufficient goods on which to levy. 4 W. IV. No. 7, s. 69.

APPEAL allowed to Quarter Sessions. *Id.* s. 71; and 2 Vict. No. 2, s. 61.

The Vagrancy Act, 6 W. IV. No. 6, s. 3, (*Callaghan*, vol. 2, p. 1281), declares that "every person wilfully exposing to view in any street, road, highway, or public place any obscene print, picture, or other indecent exhibition," and "every person wilfully and obscenely exposing his or her person in any street, road, or public highway, or in the view thereof, or in any place of public resort, shall be deemed a rogue and vagabond," and any Justice of the Peace, on conviction before him, either by confession or by evidence on oath of one or more witness or witnesses, may commit to gaol or house of correction, with hard labour, for any time not exceeding six months.

APPEAL allowed to Quarter Sessions. *Id.* s. 12.

Printing or publishing indecent or obscene books, prints, or pictures, is a misdemeanor at common law, and punishable with fine or imprisonment, or both. *R. v. Curl*, 2 Str. 788; *R. v. Wilkes*, 4 Burr. 2527, 2574; see 2 Arch. J. P. 7.

FORM OF COMMITMENT FOR PUBLIC INDECENCY.

on the day of , in the year of our Lord one thousand eight hundred and , at , in the said Colony, on a certain public and common highway there situate, in the presence of divers liege subjects of our Lady the Queen, then and there being, unlawfully, wickedly, and scandalously did expose to the view of the said persons so present, the body and person of him the said A. B., naked and uncovered, for the space of one hour. And you the said Keeper," &c.

Misdemeanor at Common Law.

FORM OF COMMITMENT FOR PUBLISHING OR SELLING INDECENT PRINTS, &c.

on the day of in the year of our Lord one thousand eight hundred and at in the said Colony, unlawfully, wickedly, and scandalously did sell, utter, and publish a certain lewd, indecent, scandalous, and obscene print and picture. And you the said Keeper, &c.

INFANTS.

An Infant, or Minor, means any one who is under the age of *twenty-one years*. It is said generally that those under the age of fourteen years, which is called the age of discretion, are not punishable by any criminal prosecution whatsoever; but this must be understood with some allowance, for, if it appear by the circumstances, that an infant under the age of discretion *could distinguish between good and evil*, as if one of the age of nine or ten years kill another, and hide the body, or make excuses, or hide himself, he may be convicted and condemned, as if he were of full age. *Hale Sum.* 43. But within seven years of age, there can be no guilt whatsoever of any capital offence. The child may be chastised by his parents, or tutors, but cannot be capitally punished. 1 *Hale*, 19. An infant under the age of *fourteen*, is presumed by law unable to commit a *Rape*, and therefore it seems cannot be guilty of it. And though in other felonies, *malitia supplet ætatem*, in some cases; yet as to this fact, the law presumes him *impotent*, as well as wanting discretion. 1 *Hale*, 630. But although he cannot be convicted of the rape, he may be convicted of an assault under Stat. 1 Vict. c. 85, s. 9, if the evidence warrant it. *R. v. Jordan*, 9 C. and P. 366. An infant under fourteen may be guilty of *misdemeanors*, attended with a notorious breach of the peace, such as riot, battery, or the like. And he is also liable for perjury, or cheating. 3 *Bac. Ab.* In *Brazier's case*, (1 *Leach*, 237,) on an indictment for assaulting an infant of five years of age, with intent to ravish her, it was agreed by all the Judges that children of any age might be examined on oath, if capable of distinguishing between good and evil. *But they cannot be examined in any case without oath.* If a child is too young to be sworn, it follows as a necessary consequence, that any account which it may have given to others, ought not to be admitted in evidence. 1 *Ph. Ev.* 20.

Where a criminal prosecution was coming on to be tried, and the learned Judge found that the principal witness was a female infant, wholly incompetent to take an oath, he postponed the trial until the following assizes; and ordered the child to be instructed, in the mean time, in the principles of her duty, and the nature and obligation of an oath. And at the next assizes, the prisoner was put upon his trial, and the infant being found by the Court to have a proper sense of the nature of an oath, was sworn; and the prisoner was convicted on her testimony, and executed. 1 *Leach*, 430.

In a case tried in the Supreme Court in November, 1834, (*Rex. v. Ebsthorpe*) for highway robbery, the principal witness being a boy of twelve years old, wholly uninstructed in any religious principles, and consequently incompetent as a witness, the prisoner was acquitted, for want of his evidence. Mr. Justice Burton, who presided, observed, "that in such cases, when children of tender age are brought before Magistrates, they should be questioned as to the nature and obligation of an oath, and if the Magistrate finds that a child has not been instructed in any religious principles, he should order him to be instructed before the trial comes on, that the ends of justice may not be frustrated."

INQUEST.

By an Act of Council, 1 Vic. I. No. 3 of 13th June, 1838, intituled, "An Act to Provide for the Attendance of Medical Witnesses at Coroners' Inquests, and Inquiries held by Justices of the Peace," it is enacted by,

Section 1—

MEDICAL WITNESS MAY BE SUMMONED.—Whereas an Act was passed in England in the sixth and seventh year of His late Majesty's reign, intituled '*An Act to Provide for the Attendance and Remuneration of Medical*

Witnesses at Coroners' Inquests;' and it is expedient to extend the several provisions of the said Act to this Colony, in the manner hereinafter mentioned. Be it therefore enacted, by his Excellency the Governor of New South Wales, with the advice of the Legislative Council thereof, that after the passing of this Act, whenever, upon the summoning or holding of any Coroner's inquest, or upon the holding of any inquiry by a Justice or Justices of the Peace, touching the death of any person, it shall appear to the Coroner, Justice, or Justices (as the case may be), that the deceased person was not, at, or immediately before his death, attended by any legally qualified medical practitioner, it shall be lawful for such Coroner, Justice, or Justices, to issue a summons for the attendance, as a witness, at such inquest or inquiry, of some legally qualified medical practitioner, in actual practice, who shall reside near to the place where such inquest or inquiry is holden: But that where the deceased person was attended by any such practitioner, the Coroner, Justice, or Justices, shall issue a summons for his attendance only; or, if the deceased was attended by more than one such practitioner, the Coroner, Justice, or Justices, may cause all or any of them to be summoned, at his or their discretion."

Section 2—

POST MORTEM EXAMINATION. — IMPROPER TREATMENT.—“That it shall be lawful for the Coroner, Justice, or Justices, either in such summons as aforesaid, or by an order in writing, at any time before the termination of the inquest or inquiry, to direct any legally qualified medical practitioner to perform a *post mortem* examination of the body of the deceased, either with or without an analysis of the contents of the stomach or intestines: Provided that if in any case it appear to the Coroner, Justice, or Justices, (as the case may be), that the death of such deceased person was probably caused, partly or entirely, by the improper or negligent treatment of any medical practitioner, or other person,

then such practitioner or other person shall not be allowed to perform or assist at any such examination or analysis, although he shall, in every such case, be allowed to be present thereat."

Section 3—

OTHER MEDICAL WITNESS.—“That whenever it shall appear to the Coroner or to a majority of the jury at any such inquest, or to the Justice or Justices, or a majority of them, at any such inquiry, that the cause of death has not been satisfactorily explained by the practitioner or practitioners examined in the first instance at such inquest or inquiry, the Coroner, Justice, or Justices, shall forthwith cause any other legally qualified practitioner or practitioners to be summoned as a witness or witnesses at such inquest or inquiry, and shall direct him or them to perform a *post mortem* examination, with or without such analysis as aforesaid, whether such an examination shall have been previously performed or not: Provided, that where such additional evidence is at the instance of a majority of the jury, it shall be lawful for such majority to name to the Coroner any particular practitioner or practitioners whom they wish to attend, and in that case such practitioner or practitioners shall be summoned, and no other.”

Section 4—

FEE OF MEDICAL WITNESS.—“That when any legally qualified medical practitioner has attended at an inquest or inquiry, in obedience to any such summons, as aforesaid, he shall, for such attendance, and for giving evidence at such inquest or inquiry, be entitled to receive the remuneration of one guinea, and (in addition thereto) for the making of any such *post mortem* examination, the remuneration of two guineas; and if the place of his residence shall be more than ten miles distant from the place where the inquest or inquiry is holden, then such practitioner shall be entitled to a sum of one shilling for every mile of such extra distance, in addition; Provided that no remuneration shall be paid for the performance

of any *post mortem* examination instituted without the previous direction of the Coroner, Justice, or Justices, (as the case may be): Provided also, that where the death shall have happened in any public hospital, gaol, or other public building, no medical officer, appointed with salary to attend such hospital, gaol, or building, shall be entitled to any such remuneration.

Section 5—

SUMMONS, NEGLECT TO OBEY.—“That where any such summons or order of any Coroner, Justice, or Justices, as aforesaid, shall have been served upon any medical practitioner to whom the same was directed, or shall have been left at his usual residence in sufficient time for him to obey the same, and he shall, nevertheless, not obey such summons or order, he shall for such neglect forfeit and pay a penalty or sum of not less than three pounds, nor more than twenty, to be recovered in a summary way, before any two Justices of the Peace, unless he shall, at the hearing of the case, shew a good and sufficient excuse for such neglect, to the satisfaction of such Justices: and every proceeding under this section shall be had before such Justices, and every such penalty be awarded, levied, and distributed, and the party convicted be entitled to appeal in the manner respectively provided by an Act of the Governor and Council, passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled, “*An Act to regulate Summary Proceedings before Justices of the Peace.*”

The Act of Council, 2 Vic. I. No. 22, of 1838, (12th October, 1838), intituled, “An Act to Define the Qualifications of Medical Witnesses at Coroners’ Inquests and Inquiries, held before Justices of the Peace, in the Colony of New South Wales:”

Section 1, enacts—

WHO MAY BE MEDICAL WITNESSES.—“That no person, from and after the 1st day of January next, shall, for the purposes of said recited Act (1 Vic. I. No. 3 of 1838), be deemed a legally qualified medical

practitioner, unless such person shall have proved to the satisfaction of the president, and any other member of a Medical Board, to be hereafter appointed, that he is a doctor or bachelor of medicine of some university, or a physician or surgeon, licensed or admitted as such, by some college of physicians, or surgeons, in Great Britain or Ireland, or a Member of the Company of Apothecaries of London, or who is or has been a medical officer, duly appointed or confirmed, of Her Majesty's sea or land service." Also members or licentiates of the Apothecaries' Hall, of Dublin. 9 Vict. No. 12. *Calaghan Sup.* p. 1579.

Section 2—

"The Governor to appoint a committee of not less than three members, being of the medical profession, to be called 'The New South Wales Medical Board;' any person desirous of being declared a 'legally qualified medical practitioner,' to submit his degree, diploma, or other proof, for examination of said Board—if approved, to obtain a certificate." Medical Board for the District of Port Phillip may be appointed by the Superintendent. 8 Vict. No. 8.

Section 3—

"Medical Board to register the names of all 'legally qualified medical practitioners' in a book, and also to publish them annually, about the 1st day of January, in the *Government Gazette*, for the information of Coroners, Magistrates, and the public."

INSOLVENCY.

Any insolvent attempting to remove out of the jurisdiction of the Supreme Court before the plan of distribution of his estate is confirmed, and without the consent of three-fourths of the creditors who have proved against his estate, certified to the Chief Commissioner, or before allowance of his certificate, may be apprehended by

warrant of any Justice of the Peace, granted on information on oath by trustee, creditor, or other person, and brought before such Justice or other Justice or Justices, who shall enquire into the matter, and either commit to gaol till he be discharged in due course of law, or discharge him out of custody, according as he or they shall find such information to be well founded or not. 5 Vict. No. 17, s. 66. *Callaghan*, vol. 1, p. 617.

Any person disposing of, removing, retaining, concealing, embezzling, or receiving, any moveable property, monies, or securities for money, belonging to any insolvent estate, which has or have been attached by virtue of any order for the sequestration thereof, knowing the same to have been so attached, and with intent to defeat the said attachment, or hindering or obstructing, or endeavouring to hinder or obstruct, the messenger or other person authorised to make the same, on conviction, to suffer imprisonment, with or without hard labour, for any period not exceeding three years. *Id.* s. 75.

Any Justice of the Peace may, where on application by Chief Commissioner or any trustee or creditor of any insolvent estate, it shall be made to appear on oath to his satisfaction that there is reason to suspect or believe, that property of any insolvent is concealed in any house or other place, not belonging to the insolvent, grant a warrant to search for and take the said property. Warrant to be executed in the same manner as a search warrant for stolen property. Any property so found to be forthwith delivered to official assignee or person appointed by the Chief Commissioner. *Id.* s. 76.

JURY.

(See New Jury Act, post "Appendix.")

JUSTICES OF THE PEACE.

Justices of the Peace are persons appointed by Commission under the Seal of the Colony to keep the Peace, and for the execution of matters entrusted to them by the Commission, and by particular Statutes and Acts of Council. No particular qualification in rank, money, or property, is necessary in this Colony to entitle persons to act as Justices of the Peace, though certain restrictions in these respects are, with propriety, observed in their appointment. Before entering upon their office, Justices must swear (in the terms mentioned hereafter) that they shall perform their duty faithfully and impartially. They must also take the oaths required to be taken by all persons in public trust.

The most important particulars of a Justice's duty are contained in the Commission and the oaths of office.

THE FORM OF THE COMMISSION IS AS FOLLOWS :—

“Victoria the First, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth.

To J. P.

Greeting :

FIRST ASSIGNMENT.—Know you, that we have assigned you our Justice to keep our peace in our Colony of New South Wales and its Dependencies ; either alone, or in conjunction with one or more of our other Justices, that have been appointed on or since the day of , one thousand eight hundred and , or hereafter shall be appointed in our said Colony and its Dependencies ; and to keep and cause to be kept, all ordinances and Statutes for the preservation of the peace, and for the quiet rule and government of our people, made in all and singular their articles in our said Colony and its Dependencies, according to the form and effect of the same, and to punish all persons offending against the said ordinances and statutes, or any of them in the said Colony and its Dependencies ; and to cause to come before you, all those within our said Colony and its Dependencies, who to any one or more of our people concerning their bodies, or the firing their houses, shall have used threats, to find security for the peace or their good behaviour towards us and our people. And if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept.

SECOND ASSIGNMENT.—We have also assigned you, either alone or with any one or more of such Justices appointed, or to be appointed as aforesaid, to inquire the truth more fully by all lawful means by which the truth of the matter shall be better known, of all and all manner of felonies, poisonings, trespasses, or extortions whatsoever, and of all and singular other crimes and offences of which the Justices of our peace may or ought lawfully to inquire by whomsoever and after what manner soever, in the said Colony or its Dependencies done or perpetrated, or which shall happen to be done or attempted. And also, of all those who in the aforesaid Colony or its Dependencies, in companies

against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride. And also of all those who have there lain in wait, or hereafter shall presume to lie in wait to maim, or cut, or kill our people. And also of all victuallers, and all and singular other persons who, in the abuse of weights or measures, or in selling victuals against the form of the ordinances and statutes, or any of them therefore made for the common benefit of the said Colony and its Dependencies, and our people thereof have offended, or attempted, or hereafter shall presume, in the said Colony or its Dependencies, to offend or attempt. And also of all Sheriffs, Constables, Keepers of Gaols, and other officers who, in the execution of their offices about the premises, or any of them, have rudely behaved themselves, or hereafter shall presume to behave themselves rudely, or have been or shall happen hereafter to be careless, remiss, or negligent, in our aforesaid Colony or its Dependencies. And of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever and after what manner soever in our said Colony or its Dependencies done or perpetrated, or which hereafter shall happen to be done or attempted, in what manner soever. And to inspect all indictments whatsoever so before you, either alone or in conjunction with such Justice or Justices aforesaid taken or to be taken, or before others late our Justices of the Peace in the aforesaid Colony or its Dependencies, made or taken, and not yet determined. And to make and to continue processes thereupon, against all and singular the persons so indicted, or who before you, hereafter, shall happen to be so indicted, until they can be taken, surrender themselves, or be outlawed. And to hear and determine all and singular the felonies, poisonings, trespasses, extortions, unlawful assemblies, and indictments aforesaid. And all and singular other the premises according to the Law and Statutes of England, and of the said Colony and its Dependencies, as in the like case it has been accustomed or ought to have been done. And the same offenders, and every of them for their offences, by fines, ransoms, americiaments, forfeitures, and other means as according to the Law and Customs of England, or the Forms of the Ordinances and Statutes aforesaid, it has been accustomed or ought to have done to chastise and punish. Provided always, that if a case of difficulty upon the determination of any of the premises before you shall happen to arise, then let judgment in no wise be given thereon before you, unless in the presence of one of our Justices of the Supreme Court of the said Colony. And therefore we command you, that to keep the peace, or Ordinances, Statutes, and all and singular other the premises you diligently apply yourself, and at certain days and places duly appointed, or to be appointed for these purposes, into the premises you make enquiries. And all and singular the premises hear and determine, and perform, and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the Law and Custom of England, saving to us the americiaments and other things thereto belonging. And we command our Sheriff of the said Colony, at certain days and places duly appointed, or to be appointed as aforesaid, to be aiding by all lawful means, in the performance and due execution of the premises.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of the Colony to be thereunto affixed.

Witness, our trusty and well beloved		our Governor and
Commander-in-Chief of our Colony of New South Wales and its Dependencies at Sydney, this	day of	in the year

The first assignment authorises any one Justice to take the proper steps for preventing breaches of the peace, and for getting any person guilty of a breach of the peace brought to trial. He may by a warrant, directed to some constable or other proper person, order

suspected houses to be searched, or suspected persons to be apprehended, and brought before him to be examined or bound to the peace. The second assignment defines their powers at the Quarter Sessions, and comprehends those matters of which two or more Justices may there take cognizance for trial.

The following is the Oath of Office to be taken, viz. :—

“You shall swear that as Justice of the Peace in the Colony of New South Wales, in all articles in the Queen’s Commission to you directed, you shall do equal right to the poor and the rich, after your cunning, wit, and power, and after the laws and customs of the realm and statutes thereof made. And ye shall not be of counsel in any quarrel hanging before you, and that you hold your sessions after the form of the ordinances and statutes thereof made. And the issues, fines, and americiaments that shall happen to be made, and all forfeitures, which shall fall before you, ye shall cause to be entered without any concealment (or embezzling), and truly send them to the Queen’s Exchequer. You shall not let for gift or other cause, but well and truly you shall do your office of Justice of the Peace in that behalf. And that you take nothing for your office of Justice of the Peace to be done, but of the Queen and fees accustomed and costs limited by statute. And you shall not direct nor cause to be directed any warrant (by you to be made) to the parties, but you shall direct them to the Bailiff of the said Colony, or other the Queen’s officers or ministers, or other indifferent persons to do execution thereof. So help you God.”

The jurisdiction of a Justice of the Peace at present extends over the whole Colony and its Dependencies. (With restrictions as to the City of Sydney and Town of Melbourne.)

The far greater part of the labours of Justices, out of Sessions, arise from duties imposed on them by particular Statutes and Acts of Council.

A Justice of the Peace, before taking cognizance of a matter, and acting either ministerially or judicially as a Justice, should be cautious in ascertaining, whether the case in which he is called upon to act, be one over which he has jurisdiction, which he may ascertain from his Commission or from the Act of Parliament, or Act of Council, giving him jurisdiction over it, as the case may happen; whether he may act alone, without the aid of a fellow Justice; whether the case is laid before him in a limited time, by a proper and competent person on proper information on oath, or otherwise.

In some cases, the Justice has a *discretionary* duty to

take cognizance of the offence ; in others, as is most usual, the duty is *imperative*. It has been observed by Lord Mansfield, "that this discretionary power, when applied to a Court of Justice, means sound discretion guided by law. It must be guided by rule, not by humour ; it must not be arbitrary, vague, and fanciful, but legal and regular." 4 *Bur.* 2539. In most cases a Justice is *imperatively* called on to act ; and generally when a statute directs the doing of a thing for the sake of Justice or the public good, the word *may* is the same as the word *shall*, and is imperative on the Justices to proceed. 4 *B. and Al.* 271 ; 7 *B. and Cr.* 278. In such cases, if he refuse to act, he may be compelled by *Mandamus* ; but if there be a reasonable doubt of his jurisdiction, a *Mandamus* will not be granted. 5 *B. and Cr.* See "*Mandamus*," Post.

Whatever any *one* Justice alone may do, the same may be also lawfully done by any *two or more Justices* ; but where the law giveth authority to *two*, then *one* alone cannot execute it. *Dalt.* c. 6.

It is clear that Magistrates ought not to execute their functions in their own case, but cause the offenders to be taken before other Justices, or desire the aid of some other Justice being present. *Dalt.* 174. Lord Coke says, "that it is not safe for any man (be he ever so learned) to be of counsel with himself in his own cause, but to take advice of other great and learned men." And the reason he gives is, "that men are generally more foolish in their own concerns than in those of other people." In a recent case (4 *D. and R. M. C.* 35) Lord Tenterden said, "We think it the safer course to hold, that Magistrates should not interfere in any cases where they are interested." By Holt C. J. the Mayor of Hereford was *laid by the heels* for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he, by the Charter, was sole Judge of the Court. 1 *Salk.* 396.

Justices of the Peace are strongly protected by law, in

the just execution of their office. And the Supreme Court always leans towards favouring them, unless partiality, corruption, or malice, clearly appear. 3 *B. and Al.* 432.

The *liabilities* of Magistrates are either *criminal* or *civil*. In criminal proceedings the rule is, that a Magistrate is never liable for an error of judgment ; but only, when a particular, malicious, or corrupt motive can be distinctly proved, or plainly inferred, from the circumstances in which he acted. 1 *Bur.* 556. Where such motive can either be so proved or so inferred, he is guilty of a *misdemeanor*, and may be proceeded against by indictment, or by criminal information, in the Supreme Court, which exercises a general supervision over all Justices of the Peace. The latter is the course more usually adopted ; but in order to make the application with success, the party complaining must come before the Court "with clean hands"; that is, he must shew himself free from all blame, in the subject matter of his charge. 3 *T. R.* 388.

An information will be granted against a Justice, as well for refusing, or criminally neglecting, to act on any given occasion, as for misconducting himself in his office.

The Court will not grant an information against a Magistrate after the expiration of the *second term* from the matter complained of, nor so late in the second term as to prevent him from shewing cause before its conclusion, (2 *East*, 322,) nor unless a notice, containing the grounds of charge, has been served on him personally, or left at his place of abode, in sufficient time to enable him, if he thinks proper, to oppose the motion in the first instance. *Hand. Pr.* 3. Even where there are grounds for an *Information*, the prosecutor cannot proceed both *criminally* and *civilly* ; he must make his election. 2 *Bur.* 719.

If a Magistrate grant a warrant in a case where he has no jurisdiction, he is liable to the party im-

prisoned, in an action of *trespass*. And even in a case over the subject matter of which he has a jurisdiction, if he proceed without information on oath, he is liable in the same form. 2 *T. R.* 225. But trespass does not lie against a Magistrate, acting on a complaint made to him on oath, by the terms of which he had jurisdiction, although the complaint might not be sustained by the real facts, if the party accused did not attend on summons, or lay these facts before him. 8 *East*, 113. As a general rule it may be laid down, that if a Justice of the Peace, in or out of sessions, has jurisdiction over the subject matter, and acts *judicially*, he is not liable to an action, however *erroneous* the conclusion at which he arrives may be. 6 *Bing.* 85. For any *excess* of jurisdiction, he would be liable for such excess. 5 *Bing.* 354. When a Magistrate has convicted, and the conviction is good in form, it will be an answer to an action of trespass, at suit of the party convicted, and the conviction may be drawn up at any time before the trial, (*Manion v. Nicholson*, decided in the Supreme Court, June, 1834); but not where the party has been imprisoned on a warrant, insufficient on the face of it, although there has been a previous conviction. 2 *Bing.* 483. Justices are not liable in trespass upon a conviction being *quashed*; the Stat. 43 Geo. III. c. 141, s. 1, expressly providing in such case (see 12 *East.* 67, 16 *East.* 13.) "that the plaintiff shall not recover more than two-pence (without costs) unless it be alleged in the declaration (and which shall be *in case* only) that the Justice acted *maliciously*, and without reasonable and probable cause." In such an action upon the case, it is not sufficient for the plaintiff to prove his innocence, and call on the Magistrate to shew probable cause for the conviction, but the plaintiff must give such evidence of what passed on the hearing, by calling the witnesses for the prosecution, or otherwise, that it may appear there was no probable cause for the conviction. 5 *Taunt.* 580.

Every action against a Justice of the Peace, for any

thing done in the execution of his office,* must be commenced *within six calendar months* after the fact committed. 24 G. II. c. 44. s. 8. This time is to be calculated *including* the day on which the ground of complaint arises. 4 *Moore*, 465. But in case of *continuous* imprisonment, under a warrant issued beyond the six months, the Magistrate is liable for such portion of the imprisonment as may be within the period. 15 *East*, 67.

For the further protection of Justices, no action can be commenced without giving them a *month's notice*, in order that they may, if they think proper, tender amends. By 24 G. II. c. 44. s. 1.

“No writ shall be sued out against, nor any copy of any process at the suit of a subject, shall be served on any Justice of the Peace, for anything by him done in the execution of his office, until notice in writing of such intended writ or process shall have been delivered to him, or left at the usual place of his abode by the attorney or agent for the party who intends to sue or cause the same to be sued out or served, at least *one calendar month* before the suing out or serving the same, in which notice shall be clearly and explicitly contained the cause of action which such party hath or claimeth to have against such Justice of the Peace; on the back of which notice shall be endorsed the name of such attorney or agent, together with the place of his abode.”

By Section 5—

“No evidence shall be permitted to be given by the plaintiff of any cause of action, except such as is contained in the notice thereby directed to be given.”

It has been frequently observed by the Courts that *the notice* which is directed to be given to Justices and other Officers, before actions are brought against them,

* By Colonial Act, 2 Vic. I. No. 2, of 1838, (Town's Police,) all actions against any person, for anything done in pursuance of *that Act*, to be commenced within *two calendar months*; and other Acts limit the time to a shorter period.

is of no use to them when they have acted within the strict line of their duty, and was only for the purpose of protecting them in those cases where they intended to act within it, but by mistake exceeded it. Per *Lord Kenyon*, 4 *T. R.* 553. It has uniformly been held, that where a party *bonâ fide* believes or supposes he is acting in pursuance of an Act of Parliament, he is within the protection of such a clause. Per *Lord Tenderden*, 9 *B. and Cr.* 839. Therefore where a Magistrate committed the mother of a bastard child, though *two* Magistrates only have jurisdiction in such case, he was held entitled to notice, for he intended to act as a Magistrate at the time, however mistakenly. 9 *East.* 364. But where the act in question has not been done in the capacity of Justice, and cannot be referred to that character, but is wholly *diverso intuitu*, notice is not required. 2 *B. and Cr.* 729.

The notice must express the nature of the writ or process to be sued out, and also the *cause* of action, but it need not specify the *form* of action. 2 *Camp.* 196.

The law has given to Justices an advantage, which it has denied to ordinary persons in cases of trespass, that of *Tendering Amends*, for which an opportunity is always afforded by the *notice*. If this tender be made before action brought, that is, before the writ is issued out, it may be pleaded in bar of the action; and if the jury find that the tender was made, and the amends *sufficient*, he will be entitled to a verdict and costs. 24 *G. II. c. 44. s. 2.* And if he shall neglect to tender amends before action brought, he may, at any time before issue joined, pay money into Court on the same terms and with the same result as in a case of liquidated damages; and the plaintiff will proceed for further damages at his peril. *Id.* And even after he has pleaded he may withdraw his plea by leave of the Court, pay money into Court, and plead anew. 7 *Taunt.* 33. In all actions of trespass, or case against Justices for any thing done in their official capacity, they may give in evidence their

special ground of defence under the plea of *Not Guilty*. And if the Justice obtain a verdict, or the plaintiff become nonsuit, or suffer any discontinuance thereof, he will be entitled to *double costs*. 7 *Jac.* I. c. 5. But to entitle a defendant to double costs, there must be a certificate from the Judge.

When plaintiff in any action against a Justice obtains a verdict he shall be entitled to *double costs*, if the Judge (before whom the cause is tried) in open Court will certify, on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed. 24 *G. II.* c. 44, s. 7. Several of the colonial enactments limit the time of *bringing* actions against Justices, and others acting under those enactments, to two and three months.

JUSTICE'S ORDER.—(DISOBEYING.)

In all cases where the Justices at Sessions, or a Justice, or Justices out of Sessions, have by law authority to make an order requiring any person to do an act, such as to pay costs, (*R. v. Byce*, 1 *Bott.* 324); to re-admit a person as member of a benefit society, (*R. v. Gilks*, 3 *C. and P.* 52, 8 *B. and C.* 439; *R. v. Wade*, 1 *B. and Ad.* 861; *R. v. Gash*, 1 *Stark*, 441); or such as the order of maintenance of bastard child formerly; see *Kirk v. Stickwood*, 4 *B. and Ad.* 421, or the like. If the party upon whom such order is made, refuse or neglect to obey it, when required, and after a copy of the order, or other notice of it shall have been served upon him, (see *R. v. Moorhouse*, *Cald.* 554; *R. v. Kingston*, 8 *East*, 41), he will be guilty of a misdemeanor at common law, and liable upon indictment to be punished by fine or imprisonment, or both. See 2 *Arch. J. P.* 43.

FORM OF COMMITMENT FOR NOT OBEYING A JUSTICE'S ORDER.

on the day of in the year of our Lord one thousand eight hundred and at in the said Colony, did unlawfully and contemptuously neglect and refuse to obey a certain order of J. P. and L. M., Esquires, two of Her Majesty's Justices of the Peace for the said Colony, requiring him the said A. B. to " [set out shortly the substance of the order], " and of which said order the said A. B. had before had notice. And you the said keeper, &c.

Misdemeanor at Common Law.

LARCENY.

Larceny is a felonious taking and carrying away of the personal goods of another. Where goods are stolen, and are very shortly afterwards found in the possession of a person who is unable satisfactorily to show by evidence in what manner he came by them, the presumption is that he is the person who stole them. It is therefore a very usual way of proving a larceny, first to call the prosecutor or other person, in whose possession the goods were at the time they were stolen, to prove when he last saw them in his possession, and when he missed them; then to call some person who can prove that they were in the possession of the prisoner very shortly after they were stolen; and lastly, to call some person to identify and prove the property in the goods. This is deemed good *prima facie* evidence of the larceny, and has the effect of throwing the onus upon the prisoner, of proving that he honestly came by them. The presumption also may be very much strengthened by proof of any circumstances of suspicion in the conduct of the defendant, with relation to the goods in question: such as his selling them at an under value, his pawning them, or getting some other person to pawn them for him in a feigned name; his denying their being or having been in his possession; his being near the place where, and about the time, they were stolen, or the like.

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The possession of the goods by the prisoner, however, must be proved to have been very recent after the felony committed. Where the goods were found in the prisoner's possession sixteen months after they were stolen, this was holden to be no evidence that he stole them. *Anon. 2 Car. and P. 459.* And in another case, where the property stolen was found in the prisoner's possession three months after they were stolen, Park, J. ordered the prisoner to be acquitted, without putting him upon his defence. *R. v. Adams, 3 Car. and P. 600.* But where cloth was stolen in an unfinished state, and was found in the possession of the prisoner three months afterwards in the same state, Patteson, J. held that under these circumstances the possession was sufficiently recent to raise the presumption of the prisoner's guilt. *R. v. Partridge, 7 Car. and P. 551.* There may be cases in which, from circumstances, it may appear doubtful whether the possession of the goods by the prisoner does not prove rather that he received them from another who stole them, than that he stole them himself. However, the circumstances must amount to strong proof of the receiving, to be sufficient to rebut the presumption of the prisoner's being the person who stole the goods. Where goods stolen, were shortly afterwards found concealed in an old engine-house, and the place being watched, the prisoners were observed to go there and take them away; the prisoners being indicted as receivers, there being no evidence of the goods having been stolen by any of them, Patteson, J. after remarking that this seemed to be evidence more of stealing than receiving, told the jury that if they were of opinion that the prisoners stole the goods, they must be acquitted on the present indictment: and the jury being of opinion that the prisoners stole them, they were accordingly acquitted. *R. v. Dursley and others, 6 Car. and P. 399.* So, in order to raise this presumption from the prisoner's possession of the goods, the previous possession of them by the prosecutor or his bailee, or the loss of them, must

be clearly proved. Where upon an indictment for horse stealing, the prosecutor proved that he put the horse to agist with a person at a distance; that having heard from that person of the loss of the horse, he went to the field where it had been put to feed, and discovered it was gone; but the agister or his servant was not called, nor was any other evidence given of the loss of the horse; Gurney, B. held this to be insufficient, for it was consistent with all this that the prisoner might have obtained the horse honestly from the agister, and not by felony. *R. v. Yend and Haines*, 6 Car. and P. 176.

It is only in the absence of direct evidence of the larceny, or where there is such evidence, but it cannot prudently be depended upon, that the above mode of proving it by circumstantial evidence is resorted to. Where there is direct evidence, however, the larceny of course is proved by the persons who actually saw the prisoner commit it; and if there be at all a doubt whether their testimony will be believed, such part of the above circumstantial evidence may be given, as may be necessary to strengthen and confirm it. In treating of the direct evidence of larceny, it is necessary to consider what is a taking, a carrying away, and a felonious intent, within the definition of larceny.

TAKING.—The taking, in larceny, is either actual or constructive: actual, where the party actually takes the goods out of the possession of the owner or his bailee, *invito domino*, by force or stealth, or the like, upon which it is not necessary to make any further observation. A constructive taking, is where the possession of the goods is obtained by some trick or artifice, or the like, with intent at the time to convert them to the party's own use, but which has not the effect of transferring any right of property in the goods, from the owner to the party who has thus obtained possession of them; if a right of property pass, the offence is not larceny, but an obtaining of goods under false pretences. A few cases will sufficiently illustrate this. Davenport was indicted

for larceny, in stealing two silver cream ewers from the prosecutor, a silversmith: he was formerly servant to a gentleman who dealt with the prosecutor; some time after he left this gentleman's service, he called at the prosecutor's shop, saying that his master (meaning the gentleman whose service he had left) wanted a silver cream ewer, desired the prosecutor to give it to him, and put it down to his master's account; the prosecutor gave him two ewers, in order that his master might select that which he liked best; the prisoner took both, sold them, and absconded: the prosecutor at the trial swore that he did not charge his customer with these cream ewers, nor did he intend to charge him with either, until he should have first ascertained which of them he would have chosen: it was objected for the prisoner, that this amounted merely to the obtaining of goods under false pretences, and not to larceny; but Bayley, J. held, that as the prosecutor had parted with the possession only, and not the right of property, the offence was larceny; if indeed he had sent but one cream ewer, in execution of the pretended order, and had charged the customer with it, it would have been otherwise. *R. v. Davenport cor. Bayley, J. Newcastle Spring Assizes, 1826*; and see *R. v. Joseph Small, 8 Car. and P. 46*. In a case similarly circumstanced, but where the person in whose name the goods were obtained was not called as a witness, nor was there any evidence that she had not sent the prisoner for the goods; Patteson, J. held, that on that account the prisoner should be acquitted; for *non constat* but that the prisoner had been sent for the goods as she had stated, and had delivered them to the person who had sent her. *R. v. Ann Savage, 5 Car. and P. 143*. The substance of this last decision is, that the pretence by means of which the goods have been obtained, must be proved to be false, in larceny, in the same manner as upon an indictment for obtaining goods under false pretences. So, where it appeared that a servant of the

prosecutor being sent to a fair with some oxen, to sell them for ready money, the prisoner bargained with him, and desired him to go to the inn, and he would pay him for them; he went accordingly to the inn, but the prisoner never came; and upon his going back to the fair, he found that the oxen were gone; the prisoner had taken them, and sold some of them: upon the trial of the prisoner as for larceny, these facts were proved, and the servant in his evidence said that he would not have delivered the oxen until he was paid: the jury being of opinion that the prisoner never meant to have paid for the oxen, found him guilty; and the judges afterwards held the conviction to be right. *R. v. Gilbert, Ry. and M.* 185; see *R. v. Harvey*, 1 *Leach*, 467; *R. v. Sheppard*, 9 *Car. and P.* 121; see also *R. v. John Campbell, Ry. and M.* 179; *R. v. Pratt, Ry. and M.* 250, *S. P.*; and see 1 *Arch. P. A.* 272, 273. So, where the prisoner went to a shop and asked for change of half-a-crown, and the person attending gave him two shillings and six penny-pieces; he then held out the half-crown, and the other just took hold of it by the edge, but never actually got it into his custody; the prisoner immediately ran away both with the half-crown and the change: being indicted for stealing the two shillings and six pennies, Park, J. held that it was larceny, but said that if he had been indicted for stealing the half-crown, he should have entertained great doubt whether the indictment would lie. *R. v. Williams*, 6 *Car. and P.* 390; see *R. v. Coleman*, 2 *East, P. C.* 672; *R. v. Oliver*, 4 *Taunt.* 274; *cit. R. v. Aickles*, 2 *East, P. C.* 675. On the other hand, where upon an indictment for stealing in the house of a pawnbroker, a diamond brooch and other articles, it appeared that the prisoner called at the shop of the pawnbroker with duplicates of the brooch, &c., mentioned in the indictment, which he had before then pawned there for £34, and desired to redeem them; he, at the same time, shewed the pawnbroker's shopman a parcel of loose diamonds which he wished to pawn, and the

shopman agreed to lend £160 upon them; he sealed the parcel of diamonds in the shopman's presence, and gave him what he believed, at the time, to be the same parcel; the shopman then gave him the brooch, &c., mentioned in the indictment, and the balance of the £160 after deducting the £34 for which the brooch, &c., were pledged, and interest; but the parcel upon being afterwards opened, was found to contain some coloured stones of little value; the shopman swore that he was authorized by his master to receive money for pledges, and to lend money on them; and that, when he delivered the articles in question, he parted with them entirely, believing he had received a full equivalent: this case being referred to the judges, they held that it was not larceny, because the shopman parted with the property and ownership, and not merely with the possession. *R. v. Jackson, Ry. and M.* 119; and see *R. v. Parkes, 2 Leach*, 614. So, where the prosecutor, a hatter, sold a hat to one of the customers, and the prisoner, knowing the circumstance, sent a messenger to the prosecutor for the hat in the name of his customer, and obtained it: the judges held this not to be larceny, but obtaining goods under a false pretence merely. *R. v. Phineas Adams, R. and Ry.* 225; see *R. v. Hench, id.* 163, 1 *Arch. P. A.* 275; *R. v. Atkinson, 2 East, P. C.* 673. But where, upon an indictment for stealing three chests of tea, the property of S. Tanner and his partners, it appeared that Tanner & Co. were carriers from London to Tewkesbury; the prisoner, Josiah John Longstreeth, calling himself Langstan, came to Tanner's office at Tewkesbury, and inquired if there were any teas for him; the porter informed him that there were three chests directed to J. Creighton, whom he did not know; the prisoner said they were for him, and that the party who sent them had spelt his name wrongly by mistake; he paid the carriage and portorage, the three chests were delivered to him, and he afterwards removed and concealed them; the teas were not in fact his, but belonged

to a person named J. Creighton, to whom they were directed : the prisoner, being found guilty, it was referred to the judges to say whether this was a larceny ; and they held that it was ; because the ownership in the goods was not parted with, the carrier's servant having no authority to deliver them to the prisoner. *R. v. Josiah John Longstreeth, Ry. and M.* 137. In the practice of ring dropping, (which was formerly so prevalent,) if the prosecutor merely deposit his money, &c., with the pretended finder, as a security that he will account with him for his share of the produce of the property found, the offence will be larceny (*R. v. Patch, 1 Leach, 238 ; R. v. Watson, 2 East, P. C. 680 ; R. v. Moore, id. 679.*) ; but if the prosecutor give him a sum of money, &c., for his share of the property found, it will not. *R. v. Wilson and Martin, 8 Car. and P. 111.* So, where money is obtained from a man by means of a pretended bet,—if he merely deposits the money with the party as a stakeholder, who hands it to his confederate under pretence that he has won it, the offence is larceny (*R. v. Robson Gill, Fewster and Nicholson, R. and Ry. 413 ; and see R. v. Standley, Jones and Webster, id. 305.*) ; but if he pay the money, imagining he has lost the bet, it is not. *R. v. Nicholson, 2 East, P. C. 699.* But, however well established this general rule may be, there may be cases coming so exactly upon, or so near to, the line of distinction between the one offence and the other, that there may be some difficulty in deciding whether they amount to larceny, or to the obtaining of money, &c., under false pretences. In such cases, it is advisable to indict the prisoner as for obtaining money, &c., by false pretences ; for by Stat. 7 and 8 G. IV. c. 29, s. 53, upon an indictment for the latter offence, if “ 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.”

But where a person obtains possession of goods or chattels, without any trick or artifice, and without, at

the time, having any felonious intention of appropriating them to his own use, his afterwards so appropriating them will not, in general, amount to larceny. Thus, where a woman saved some goods of the prosecutor, at a fire which was at his house, and took them home to her lodgings, and the next morning denied that they were in her possession: being tried for stealing them, and the jury being of opinion, that when she first took them, her intentions were to save them from the fire and restore them to the owner, and that she had no intention to appropriate them to her own use until afterwards, the Judges held that it was not larceny. *R. v. Leigh*, 2 East, C. P. 694. If a man lose goods, and another find them, and, not knowing the owner, sell them, or otherwise apply them to his own use, this is not larceny, (1 *Hawk.* c. 33, s. 2; 1 *Hal.* 506; *R. v. Reed et ux. Car. and M.* 306; *R. v. Mole, Car. and K.* 417.); but if he know the owner (*R. v. Wynn*, 2 East, P. C. 644; *R. v. Lamb, id.* 664.), or know that he can find him (*R. v. Pope*, 6 *Car. and P.* 346.), it is. Where a person having purchased a bureau at an auction, found a purse and money concealed in a secret drawer of it, which he appropriated to his own use; being apprehended for this by a constable without a warrant, and being afterwards discharged when before the Magistrate, he brought his action as for a false imprisonment; and the defendant having justified the arrest as for a felony, the Court held that this was a larceny; but it being proved also that the auctioneer had said that he sold all the bureau contained, with the article itself, they held that as this gave the plaintiff a colourable right to the contents of the bureau, abstracting those contents could not be deemed a felonious taking. *Merry v. Green et al.* 10 *Law J.* 154 m.; 7 *Mees. and W.* 623. So, where goods are bailed by the owner to another, the bailee, whilst the bailment subsists, cannot, in general, be said to commit larceny of them by converting them to his own use; because, in such a case, there is no felonious taking, the bailee being already in the legal possession of

the goods. See *Arch. 1 P. A. 277*, and *R. v. Thomas, 9 Car. and P. 741*. If a man give his watch to a watchmaker to repair, and he sell it, this is not larceny, unless, indeed, he obtained it by some trick or fraud, with the intent, at the time, of converting it to his own use. *R. v. Levy, 4 Car. and P. 431, cor. Vaughan, B.* Even where a man hired a horse for a particular purpose, but the day following, after the purpose for which he borrowed the horse was over, he rode the horse in a different direction, and sold it; and upon his trial, as for a larceny, the Jury found that, at the time he borrowed the horse, he had no felonious intention: the judges held that this was not larceny; that, if the prisoner had not a felonious intention at the time he took the horse, his subsequent withholding and disposing of it did not constitute a new felonious taking; and that the doctrine laid down in *2 East, P. C. 690, 694*, and *2 Russell, 1089, 1090*, to the contrary, was not correct. *R. v. W. Banks, R. and Ry. 441*. But if the jury had been of opinion that he had such felonious intention at the time of the bailment, the prisoner must have been found guilty (see *R. v. John Stock, Ry. and M. 87*); this is always a question for the jury to determine. And if a carrier, or other bailee, open a bale or package of goods entrusted to him, take out part, and dispose of that part to his own use, this is considered such a proof of an original felonious intention, that it has always been holden to be larceny; (see *3 Inst. 107, 1 Hal. 505; Arch. Sum. 125; R. v. Edward Madox, R. and Ry. 92; R. v. Pratley, 5 Car. and P. 533; R. v. Fletcher, 4 id. 545; R. v. Howell, 7 id. 325; R. v. Mary Ann Jones, 7 id. 151; R. v. Jenkins, 9 id. 38*); although it would be otherwise, if he disposed of the whole bale or package without breaking it. *Supra*. But where the prosecutor sent forty sacks of wheat to the prisoner, a warehouseman and wharfinger, for safe custody, and the prisoner emptied several of the sacks of the wheat contained in them, which he sold, and

then substituted for it other wheat of an inferior quality : it was doubted, at first, whether, as the prisoner had appropriated to his own use the whole of the wheat in each of the sacks which he had emptied, he could be deemed guilty of larceny ; but upon the question being referred to the judges, they were unanimously of opinion that it was larceny, and the prisoner had judgment accordingly. *R. v. Brazier, R. and Ry.* 337. The rule here mentioned, however, as to carriers and other bailees, does not extend to their servants ; and, therefore, if a bailee's servant sell or dispose of a bale or package of goods entrusted to his master, he will be guilty of larceny. *R. v. Harding, Hays, Cooke and Mears, R. and Ry.* 125. So, the owner's own servant is not deemed a bailee in this respect, and is liable to be indicted for larceny if he take and dispose of the goods of his master to his own use ; for the possession of the servant is deemed the possession of the master. See *R. v. Harvey, 9 Car. and P.* 353. And therefore if a gentleman's butler having the care and custody of his plate, or his shepherd of his sheep, embezzle them, they are as much guilty of larceny as if they took them out of the actual custody of their master. 1 *Hal.* 506, and see *R. v. Robinson, 2 East, P. C.* 565 ; *R. v. Bass, id.* 566 ; *R. v. Paradice, id.* 565 ; *R. v. Chipchase, 2 Leach,* 699 ; *R. v. Hammon, 4 Taunt.* 304. And where a farmer hired a person, who sometimes acted as drover to him, but was not regularly in his service, to drive some sheep for him to Grantham fair, at the wages of 3s. a day ; the master sold some of them there, and then sent the remainder by the prisoner to Smithfield market ; but the prisoner, instead of taking them there, sold them, and absconded with the money : although the Jury found that the prisoner, at the time he took the sheep under his care, had no intention to steal them, yet the Judges held him to be guilty of larceny ; for, being the owner's servant, his possession was the possession of the owner, who therefore had not parted with either the possession or the

right of property. *R. v. M^cNamee, Ry. and M.* 368. Where, in a similar case, there was no proof of the prisoner being the prosecutor's servant, it was holden that he could not be convicted. *R. v. Goodbody, 8 Car. and P.* 665. But in a recent case before Patteson, J. where it appeared that the prosecutor had employed the defendant to take his barge to a particular place, paid him his wages in advance, and gave him a distinct sum of three sovereigns to pay the tonnage dues; the defendant took the barge part of the way, paid £2 for dues, but the other sovereign he appropriated to his own use: Patteson, J. held that it was larceny; and he said that in such a case it was not necessary to prove the relation of master and servant: for if a man give another money to apply to a particular purpose, and he appropriated it to another purpose with a felonious intent, it is larceny. *R. v. Goode, Car. and M.* 582; *S. P. R. v. Beaman, id.* 595. If a man give goods to another to carry, or the like, and he himself be present at the time: this is not a bailment, nor is the owner deemed to have parted with the possession of the goods; and therefore if the person to whom the goods are so entrusted, run away with them, he is guilty of larceny. See 1 *Hawk. c.* 33, s. 2; 2 *East, C. P.* 683, 684. The distinction seems to be, that where a man has merely the custody of a thing, and he appropriate to his own use, he is guilty of larceny, although he had no such intent at the time he first received it; but if he had such a possession of it as would give him a special property in it, then his appropriating it to his own use would not be larceny, unless he had the intention so to appropriate it when he took it into his possession. See *R. v. Jones, Car. and M.* 611; *R. v. Evans, id.* 632. But a man cannot be guilty of larceny, by selling another man's goods to a person in whose possession they already are. *R. v. Jones, supra.*

Formerly, if goods, &c., which had never been in the master's possession, were delivered to the clerk or servant for the master's use, and the clerk or servant, in-

stead of delivering them to his master, sold them, or otherwise converted them to his own use, this was not larceny. *R. v. Bazely*, 2 *Leach*, 835; *R. v. Bull*, *id.* 841, *cit. R. v. Waike*, 2 *East*, P. C. 570. This was afterwards altered by Statute: See Stat. 39 G. III. c. 85; and now, by Stat. 7 and 8 G. IV. c. 29, s. 47, "if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and shall fraudulently embezzle the same, or any part thereof: every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master, otherwise than by the actual possession of his clerk, servant, or other person so employed." It is usual, however, in such a case, to indict specially for the embezzlement.

Also, persons who have the bare use of the goods of another, are not deemed in law bailees; and therefore if a guest at an inn or tavern steal the plate or other articles, of which he has the use at his meals, &c., he is guilty of larceny, for he is said to have the use merely of them, and not the possession. 1 *Hal.* 506. 1 *Hawk.* c. 33, s. 6. But the tenant of furnished lodgings is deemed to have, not merely the use, but the possession also, of the furniture let with the lodgings; and formerly, if he sold or disposed of it for his own use, it was not deemed larceny. But now, by stat. 7 and 8 G. IV. c. 29, s. 45, the tenant, in such a case, may be indicted as for a simple larceny, and punished accordingly.

But a joint tenant or tenant in common of a personal chattel, cannot be guilty of larceny, by taking it and disposing of the whole to his own use; it is merely the subject of a civil remedy. 1 *Hal.* 513. But if he take it out of the hands of a bailee, with whom it is left for safe custody or the like, and the effect of such taking

will be to charge the bailee, it is otherwise. Therefore where a woman, a member of a benefit society, entered the room of a person, with whom a box, containing the funds of the society, was deposited for safe custody, and took and carried away the box with intent to appropriate the contents to her own use: the judges were clearly of opinion that this was larceny, the bailee being answerable to the society for the property. *R. v. Phæbe Bramley, R. and Ry.* 478; *R. v. Cain, Car. and M.* 309. So, a man cannot be guilty of larceny in taking his own goods, unless they be in the hands of a bailee, and the taking will have the effect of charging him. Where the owner of goods had them shipped for exportation by shipping agents, who gave the usual bond to the custom-house; but the owner, for the purpose of defrauding the revenue, had the bales re-landed, the goods taken out, and rubbish substituted for them: four of the judges held this not to be larceny, as the intent was, not to cheat or charge the agents, but to defraud the crown; but seven of the judges held it to be larceny, because the agents having given a bond to the custom-house, the fraud would have the effect of charging them, by rendering them liable to a suit upon their bond. *R. v. Wilkinson and Marsden, R. and Ry.* 470. So, a wife cannot be said to be guilty of larceny of the goods of her husband, except in those cases in which the husband himself might be guilty, as just now mentioned: for they are one person in law. 1 *Hal.* 514. Therefore, where money belonging to a friendly society was deposited in a box, and placed in the custody of one of the members, and his wife broke open the box and stole the money: the judges held that an indictment against her, as for larceny, could not be maintained. *R. v. Willis, Ry. and M.* 375. Dalton says, that if a wife take the goods of her husband, and give them to her avowterer, who, knowing it, carries them away, the avowterer is thereby guilty of larceny. *Dalt. c.* 104. This probably may be doubted. See *R. v. Harrison, 1 Leach,* 47. But where the wife of the

prosecutor, and a man with whom she afterwards cohabited, jointly took money and goods belonging to the husband: the judges held that an indictment for larceny would lie against the man, although not against the wife; and that notwithstanding the wife's consent, the property must be considered as having been taken *invito domino*. *R. v. Tolfree, R. and M.* 243.

The taking must be *invito domino*. But these words must be understood as meaning merely the absence of all free and voluntary consent, upon the part of the owner, to the party taking his goods, and appropriating them to his own use. See *R. v. Tolfree, supra*. Where thieves had applied to a servant to aid them in robbing his master's house, and the servant having told his master of it, the latter, in order to detect the thieves and have them apprehended, desired his servant to carry on the affair, consented to his opening the door, marked the property, and even left some of it in a place where the robbers were likely to come: this was holden to be no defence to an indictment against the robbers. *R. v. Egginton, 2 Bos. and Pul.* 508.

CARRYING AWAY.—The prosecutor must prove a carrying away, as well as a taking, of the goods in question. But if they be detached from the place where they were taken, nay, the slightest removal from the place, will be a sufficient carrying away to constitute larceny. Where it appeared that the prisoner, who was sitting on the driving box of the Exeter mail coach, took hold of the upper end of a bag that was in the front boot, and lifted it from the bottom of the boot on which it rested; he handed the upper end of it to a person near him, and they were both endeavouring to pull it out of the boot, with a common intent to steal it, when the guard of the coach coming up, they dropped the bag again into the boot; the judges were of opinion that this was a complete asportation of the bag, sufficient to constitute larceny. *R. v. James Walsh, Ry. and M.* 14. So, where it appeared that the prisoner drew a pocket-book out of

the inside breast-pocket of the prosecutor's coat, about an inch above the top of the pocket; but the prosecutor suddenly putting his hand up, the prisoner let go the book whilst it was still about the person of the prosecutor, and the book fell back again into the pocket: the judges held this to be a sufficient asportation to constitute a simple larceny, although the larceny from the person was not complete. *R. v. Wm. Thompson, Ry. and M.* 78; see also *R. v. Pitman*, 2 *Car. and P.* 423; *R. v. Simpson, Kel.* 31; *R. v. Coslet*, 1 *Leach*, 256. But where a thief was not able to carry off goods he intended to steal from a shop, on account of their being attached by a string to the counter, this was holden not to be a sufficient asportation to constitute larceny, because there was no severance, the goods all the time being attached to the counter. *Anon.* 2 *East, P. C.* 556. So, where a thief was prevented carrying off a purse, on account of some keys attached to the strings of it getting entangled in the owner's pocket, it was holden not sufficient, for the same reason. *R. v. Wilkinson*, 1 *Hal.* 508. So, where the prisoner merely turned a bale of goods on end where it lay, for the purpose of cutting it open and taking the goods out, and he was detected before he effected his purpose: this was holden not to be a sufficient asportation to constitute larceny. *R. v. Cherry*, 2 *East, P. C.* 556.

FELONIOUS INTENT.—The taking, &c., must have been with a felonious intent, that is to say, it must be without any bonâ fide claim of right to the goods taken, on the part of the person taking them; it must be done fraudulently, and with the intent wholly to deprive the owner of the property. If the taking, &c., be by mistake, or under a bonâ fide claim of right, however mistaken, it cannot be larceny. 1 *Hal.* 506, 509. So, if not done with intent wholly to deprive the owner of his property, it cannot be larceny. Thus, for instance, where upon an indictment for larceny, it appeared that the prisoner had clandestinely taken the articles alleged

to be stolen, merely for the purpose of inducing a young girl, the owner of them, to call for them, and thereby to give him an opportunity of soliciting her to commit fornication with him: the judges held that this was not a felonious taking. *R. v. Richard Dickinson, R. and Ry.* 420; and see *R. v. Cornelius Von Muyen, R. and Ry.* 118. So, where, upon an indictment for stealing two horses, it appeared that the prisoners took the two horses out of the prosecutor's stables, rode them about thirty miles, and then left them at an inn, saying they would be back in three hours, and desiring that the horses should be taken care of; and they were afterwards taken on the same day about fourteen miles distant from the inn, and walking in a direction from it; the jury found that the prisoners took the horses merely for the purpose of riding them the thirty miles, and that they left them at the inn without intending to come back for them or dispose of them; and ten of the judges held this not to be larceny. *R. v. Philips et al. 2 East, P. C.* 662, 663. But where, upon a similar indictment for horse-stealing, it appeared that the horse in question had been before stolen by one Haworth, who was about to be tried for the offence; and the prisoner, in order (as he thought) to screen Haworth from conviction, clandestinely took the horse out of the prosecutor's stable, led him to a coal-pit, and backed him into it, and the horse was killed: it was objected at the trial that this was not a larceny, because the taking appeared not to have been done with intention to convert the horse to the use of the taker *animo furandi et lucri causá*; but seven of the judges held it to be larceny; and six of this majority held, that to constitute larceny, it is not essential that the taking should be *lucri causá*; if it be fraudulent, and with intent wholly to deprive the owner of the property, it is sufficient. *R. v. Wm. Cabbage, R. and Ry.* 292.

And the felonious intent must be entertained at the time of the taking. This has been already incidentally

mentioned in many instances. See *R. v. Leigh*, ante, p. 248; *R. v. W. Banks*, ante, p. 249. Where a letter, containing a bill of exchange, directed to J. M., St. Martin's Lane, Birmingham, was delivered to another person of that name living near St. Martin's Lane, there being in fact no person residing in the lane of that name; the party, upon opening the letter, must have perceived that it was not for him, but he nevertheless applied the bill to his own use: the Judges held this not be larceny, as it did not appear that the party had any *animus furandi* at the time he received the letter. *R. v. James Mucklow, Ry. and M.* 160.

The goods stolen may be laid to be the property, either of the actual owner, although he may have never been in possession of them (*R. v. Remnant, R. and Ry.* 136), or of a bailee in whose possession they were at the time they were stolen; the one has the actual property, the other a special property, in them. See 1 *Arch. P. A.* 283. But where the owner of a house let a room in it furnished to a lodger, and some of the furniture was stolen by a third party; the Judges held that the furniture stolen should have been laid to be the property of the lodger, and not of the owner of the house; for the owner was not in possession, nor entitled to the possession of it, and could not have maintained trespass. *R. John Belstead, R. and R.* 411, *S. P.*; *R. v. George Brunswick, Ry. and M.* 26. But where the person, in whose possession they are at the time they are stolen, is merely a servant of the owner, in that case the goods must be laid as the property of the owner. 2 *East, P. C.* 652. If the owner be dead at the time of the tenancy, the goods must be stated to be the property of the executor, if there be one, or of the administrator, if at that time there be one, or if neither, they must be laid to be the property of the ordinary.* *R. v. George and Ann Smith, 7 Car. and P.* 147. The clothes upon a child,

* Here, the Master in Equity.

may be described as the property, either of the father of the child, or of the child itself. *R. v. Hughes, Car. and M.* 593. If the goods be the property of two or more persons, as partners, joint-tenants, parceners, or tenants in common, it is sufficient in the indictment to state them to be the property of any one of them "and another," or "others," as the case may be (7 G. IV. c. 64, s. 14.); and it should seem that the evidence need not be more particular. If the name of the prosecutor be mis-spelt, it will be immaterial. *R. v. Foster, R. and Ry.* 412. If he be called by a name by which he is usually known, it will be sufficient (*R. v. Berriman, 5 Car. and P.* 601; *Anon. 6 Car. and P.* 408), although it be not his real name. *R. v. Norton, R. and Ry.* 510, and see 1 *Arch. P. A.* 285.

ROBBERY.—Robbery is a feloniously taking of money or goods from the person of another, or in his presence, against his will, by violence and putting him in fear, (2 *East, P. C.* 707,) and carrying of the same away. It is a larceny from the person, committed either with personal violence to the party, or in such a manner as is calculated to inspire a man of reasonable firmness with fear. See 1 *Hawk. c.* 34, s. 8, 9. The property must be actually separated from the person of the party robbed, otherwise the offence will be incomplete, (see *Lapier's case, 1 Leach,* 320; *R. v. Thompson, Ry. and M.* 78,) and will only amount to a simple larceny, or an assault with intent to rob. Also, the violence or putting in fear must precede or accompany the stealing; if a man steal from the person of another, and only afterwards use violence or put him in fear, it will not amount to robbery. See 1 *Arch. P. A.* 292—295. But if the offence be once committed, it cannot afterwards be purged by the offender's giving back the property stolen. *R. v. Peat, 2 East, P. C.* 557.

ASSAULT WITH INTENT TO ROB.—Assaulting any person, with intent to rob—*felony.* 1 *Vict. c.* 87, s. 6. This is the same offence as robbery, except that the offender has not succeeded in obtaining any property

by his violence. But where a man, under a feasible claim of right, assaulted another for the purpose of getting certain money from him: it was holden that he could not be convicted upon this statute, but that he might be convicted as for an assault under stat. 1 Vict. c. 85, s. 11; *R. v. Bowden, Car. and K.* 395; see 2 *Arch. J. P.* 54, *et seq.*

As to Larceny punishable on summary conviction before Justices, see various titles throughout the work, as "Dogs," "Fences," "Fish," "Trees," "Wood," &c. See also tit. "Conviction," ante.

FORM OF WARRANT TO APPREHEND A PERSON FOR LARCENY.

New South Wales, }
 To wit. } To Constable of
 Forasmuch as A. B. of in the said Colony, hath this day made information on complaint on oath before me J. P., Esquire, one of Her Majesty's Justices of the Peace for the said Colony, that this present day (or as the case may be) divers goods of him the said A. B., to wit (state the things) have feloniously been stolen, taken and carried away from (the house of) him the said A. B. at aforesaid, and that he hath just cause to suspect, and doth suspect, that B. C., late of (labourer), feloniously did steal, take, and carry away the same. These are therefore to command you forthwith to apprehend the said B. C., and to bring him before me at , to answer unto the said information and complaint, and to be dealt with according to law. Herein fail not.
 Given under my hand and seal the day of

J. P.

FORMS OF COMMITMENT FOR LARCENY.

on the day of , in the year of our Lord one thousand eight hundred and , at in the said Colony, ten pieces of the current gold coin of the realm called sovereigns, one woollen cloth coat, and one linen shirt, of the monies, goods, and chattels of [the said] C. D., feloniously did steal, take, and carry away. And you the said keeper, &c.

LARCENY IN A DWELLING-HOUSE.

on the day of , in the year of our Lord one thousand eight hundred and , at in the said Colony, one silver tea-pot of the value of five pounds, and six silver tea-spoons of the value of two pounds," ("chattel, money, or other valuable security") of the goods and chattels of (the said) C. D., in the dwelling-house of the said C. D. there situate then being, then and there in the said dwelling-house feloniously did steal, take, and carry away. And you the said keeper, &c.

7 and 8 G. IV. c. 29, s. 12, 13; 1 Vict. c. 90, s. 1; Callaghan, vol. 1, p. 297.

LARCENY BY TENANT OR LODGER.

Same as in Simple Larceny. See ante, p. 7 and 8 G. IV. c. 29, s. 45; Callaghan, vol. 1, p. 304.

LARCENY BY CLERKS OR SERVANTS.

on the day of , in the year of our Lord one thousand eight hundred and , at in the said Colony, being then clerk (or servant) to C. D., ten pieces of the current gold coin of the realm, called sovereigns, one woollen cloth coat, and one linen shirt, of the monies, goods, and chattels of and belonging to the said C. D., his master, feloniously did steal, take, and carry away: against the form of the Statute in that case made and provided. And you the said keeper, &c.

7 and 8 G. IV. c. 29, s. 46; Callaghan, vol. 1, p. 304.

FORM OF COMMITMENT FOR "DESTROYING OR DAMAGING,"
WITH INTENT TO STEAL.

on at , six (state the things destroyed or damaged, "Fences," "plants," "fruit," "vegetables," &c.) the property of C. D., there being (growing) in a certain (hothouse) of the said C. D., there situate, feloniously did damage (destroy) with intent the same then and there to steal, take, and carry away, against the form of the Statute in such case made and provided, (he the said A. B. having been before convicted of the like offence.) And you the said keeper, &c.

FORM OF COMMITMENT FOR LARCENY FROM MINES, &c.

on at , twenty pounds weight of copper ore, the property of (the said) C. D., in a certain mine of copper ore of the said C. D. there situate, from the said mine feloniously did steal, take, and carry away, (or feloniously did sever with intent the same then and there feloniously to steal, take, and carry away): against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR LARCENY OF TREES GROWING
IN PARKS, PLEASURE GROUNDS, &c.

on , at , in a certain park (park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining to or belonging to any house,) of C. D., there situate one oak tree (the whole or any part of any tree, sapling, or shrub, or any underwood,) of the value of (one pound,) and upwards, the property of the said C. D., in the said park, then and there growing, feloniously did steal, take, and carry away: against the form of the Statute in such case made and provided. And you the said Keeper, &c.

FORM OF COMMITMENT FOR CUTTING OR DAMAGING SUCH
TREES IN PARKS, PLEASURE-GROUNDS, &c.

on , at , in a certain park of C. D., there situate, ten oak trees, the property of the said C. D., in the said park, then and there growing, feloniously did cut, break, root up, and destroy, (or) damage with intent, the same, then and there to steal, take, and carry away, thereby doing injury unto the said C. D., to an amount exceeding the sum of (one pound): against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR STEALING FROM WRECK, &c.

on _____, at _____, (twenty pieces of oak-plank, being parts of (or) twenty pounds weight of _____, belonging to) a certain ship and vessel then and there stranded, and cast on shore, (in distress, or wrecked, stranded, or cast on shore,) the property of a person or persons unknown, feloniously did plunder, steal, take, and carry away: against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR LARCENY FROM THE PERSON.

on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at _____ aforesaid, in the said Colony, ten pieces of the current gold coin of the realm, called sovereigns, and one silver watch, of the monies, goods and chattels of (the said) C. D., from the person of the said C. D. feloniously did steal, take, and carry away: against the form of the Statute in that case made and provided. And you the said keeper, &c.

See 1 Vict. c. 87, s. 5.; (Callaghan, vol. 1. p. 316.)

FORM OF COMMITMENT FOR ROBBERY AND ASSAULT.

on _____ at _____, in and upon one C. D., feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life feloniously did put, and ten one pound bank notes of the Union Bank of Australia, of the value of ten pounds sterling, and one gold watch, of the monies, goods, and chattels of the said C. D., from the person and against the will of the said C. D. feloniously and violently did steal, take, and carry away. And you the said keeper, &c.

FORM OF COMMITMENT FOR ASSAULT WITH INTENT TO ROB.

on _____ at _____, in and upon one C. D., feloniously did make an assault with intent then and there, the monies, goods, and chattels of the said C. D., from the person and against the will of the said C. D., feloniously and violently to steal, take, and carry away; against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DEMANDING MONEY WITH MENACES, &c.

on _____ at _____, did with menaces, (or by force,) feloniously demand of and from one C. D., the money ("chattel, money, or valuable security," this must be stated according to the truth. If the demand were of a specific chattel or valuable security, it may be stated thus:—"a certain chattel to wit, _____;" or, "a certain valuable security, to wit, _____;" stating the nature of it shortly,) of him the said C. D., with intent the said (money) from the said C. D. then and there feloniously to steal, take, and carry away; against the form of the Statute in such case made and provided. And you the said keeper, &c.

GENERAL FORM OF CONVICTION, WHERE THE LARCENY IS PUNISHABLE UPON SUMMARY CONVICTION.

Be it remembered, That on the _____ day of _____, in the year of our Lord _____ at _____, in _____, A. O. is convicted before me, J. P., one of Her

Majesty's justices of the Peace for the said colony [or city], for that he the said A. O. did [specify the offence, and the time and place when and where the same was committed, as the case may be; and on a second conviction state the first conviction]; and I the said J. P. adjudge the said A. O. for his said offence to be imprisoned in the [or, to be imprisoned in the], and there kept to hard labour] for the space of [or, I adjudge the said A. O. for his said offence to forfeit and pay [here state the penalty actually imposed, or state the penalty, and also the value of the article stolen, or the amount of the injury done, as the case may be], and also to pay the sum of for costs, and in default of immediate payment of the said sums, to be imprisoned in the [or, to be imprisoned in the] and there kept to hard labour] for the space of unless the said sums shall be sooner paid [or, and I order that the said sums shall be paid by the said A. O. on or before the day of]; and I direct that the said sum of [i. e. the penalty only] shall be paid to of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided; [or, that the said sum of [i. e. the penalty] shall be paid to, &c. [as before], and that the said sum of [i. e. the value of the articles stolen, or the amount of the injury done] shall be paid to C. D. [the party aggrieved, unless he is unknown or has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty, as before]; and I order that the said sum of for costs shall be paid to [the complainant]. Given under my hand and seal, the day and year first above mentioned.

This form is given by stat. 7 and 8 Geo. IV. c. 29.

Appeal. Id. s. 72. No Certiorari. Id. s. 73. For a first offence, the Justice may discharge the offender, upon his making such satisfaction to the party aggrieved for damages and costs, or either, as shall be ascertained by the justice. Id. s. 68.

CONVICTION FOR STEALING DOGS.

New South Wales, } Be it remembered, that on the day of , in
to wit. } the year of our Lord , at aforesaid, C. D. is
convicted before me, J. P., one of her Majesty's Justices of the Peace for the
said Colony, for that he the said C. D., on the day of , in the year
of our Lord , at , in aforesaid, one dog, of the value of
one shilling, (or one parrot of the value of one shilling, which was then and
ordinarily kept in a state of confinement), the property of E. F., then and there
being found, unlawfully did steal, take, and carry away; against the form of
the Statute in that case made and provided: I the said J. P. do therefore
adjudge the said C. D., for his said offence, to forfeit and pay the sum of
(twenty) pounds, over and above the value of the said (dog), so stolen as afore-
said, and the further sum of five shillings, being the value of the said dog, and
also to pay the sum of shillings* for costs; and in default of immediate
payment of the said said sums, to be imprisoned in the (and there kept
to hard labour) for the space of (see s. 67,) calender months, unless the
said sums shall be sooner paid; and I direct that the said sum of twenty
pounds shall be paid to J. S. (see s. 66) of aforesaid, in which the said
offence was committed, to be by him applied according to the direction of the
Statute in that case made and provided; and that the said sum of five shillings
shall be paid (to the said E. F.; or if he be unknown, or have been examined
in proof of the offence, then thus: "also to the said J. S., the owner of the said
dog being unknown," or "E. F., the owner of the said dog having been
examined in proof of the offence aforesaid"); and I order that the said sum of
shillings for costs shall be paid to (the complainant). Given
under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the penalty, &c., the form of the con-

viction may be the same as the above, to the *) "for costs; and I order that the said sums shall be paid by the said C. D., on or before the day of next; and I direct the said sum of twenty pounds to be paid to J. S., of," &c. as in the above form, to the end.

See 7 & 8 G. IV., c. 29, s. 31. Callaghan, vol. 1, p. 301.

CONVICTION FOR HAVING STOLEN DOGS IN POSSESSION.

New South Wales, } Be it remembered, that on the day of , in
to wit. } the year of our Lord , at , in afore-
said, C. D. is convicted before me, J. P., one of Her Majesty's Justices of the
Peace for the said Colony, for that on the day of , in the
aforesaid, at in the aforesaid, a certain dog, the property of
E. F. (by a certain ill-disposed person unknown, then lately before unlawfully
stolen, taken, and carried away), was found in the dwelling-house and premises
["in the possession or on the premises"] of the said C. D. there situate, by
virtue of a certain search warrant theretofore in that behalf duly granted; he the
said A. B. then and there well knowing the said dog to have been unlawfully
stolen, taken, and carried away; against the form of the Statute in that case
made and provided; I, the said J. P., do therefore adjudge the said C. D., for
his said offence, to forfeit and pay, &c.

See 7 and 8 G. IV. c. 29, s. 32. Id.

CONVICTION FOR STEALING PIGEONS.

New South Wales, } Be it remembered, that on the day of , in the
to wit. } year of our Lord , at , C. D. is convicted
before me, J. P., one of her Majesty's Justices of the Peace for the said
for that he the said C. D., on the day of , in the year aforesaid, at
, one pigeon, of the value of sixpence, the property of E. F., then and
there being found, unlawfully and wilfully did kill and take ("kill, wound, or
take"); against the form of the Statute in that case made and provided: I, the
said J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and
pay the sum of (two) pounds, over and above the value of the said pigeon, so
killed and taken as aforesaid, and the further sum of sixpence, being the value
of the said pigeon, and also to pay the sum of shillings* for costs; and in
default of immediate payment of the said sums, to be imprisoned in the
(and there kept to hard labour) for the space of (see s. 67) calendar
months, unless the said sums be sooner paid; and I direct that the said sum of
two pounds shall be paid to J. S. (see s. 66) of aforesaid, in which the
said offence was committed, to be by him applied according to the directions of
the Statute in that case made and provided, and that the said sum of sixpence
shall be paid (to the said E. F.; or if he have been examined in proof of the
offence, then thus: "also to the said J. S., E. F. the owner of the said pigeon
having been examined in proof of the offence aforesaid"); and I order that the
said sum of shillings for costs shall be paid to (the complainant).
Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the penalty, &c., the form of the conviction may be the same as the above, to the*) "for costs; and I order that the said sums shall be paid by the said C. D. on or before the day of next; and I direct that the said sum of two pounds shall be paid to J. S., of," &c., as in the above form, to the end.

See 7 and 8 G. IV. c. 29, s. 33. Id.

CONVICTION FOR TAKING FISH IN WATER WHICH IS PRIVATE PROPERTY.

To wit: Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____, C. D. is convicted before me J. P., one of Her Majesty's Justices of the Peace for the said _____ for that he the said C. D., on the _____ day of _____, in the year aforesaid, at _____, in the aforesaid, in a certain pond [or stream] of water there situate, the private property of E. F. [or wherein E. F. then had a private right of property] ten fish, called trout, of the value of ten-pence, then and there being found, then and there in the said pond unlawfully and wilfully did take ["take or destroy, or attempt to take or destroy"]; against the form of the Statute in that case made and provided: I the said J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [five] pounds over and above the value of the said fish so taken as aforesaid, and the further sum of [ten-pence], being the value of the said fish, and also to pay the sum of _____ shillings* for costs; and in default of immediate payment of the said sums, to be imprisoned in the _____ (and there kept to hard labour) for the space of _____ (see s. 67.) calendar months, unless the same sums shall be sooner paid; and I direct that the said sum of five pounds shall be paid to J. S. (see s. 66,) of _____ aforesaid, in which the said offence was committed, to be by him applied according to the direction of the Statute in that case made and provided, and that the said sum of ten-pence shall be paid (to the said E. F., or if he have been examined in proof of the offence, then thus: "also to the said J. S.. the said E. F. having been examined in proof of the offence aforesaid"); and I order that the said sum of _____ shillings for costs shall be paid to _____ (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the penalty, &c. the form of the conviction may be the same as above, to the*) "for costs; and I order that the said sums shall be paid by the said C. D., on or before the _____ day of _____ next; and I direct that the said sum of five pounds shall be paid to J. S., of, &c." as in the above form, to the end.

See 7 and 8 G. IV. c. 29, s. 34, 35. Taking or destroying fish (except by angling) in any water in or running through land adjoining or belonging to the dwelling-house of the owner or person having right of fishery therein, is an indictable offence. Id.

CONVICTION FOR STEALING TREES, SHRUBS, &c.

To wit: Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____, in the _____ aforesaid, C. D. is convicted before me, J. P. one of Her Majesty's justices of the peace for the said _____, for that he the said C. D., on the _____ day of _____, in the year aforesaid, at the parish of _____, in the _____ aforesaid, one ash tree ["the whole or any part of any tree, sapling, or shrub, or any underwood"] of the value of two shillings, the property of E. F., then and there growing, unlawfully did steal, take, and carry away; against the form of the Statute in that case made and provided: I the said J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [five] pounds, over and above the value of the said tree so stolen as aforesaid, and the further sum of two shillings, being the value of the said tree, and also to pay the sum of _____ shillings* for costs, and in default of immediate payment of the said sums, to be imprisoned in the _____ [and there kept to hard labour] for the space _____ (see s. 67.) calendar months, unless the said sums shall be sooner paid; and I direct that the said sum of five pounds shall be

paid to J. S. (see s. 66.) of _____ aforesaid, in which the said offence was committed, to be by him applied according to the direction of the statute in that case made and provided; and that the said sum of two shillings shall be paid (to the said E. F.; or if he have been examined in proof of the offence, "also to the said J. S., E. F. the owner of the said tree having been examined in proof of the offence aforesaid"); and I order that the said sum of _____ shillings for costs shall be paid to _____ (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the penalty, &c., the conviction may be the same as the above form, to the*) "for costs; and I order that the said sums shall be paid by the said C. D., on or before the _____ day of _____ next: and I direct that the said sum of five pounds shall be paid to J. S., of," &c., as in the above form, to the end.

See 7 and 8 G. IV. c. 29. s. 39. In what cases punishable upon indictment, see 7 and 8 G. IV. c. 29. s. 38. Callaghan, vol. 1, p. 302.

CONVICTION FOR STEALING FENCES, GATES, &c.

to wit: Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____, in the _____ aforesaid, C. D. is convicted before me, J. P., one of Her Majesty's justices of the peace for the said _____ for that he the said C. D., on the _____ day of _____, in the year aforesaid, at _____, in _____, ten wooden pales ["any part of any live or dead fence, or any wooden post, pale, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively"], of the value of ten-pence, the property of E. F., then and there being, and then and there set up and used as a fence, unlawfully did steal, take, and carry away; against the form of the Statute in that case made and provided: I the said J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [five] pounds, over and above the value of the said pales so stolen as aforesaid, and the further sum of ten-pence, being the value of the said pales, and also to pay the sum of shillings* for costs, and, in default of immediate payment of the said sums, to be imprisoned in the _____ [and there kept to hard labour] for the space of _____ (see s. 67) calendar months, unless the said sums shall be sooner paid; and I direct that the said sum of five pounds shall be paid to J. S. (see s. 66) of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided; and that the said sum of ten-pence shall be paid [to the said E. F.; or if he have been examined in proof of the offence, then thus: "also to the said J. S., E. F. the owner of the said pales, having been examined in proof of the offence aforesaid"]; and I order that the said sum of _____ shillings for costs shall be paid to _____ (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for the payment of the penalty, &c., the conviction may be the same as the above, to the*) "for costs; and I order that the said sums shall be paid by the said C. D. on or before the _____ day of _____ next; and I direct that the said sum of five pounds shall be paid to J. S., of," &c., as in the above form, to the end.

See 7 and 8 G. IV. c. 29. s. 40. *Id.*

**CONVICTION FOR HAVING STOLEN TREES, FENCES, &c., IN
POSSESSION.**

to wit: Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____, in the county aforesaid, C. D. is convicted before me, J. P., one of Her Majesty's Justices of the Peace for the said _____ for that on the _____ day of _____, in the year aforesaid, at _____ in the _____ aforesaid, a certain ash tree ("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, rail, stile, or gate, or any part thereof") of the value of two shillings, was found on the premises ("in the possession or on the premises") of the said A. B. there situate, by virtue of a certain search warrant theretofore in that behalf duly granted, he the said C. D. then and there well knowing the said tree to be on his premises aforesaid; and that he the said C. D., being now here carried before me the said J. P., as such Justice as aforesaid, doth not show unto or satisfy me the said J. P. that he came lawfully by the said tree, but hath altogether failed in so doing; against the form of the Statute in that case made and provided: I, the said J. P., do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of (two) pounds, over and above the value of the said tree, so found as aforesaid, and the further sum of two shillings, being the value of the said tree, and also to pay the sum of _____ shillings* for costs; and in default of immediate payment of the said sums, to be imprisoned in the _____ (and there kept to hard labour) for the space of _____ (see s. 67) calendar months, unless the said sums shall be sooner paid; and I direct that the said sum of two pounds shall be paid to J. S. (see s. 66.) of _____ aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided, and that the said sum of two shillings shall be paid (to E. F., the owner of the said tree; or if the owner be unknown, or have been examined in proof of the offence, then thus: "also to the said J. S., the owner of the said tree being unknown" or, "E. F., the owner of the said tree having been examined in proof of the offence aforesaid"); and I order that the said sum of _____ shillings for costs shall be paid to _____ (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the penalty, &c., the conviction may be the same as the above form to the *) "for costs; and I order, that the said sums shall be paid by the said C. D., on or before the _____ day of _____ next; and I direct that the said sum of two pounds shall be paid to J. S., of," &c., as in the above form, to the end.

See 7 and 8 Geo. IV. c. 29, s. 41. Id.

CONVICTION FOR STEALING FRUIT, VEGETABLES, &c.

to wit. } Be it remembered, that on the _____ day of _____, in the year of our Lord _____, at _____, in the _____ aforesaid, C. D. is convicted before me, J. P., one of her Majesty's Justices of the Peace for the said _____, for that he the said C. D., on the _____ day of _____, in the year aforesaid, at _____, in the _____ aforesaid, ten apples ("any plant, root, fruit, or vegetable production") of the value of two-pence, the property of E. F., in a certain garden ("garden, orchard, nursery-ground, hot-house, green-house, or conservatory") of the said E. F., there situate, then and there growing, then and there in the said garden unlawfully did steal, take, and carry away; against the form of the Statute in that case made and provided: I, the said J. P., do therefore adjudge the said C. D., for his said offence, to be im-

prisoned in the (there to be kept to hard labour) for the space of (six) calendar months. Given under my hand and seal the day and year first above mentioned.

J. P.

Or, "I, the said J. P., do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of (twenty) pounds, over and above the value of the said apples so stolen as aforesaid, and the further sum of two-pence, being the value of the said apples, and also to pay the sum of shillings* for costs, and in default of immediate payment of the said sums, to be imprisoned in the (and there kept to hard labour), for the space of (see s. 67) calendar months, unless the said sum shall be sooner paid; and I direct that the said sum of twenty pounds shall be paid to J. S. (see s. 66) of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided, and that the said sum of two-pence shall be paid (to the said E. F.;" or, if the owner have been examined in proof of the offence, then thus: "also to the said J. S., E. F. the owner of the said apples having been examined in proof of the offence aforesaid"); and I order that the said sum of shillings for costs shall be paid to (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the penalty, &c. the conviction may be the same as the above form to the *) "for costs; and I order, that the said sums shall be paid by the said C. D., on or before the day of next; and I direct that the said sum of twenty pounds shall be paid to J. S. of," &c., as in the above form, to the end.

See 7 & 8 G. IV. c. 29, s. 42. For a second offence, the party may be indicted. Id.

LIBEL.

(And as to "ORAL SLANDER," see 11 Vict. No. 13. post p. 271.)

A libel is a malicious reflection, in writing, printing, or by signs, effigies, or the like, upon the character or conduct of individuals, or bodies of persons, or on public institutions. See *R. v. Benfield*, 2 *Burr.* 985. To be punishable, however, it must be proved to have been published, either openly to the world, as in books or newspapers, &c., or singing it in the streets (*R. v. Benfield*, 2 *Burr.* 985), or the like, or to individuals, as in letters, &c., or by letter directed to and received by the individual libelled. *Phillips v. Jansem*, 2 *Esp.* 624. And evidence of buying a libel at the shop of a known bookseller or newsvender will be sufficient proof of a publication of it by him, although he be not present at

the time of the sale. *R. v. Almon*, 5 *Burr.* 2686 ; *R. v. Walter*, 3 *Esp.* 21 ; *R. v. Alexander, Moody and M.* 437. But see 11 *Vict. No. 13*, s. 11, post p. 273. If published, not only the publication, but the composing, writing, or printing of it, is punishable by indictment ; and on the other hand it seems not to be an indictable offence merely to write a libel, if it be not afterwards published. *R. v. Burdett* 3 *B. and A.* 717. 4 *id.* 95.

The malicious intention may be inferred from the nature of the libel and the fact of publication ; for a person who publishes that which is calumnious of the character of another, must be presumed to have intended that which the publication necessarily and obviously is calculated to effect ; and the onus of proving the contrary lies upon him. *R. v. Harvey*, 2 *B. and C.* 257. And it will be no excuse, that it is a faithful report of the proceedings in a court of justice, if it contain matter of an obscene or blasphemous nature, or if it be of a preliminary nature, i. e., if the whole of the proceedings be not concluded. See 11 *Vict. No. 13*, s. 5, post p. 272. Nor is it matter of excuse, that the libel has been borrowed from another publication (*R. v. Holt*, 5 *T. R.* 436) ; or that it has been published by an order of the House of Commons. *Stockdale v. Hansard*, *MS. T.* 1839. And a member of parliament, who publishes a speech, said to have been spoken by him in parliament, is punishable for it, if it be a libel, in the same manner as other persons. *R. v. Crevy*, 1 *M. and S.* 273 ; *R. v. Ld. Abingdon*, 1 *Esp.* 226. But assigning reasons in the books of a Quakers' meeting, for the expulsion of one of their members, has been holden not to be a libel. *R. v. Hart*, 1 *W. Bl.* 386. So, an advertisement in a newspaper, though conveying an imputation injurious to the character of a person, has been holden not to be a libel, where it appeared to have been done bonâ fide for the purpose of obtaining information on a subject, by a person really interested in the discovery. *Delany v. Jones*, 4 *Esp.* 191.

Libels may be classed under four heads: seditious libels, blasphemous libels, libels reflecting on the public administration of justice, and libels on individuals. And in this order we shall now consider them.

SEDITIONOUS LIBELS.—Every writing against the Queen or her government, which passes the bounds of fair and free discussion, and does not amount to an overt act of treason, may be deemed a seditious libel; and if published, the writer, printer, and publisher are liable, upon indictment, to fine, or imprisonment, or both. Writings which incite to, or justify rebellion, or otherwise import a compassing of the Queen's death, are overt acts of treason, if they be published. *Twyn's Case*, *Kel.* 22, 2 *St. Tr.* 528; *Fort.* 205; 3 *Inst.* 5. On the other hand, the people of this country have a right freely to discuss the public acts of the Queen and her government, provided they do it fairly and temperately, without imputing bad or improper motives, or attempting to bring either the Queen or her government into contempt or hatred. See *R. v. Lambert*, 2 *Camp.* 398. And all writings, with relation to the Queen or her government, which cannot be thus justified, but which do not amount to an overt act of high treason,—and all political writings intended to inflame the people, and to incite them to tumult or disorder (*R. v. Collins*, 9 *Car. and P.* 456), or which have a tendency to cause unlawful meetings and disturbances (*R. v. Lovett*, *id.* 462), may, if published, be deemed seditious libels.

After conviction, the Court may order that all copies of the libel which may be in the possession of the party, or of any other person to his use, shall be seized. 60 G. III. and 1 G. IV. c. 8, s. 1.

BLASPHEMOUS LIBELS.—Writings against the Christian religion, against the divinity of Christ, or the existence of God, if published, amount to a misdemeanor at common law, and subject the writer, printer, and publisher to fine, or imprisonment, or both. *R. v. Daniel Isaac Eaton*, *M. S. March* 1812; *R. v. Taylor*, 3 *Keb.* 607,

621; *R. v. Woolstan*, 2 *Str.* 834; *R. v. Waddington*, 1 *B. and C.* 26; *R. v. Carlisle*, 3 *B. and A.* 161.

LIBELS REFLECTING ON THE PUBLIC ADMINISTRATION OF JUSTICE.—Writings, reflecting upon the public administration of justice, calculated to lower it in the estimation of the public, are, if published, misdemeanors at common law, and punishable upon indictment with fine, or imprisonment, or both. And the Court of King's Bench have granted a criminal information, for a libel, reflecting on a Judge and Jury, for having acquitted a prisoner. *R. v. White*, 1 *Camp.* 359 *n.* Also, where a plaintiff had recovered large damages against an officer of a corporation, for having indicted him for perjury, and the corporation thereupon entered in their books a resolution that the officer, in preferring the indictment, was actuated by motives of public justice, &c.: the court held this entry to be a libel reflecting on the administration of justice, and granted a criminal information against the parties concerned in it. *R. v. Watson*, 2 *T. R.* 199.

LIBELS ON INDIVIDUALS.—Writings against individuals, or against any body of persons, such for instance as the clergy of a diocese, (*R. v. Williams*, 5 *B. and A.* 595) or the like, accusing them of any offence punishable by law, or imputing to them conduct calculated to degrade them in the eyes of mankind, or expose them to public hatred, contempt, or ridicule, are deemed libels; and as they tend to provoke a breach of the peace, they are, if published, punishable as misdemeanors, with fine, or imprisonment, or both (1 *Hawk. c.* 73, s. 1, *et seq.*); and this, whether the accusation be expressed in direct terms, or by way of implication, or ironically, or the like. *Id.* s. 4; and see *R. v. Kinnersley*, 1 *W. Bl.* 294; *R. v. Benfield*, 2 *Burr.* 985. So, publishing libellous matter, reflecting upon the conduct of a person deceased, is in like manner punishable, if it be such as is calculated to incite his surviving relations to a breach of the peace, or expose them to the hatred of the peo-

ple or their neighbours. See *R. v. Topham*, 4 T. R. 126. So, publications tending to degrade and defame persons in considerable stations of power or dignity in foreign countries, may be treated as libels, on the ground that they may tend to involve this country in disputes and war. *R. v. Lord Gordon*, 1 Russ. 233.

The 11 Vict. No. 13, is intituled, "An Act to amend the Law respecting defamatory words and libel." (Assented to, 24th August, 1847.

[Preamble. Right of action for written slander extended to oral slander.]

For the better protection of private character, and for the more effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty: Be it enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That the right of action for oral slander shall extend to all defamatory words for which an action might now be maintained, if the same were reduced into writing; and that all the rules now in force relating to actions for written slander, shall, so far as they are applicable, and are not altered by this Act, be deemed applicable to all actions for such defamatory words.

[Proviso where plaintiff's character not likely to be injured thereby.]

II. Provided always and it be enacted, That on the trial of any action for defamatory words, not imputing an indictable offence, it shall be competent to the jury, under the plea of not guilty, to consider whether the words set forth in the declaration were spoken on an occasion when the plaintiff's character was likely to be injured thereby, and if the Jury shall be of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby, to find a verdict for defendant.

[Offer of an apology admissible in evidence in mitigation of damages.]

III. And be it enacted, That in any action for defamation, it shall be lawful for the defendant, (after notice in writing of his intention so to do, duly given to the plaintiff, at the time of filing or delivering the plea in such action,) to give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation, before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology.

[Truth of matters charged no defence, unless for the public benefit that such matters should be published.]

IV. And be it enacted, That in any action for defamation, whether oral or otherwise, the truth of the matters charged shall not amount to a defence to such action, unless it was for the public benefit that the said matters charged should be published; and that where the truth of such matters charged shall be relied upon, as a defence to such action, it shall be necessary for the defendant in his plea of justification, to allege that it was for the public benefit that the said matters charged should be published; and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published; and that unless the said allegation shall be made out to the satisfaction of the jury, as well as the truth of the said matters charged, the plaintiff

shall be entitled to recover a verdict, with such damages as the jury shall think proper.

[Actions not maintainable against periodical publications unless in certain cases. Proviso as to obscenity or blasphemy, and judicial proceedings.]

V. And be it enacted, That no action, indictment, or information shall be maintainable against any newspaper or other publication, for a faithful and accurate report of any judicial proceedings, the same not being of a preliminary nature: Provided always, that it shall not be lawful for any newspaper or other periodical publication to publish any matter of an obscene or blasphemous nature, nor any judicial proceedings which may not be concluded, and which the presiding Judge may pronounce it improper to publish at their then stage.

[In an action against a newspaper for libel, the defendant may plead that it was inserted without malice, and without neglect, and may pay money into Court as amends.]

VI. And be it enacted, That in an action for a libel contained in any public newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted in such newspaper, or other periodical publication, without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted, in such newspaper, or other periodical publication, a full apology for the said libel; or if the newspaper or periodical publication, in which the said libel appeared, should be ordinarily published at intervals, exceeding one week, had offered to publish the said apology in any newspaper or periodical publication, to be selected by the plaintiff in such action; and that every such defendant shall, upon filing such plea, be at liberty to pay into Court a sum of money, by way of amends for the injury sustained by the publication of such libel; and such payment into Court shall be of the same effect, and be available in the same manner, and to the same extent, and be subject to the same rules and regulations as to payment of costs, and the form of pleading, except so far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court, under an Act of the Governor and Legislative Council of New South Wales, passed in the fifth year of the reign of Her Majesty Queen Victoria, intituled, "An Act for the further amendment of the Law, and the better advancement of Justice;" and that to such plea to such action, it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

[Publishing or threatening to publish a libel, &c., with intent to extort money, punishable by imprisonment and hard labor.]

VII. And be it enacted, That if any person shall publish, or threaten to publish, any libel upon any other person, or shall, directly or indirectly, threaten to print or publish, or shall, directly or indirectly, propose to abstain from printing or publishing, or shall, directly or indirectly, offer to prevent the printing, or publishing of any matter or thing touching any other person, with intent to extort any money, or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, every such offender, on being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction for any term not exceeding three years: Provided always, that nothing herein contained, shall in any manner alter or affect any law now in force, in respect to the sending or delivery of threatening letters or writings.

[Punishment of false defamatory libel.]

VIII. And be it enacted, That if any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person, being convicted thereof, shall be liable to be imprisoned in the common gaol or house of

correction for any term not exceeding two years, and to pay such fine as the Court shall award.

[and of malicious defamatory libel.]

IX. And be it enacted, That if any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine or imprisonment, or both, as the Court may award, such imprisonment not to exceed the term of one year.

[Proceedings upon the trial of an indictment or information for a defamatory libel.—Double plea.—Plea of not guilty in civil and criminal proceedings.]

X. And be it enacted, That on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matters charged, as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation; and further to allege, that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof; and that if after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the Court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or to disprove the same: Provided always, that the truth of the matters charged in the alleged libel, complained of by such indictment or information, shall in no case be inquired into without such plea of justification: Provided also, that in addition to such plea, it shall be competent to the defendant to plead a plea of not guilty: Provided likewise, that nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty, which it is now competent to the defendant to make under such plea to any action or indictment, or information, for defamatory words or libel.

[Evidence to rebut *prima facie* case of publication by an agent.]

XI. And be it enacted, That wheresoever, upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given, which shall establish a presumptive case of publication against the defendant, by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

[On prosecution for private libel defendant entitled to costs on acquittal.]

XII. And be it enacted, That in case of any indictment, or information, by a private prosecutor, for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant, by reason of such indictment, or information; and that upon a special plea of justification to such indictment, or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor, by reason of such plea, such costs so to be recovered by the defendant, or prosecutor respectively, to be taxed by the proper officer of the Court, before which the said indictment, or information, is tried.

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[Plaintiff having obtained judgment may levy costs, &c., out of types, &c., used in printing defamatory article, as well as out of the property of the defendant on the Record.]

XIII. And be it enacted, That whenever any person shall be convicted, either in a civil or criminal proceeding, of printing or publishing a defamatory article, the plaintiff or prosecutor, in whose favour judgment shall have been given, shall be at liberty, under his writ of execution, to levy the costs, damages, penalty, and expenses named therein, out of the whole of the types, presses, or printing materials whatsoever, belonging to the person whose types, presses, or printing materials, or any part thereof, may have been used in printing such defamatory article, as well as out of the property of the defendant on the Record.

[Persons liable for penalties for printing any blasphemous, seditious, or defamatory libel, not relieved from such liability by any Act for relief of insolvent debtors, or for abolition of imprisonment for debt.]

XIV. And be it enacted, That from and after the passing of this Act, no law which is now, or may hereafter be in force in the said Colony, for the relief of insolvent debtors, or for the abolition of imprisonment for debt, shall extend, or be construed to extend, to effect or discharge from his liability any person who shall be indebted for any penalty, damages, or costs, adjudged against him in any proceeding, either civil or criminal, for the printing or publishing of any blasphemous, seditious, or defamatory words or libel.

[Benefits of this Act not to extend to any defendant who shall not have complied with all the requirements of the laws for regulating the printing and publication of newspapers &c.]

XV. And be it enacted, That no defendant in any proceeding, civil or criminal, shall be able to avail himself of any of the benefits or advantages of this Act, unless at the time of the publication of the article complained of, if it be a printed article, all the provisions made by law, for regulating the printing and publication of newspapers, and papers of a like nature, or of the trade of printing generally, applicable to such a work as that in which such article may be printed, shall have been complied with; but such defendant shall nevertheless be bound by the other parts of this Act, and any specified non-compliances with the law shall be a good answer to any pleading under this Act.

[Interpretation of Act.]

XVI. And be it enacted, That wherever throughout this Act, in describing the plaintiff, or defendant, or the party affected, or intended to be affected, by the offence, words are used importing the singular number or the masculine gender only, yet they shall be understood to include several persons as well as one person, and females as well as males, unless when the nature of the provision, or the context of the Act, shall exclude such construction.

CHS. A. FITZ ROY,
Governor.

FORM OF COMMITMENT FOR A SEDITIOUS LIBEL.

on _____, at _____, wickedly, maliciously, and seditiously did write and publish a certain false, wicked, malicious, scandalous, and seditious libel, of and concerning our Sovereign Lady Victoria, and her government. And you the said keeper, &c.

FORM OF COMMITMENT FOR A BLASPHEMOUS LIBEL.

on _____, at _____, unlawfully and wickedly did compose, print, and publish a certain scandalous, impious, and profane libel, of and concerning the Holy Scriptures and the Christian Religion (as the case may be). And you the said keeper, &c.

FORM OF COMMITMENT FOR A LIBEL REFLECTING ON THE
PUBLIC ADMINISTRATION OF JUSTICE.

on _____, at _____, wickedly and maliciously did write and publish a certain false, wicked, malicious, and scandalous libel, of and concerning a certain cause between C. D. and E. F. tried at _____, and of and concerning the Jury who tried the said cause, and of and concerning the Judge before whom the said cause was tried. And you the said keeper, &c.

FORM OF COMMITMENT FOR A LIBEL ON AN INDIVIDUAL.

on _____, at _____, unlawfully, wickedly, and maliciously, did write and publish a certain false, scandalous, and malicious libel, containing divers false, scandalous, and malicious matters and things, of and concerning the said C.D. And you the said keeper, &c.

LODGERS AND TENANTS.—(LARCENY BY.)

Any person stealing any chattel or fixture, let, to be used by him or her, in or with any house or lodging, whether the contract be entered into by him or her, or by her husband, is guilty of felony. 7 & 8 G. IV. c. 29, s. 45, *Callaghan*, vol. 1, p. 304. See form of commitment under title "Larceny."

LUNATICS.

By Acts of Council 7 Vict. No. 14, *Callaghan* vol. 2, p. 851, it is enacted,

"That if any person shall be discovered and apprehended in the Colony of New South Wales, under circumstances denoting a derangement of mind, and a purpose of committing suicide or some crime for which if committed such person would be liable to be indicted, it shall be lawful for any two Justices of the Peace, of New South Wales, before whom such person may be brought, to call to their assistance any two legally qualified medical practitioners; and if upon view and examination of the said person so apprehended, and upon proof on oath by the said two medical practitioners to the effect, that in their opinion such person is a dangerous lunatic or a dangerous idiot, and on any other proof the said Justices shall be satisfied that such person is a dangerous lunatic or a dangerous idiot, then it shall be lawful for the said Justices by warrant under their hands and seals to commit such person to some gaol, house of correction, or public hospital, within the said colony, there to be kept in strict custody until such person shall be discharged by the order of two Justices of the Peace, one

whereof shall be one of the Justices who has signed such warrant, or by one of the Judges of the Supreme Court of New South Wales, or until such person shall be removed to some public colonial lunatic asylum, by order of His Excellency the Governor of New South Wales, for the time being, as hereinafter provided: Provided always, that every such person while so detained in such gaol, house of correction, or public hospital, shall have the liberty and privilege of seeing his or her friends and legal advisers, at all reasonable times: Provided, also, that this Act or anything herein contained, shall not be construed to extend to restrain or prevent any relative or friend from taking such insane person, or dangerous idiot, under his or her own care and protection. If he or she shall enter into sufficient recognizance for the peaceable behaviour or safe custody of such dangerous lunatic or idiot, before two Justices of the Peace, or the Court of Quarter Sessions, or one of the Judges of the Supreme Court of New South Wales."

As to legally qualified medical practitioners, (see 9 Vict. No. 34, *Callaghan, Sup.* 1636,) which declares, "That all persons who have been or shall be declared to be legally qualified medical practitioners, either by the Medical Board of New South Wales, or by that of the District of Port Phillip, shall be held and taken to be legally qualified medical practitioners, within the intent and for the purposes of the above Act."

FORM OF WARRANT OF COMMITMENT OF A LUNATIC FOR SAFE CUSTODY.

To Mr. _____, Chief Constable of the Sydney Police, and his Assistants, and to the Keeper of _____, at Sydney, in the Colony of New South Wales:—

Whereas A. B. hath been discovered and apprehended, in the Colony of New South Wales, that is to say, at _____, under circumstances denoting a derangement of mind, and a purpose of committing (as the case may be, see ante,) and the said A. B. being brought before us, C. D. and E. F. Esquires, two of Her Majesty's Justices of the Peace, of New South Wales, we did call to our assistance two legally qualified Medical Practitioners; to wit, J. K., and G. F., of _____; And whereas, upon view and examination of the said A. B., and upon proof on oath by the said two Medical Practitioners, that in their opinion the said A. B. is a dangerous (as the case may be,) and upon other proof duly made before us, we, the said Justices, are satisfied, that the said A. B. is a dangerous lunatic: These are therefore to command you, that you, the said constables, forthwith convey and deliver into the custody of the said Keeper of the common gaol at _____, in the said Colony, the body of the said A. B., and we command you, the said Keeper, of the said common gaol at _____, that you receive into your custody, the body of the said A. B., herewith sent, as a dangerous (lunatic), and him keep in strict custody, until he shall be discharged by the order of two Justices of the Peace, one whereof shall be one of us, the said C. D., and E. F., or by one of the Judges of the Supreme Court of New South Wales, or until he shall be removed to some public Colonial Lunatic Asylum, by order of His Excellency the Governor of New South Wales, for the time being, as is by law provided, and for so doing, this shall be your sufficient warrant.

Witness our hands and seals, at Sydney, in the said Colony, this day of _____, A.D. 184 _____.

FORM OF DISCHARGE OF A LUNATIC BY TWO JUSTICES.

To the Keeper of the common gaol at _____, in the Colony of New South Wales:—

Whereas, by a certain Warrant or Order of Committal, under the Hands and Seals of C. D. and E. F., Esquires, two of Her Majesty's Justices of the Peace, of the Colony of New South Wales, bearing date the _____ day of _____, A.D. 184____, A. B. was committed to the common gaol at _____ under your charge, as a dangerous (lunatic): And whereas, we, C. D. and G. H., Esquires, two of Her Majesty's Justices of the Peace, are willing, upon due consideration that the said A. B. be now discharged out of your custody: These are therefore to command you, that you forthwith discharge out of your custody, the body of the said A. B., and him suffer to go at large, whithersoever he will _____, and for so doing this shall be your sufficient warrant.

Witness our hands and seals, at Sydney, in the Colony aforesaid, this _____ day of _____, A.D. 184____.

MACHINES.—(THRESHING, &c.)

Unlawfully or maliciously breaking, destroying, or damaging, with intent to destroy, or make useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, or cotton goods*—*felony*. 7 and 8 G. IV. c. 30, s. 4, *Callaghan*, vol. 1, p. 332. See Forms under "*Malicious Injury*."

MALICE.

Malice, from *malitia*, in its legal sense, bears a signification very different from the common acceptation of the word—it may be said to mean in its legal sense any wicked or mischievous intention of the mind without any reference to hatred or ill-will against an individual.

MALICIOUS INJURIES.

To Houses, &c.—Setting fire to a church, chapel, house, &c. See "*Burning*," ante p. 66.

* See post "*Manufacture*."

Persons riotously assembled, unlawfully, and with force, pulling down, or beginning to pull down, or destroy, any church, chapel, house, outhouse, &c.—*felony*. 7 and 8 G. IV. c. 30, s. 8; *Callaghan*, vol. 1, p. 331.

TO MANUFACTURES AND MACHINERY.—Setting fire to any building or erection used in carrying on any branch of trade or manufacture—*felony*. *Id.* s. 2; 1 Vict. c. 89, s. 3, *Callaghan*, vol. 1, p. 340.

Persons riotously assembled beginning to pull down or demolish any building or machinery used in any branch of trade or manufacture, or any steam engine used to carry on the business of a mine, &c.—*felony*. 7 and 8 G. IV. c. 30, s. 8.

Maliciously cutting, breaking, or destroying, or damaging, with intent to destroy or render useless any articles of silk, woollen, linen, or cotton, or any frame work, knitted piece, stocking, hose, or lace, in any loom or frame, or in any stage of manufacture—*felony*. *Id.* s. 3. Maliciously cutting, breaking, or destroying or damaging, with intent to destroy or render useless any warp or shute of silk, woollen, linen, or cotton, or any loom, engine, machine, &c., for spinning, weaving, or otherwise manufacturing the same—*felony*. *Id.* s. 3. Forcibly entering a building, &c., with intent to commit either of the two last mentioned offences—*felony*. *Id.* s. 3.

Maliciously cutting, breaking, or destroying or damaging, with intent to destroy or render useless any machine or engine employed in any other manufacture—*felony*. *Id.* s. 4.

TO AGRICULTURE, &c.—Maliciously setting fire to any hopoast, barn, or granary—*felony*. 1 Vict. c. 89, s. 3.

Maliciously setting fire to any stack of corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, or wood—*felony*. *Id.* s. 10.

Maliciously setting fire to any crop of corn, grain, or

pulse, whether standing or cut, or to any wood, coppice, or plantation, or to any heath, gorse, furze, or fern—*felony*. 7 and 8 G. IV. c. 30, s. 17.

Maliciously cutting or destroying hop binds—*felony*.
Id. s. 18.

Maliciously breaking, barking, destroying, or damaging, &c., any tree, sapling, shrub, or underwood, growing in any park, garden, pleasure grounds, &c.—*felony*. Transportation for seven years, or imprisonment with or without hard labour for not more than two years, and whipping. *Id.* s. 19. The like offence, where the tree, &c., shall be growing elsewhere, if the injury done exceed £5—*felony*: the like punishment. *Id.* The like offence, wheresoever the tree shall be growing, if the injury done amount to 1s. at the least: *first offence*—penalty not exceeding £5, over and above the amount of the injury done. *Second offence*—imprisonment and hard labour for not more than twelve months, and (if conviction be by two Justices) whipping. *Third offence*—*felony*: transportation for seven years, or imprisonment with or without hard labour for not more than two years, and whipping. *Id.* s. 20.

Maliciously destroying, or damaging with intent to destroy, any plant, root, fruit, or vegetable, growing in any garden, orchard, nursery ground, hot-house, greenhouse, or conservatory: *penalty*—not exceeding £20, over and above the value of the plant, &c., or imprisonment, with or without hard labour, for not more than six months. *Second offence, felony*—transportation for seven years, or imprisonment, with or without hard labour, for not more than two years, and whipping. *Id.* s. 21.

Maliciously destroying, or damaging with intent to destroy, any cultivated root or plant, used for the food of man or beast, or for medicine, distilling, or dyeing, or in the course of any manufacture, and growing in land, open or enclosed, not being a garden, orchard, or nursery ground, *penalty*—not exceeding 20s. over and above the amount of injury done, or imprisonment, with or without

hard labour, for not more than one month. *Second offence*—imprisonment, and hard labour, for not more than six months, and (if conviction be by two Justices,) whipping.* *Id. s. 22.*

Maliciously breaking, throwing down, or destroying any fence, wall, stile, or gate: *penalty*—not exceeding £5 over and above the amount of injury done. *Second offence*—imprisonment, and hard labour, for not more than twelve months, and (if the conviction be before two Justices,) whipping. *Id. s. 23.*

Maliciously committing damage to any real or personal property whatever, public or private, for which no remedy is hereinbefore provided: *penalty*—such sum as may be a compensation for the injury, not exceeding £5, to the party grieved, unless he have been examined in proof of the offence; and if not paid, imprisonment, with or without hard labour, for not more than two months, if penalty not sooner paid. *Id. s. 24.* Not to extend to cases where the party had a reasonable supposition that he had a right to do the act; nor to trespass committed in hunting, fishing, or in pursuit of game. *Id. s. 24.*

Maliciously cutting, breaking, or destroying, or damaging, with intent to destroy, or render useless any threshing machine—*felony. Id. s. 4.*

To MINES.—Maliciously setting fire to a mine of coal or cannel coal—*felony. 1 Vict. c. 89, s. 9.*

Maliciously causing water to be conveyed into a mine with intent to damage it, or hinder the working of it—*felony (7 and 8 G. IV. c. 30, s. 6);* not to extend to damage done under ground by working an adjoining mine. *Id. s. 6.*

Maliciously pulling down, filling up, or obstructing any airway, waterway, drain, pit, level, or shaft, belonging to a mine, with the like intent—*felony (Id. s. 6);* not to extend to damage done under ground by working an adjoining mine. *Id.*

* The Editor deems it hardly necessary to state, that this punishment is never inflicted now, though there is no enactment doing away with it under Peel's Acts.

Maliciously pulling down, or destroying, or damaging, with intent to destroy or render useless any steam engine, or other engine for sinking, draining, or working a mine, or any staith, building, or erection used in the business of a mine, or any bridge, waggon way, or truck for conveying minerals from a mine—*felony*.
Id. s. 7.

Persons riotously assembled, beginning forcibly to demolish any such engine, staith, &c.—*felony*. *Id.* s. 8.

To MILLS.—Maliciously setting fire to a mill—*felony*.
1 Vict. c. 89, s. 3. See “Burning.”

Persons riotously assembled, beginning forcibly to demolish a mill—*felony*. 7 and 8 G. IV. c. 30, s. 8.

Maliciously breaking down or destroying the dam of a mill pond—*misdemeanor*. *Id.* s. 15.

To RIVERS, CANALS, &c.—Maliciously breaking or cutting down any sea bank, or sea wall, or the bank of any river, canal, or marsh, whereby lands are overflowed or in danger of being so—*felony*. *Id.* s. 12.

Maliciously throwing down, levelling, or destroying, any lock, sluice, flood-gate, &c., on a navigable river or canal—*felony*. *Id.* s. 12.

Maliciously drawing up or removing piles, chalk, or materials for securing a sea bank, &c., or the bank of any river, canal, or marsh—*felony*.

Maliciously drawing up or opening any flood-gate, or doing other injury to a navigable river or canal, with intent to hinder the navigation—*felony*. *Id.* s. 12.

To BRIDGES.—Maliciously pulling down or destroying a bridge—*felony*. *Id.* s. 13.

Maliciously doing any injury to a bridge, with intent to render it dangerous or impassable—*felony*. *Id.* s. 13.

To TURNPIKE GATES, &c.—Maliciously throwing down or destroying any turnpike gate, or any chain, rail, or post belonging thereto, or any building, weighing engine, &c.—*misdemeanor*.

To ANIMALS.—Maliciously killing, wounding, or maiming cattle—*felony*. *Id.* s. 16.

Maliciously breaking down or destroying the dam of a fish pond or water, which is private property, or in which there is a private right of fishery, with intent to take or destroy the fish, or so as thereby to cause the loss or destruction of the fish—*misdemeanor*. *Id.* s. 15.

Maliciously putting lime or other noxious material into such pond, &c., with intent to destroy the fish—*misdemeanor*. *Id.* s. 15.

To SHIPS, &c.—Maliciously setting fire to or otherwise destroying a ship or vessel, with intent to murder, or whereby life may be endangered—*felony*. 1 Vict. c. 89, s. 4.

Maliciously setting fire to, casting away, or otherwise destroying a ship or vessel, with intent to prejudice the owner of the ship or goods, or the underwriters—*felony*. *Id.* s. 6.

Maliciously damaging a ship or vessel, otherwise than by fire, with intent to destroy it or render it useless—*felony*. 7 and 8 G. IV. c. 30, s. 10.

Exhibiting a false light or signal, with intent to bring a ship or vessel into danger—*felony*. 1 Vict. c. 89, s. 5.

Maliciously doing anything tending to the immediate loss or destruction of a ship or vessel in distress—*felony*. *Id.*

Maliciously destroying any part of a ship in distress, or stranded, &c., or any goods belonging to it—*felony*. *Id.* s. 8.

Forcibly preventing or impeding a person endeavouring to save his life from such ship or vessel—*felony*. *Id.* s. 7.

PROSECUTION, &c.—Persons found committing any offence against this Act, may be immediately apprehended without warrant, by a peace officer, or the owner of the property injured, or his servant, and taken before a Justice. 7 and 8 G. IV. c. 30, s. 28.

In prosecutions for any offence against this Act, the party is punishable, whether the offence was committed from malice to the owner or otherwise. *Id.* s. 25.

Prosecution in cases of summary conviction before Justices to be commenced within three months. *Id.* s. 60. The party grieved, and the inhabitants of the county, &c., may be witnesses. *Id.* Upon charge being made on oath the offender may be summoned, and if he do not appear the Justice may proceed *ex parte*, or he may thereupon issue his warrant to apprehend him; or he may issue his warrant in the first instance without summons. *Id.* s. 30. If the sum forfeited, or penalty, be not paid on conviction, imprisonment, with or without hard labour, for not more than two months, if the sum, with costs, shall not exceed £5; not more than four months, where the sum, with costs, shall not exceed £10; and not more than six months in any other case. *Id.* s. 33. Upon a conviction for a first offence the Justice may discharge offender upon his making satisfaction to the party. *Id.* s. 34. Appeal allowed. *Id.* s. 38. *No certiorari.* *Id.* s. 39. No warrant of commitment to be deemed void, if therein alleged that the party was convicted, and there be a valid conviction to sustain it. *Id.* s. 39. Convictions to be returned to Sessions. *Id.* s. 40.

GENERAL FORM OF CONVICTION FOR A MALICIOUS INJURY
WHERE THE OFFENCE IS PUNISHABLE UPON SUMMARY
CONVICTION.

Be it remembered, That on _____, at _____, A. O. is convicted before me, J. P., Esquire, one of Her Majesty's Justices of the Peace for the Colony of New South Wales, for that he the said A. O. did (specify the offence and the time and place when and where the same was committed, as the case may be; and on a second conviction state the first conviction); and I the said J. P., Esquire, adjudge the said A. O. for his said offence, to be imprisoned in the _____ (and there kept to hard labour if so ordered) for the space of _____ (or, I adjudge the said A. O. for his said offence to forfeit and pay _____ (here state the penalty actually imposed, or state the penalty and also the amount of the injury done, as the case may be), and also to pay the sum of _____ for costs; and in default of immediate payment of the said sums, to be imprisoned in the _____ (or, to be imprisoned in the _____ and there kept to hard labour) for the space of _____, unless the said sums shall be sooner paid; (or, and I order that the said sums shall be paid by the said A. O. on or before the day of _____); and I direct that the said sum of _____ (i. e. the penalty only) shall be paid to _____, of _____ aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided; (or, that the said sum of _____, (i. e.

the penalty) shall be paid to, &c. (as before), and that the said sum of (i. e. the sum for the amount of the injury done) shall be paid to C. D. (the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty, as before); and I order that the said sum of for costs shall be paid to (the complainant.) Given under my hand and seal, the day and year first above mentioned.

This form is given by Stat. 7 and 8 G. IV. c. 30. Callaghan, vol. 1, p. 338.

Appeal. Id. s. 38. No certiorari. Id. s. 39. For a first offence, the Justice may discharge the offender, upon his making such satisfaction to the party aggrieved for damages and costs, or either, as shall be ascertained by the justice. Id. s. 34.

2. CONVICTION FOR MALICIOUSLY DAMAGING TREES, SHRUBS, &c.

to wit: Be it remembered, that on the day of , in the year of our Lord , at , in the aforesaid, C. D. is convicted before me, J. P., one of Her Majesty's Justices of the peace for the said , for that he the said C. D., on the day of , in the year aforesaid, at , in the aforesaid, one ash tree (the whole or any part of any tree, sapling or shrub, or any underwood), the property of E. F., then and there growing, unlawfully and maliciously did cut and damage ("cut, break, bark, root up, or otherwise destroy or damage"), thereby then and there doing injury unto the said E. F. to the amount of two shillings; against the form of the Statute in that case made and provided; I, the said J. P., do thereupon adjudge the said C. D., for his said offence, to forfeit and pay the sum of (five) pounds, over and above the amount of the injury so done as aforesaid, and the further sum of two shillings, being the amount of the said injury, and also to pay the sum of shillings* for costs, and in default of immediate payment of the said sums, to be imprisoned in the , (and there kept to hard labour), for the space of , (see s. 33) calendar months, unless the said sums shall be sooner paid; and I direct that the said sum of five pounds shall be paid to J. S. (see s. 32,) of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided, and that the said sum of two shillings shall be paid (to the said E. F.; or if he have been examined in proof of the offence, then thus: "also to the said J. S., E. F. the owner of the said tree having been examined in proof of the offence aforesaid"); and I order that the said sum of shillings for costs shall be paid to , (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the penalty, &c., the conviction may be the same as the above form, to the *) "for costs; and I order that the said sums shall be paid by the said A. B. on or before the day of next; and I direct that the said sum of five pounds shall be paid to J. S., of," &c., as in the above form to the end.

See 7 and 8 G. IV. c. 30, s. 20. In what cases punishable upon indictment, see 7 and 8 G. IV. c. 30, s. 19, Callaghan, vol. 1, p. 334.

3. CONVICTION FOR MALICIOUSLY DAMAGING FENCES, GATES, &c.

to wit: Be it remembered, that on the day of , in the year of our Lord , at , in the aforesaid, C. D. is convicted

before me, J. P., one of Her Majesty's Justices of the Peace for the said , for that he the said C. D., on the day of , in the year aforesaid, at , in the aforesaid, a certain gate ("any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively") the property of E. F. then and there being, then and there unlawfully and maliciously did break, throw down, and destroy ("cut, break, throw down, or in anywise destroy"), thereby then and there doing injury to the said E. F. to the amount of ten shillings; against the form of the Statute in that case made and provided: I, the said J. P., do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of (five) pounds, over and above the amount of the injury so done as aforesaid, and the further sum of ten shillings, being the amount of the said injury, and also to pay the sum of shillings* for costs. and in default of immediate payment of the said sums, to be imprisoned in the (and there kept to hard labour) for the space of (see s. 33) calendar months, unless the said sum shall be sooner paid; and I direct that the said sum of five pounds shall be paid to J. S. (see s. 32) of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided; and that the said sum of ten shillings shall be paid (to the said E. F.; or if he have been examined in proof of the offence, then thus: "also to the said J. S., E. F., the owner of the said gate, having been examined in proof of the offence aforesaid";) and I order that the said sum of shillings for costs, shall be paid to (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for the payment of the penalty, &c., the conviction may be the same as the above form, to the*) "for costs; and I order that the said sums shall be paid by the said C. D. on or before the day of next; and I direct that the said sum of five pounds shall be paid to J. S., of," &c., as in the above form, to the end.

See 7 and 8 G. IV. c. 30, s. 23. Id. 335.

4. CONVICTION FOR MALICIOUS TRESPASS TO OTHER PROPERTY.

to wit: Be it remembered, that on the day of , in the year of our Lord , at , in the aforesaid, C. D. is convicted before me, J. P., one of Her Majesty's Justices of the Peace for the said , for that he the said C. D. on the day of , in the year last aforesaid, at , in the aforesaid, a certain cart ("any real or personal property, either of a public or private nature, for which no remedy or punishment is hereinbefore provided") of E. F., then and there being, unlawfully and maliciously did damage and injure ("commit any damage, injury or spoil"); against the form of the Statute in that case made and provided: I the said J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of (five) pounds, as a reasonable compensation for the damage and injury so committed by the said C. D. as aforesaid, and also to pay the sum of shillings* for costs, and in default of immediate payment of the said sums, to be imprisoned in the (and there kept to hard labour), for the space of (two) calendar months, unless the said sums shall be sooner paid; and I direct that the said sum of (five) pounds shall be paid (to the said E. F.; or if the owner have been examined in proof of the offence, then thus: "to J. S., of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided; E. F., the owner of the said cart, having been examined in proof of the offence aforesaid"); and I order that the said sum of shillings, for costs, shall be paid to (the complainant). Given under my hand and seal, the day and year first above mentioned.

J. P.

* (If time be given for payment of the compensation, &c., the conviction may be the same as the above form, to the*) "for costs; and I order that the said sums shall be paid by the said C. D. on or before the day of next; and I direct that the said sum of five pounds shall be paid to J. S., of," &c., as in the above form, to the end.

See 7 and 8 G. IV. c. 30, s. 24. Id. 336.

FORM OF COMMITMENT FOR KILLING OR WOUNDING CATTLE, SHEEP, &c.

on , at , one bay mare, the property of C. D., unlawfully, maliciously, and feloniously did kill ("kill, maim, or wound"), against the form of the Statute in such case made and provided; And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING GOODS IN PROCESS OF MANUFACTURE, MACHINERY, &c.

on , at , twenty-five yards of woollen cloth, of the goods and chattels of C. D., in a certain loom ("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") then and there being, then and there unlawfully, maliciously, and feloniously, did cut, break, and destroy, (or did damage by [stating how] with intent then and there feloniously to destroy the said cloth, and to render the same useless); against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING WARPS OF SILK OR CERTAIN MACHINERY, &c.

on , at , a certain warp of silk, (or as the case may be,) of the property of C. D., then and there unlawfully, maliciously, and feloniously did cut, break, and destroy, (or did damage, by (stating how,) with intent then and there feloniously to destroy the said warp, and to render the same useless): against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR ENTERING A BUILDING BY FORCE, WITH INTENT TO COMMIT EITHER OF THE TWO LAST MENTIONED OFFENCES.

on , at , into a certain house and building ("house, shop, building, or place," of C. D., there situate, feloniously, and by force, did enter, with intent, then and there, certain woollen goods of the said C. D., in a certain loom then and there being "or certain looms and machinery, then and there prepared for, and employed in the weaving, manufacturing, and preparing of woollen goods," (or stating in other appropriate terms an intent to commit the offences stated in either of the two last forms,) unlawfully, maliciously, and feloniously to cut, break, and destroy: against the form of the Statute in that case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING MACHINES IN OTHER MANUFACTURES, THRESHING MACHINES, &c.

on _____, at _____, a certain threshing machine (or) a certain machine and engine called a _____ then and there prepared for and employed in the manufacture of _____, (the same not being prepared for or employed in the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work, knitted piece, stocking, hose, or lace,) of the property of C. D., unlawfully, maliciously, and feloniously did cut, break, and destroy (or) did damage by (stating how) with intent then and there feloniously to destroy the said machine, and to render the same useless), against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING HOPBINDS.

on _____, at _____, one thousand hopbinds, the property of one C. D., then and there growing on poles in a certain plantation of hops of the said C. D. there situate, unlawfully, maliciously, and feloniously did cut and destroy ("cut or otherwise destroy"); against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING OR DAMAGING TREES, SHRUBS, &c., GROWING IN PARKS OR PLEASURE GROUNDS, &c.

on _____, at _____, in a certain park (or as the case may be) of C. D. there situate, ten oak trees, the property of the said C. D. in the said park then and there growing, then and there unlawfully, maliciously, and feloniously did cut and damage; thereby doing injury unto the said C. D., to an amount exceeding the sum of (one pound): against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DAMAGING TREES, &c., GROWING ELSEWHERE.

on _____, at _____, in a certain close of C. D., there situate, ten oak trees, the property of the said C. D., then and there growing, unlawfully, maliciously, and feloniously did cut and damage, thereby doing injury unto the said C. D. to an amount exceeding the sum of five pounds: against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR CONVEYING WATER INTO A MINE.

on _____, at _____, unlawfully, maliciously, and feloniously, did cause a large quantity of water to be conveyed into a certain mine of C. D., there situate, with intent thereby to damage and destroy (or) to hinder and delay the working of the said mine: against the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR OBSTRUCTING AIRWAYS, SHAFTS, &c.

on _____, at _____, unlawfully, maliciously, and feloniously, did fill up a certain airway of and belonging to a certain mine of C. D., there situate, with

intent thereby to damage and destroy (or) to hinder and delay the working of) the said mine, against the form of the Statute in such case made and provided : And you the said keeper, &c.

FORM OF COMMITMENT FOR DAMAGING THE STEAM-ENGINES, STAITHS, WAGGONWAYS, &c.

on _____, at _____, a certain steam-engine, the property of C. D., for the sinking, draining, and working of a certain mine of the said C. D., there situate, unlawfully, maliciously, and feloniously, did pull down and destroy (or did damage by (stating how), with intent then and there feloniously to destroy the said engine, and to render the same useless), against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR BREAKING DOWN SEA BANKS, &c.

on _____, at _____, a certain part of the bank of a certain canal called the _____, there situate, unlawfully, maliciously, and feloniously, did break down and cut down, by means whereof certain lands were then and there (in danger of being) overflowed and damaged ; against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING LOCKS, SLUICES, &c.

on _____, at _____, a certain lock, on a navigable river, called the _____, there situate and being, unlawfully, maliciously, and feloniously, did throw down, level, and destroy ; against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR REMOVING PILES, DRAWING UP FLOOD-GATES, &c.

on _____, at _____, a certain pile then and there fixed in the ground, and then and there used for securing the bank of a certain canal called the _____, there situate, then and there unlawfully, maliciously, and feloniously, did draw up and remove, against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DRAWING UP FLOOD-GATES, OR DOING OTHER DAMAGE, &c.

on _____, at _____, unlawfully, maliciously, and feloniously, did draw up and open a certain flood-gate, there situate, of and belonging to a certain navigable river called the _____, with intent thereby then and there to obstruct and prevent the carrying on (completing) and maintaining of the navigation of the said river, and that the said A. B. thereby did obstruct and prevent the carrying on (completing) and maintaining of the navigation of the said river ; against the form of the Statute in such case made and provided. And you the said keeper, &c.

**FORM OF COMMITMENT FOR BREAKING DOWN THE DAM OF
A FISH POND, &c.**

on _____, at _____, the dam of a certain fish-pond of one C. D. there situate, unlawfully, and maliciously, did break down and destroy, (with intent thereby then and there to take and destroy the fish in the said pond [or], and did thereby then and there cause the loss and destruction of divers of the fish in the said pond); against the form of the Statute in such case made and provided. And you the said keeper, &c.

**FORM OF COMMITMENT FOR PUTTING LIME, &c., INTO A FISH
POND.**

on _____, at _____, unlawfully and maliciously did put a large quantity of lime into a certain fish pond of one C. D. there situate, with intent thereby to destroy the fish in the said pond: against the form of the Statute in such case made and provided. And you the said keeper, &c.

**FORM OF COMMITMENT FOR BREAKING DOWN THE DAM OF A
MILL POND.**

on _____, at _____, the dam of a certain mill pond of one C. D. there situate, unlawfully and maliciously did break down and destroy; against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING A BRIDGE.

on _____, at _____, a certain public bridge there situate, unlawfully, maliciously, and feloniously did pull down and destroy; against the form of the Statute in such case made and provided. And you the said keeper, &c.

**FORM OF COMMITMENT FOR INJURING A BRIDGE, TO RENDER
IT DANGEROUS OR IMPASSABLE.**

on _____, at _____, unlawfully, maliciously, and feloniously did (here state the injury done) with intent thereby the said bridge to render dangerous and impassable: and that the said A. B. thereby did render the same dangerous and impassable; against the form of the Statute in such case made and provided. And you the said keeper, &c.

**FORM OF COMMITMENT FOR DESTROYING TURNPIKE GATES,
WEIGHING MACHINES, &c.**

on _____, at _____, a certain turnpike gate (or as the case may be) there situate, unlawfully and maliciously did throw down, level, and destroy; against the form of the Statute in such case made and provided. And you the said keeper, &c.

**FORM OF COMMITMENT FOR DAMAGING A SHIP OTHERWISE
THAN BY FIRE.**

on _____, at _____, on board of a certain ship and vessel called the _____, the property of E. F., upon the high sea, then being, unlawfully, maliciously,

and feloniously, did damage the said ship by then and there (state how and shew that it was done "otherwise than by fire"), with intent feloniously to destroy the said ship and vessel, and to render the same useless; against the form of the Statute in that case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR EXHIBITING A FALSE LIGHT.

on _____, at _____, whilst a certain ship was sailing on the high sea, near unto the said parish, unlawfully and feloniously did exhibit a false light, with intent thereby to bring the said ship into danger; against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DOING ANY THING TENDING TO THE IMMEDIATE LOSS OF A SHIP IN DISTRESS.

on _____, at _____, whilst a certain ship was sailing on the high sea, near unto the said parish, and whilst the said ship was in distress, unlawfully, maliciously, and feloniously did (state what was done by the prisoner,) the said (act of the prisoner state it shortly,) as aforesaid, then and there tending to the immediate loss and destruction of the said ship; against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR DESTROYING WRECK, OR GOODS BELONGING TO IT.

on _____, at _____, the hulk of a certain ship, then and there stranded, and cast ashore, (or as the case may be,) unlawfully, maliciously, and feloniously did destroy; against the form of the Statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR IMPEDING A PERSON SAVING HIMSELF FROM WRECK.

on _____, at _____, feloniously, and by force, did prevent and impede a certain man unknown, whilst he the said man was then and there endeavouring to save his life from a certain ship, which was then and there stranded, and cast on shore, ("in distress, or wrecked, stranded, or cast on shore"); against the form of the Statute in such case made and provided. And you the said keeper, &c.

MANDAMUS.

"A writ of *Mandamus* is, in general, a command issuing in the Queen's name, from the Queen's Bench Jurisdiction of the Supreme Court, and directed to any person, Corporation, or inferior Court of Judicature, requiring them to do some *particular* thing therein

specified, which appertains to their office and duty, and which the Supreme Court has previously determined, or at least supposes to be consonant to right and justice (3 *Bl. Com.* 110.) It is the peculiar business of the Supreme Court to superintend all inferior tribunals, and therein to enforce the due exercise of those judicial, or ministerial powers, with which the Crown or Legislature have invested them; and this, not only by restraining their excesses, but also by quickening their negligence, and obviating their denial of justice. *Id.* This writ is grounded on a suggestion by the oath of the party injured, of his own right, and of the denial of justice by the Court or person complained of, upon which a rule is made (except in some cases where the probable ground is manifest), directing the party complained of, to shew cause why a writ of *Mandamus* should not issue. If no sufficient cause be shewn, the writ, itself is issued, at first in the alternative, either to do the particular thing complained of, or to signify some reason to the contrary; to which a return or answer must be made at a certain day. If the person, to whom the writ is directed, return an insufficient reason, then a *peremptory Mandamus* issues to do the thing absolutely; to which the only return that can be admitted, will be *due execution* of the writ. If the person to whom it is directed make no return, or fail in obedience to it, he is punishable by *attachment* for his contempt.

“The Supreme Court has a discretionary power to grant it or not. It is not a writ grantable of *right*, but by *prerogative*; and it is the absence or want of a specific legal remedy, which gives the Court jurisdiction. 2 *Selw. N. P.* 1078. A *Mandamus* will not be granted to compel a Justice of the Peace to do an act, which may render him liable to an action, if the Justice entertain a reasonable doubt of his jurisdiction. 5 *B. and Cr.* 485.

“If a false return be made, the party injured will have an action against the party making it, together with a *peremptory Mandamus* to the defendant, to do his duty. 3 *Bl. Com.* 111.”

MANSLAUGHTER.

(See tit. "MURDER.")

Manslaughter is the unlawful and felonious killing of another, without any malice, either express or implied. It is of two kinds. 1st. *Involuntary Manslaughter* is, when a man doing an *unlawful act*, not amounting to felony, by accident, kills another. 2nd. *Voluntary Manslaughter* is, when on a sudden quarrel, two persons fight, and one of them kills the other; or where a man greatly provokes another, by some *personal violence*, and the other *immediately* kills him. Manslaughter is *felony*. Arch. C. P. 312.

MANUFACTURE.

Unlawfully and maliciously cutting, breaking, destroying, or damaging, with intent to destroy or render useless, any goods or articles of silk, woollen, linen, or cotton, or of any one of those materials mixed with each other, or mixed with any other material, or any frame-work, knitted piece, stockings, hose, or lace, respectively 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 unlawfully and maliciously cutting, breaking, or damaging, with intent to destroy or to render useless any warp, or shute of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or with any other material; or any loom, frame, machine, engine, rack, tackle, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, weaving, &c., or otherwise manufacturing such goods or articles; or *by force*, entering into any house, shop, building, or place, with intent to commit any of the offences aforesaid—*felony*. 7 and 8 G. IV. c. 30, s. 3; *Callaghan*, vol. 1, p. 331.

See form under title "Malicious Injury."

MARKETS.

Markets in the City of Sydney, and in the Town of Melbourne, are regulated by the Corporation Councils respectively. 6 Vict. No. 8, s. 71, 72; *Callaghan*, vol. 1, p. 273.

MARKETS IN COUNTRY TOWNS.—See Act of Council, 3 Vict. No. 19, *Callaghan*, vol. 2, p. 856, “An Act to authorize the establishment of markets in certain towns in the Colony of New South Wales; and for the appointment of Commissioners to manage the same.” See also an Act to amend the above, the 5 Vict. No. 2; *Callaghan*, vol. 2, p. 864.

 MASTER AND SERVANT.

(See also title “SERVANTS, CLERKS, &c.”)

The laws relating to masters and servants are now governed by the Act of Council, 9 Vict. No. 27, “An Act to amend and consolidate the Laws between Masters and Servants in New South Wales.” [Assented to 12th November, 1845.] Amended by 11 Vict. No. 9, (1847.) See post p. 305.

Magistrates must bear in mind that they are not authorized, under any circumstances, to exercise any jurisdiction in matters relating to their own servants, or in cases in which they are directly interested.

One Justice may in all cases hear the complaint in the first instance, which must be on oath (see 11 Vict. No. 9, s. 13, post p. 307) and issue a summons or warrant for the appearance of the offending party, but *two* are required to convict or adjudicate.

[Preamble.—4; Victoria, No. 23, repealed except so far as the said Act repeals the Acts thereby repealed.]

WHEREAS an Act was passed by the Governor and Legislative Council of New South Wales, in the fourth year of Her present Majesty Queen Victoria, intitled, “An Act to ensure the fulfilment of engagements, and to provide for the adjustment of disputes between Masters and Servants in New South Wales and its Dependencies;” and whereas it is deemed expedient to amend and con-

solidate the laws relating to the same : Be it therefore enacted, by His Excellency the Governor of New South Wales, by and with the advice and consent of the Legislative Council thereof, That from and after the passing of this Act, the said recited Act shall be, and the same is hereby repealed, except so far as such Act repeals the Acts thereby repealed : Provided always, that all offences which shall have been committed, and all penalties and forfeitures which shall have been incurred previously to the commencement of this Act shall and may be punishable and recoverable under the above mentioned Act, as if the same had not been repealed : Provided also, that all acts or things made, done, or executed, under or by virtue of the said Act, passed in the fourth year of the reign of Her present Majesty Queen Victoria, prior to the commencement of this Act, shall be held good, valid, and effectual to all intents and purposes.

[Punishment for Servants not entering into service according to agreement, absenting themselves, or guilty of neglect, misconduct, or misdemeanor.—Justices may discharge Servants from their Contracts.—Proviso.]

II. And be it enacted, That if any servant shall contract with any person whomsoever, to serve him for any time or times whatsoever, or in any manner, and shall not enter into or commence his service according to his contract (such contract being in writing) ; or having entered into such service, shall absent himself from his service before the term of his contract (whether such contract shall be in writing or not in writing) shall be completed, or neglect to fulfil the same, or be guilty of disobedience, or of any other misconduct or misdemeanor in the execution thereof, or otherwise respecting the same, then, and in every such case, it shall and may be lawful for any Justice of the Peace, upon complaint thereof made upon oath to him by the person or persons, or any of them, with whom such servant shall have so contracted, or by his overseer, manager, or agent, which oath such Justice is hereby empowered to administer, to issue his warrant for the apprehending every such servant, and to cause him to be brought before two or more Justices, who shall examine into the nature of the complaint ; and if it shall appear to such Justices, that any such servant shall not have fulfilled such contract, or hath been guilty of disobedience, neglect, or any other misconduct, or misdemeanor as aforesaid, it shall and may be lawful for such Justices to commit every such person to the house of correction, there to remain for a reasonable time, not exceeding three months, or in lieu thereof, to punish the offender by abating the whole or any part of his wages, and to discharge such servant from his contract, service, or employment : Provided it be the desire of such master, employer, or employers, or his or their manager, agent, or overseer, that such servant shall be so discharged, but not otherwise.

Evidence required under this clause. The master or his overseer, manager or agent, must prove the hiring or agreement, and when it took place. If there be a written agreement, it must be produced ; and to constitute the first offence, viz., that of not entering on or commencing service after engagement, it is necessary that the agreement should be in writing. It must also be proved that the servant neglected or refused to enter on or commence service according to his contract ;* or,

* The servant, on the other hand, may excuse himself, by shewing that it was impossible for him to do so either from sickness or from some other cause over which he had no control. The law does not compel a man to do impossibilities.

secondly, that having entered into service he absented himself without leave before the term of his engagement was completed. (With regard to this and the subsequent offences, it is immaterial whether the agreement be in writing or not.) If the charge be for disobedience or misconduct, &c., the particular act of disobedience, or misconduct, or misdemeanor, must be proved, as well as the hiring and agreement. If the offender be committed, it must be for a reasonable time (not in any case, under this section, exceeding three months), and commensurate with the offence. The Justices cannot commit the servant to prison, and abate his wages also; but the latter punishment may be awarded in lieu of the former. The servant cannot be discharged from his engagement at his own will, it must be by desire of his employer, &c.

Servants obtaining money, &c., in advance, and failing to fulfil their engagements.

III. And whereas many persons hire or engage themselves, and obtain from the person or persons to whom they have so hired or engaged themselves, or from their agents, different sums of money, or goods, as an advance on account of the wages or salary at which they have so engaged or hired themselves, under the pretence that they require such money, or goods, either to enable them to pay the expenses of their travelling to the place or station at which they have so hired or engaged to work or serve their employers, or for some other purpose, and after having so obtained such sums of money, or goods, under various pretexts either neglect or refuse to go to the place or places for which they were so hired or engaged to serve such employers; or having obtained money or goods as advances of wages or money, beyond the sums actually earned, refuse or neglect to complete the term of service, or to perform or complete the work or labour for which they have agreed: Be it enacted, That if any servant who shall enter into any agreement either written or parol, with any master, or with his agent, or overseer, for any time or period whatsoever, at and for any wages or salary whatsoever, or who shall have hired or engaged himself to any such master, to do, perform, finish, or complete any work, job, or employment whatsoever, taken in task, by the piece or in gross, shall under pretence of requiring the same to enable him to pay the expense of his journey to the place or places at which and where he has so engaged to serve such master, or under any other pretence whatsoever, obtain or procure from such master, or his agent, or agents, any sum or sums of money, or goods, as an advance on account of the wages at which he shall have so engaged to serve, or in part of the amount for which he shall have agreed to perform any such work, job, or employment as aforesaid, shall after obtaining the same, neglect or refuse under any pretext whatsoever, forthwith to go to the place or places at which he shall have been so hired or employed to work or to serve such master, during the time for which he shall have agreed, or shall refuse to perform, or complete any work, job, or employment whatsoever, which he had engaged to perform or complete as aforesaid, it shall be lawful for any Justice of the Peace to cause every person who shall be complained of as so offending, to be brought before any two or more Justices of the Peace, of whom the said Justice may be one, and the said

Justices shall hear and determine the matter of such complaint upon oath, and if no reasonable and sufficient excuse be shown to the contrary, such Justices shall commit every person so offending as aforesaid, to the common gaol, or to some house of correction for the district, or nearest thereto, or to the gaol or house of correction in Sydney, if there be no other gaol or house of correction more convenient, there to remain for any term not exceeding three calendar months, and at the discretion of such Justices, to be kept to hard labour for the whole or any part of the said term.

Evidence required under this section. Proof of hiring or engagement. It is immaterial whether the contract be in writing or not ; but if it be in writing it must be produced. Also proof of the receipt of money or goods by the servant, and that it was an advance on account of wages, and proof of his neglect or refusal to fulfil his agreement.

[Penalty for Servants negligently or wilfully spoiling or losing Property.]

IV. And be it enacted, That if any servant shall wilfully or negligently spoil or destroy any goods, wares, work, or materials for work, committed to his charge or care, or shall wilfully or negligently injure or lose any cattle, sheep, horses, or other property, belonging to or in the charge of his employer, every such offender, being thereof lawfully convicted by or before any two or more Justices of the Peace, shall forfeit and pay reasonable damages for such property so spoiled, destroyed, injured, or lost as aforesaid ; and in default of satisfaction of such damages, shall be committed to gaol by such Justices, for any period not exceeding three months, with or without hard labour, at the discretion of such Justices : Provided, that in all cases of mere negligent injury, under this clause, where any damages shall be assessed against any such offender, the mode of satisfying the same shall be in the discretion of the assessing Justices, where it can be shown that any such offender has any means of satisfying such damages, otherwise than by undergoing such term of imprisonment.

Evidence required. Proof that the person offending was, at the time of the damage or loss, a servant of the party injured, and that the said damage or loss happened through the wilfulness or negligence of the servant. (The servant may rebut this, by showing that he exercised due care and attention.) The nature of the injury or loss, and also the amount of damage, must be proved.

[Recovery of wages by distress and sale of goods.—If not sufficient distress, party may be imprisoned.—Proviso.]

V. And be it enacted, That in all cases of wages not exceeding thirty pounds, which shall be due and payable to any servant, it shall be lawful for any Justice of the Peace, where or near to the place where the service shall have been performed, or where or near to the place where the party or either of the parties, upon whom the claim is made, shall be or reside, upon complaint on oath made to such Justice by such servant, or on his behalf, to summon such party or parties to appear before any two Justices of the Peace, of whom the said Justice

may be one, to answer such complaint, and upon the appearance of such party or parties, or in default thereof, on due proof of his or their having been so summoned, such Justices are hereby empowered to examine the parties or their respective witnesses (if there be any) upon oath, touching the complaint and the amount of wages due, and to inspect any agreement or duplicate copy thereof if produced, and to make such order for payment of the said wages, not exceeding thirty pounds, with the costs incurred by the servant in prosecuting such claim, as shall to such Justices appear reasonable and just: and in case such order shall not be obeyed within ten days next after the making thereof, it shall be lawful for such Justices to issue their warrant to levy the amount of wages awarded to be due, by distress and sale of the goods and chattels of the party on whom such order for payment shall be made, rendering to such party the overplus (if any shall remain of the produce of the sale), after deducting thereout, all the costs, charges, and expenses incurred by the servant in the making and prosecuting of the complaint, as well as the costs and charges of the distress and levy; and if such levy cannot be made, or shall prove insufficient, then such Justices are hereby empowered to cause the party upon whom the order shall be made, to be apprehended and committed to gaol, there to remain for any period not exceeding three months, or until payment shall be made of the amount of the wages so awarded, and of all costs and expenses attending the recovery thereof: Provided always, that no such warrant shall issue, or levy be made, for any wages due by a person whose estate has been sequestered subsequent to such wages becoming due.

Evidence required. Proof of agreement and hiring, also of service, and the time when the wages became due. The complaint, in order to procure a summons for the employer, must be on oath. It may be made by the servant or by another person on his behalf. If the employer, on being summoned, do not appear, proof must be adduced that the summons was either served personally on him or that it was left at his usual place of abode. (See also post, s. 7.)

[Any Person so imprisoned, to be discharged on becoming insolvent.]

VI. And be it enacted, That any person so imprisoned for non-payment of wages shall be discharged out of custody, so soon as his estate shall have been placed under sequestration in pursuance of the provisions of an Act, intituled, "An Act for giving relief to insolvent persons, and providing for the due collection, administration, and distribution of insolvent estates, within the Colony of New South Wales, and for the prevention of frauds affecting the same."

[When Masters or Employers reside at considerable distances from where their business is carried on, or are occasionally absent for long periods of time, their Agents, Overseers, or Managers may be sued for wages, and in default of payment the Justices may levy the same by distress and sale of the Goods and Chattels of such Masters and Employers.]

VII. And whereas it frequently happens that such masters or employers reside at considerable distances from the districts or places where their business is carried on, or are occasionally absent for long periods of time, and during such residence, or occasional absences, entrust their business to the management and superintendence of agents, overseers, or other managers, whereby such servants are or may be subjected to great difficulties and hardships, and put to great expense in recovering their wages: Be it therefore enacted, That in either of the said cases it shall and may be lawful to and for any Justice of the district or place where such servant or labourer shall be employed, upon the complaint on

oath of any such servant, touching or concerning the nonpayment of his wages, to summon such agent, manager, or overseer, to be and appear before any two or more Justices, of whom such Justice may be one, at a reasonable time to be named in such summons, and to hear and determine the matter of the complaint, and also to make an order for the payment by such agent, overseer, or manager, to such servant, of so much wages as to such Justices shall appear to be justly due, provided that the sum in question do not exceed the sum of thirty pounds; and in case of refusal or non-payment of any sum so ordered to be paid by such agent, overseer, or manager, for the space of twenty-one days from the date of such order, any two or more Justices shall and may issue forth their warrant to levy the same by distress and sale of the goods and chattels of such master, or employer, rendering the overplus, if any, after payment of the charges of such distress and sale, to the owner or owners, or to such agent, overseer, or manager, for the use of such master or employer.

In order to summon the overseer or agent for non-payment of wages, the complaint in the first instance must be made by the servant himself on oath to any Justice of the Peace in the district where such servant was employed during the time such wages were earned. It may be here remarked, however, that in any case, if the parties summoned appear before the Magistrates at the time appointed for hearing the case, all previous defects in the process will be cured, and the party cannot then object on account of informality. (See ante "Conviction.")

[Penalty for breach of contract by Artificers, Splitters, Sheep Shearers, Persons engaged in reaping, mowing, harvest work, sheep washing, &c., &c.]

VIII. And whereas it frequently happens that artificers, splitters, sheep shearers, and persons engaged in mowing, reaping, or getting in of hay and corn, or in sheep washing, and other labourers, occasionally contract with persons for the performance of work at a certain price, and do leave their respective services or engagements before the term of their contracts are fulfilled, to the great disappointment and loss of the persons with whom they so contract: Be it therefore enacted, That from and after the passing of this Act, if any artificer, splitter, fencer, sheep shearer, or person engaged in mowing, reaping, or getting in hay or corn, or in sheep washing, or other labourer, who shall contract with any person whomsoever for the performance of a certain work, at a certain price, shall absent himself from his service before the termination or completion of his contract, then, and in every such case, it shall and may be lawful for any Justice of the Peace, residing in the district in which the complainant is or hath been residing, and such Justice is hereby required, authorised, and empowered, upon complaint thereof made upon oath to him by the person with whom such artificer, splitter, fencer, sheep shearer, person engaged in getting in hay or corn, or in sheep washing, or other labourer, shall have so contracted, or by his overseer, which oath such Justice is hereby empowered to administer, to issue his warrant for the apprehending and bringing before any two or more Justices of the Peace, of whom the said Justice may be one, every such artificer, splitter, fencer, sheep shearer, person engaged in mowing, and reaping, or getting in of hay and corn, or in sheep washing, or other labourer; and such Justices are hereby empowered to examine into the nature of the complaint, and if it shall appear to them that any such artificer, splitter, fencer, sheep shearer, person

engaged in mowing, reaping, or getting in of hay or corn, or in sheep washing, or other labourer, shall not have fulfilled such contract, it shall and may be lawful for such Justices to commit every such person to the house of correction, there to be kept for any time not exceeding three months.

Evidence required. Proof of the engagement or contract, and that the person engaging absented himself before the term of his engagement was completed. The complaint, in the first instance, must be on oath by the person employing the artificer, &c., or by his overseer.

[Artificers, Farmers, Splitters, Sheep Shearers, Persons engaged in mowing, reaping, or in the getting in of hay and corn, or in sheep washing, or other Labourer engaged for the performance of a certain work, at a certain price, may recover Wages, and amends for non-payment of Wages, Ill-usage, or Ill-treatment.]

IX. And be it enacted, That it shall and may be lawful for any one Justice of the Peace, of the district where such complainant is or hath been residing, upon any complaint or application on oath of any artificer, splitter, fencer, sheep shearer, person engaged in the reaping, mowing, or getting in of hay and corn, or in washing sheep, or other labourer, who shall have contracted for the performance of a certain work, at a certain price, against any master or employer, touching or concerning any misusage, refusal of necessary provision, or furnishing provision of bad quality, non-payment of wages, cruelty, or other ill-treatment whatsoever, of or towards any such artificer, splitter, fencer, sheep shearer, or person engaged in the mowing, reaping, or getting in of hay and corn, or in washing sheep, or other labourer, to summon any such master or employer, to appear before any two or more Justices of the Peace, of whom the said Justice may be one, at a reasonable time to be named in such summons, and such Justices shall and may hear and determine the matter of such complaint (whether such master or employer shall appear or not) and upon proof thereof upon oath made to their satisfaction (whether such master or employer be present or not, if service of the summons be also upon oath proved) may order the payment of such wages, as to the Justices shall then appear to be due or owing to any such artificer, splitter, fencer, sheep shearer, person engaged in the mowing, reaping, or getting in of hay and corn, or in washing sheep, or other labourer; and further, if the Justices shall so think fit, it shall be lawful for them to order and award such amends to be made to any such artificer, splitter, fencer, sheep shearer, person engaged in the mowing, reaping, or getting in of hay and corn, or in washing sheep, or other labourer, as they shall think fair and reasonable; and such order for the payment of wages, and such award for amends shall be carried into effect by distress and sale of the goods and effects of such master or employer as aforesaid, if the same are not paid within twenty-one days after the day on which such order and award have been made, provided that in no case such amends shall exceed the sum of ten pounds.

Evidence required. Proof of the engagement and of the matter complained of.

The complaint, in the first instance, must be on oath, and by the party injured.

[Servants paid in cheques, or drafts, which had been dishonored, to be entitled to recover the amount, with reasonable damages.]

X. And be it enacted, That when any wages shall be paid to any servant by any cheque, draft, order, or note, in writing upon any bank, or any person, and the same shall be dishonored, no servant shall thereby be deprived of any

remedy given to him by this Act for the recovery of his wages, but every such servant shall be entitled to recover such reasonable damages as he may have sustained in consequence of the dishonor of such cheque, draft, order, or note, and such damages shall be recoverable as wages due to such servant in the same way that wages are hereinbefore directed to be recovered : Provided that such cheque, draft, order, or note, shall be given up to the master before the amount thereof, or any damages shall be awarded for such dishonor.

Evidence. The servant must prove that the cheque, draft, or order, &c., was presented, and that the same was then dishonored.

[Servants meeting with ill-usage or ill-treatment may recover amends.]

XI. And be it enacted, That it shall and may be lawful for any one or more Justice or Justices of the Peace, residing within the district in which the complainant is or hath been residing, upon complaint on oath, of any servant against any master or employer, for refusal of necessary provision, or other ill-treatment whatsoever, of or towards any such servant, to summon any such master or employer to appear before any two or more Justices, also residing within the same district, at a reasonable time to be named in such summons ; and such Justices shall and may examine into the matter of such complaint, (whether such master or employer shall appear or not,) and upon proof thereof, upon oath made to their satisfaction, (whether such master or employer be present or not, if service of the summons be also proved on oath,) may order and award such amends to be made to any such servant as they shall think fair and reasonable ; and such order and award for amends shall be carried into effect by distress and sale of the goods and chattels of such master or employer as aforesaid, if the same be not paid within twenty-one days after the day on which such award is made : Provided that in no case such amends as aforesaid shall exceed the amount of six months' wages of such servant.

Evidence required. Proof of service, and of the particular act of ill-treatment or injury complained of.

The complaint, in the first instance, must be on oath, and by the party injured.

[Servants to obtain Discharges on the termination of service.]

XII. And be it enacted, That upon the discharge of any servant, or upon the termination of his service, he shall receive from his master, and the master is hereby required to give to him a certificate of such servant's service and discharge, which certificate shall be signed by the master or his agent ; and if the master or his agent shall refuse to give such certificate to such servant, he shall forfeit and pay a sum not exceeding five pounds : Provided that such discharge may be given by any Justice of the Peace where the master or agent refuses to give it without reasonable cause ; and that no such certificate shall be necessary in the case of any weekly servant employed within any city or town of the said Colony.

It would appear that all that is required by the Act under this section is, a certificate, by the master or his agent, of the time the servant was in his employment or service, and the date on which such service or em-

ployment terminated, and that the servant was then discharged from further service.

[Servants to produce and deliver such Discharges to their Employers when entering into new engagements.]

XIII. And be it enacted, That from and after the passing of this Act, every servant entering into new service, shall produce and deliver to the master, or employer, or his overseer or agent, into whose service he so enters, a certificate of his discharge from the place in which he had been last employed, unless he be a native of the Colony, or newly arrived immigrant, or other person entering into service for the first time, and that any master, or employer, or his overseer or agent, employing or entertaining any servant who had been previously in service, without requiring and receiving such discharge as aforesaid, shall, being lawfully convicted thereof, by or before any two or more Justices of the Peace, forfeit and pay for every such offence, the sum of five pounds; one-half thereof to be paid to the informer in such case.

[Penalty for giving false Certificates, or false Discharges.]

XIV. And be it enacted, That if any person or persons shall knowingly and wilfully pretend, or falsely assert in writing, that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever, other than that for which, or in which he shall have hired or retained such servant in his or their service or employment, or for the service of any other person or persons, or shall knowingly and wilfully pretend, or falsely assert in writing, that any servant was discharged, or left his or their service at any other time than that at which he was discharged or actually left such service, or that any such servant had not been hired or employed in any previous service, contrary to truth, then and in either of the said cases, such person or persons shall forfeit and pay any sum of money not exceeding ten pounds; one-half thereof to be paid to the informer in such case.

[Penalty for harbouring Servants already engaged.]

XV. And be it enacted, That if any person shall knowingly receive, employ, or entertain any servant already employed or retained by any other person, every person so offending, shall, for every such offence, being lawfully convicted thereof, forfeit and pay a sum not exceeding twenty pounds; one-half thereof to be paid to the informer in such case.

[Jurisdiction in cases not specially provided for.]

XVI. And be it enacted, That all contracts, disputes, differences, claims and demands, between masters and servants, arising out of their connexion as such, not hereinbefore specially provided for, shall be cognizable in a summary manner, either before one or two or more Justices of the Peace, as the case may be, and the said Justice or Justices as the case may be, are hereby empowered, upon complaint duly made to them, to summon, or to issue warrants in the first instance, and afterwards to hear and examine the parties and their witnesses upon oath, to decide and determine all complaints, to make orders, consequent upon such decisions and determinations, to adjudge satisfaction, to give costs and damages to the party aggrieved, to issue warrants to levy such costs and damages, by distress and sale of the goods of the offender refusing to make such satisfaction, or pay such costs and damages, and for want of such sufficient distress or otherwise, to commit any offending party to the common gaol or house of correction, either until satisfaction made, or absolutely (as each case may require) for any time not exceeding the periods respectively limited for any such imprisonment by the provisions of this Act.

[Justices to determine cases not hereinbefore provided for.—Proviso.]

XVII. And be it enacted, That it shall and may be lawful for any two or more

Justices of the Peace, in any case not hereinbefore specially provided for, to hear and determine in a like summary manner, any complaint, difference, or dispute, which shall happen and arise between any such servant and his master, or employer, or his overseer or agent, and to make such order or award against either party in every such case, as to such Justices shall seem meet; and every such order and award to enforce by cancelling the indenture or agreement between the parties, or by imposing on either party a fine or penalty proportionable to the offence, but not exceeding the sum of thirty pounds, and in default of payment by execution against the goods, effects, or other property of the party against whom such order or award shall be made; or in default of sufficient distress, by arrest and imprisonment of such party for any time not exceeding three calendar months: Provided always, that no such agreement or indenture shall be cancelled against the consent of the party in whose favor such decision is given.

[Not necessary to call the attesting Witnesses, or prove their Handwriting.]

XVIII. And be it enacted, That in prosecuting any offence under this Act, it shall not be necessary, for the purpose of proving the execution of any agreement, to call any subscribing or attesting witness thereto, or to account for the absence, or to prove the handwriting of any such subscribing or attesting witness, but that every agreement may be proved in like manner as if there were no subscribing or attesting witness thereto.

[Persons engaging Servants in other countries for service in New South Wales, may prosecute any parties harbouring, retaining, or concealing them here.]

XIX. And whereas servants in the United Kingdom, in British Colonies, in the British East India possessions, and in Foreign Countries, occasionally contract by indenture, or other written agreement, with persons about to proceed to, or actually resident in the Colony of New South Wales, or with the agents of such persons: Be it enacted, That it shall and may be lawful for any person or persons with whom any such servant shall have so contracted to serve, as aforesaid, to maintain an action on the case, against any person or persons who shall employ, retain, harbour, or conceal any such servant, with intent to deprive the employer of any such person of his services, or otherwise with intention to defraud or injure such employer; and in case the plaintiff in any such action shall recover a verdict, he, in addition to the damages found by such verdict, shall be entitled to treble costs.

[Justices may punish for violations of Indentures, &c.]

XX. And be it enacted, That it shall and may be lawful for any two or more Justices of the Peace in the said Colony, upon complaint made upon oath, to punish, by fine or imprisonment, or both, any wilful violation of the provisions of such indentures, or other written agreement as last aforesaid, or any misdemeanor, miscarriage, misconduct, or ill-behaviour of such servant in such his service or employment as aforesaid; and also to hear and determine all complaints, differences, or disputes, which shall happen and arise between any such servant and the person or persons whom he shall have so contracted to serve, as aforesaid; and to make such order or award, in every such case, as to such Justices shall seem just; and every such order or award to enforce by execution against the goods, effects, or other property of the party or parties against whom such order or award shall be made, or by arrest of the persons, and imprisonment for any time not exceeding three calendar months.

Evidence required. Proof of the contract, which must be by production of the written agreement, also proof of the particular matter complained of.

The complaint, in the first instance, may be made before *one* Justice. It must be on oath.

[Construction of certain Words in this Act.]

XXI. And be it enacted, That throughout this Act, unless when otherwise required by the context, the word "servant" shall extend to and include all agricultural and other labourers, and workmen, shepherds, stockmen, and artisans, domestic and other servants; and that all words in the singular number shall extend also to the plural; and every word importing the masculine gender shall also extend to the feminine.

[Female Servants not to be committed to Gaol.]

XXII. Provided always, and be it enacted, That nothing in this Act contained shall be deemed or taken to authorise the committal of any female servant to any gaol or house of correction for any offence committed under the same.

[Appropriation of Penalties, &c.]

XXIII. And be it enacted, That all fines or penalties not hereinbefore specially appropriated shall be paid to the Colonial Treasurer for the purposes of the General Revenue of the said Colony.

[Forms of Conviction.]

XXIV. And be it enacted, That the Justices by or before whom any person or persons shall be convicted, or by whom any award shall be made under this Act, shall cause all convictions to be respectively drawn in the form or to the effect set forth in the schedules to this Act annexed, marked B and C. (See Post.)

[Persons convicted may appeal to the next Court of Quarter Sessions.—Such appeal shall be final.]

XXV. And be it enacted, That if any person convicted of any offence or offences punishable or subjected to any penalty under this Act, before any one or two Justices of the Peace, shall think himself aggrieved by the judgment of such Justices, such person shall have liberty to appeal from any such conviction to the next Court of Quarter Sessions of the Peace, which shall be held for the district or place wherein, or nearest to which such offence shall have been committed; and that the execution of every judgment so appealed from shall be suspended, in case the person so convicted shall, with two sufficient sureties, immediately, before such Justice enter into a bond to Her Majesty, Her Heirs and Successors, in the penal sum of double the amount of the penalty so incurred or forfeited, or in case such conviction should contain a judgment of imprisonment, such appellant shall immediately enter into a recognizance before such Justices, himself in the penalty of twenty pounds, with two sufficient sureties in the penalty of ten pounds each; which bond or recognizance respectively, such Justices are hereby authorized and required to take; and such bond or recognizance shall be conditioned to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said Court of Quarter Sessions, and to pay such costs as the said Court shall award on such occasion; and the Justices in the said Court of Quarter Sessions are hereby authorized and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party, and such decision shall be final between the said parties to all intents and purposes; and if, upon hearing the said appeal, the judgment of the Justice or Justices before whom the appellant shall have been convicted, shall be affirmed, such appellant shall forthwith pay the forfeiture or penalty, if any, mentioned in such conviction, and the costs awarded to be paid by such appellant; and in default of payment thereof, or in

case such conviction shall contain a judgment of imprisonment, such appellant shall immediately be committed by the said Court to the common gaol, or house of correction, according to such conviction, and for the space of time therein mentioned, without bail or mainprize, and also until the payment of such costs as shall be awarded by the said Court to be paid by such appellant.

[No Certiorari.]

XXVI. And be it enacted, That no conviction under this Act, nor any adjudication made on appeal therefrom, shall be quashed for want of form, or removed by writ of certiorari, or otherwise, into the Supreme Court of the said Colony; 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 that there be a good and valid conviction to sustain the same.

[Limitation of Convictions.]

XXVII. And be it enacted, That no conviction shall be had under this Act, unless the complaint be made within six months from the time the offence shall have been committed.

[Justices not to have jurisdiction over their own Servants.]

XXVIII. And be it declared and enacted, That nothing in this Act contained, shall be deemed or taken to authorize any Justice of the Peace to exercise any such jurisdiction as aforesaid, in any case of any such servant as aforesaid, who shall be in the service of any such Justice, or in any case in which any such Justice may be directly interested.

[Commencement and Duration of Act.]

XXIX. And be it enacted, That this Act shall commence and take effect from the date of its passing, and shall be and continue in force until the thirty-first day of December, in the year one thousand eight hundred and forty-eight.

SCHEDULES REFERRED TO.

B.—FORM OF CONVICTION.

Be it remembered that on the day of , in the year of our Lord one thousand eight hundred and , A. B. was convicted by and before us (naming the Justices) two (or more) of Her Majesty's Justices of the Peace, duly authorised in that behalf, of having (state the offence) contrary to the Act of the Governor and Council, passed in the ninth year of the reign of Her Majesty Queen Victoria, intituled, "An Act to amend and consolidate the laws between masters and servants in New South Wales," and we the said Justices do hereby order and adjudge the said A. B. to be committed to, and confined in, (place where to be confined) for the space of , or to the House of Correction, at , (there to be kept at hard labour for the space of , or not, as the case may be.)

Given under our hands the day and year above written.

C.—FORM OF CONVICTION IN A PECUNIARY PENALTY.

To WIT.

Be it remembered, that on the day of , in the year of our Lord 184 , A. B. was convicted by and before us , of Her Majesty's Justices of the Peace, duly authorised in that behalf, of having (state offence,) contrary to the provisions of an Act of the Governor and Council, passed in the

ninth year of the reign of Her Majesty Queen Victoria, intituled, "An Act to amend and consolidate the laws between masters and servants in New South Wales," and we the said Justices do hereby adjudge and determine that the said A. B., for the said offence, do forfeit and pay the sum of _____, to be distributed as the said Act directs.

Given under our hands the day and year above written.

_____ J. P.

_____ J. P.

The following, the 11th Vict. No. 9, is an Act to amend the foregoing, and is intituled "An Act to amend an Act, intituled 'An Act to amend and consolidate the Laws between Masters and Servants in New South Wales.'" [Assented to, 16th August, 1847.]

[Preamble. Declaring and defining summary jurisdiction of Justices.]

WHEREAS an Act was passed in the ninth year of Her present Majesty, intituled "An Act to amend and consolidate the laws between Masters and Servants in New South Wales:" And whereas doubts have arisen as to the extent of summary jurisdiction created by the said recited Act, and it is advisable to remove the same: Be it therefore enacted, by His Excellency the Governor of New South Wales, by and with the advice and consent of the Legislative Council thereof, That it shall and may be lawful for any two or more Justices of the Peace to hear and determine, in a summary manner, all informations for penalties, and all complaints, differences, or disputes, of whatsoever nature or description, which shall happen or arise under the said recited Act, or under this Act, whether the same be between any servant and his master or employer, or the overseer or agent of such master or employer, or between any person or persons whomsoever; and the order or award of such Justices shall be final and conclusive in all such cases, unless where either party appeal to the Court of Quarter Sessions in the manner provided by the said recited Act.

[Staying proceedings against persons who have acted without sufficient powers under recited Act.]

II. And be it enacted, That no suit, information, indictment, prosecution, or other proceeding whatsoever, shall be commenced or prosecuted in any manner howsoever, against any Justice or Justices of the Peace, or any other person, for any matter or thing already done by him or them, for want of any power or authority in such Justices to hear and determine the same in a summary way, under the said recited Act; and if any action, suit, information, indictment, prosecution, or proceeding whatsoever, shall have been commenced against any such Justice or Justices, or other person or persons, acting under and in obedience to any warrant, order, or conviction, of any such Justice or Justices, in respect of anything already done, for want of summary jurisdiction therein, under the said recited Act, it shall be lawful for the defendant or defendants to apply to the Supreme Court, or any Judge thereof, to stay such proceedings; and such Court or Judge respectively is hereby required to stay such proceedings accordingly, and to make such order as to the costs of the application, as to the said Court or Judge shall seem fit.

[Declaring that agreements made without the colony subject the parties thereto to the same jurisdiction and penalties as if made within the colony.]

III. And whereas it was recited by the said Act, among other things, that "servants in the United Kingdom, in British colonies, in the British East India

possessions, and in Foreign countries, occasionally contract, by indenture or other written agreement, with persons about to proceed to, or actually resident in, New South Wales :” And whereas doubts have arisen whether such contracts by indenture or other written agreement are subject to the summary jurisdiction of Justices of the Peace, and it is expedient to remove the said doubts : Be it therefore declared and enacted, That all such contracts by indenture or other written agreement shall be of the like force and effect within the said Colony of New South Wales as if they had actually been made and executed by the respective parties thereto within the same ; and shall subject every such party for any breach thereof, upon summary conviction by or before any two or more Justices, to the like fines, penalties, and punishments, as in and by the said recited Act are provided, for any wilful violation of the provisions of any indenture or other written agreement actually made or executed within the said Colony, or for any misdemeanor, miscarriage, misconduct, or ill-behaviour of any master or servant within the same : Provided that no such contract shall be binding on any person to serve for a longer period than five years.

[Penalty for forging certificates of discharge.]

IV. And whereas by the said recited Act it was enacted among other things, that upon the discharge of any servant, or upon the termination of his service, he should receive from his master, and his master should give to him, a certificate of his service and discharge, and no penalty was provided for the forging of any such certificate of discharge as aforesaid : Be it therefore enacted, That any servant, or other person, who shall forge or knowingly use any forged certificate, purporting to be a discharge of any person or persons, from any service as aforesaid, shall be deemed guilty of a misdemeanor, and on being summarily convicted thereof by or before any two or more Justices of the Peace, who shall hereby have power and authority to determine the same, shall be liable to imprisonment, with or without hard labour, for any period not exceeding three calendar months.

[Justices to examine parties on oath or otherwise at their discretion.]

V. And whereas doubts are entertained as to whether it is not imperative on Justices under the said recited Act to examine both complainant and defendant upon oath, and it is advisable to remove the same : Be it therefore enacted, That it shall and may be lawful for any Justice or Justices of the Peace, acting under the said recited Act, or under this Act, to exercise his or their discretion as to the examination of any complainant or complainants, or defendant or defendants, under the same.

[The Evidence of a wife may be received for a husband.]

VI. And whereas doubts are entertained as to whether it is lawful to examine a wife as witness for her husband under the said recited Act, and whereas it is advisable to remove the same : Be it therefore enacted, That it shall and may be lawful for any Justice acting under the said recited Act, or under this Act, to receive the evidence of a wife as a witness for her husband, either as complainant or defendant, under the same : Provided always, nevertheless, that it shall and may be lawful for such Justice to exercise his discretion as to the examination of any such witness.

[Penalty on persons employing or harbouring servants already engaged by other persons under agreements entered into without the colony.]

VII. And whereas the said recited Act contains no provision for summary adjudication in cases where servants hired by indenture or other written agreement in the United Kingdom, in British colonies, in the British East India possessions, or in Foreign countries, for service in this colony, are retained or employed, and it is advisable to provide for the same : Be it therefore enacted, That if any person shall wilfully or knowingly hire or employ any such servant whatsoever, already employed or retained by any other person, every person so

offending shall, for every such offence, being summarily convicted thereof, by or before any two or more Justices of the Peace, forfeit and pay a sum not exceeding twenty pounds, one-half thereof to be paid to the informer in such case.

[Offenders may be imprisoned in lock-up or watch-house in certain cases.]

VIII. And be it enacted, That in cases where the nearest gaol may be at a distance greater than thirty miles, the nearest public lock-up or watch-house may be used as a gaol under this and the said recited Act: Provided always, that nothing herein contained shall authorize the imprisonment, in such public lock-up or watch-houses, of any person under this or the said recited Act, for a longer period than one week.

[Justices to act summarily in Courts of Petty Sessions only.]

IX. And be it declared and enacted, That in every case in which a summary jurisdiction is vested in any Justices under this or the said recited Act, the same shall be exercised only by such Justices in some Court of Petty Sessions, duly appointed and publicly notified in the *New South Wales Government Gazette*.

[Empowering Justices to seize and sell goods and effects of offenders on non-payment of penalties.]

X. And whereas doubts are entertained as to the mode of enforcing the payment of fines and penalties in certain cases under the said recited Act, and it is advisable to remove the same: Be it therefore enacted, That if any fine or penalty awarded under the said Act, or under this Act, shall not be paid within twenty-one days after the conviction or award ordering it was made, the same may be enforced by the convicting Justices by warrant of distress and sale of the goods and chattels of the person or persons convicted, or against whom such award shall be given.

[Limitation of complaints.]

XI. And whereas the said recited Act specifies no period of limitation for complaints for non-payment of wages, and it is advisable to define the same: Be it therefore enacted, That no conviction, order, or award, shall be made or had under the said recited Act, or this Act, unless complaint be made within six months from the time when the offence, breach of agreement, or cause of complaint arose.

[Limitation of actions.]

XII. And whereas no period has been specified under the said recited Act, for limitations of actions against persons acting under the same: Be it therefore enacted, That no action at law shall lie against any Justice or Justices of the Peace, for any matter or thing which may be done, or commanded to be done by him or them, in pursuance of the provisions of the said recited Act, or this Act, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any Justice or Justices shall be sued for any matter or thing done in pursuance of this or the said recited Act, he or they may plead the general issue, and give this Act, and the special matter, in evidence.

[Proceedings by summons or warrant without information in writing, valid.]

XIII. And be it enacted, That in all cases under the said recited Act, or under this Act, all proceedings by summons or warrant without a formal information in writing shall be good, valid, and effectual to all intents and purposes, as if formal information in writing had been exhibited: Provided always, that in every such summons or warrant the general nature of the charge shall be succinctly stated, and the original complaint shall be made on oath.

[Females not to be imprisoned.]

XIV. Provided always, and be it enacted, That nothing in this or under the

said recited Act, shall be deemed to authorize the imprisonment of any female under the same.

[Not to extend to natives of savage or uncivilized tribes inhabiting any island in the Pacific Ocean.]

XV. Provided always, and be it enacted, That nothing in this or the said recited Act contained, shall be deemed or construed to apply to any native of any savage or uncivilized tribe, inhabiting any island or country in the Pacific Ocean, or elsewhere, anything therein or herein to the contrary notwithstanding.

[Appeal given.]

XVI. And be it enacted, That if any person shall feel himself aggrieved by any conviction, order, or award made by any Justices of the Peace, under and by virtue of this Act, or the said recited Act, it shall be lawful for such person to appeal from such conviction, order, or award, to the nearest Court of Quarter Sessions, in the same manner, and upon the same terms that any person may now appeal against any conviction under the said recited Act.

[Commencement and duration of Act.]

XVII. And be it enacted, That this Act shall commence and take effect from and after the first day of August next, and that the said recited Act, and this Act, shall be and continue in force until the thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty.

MINES.

Unlawfully and maliciously setting fire to any mine of coal, or cannel coal—*felony*. 7 and 8 G. IV. c. 30, s. 5; *Callaghan*, vol. 1, p. 332.

Unlawfully and maliciously causing any water to be conveyed 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 with the like intent unlawfully and maliciously pulling down, filling up, or obstructing, any airway, water-way, drain, pit, level, or shaft, of or belonging to any mine—*felony*. *Id.* s. 6. But not to extend to any damage committed under ground by owner of adjoining mine in working the same. *Id.*

Unlawfully and maliciously pulling down or destroying or damaging with intent to destroy, or to render useless, any steam-engine, or other engine for sinking, draining, or working, any mine, or any staith, building,

or erection, used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggon-way, or trunk, be completed, or in an unfinished state—*felony*. *Id.* s. 7.

Stealing, or severing with intent to steal, the ore of any metal, or any lapis calaminaris, manganese, or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively—*felony*: punishable as simple larceny. 7 and 8 G. IV. c. 29, s. 37; *Callaghan*, vol. 1, p. 302.

See Forms under title “*Malicious Injuries*.”

MINORS,—(MARRIAGE OF.)

“The Act of Council, 2 Vic. I. No. 13, 29th August, 1838, entitled “An Act to Authorise the Marriage of Minors, without the Consent of Parents or Guardians in certain cases,” after reciting, that from the frequent arrival of young persons in this colony for the purpose of settling, unaccompanied by their parents, and from the residence in other countries of the greater number of relations and connexions of families settled in New South Wales, and from other causes, it frequently happens that persons under the age of twenty-one years are without any parent or guardian, residing in the said colony, qualified to consent to their marriage, and that the marriage of such persons may, under such circumstances, be unnecessarily impeded, enacts—

“That the consent of any Magistrate of the said colony, or other person duly appointed for that purpose as hereinafter mentioned, to the marriage of any person under the age of twenty-one years obtained in manner hereinafter provided, shall be of the same force and effect to all intents and purposes, as the consent of a parent or guardian.”

Section 2—

JUDGES TO NOMINATE MAGISTRATES.—“That it shall and may be lawful for the Judges of the Supreme Court to nominate and appoint from time to time as occasion may require, such and so many Magistrates or other persons as aforesaid, residing in any district of the said colony, as they shall think fit and necessary for the purposes of this Act.”

Section 3—

PERSONS UNDER TWENTY-ONE WITHOUT PARENT OR GUARDIAN.—“That in case any unmarried person in the said colony being under the age of twenty-one years, and without a parent or guardian in the said colony authorised to consent to his or her marriage under the provisions of the said recited Act, shall appear before any Magistrate or other person duly appointed as aforesaid, for the district in which he or she shall be then residing, or in case there shall be no such Magistrate or other person appointed as aforesaid therein, before any such Magistrate or other person appointed as aforesaid for the district nearest to that in which he or she shall be then resident, and shall make oath in the form and to the effect set forth in the schedule hereunto annexed (which oath such Magistrate or other person appointed as aforesaid is hereby authorised and required to administer), and such Magistrate or other person appointed as aforesaid, shall thereupon make such inquiry as to him shall seem proper and necessary as to the state and condition of the parties seeking to be married, and if there shall not appear to be any reasonable and valid objection to such marriage, he shall give his consent thereto by writing under his hand according to the form in the schedule hereunto annexed: Provided always, that nothing herein contained shall be construed to prevent the Supreme Court from appointing a guardian or guardians (other than a Magistrate or Magistrates, or other person or persons appointed as aforesaid, under the provisions of this Act,)”

to give consent to the marriage of any single person under the age of twenty-one years, whose parents or guardians shall be absent from the said colony.

Section 5—

OATH TO BE TAKEN.—“That if any person or persons in any oath to be made or taken in pursuance of the provisions of this Act for the purpose of obtaining the consent of any Magistrate or other person appointed as aforesaid, shall knowingly or wilfully swear any matter or thing which shall be false, every person so offending shall on conviction thereof be deemed guilty of perjury, and shall suffer the like pains and penalties, and incur the same disabilities as persons guilty of wilful and corrupt perjury are by law subject to.”

Section 7—

THIS ACT NOT TO APPLY TO FELONS, OR OTHER PERSONS UNDER SENTENCE OF TRANSPORTATION.—“That nothing in this Act, nor in the said recited Act contained, shall be deemed or construed to apply to the marriage of any felon or other offender serving under a sentence of transportation, who may be under the age of twenty-one years, anything therein or in the said recited Act contained to the contrary notwithstanding: Provided nevertheless, that no marriage shall be solemnized where either of the parties shall be a felon or other offender serving under a sentence of transportation, whether under the age of twenty-one years or otherwise, without the consent of the Governor of the said colony being first had and obtained.”

FORM OF AFFIDAVIT.

on this day of , in the year one thousand eight hundred and , A. B. of , in the Colony of New South Wales, Bachelor or Spinster, (as the case may be) appeared personally before C. D., being a Magistrate, or other person (as the case may be) appointed in pursuance of an Act intituled “An Act to authorise the Marriage of Minors without the consent of Parents or Guardians in certain cases,” for the District of , in which the said A. B. is now resident (or being the District nearest to where the said A. B. is resident, as the case may be) the said A. B. being desirous to intermarry with E. F. of , and for the purpose of obtaining the consent of the said C. D., as such Magistrate or other person appointed as aforesaid. And the said

A. B. maketh oath and saith, that he, or she, is under the age of twenty-one years, and that he, or she, knows of no impediment, by reason of any former marriage, consanguinity, affinity, or any lawful cause whatsoever to hinder the said marriage, and that he, or she, hath no Parent or Guardian resident in the said colony qualified to give such consent, and is not a widower or widow.

A. B.

Sworn before me, at _____, this _____ day of _____, C. D. J.P., (or as the case may be,) duly authorised under the Act of the Governor and Council 2 Vic. No. 13.

FORM OF CONSENT.

I, C. D., of _____, in the Colony of New South Wales, Esquire, duly appointed under the provisions of an Act of the Governor and Council, intituled "An Act to authorise the Marriage of Minors without the consent of Parents or Guardians, in certain cases," do hereby declare my consent to the marriage of A. B., (who is a young person under the age of twenty-one years, and hath no Parent or Guardian resident in this colony qualified to give such consent) with E. F. of _____

In witness whereof, I have hereunto set my hand, this _____ day of _____, in the year one thousand eight hundred and _____.

MISDEMEANOR.

This word, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name, and they may be punished according to the degrees of the offence by fine or imprisonment, or both. *B. J.*

A misdemeanor is, in truth, any crime less than felony; and the word is generally used in *contradistinction* to *felony*; and misdemeanors comprehend all indictable offences which do not amount to felony: as perjury, battery, libels, conspiracies, public nuisances, &c. 4 *Bl. Com.* 5.

In crimes below the degree of felony there can be no accessaries; but all persons guilty therein, if concerned at all, are *principals*. 4 *Bl. Com.* 36.

An attempt to commit a misdemeanor created by Statute, is itself a misdemeanor. *R. v. Butler*, 6 *C. and P.* 368.

MURDER.

“ Murder is the killing any person under the King’s peace, with malice prepense or aforethought, either *express* or *implied* by law. 1 *Hawk.* c. 31, s. 3. *Felony—Death.* 9 G. IV. c. 31, s. 3.

“ *Express malice* is when one person kills another with a sedate, deliberate mind, and formed design ; and the evidence of such malice must arise from external circumstances, discovering the inward intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do the party some bodily harm. 1 *Hale*, 451.

“ Malice is *implied* by law in several cases ; as if one voluntarily kills another without provocation ; for no person that had not an abandoned heart would be guilty of such an act, and the law will in such case presume it to be malicious, and that he is a public enemy of mankind. *Id.* Poisoning implies malice. And also when an officer is killed in the execution of his duty, it is *Murder*, and the law implies malice. It should be observed, as a general rule, that every homicide is presumed to be *malicious*, and, of course, amounting to murder, until the contrary appears from circumstances of alleviation, excuse, or justification ; and it is incumbent upon the prisoner to make out such circumstances. 4 *Bl. Com.* 201. Whenever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far. 1 *Hawk.* c. 31, s. 38. If a man resolve to kill the next person he meets, and do kill him, it is Murder, although he know him not, for it is universal malice. 4 *Bl. Com.* 401. It should also be remarked, that where the defence rests upon some violent provocation, it will not avail, however grievous such provocation may have been, if it appear that there was *an interval of reflection*, or a reasonable time *for the blood to have cooled*, before the

deadly purpose was effected. And provocation will be no answer to proof of *express* malice. So that if, upon a provocation received, one party deliberately and advisedly denounce vengeance against the other, as by declaring that *he will have his blood*, or the like, and afterwards carry his design into execution, he will be guilty of murder, although the death happened so recently after the provocation, as that the law might (apart from such evidence of express malice) have imputed the act to unadvised passion. 1 *Russ.* 423.

“*Murder* must be committed by a person of *sound memory and discretion*; it cannot be committed by an idiot, lunatic, or infant, unless he show a consciousness of doing wrong, and, of course, a discretion or discernment between good and evil. 4 *Bl. Com.* (See title “*Infant.*”) But if any person procure an idiot, lunatic, or infant to murder another, the procurer is guilty of murder, (1 *Hawk.* c. 31, s. 7,) even if not present at the time.

“It must be an unlawful killing, *not excusable or justifiable*. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome. 4 *Bl. Com.* 196. Taking away a man’s life by *Perjury* is not, it seems, in law Murder. *Fost.* 132. Although, “*foro conscientiae,*” it is as much so as killing with a sword. When an apprentice died from harsh treatment, and want of care on the part of his master, whilst he was labouring under disease, this was holden to be murder in the master. 1 *Russ.* 426. If a man have a beast that is used to do mischief, and he, knowing it, suffer it to go abroad and it kill a man, this, it seems, is manslaughter in the owner; but if he had purposely turned it loose, though merely to frighten people, and to make what is called sport; it is as much *murder* as if he had incited a dog or other furious animal to worry them. 4 *Bl. Com.* 197. It is a general rule that, to make the killing murder, the death must follow *within a year and a day* after the stroke, or other cause of it.

“The person killed must be a *reasonable creature in being*, and under the King’s peace. Therefore, to kill a child in the mother’s womb is no murder; but if the child be born alive, and die by reason of the potion or bruises it received in the womb, it is murder in the person who administered or gave them. 3 *Inst.* 50. See “Abortion.”

“As to the words “the Queen’s peace,” in the definition of murder, they mean merely that it is not murder to kill an alien enemy in time of war. *Id.* The Aboriginal Natives of the colony are within “the Queen’s peace,” and the unlawful killing of them is as much murder as the killing of any other of the Queen’s subjects.

“If the *name* of the deceased be *known*, it must be stated in the indictment, and be proved strictly in *evidence*; it is therefore *essential* that the Magistrate or Coroner in taking the *depositions*, should ascertain *what name he was known by in his life time*. If his *name* be *unknown*, it may be so stated in the indictment; but if it appear in evidence on the trial that his name was known, the prisoner would be acquitted.

“The *mode* of death should be ascertained with as much care as possible in taking the *depositions*; for if the species of death alleged in the indictment, be different from that proved in evidence, as if the indictment allege a *stabbing* or *shooting*, and the evidence prove a *poisoning* or *starving*, the variance would be fatal; and the same if the indictment state a *poisoning*, and the evidence prove *starving*. Thus where an indictment stated that the prisoner assaulted the deceased, and struck and beat him on the head, and thereby gave divers mortal bruises and blows, of which he died, and it appeared in evidence that the death was caused by the deceased *falling on the ground*, in consequence of a blow on the head received from the prisoner, it was holden that the cause of death was not properly stated. *R. and M.* 139. And the same, where an indictment

charged that the prisoner struck the deceased with a brick, and it appeared that he knocked the deceased down with his fist, and that the deceased *fell* upon a brick, which caused his death. *R. and M.* 113. But if the indictment state that the deceased was killed with a knife, it is not necessary to prove this strictly, if it appears in evidence that he was killed with a dagger, sword, or other pointed instrument capable of producing the same kind of death, as the instrument stated in the indictment, the variance will not be material. Also if the indictment allege a death by one kind of poison, proof of the death by another kind of poison will support the indictment. *R. and M.* 113.

“As it is from what appears in the *depositions* taken by the Coroner or Magistrate, that the *indictment* must be framed, it will be seen from the foregoing cases, how necessary it is for the Coroner or Magistrate to probe well the immediate cause of death. If it be apprehended that it was caused by a fall, the place ought to be closely inspected, as the mark of the fall might be visible. It must be shewn with certainty in what part of the body the deceased was wounded, and therefore if the indictment state the wound to have been on the arm, hand, or side, without saying the right or left, it is bad. *2 Hale*, 185. Though it is not absolutely necessary to prove it as stated. *Arch. C. P.* 310. The kind of wounds received, whether lacerated or contused, &c., should be carefully ascertained, so that they may appear on the *depositions*.

“KILLING BY POISON.—Of all the forms of death by which human nature may be overcome, the most detestable is that of poison; because it can of all others be the least prevented, either by manhood or forethought. (3 Inst. 48.) Therefore, in all cases where a man wilfully administers or lays poison for another, and either he or another takes it and is killed by it, the law implies *malice*, though no particular enmity can be proved. If, however, it were administered by mistake, or if it were

laid with an innocent intention where the deceased got it, it is merely homicide by *misadventure*. If a physician or surgeon give his patient a potion or plaster to cure him, which, contrary to expectation, kills him, this is neither murder nor manslaughter, but *misadventure*. A distinction has been taken in such cases between a regular physician or surgeon and one who is not so; but Lord Hale questions the soundness of such distinctions, and it seems that if a person, whether he be a regular practitioner or not, honestly and bonâ fide perform an operation which causes the patient's death, he is not guilty of manslaughter. 3 *C. and P.* 629. But if he be guilty of criminal misconduct, arising from gross ignorance or criminal inattention, then he will be guilty of manslaughter. *Id.* 635. And in a late case, *R. v. Long. Sess. O. B.*, where the defendant, not a regular physician, killed a woman by an application, the Jury found that he entertained a criminal disregard of human life, and he was convicted of and punished for *manslaughter*.

“KILLING BY FIGHTING.—Killing by fighting may be either murder, or manslaughter, or homicide; (*se defendo*) or self-defence, according to circumstances.

If two persons quarrel and afterwards fight, and one of them kill the other, in such case, if there intervene between the quarrel and the fight, a sufficient *cooling* time for passion to subside and reason to interpose, the killing would be murder. *Fost.* 296. But if such time had not intervened, if the parties in their passion fought *immediately*, the killing, in such case, would be *manslaughter*; even if *immediately* on the quarrel they went out and fought in a field, which would be deemed a *continued* act of passion. 1 *Hale*, 453. If two persons deliberately fight a duel, and one of them be killed, the other and his second are guilty of murder, no matter how grievous the provocation, or by which party it was given. 1 *Hale*, 442; 3 *East*, 581. The second of deceased is also deemed guilty of murder,

as being present aiding and abetting; although Lord Hale seems to think the rule of law, as to principles in the second degree, too far strained in that case. 1 *Hale*, 442. A tilt or tournament, the martial diversion of our ancestors, was an unlawful act, and so are *boxing* and sword playing, the succeeding amusements of their posterity, and if one be killed at either, it is *manslaughter*. If two men fight upon a sudden quarrel, and one of them after a while endeavours to avoid any further struggle, and retreat, *as far as he can*, and at length turn round and kill his assailant, in order to avoid destruction, this homicide is excusable, as being committed in self-defence. *Fost.* 277. The distinction between homicide in *self-defence* and *manslaughter* is, that in the former *the slayer* could not escape although he would; in manslaughter he would not escape if he could. *Arch. C. P.* 317. If, when two persons are fighting, a third come up and take the part of one of them and kill the other, this will be manslaughter in the third party.

“KILLING UPON PROVOCATION.—No *provocation* whatever can render homicide justifiable or even excusable; the least it can amount to is manslaughter. In considering, however, whether, the killing upon provocation amount to murder or manslaughter, *the instrument* made use of must be taken into consideration; for if the death was effected by a deadly weapon, the provocation must be great indeed to extenuate the offence to manslaughter. If a man pull another's nose, or offer him any other great personal indignity, and the other thereupon immediately kill him, it is manslaughter only. 4 *Bl. Com.* 191. Or if a man take another in adultery with his wife and kill him directly on the spot, this is manslaughter merely. *Ld. Raym.* 212.

“KILLING IN DEFENCE OF PROPERTY.—In case of *forcible misdemeanors*, such as trespass in taking goods, although the owner may justify beating the trespasser, in order to make him desist, yet if he kill him, it will be

manslaughter ; or if, instead of beating him, he attack him with a deadly weapon, it would perhaps be murder, particularly if the wound were given after the party had desisted from the trespass. 1 *Hale*, 485. But in defence of a man's house, the owner or his family may kill a trespasser who would forcibly dispossess him of it ; in the same manner as he would by law kill, in self-defence, a man who attacked him personally, with this distinction, however, that in defending his house he need not retreat as in other cases of self-defence, for that would be giving up his house to his adversary. *Id.*

“KILLING WITHOUT INTENT, WHILST DOING ANOTHER ACT.—If a person whilst doing, or attempting to do, another act, undesignedly kill a man, if the act intended or attempted *were a felony*, the killing is murder ; *if unlawful (Malum in se)* but not amounting to felony, the killing is manslaughter ; *if lawful* (that is not being *Malum in se*) homicide by misadventure only. *Archb. C. P.* 324.

“As to the evidence of the dying declarations of the deceased. See tit. ‘*Commitment,*’” p. 99.

FORM OF COMMITMENT FOR MURDER.

on the day of , in the year of our Lord one thousand eight hundred and , at , in the said colony, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by (stabbing the said C. D. with a knife, in and upon the said left side of the belly, and on other parts of the body of him the said C. D., or as the cause of death may be), thereby giving him divers mortal wounds ; of which said mortal wounds the said C. D. instantly died. And you the said keeper,” &c.

See stat. 9 G. IV. c. 31, s. 8 ; Callaghan, vol. 1, p. 324.

MUTINY.

Inciting persons in Her Majesty's forces by sea or land to mutiny—*felony : (death.)* 37 G. III. c. 70, s. 1. Endeavouring to seduce them from their allegiance—*felony—(death.) Id.*

FORM OF COMMITMENT FOR INCITING TO MUTINY.

on _____, at _____, maliciously, advisedly, and feloniously, did endeavour to seduce one C. D., who was then serving in Her Majesty's forces by land, from his duty and allegiance to Her Majesty (or as the case may be) : against the form of the Statute in such case made and provided. And you the said keeper, &c.

 NUISANCE.

NUISANCE, WHAT, AND HOW PUNISHABLE.—A nuisance is something done or omitted, which in its consequences is an annoyance, either to some individual in particular, or to all the Queen's subjects generally: the former is termed a private, the latter a public nuisance. As public nuisances alone, however, are the subject of criminal prosecution, we shall here confine our attention to them. Allowing a public highway or bridge to get out of repair, is a public nuisance, because it is an annoyance to all the Queen's subjects who may pass that way. So doing anything which may have the effect of obstructing a public highway or navigable river, is a public nuisance for the same reason. Bawdy-houses, gaming-houses, and other disorderly houses, are also deemed common nuisances, from their baneful effects upon the morals of the people, and their tendency to attract numbers of disorderly persons. Erecting or keeping gunpowder mills or magazines near a town, is also a public nuisance, from the probable danger attending them. 1 *Russ.* 297. Offensive trades carried on to the annoyance, not merely of a few individuals (*R. v. Lloyd*, 4 *Esp.* 200,) but of all persons in the neighbourhood or passing along the high-ways near them, are also public nuisances. Making loud noises in the night, with a speaking trumpet, to the disturbance of the neighbourhood, has also been deemed a public nuisance. *R. v. Smith*, 2 *Str.* 704. So exposing persons on public high-way or place frequented by the public, who are infected with a contagious disease, such as the small-

pox, (*R. v. Vautandillo*, 4 *M. and S.* 73; *R. v. Burnett*, *id.* 272), or the like, is also a public nuisance. Also a woman who is a common scold, is said, in our ancient text books, to be a common nuisance, and to be indictable as such. 1 *Hawk.* 75, s. 5, 14. These, however, are merely mentioned as instances; but there are an infinite variety of public nuisances, which it is impossible here to enumerate. Some of these which have now been noticed shortly, shall presently be treated of more in detail. There is one observation, however, applicable to all kinds of public nuisance, which should be here mentioned, namely, that their having existed for any length of time, however great, will not have the effect of legalizing them; no length of time will legalize a public nuisance. *R. v. Cross*, 3 *Camp.* 227.

A nuisance is a misdemeanor at common law, punishable with fine or imprisonment, or both; and if the nuisance be continuing when the judgment is given, the Court may make it part of their judgment that the nuisance be abated.

NUISANCE TO HIGHWAYS.—Obstructing a public highway, is also a nuisance: as by digging a ditch or making a hedge across it (1 *Hawk.* c. 76, s. 144), even although a part only, and not the whole of the breadth of the highway, be obstructed (*Id.* s. 145); erecting a gate across it, where none had previously been (*Id.* c. 75, s. 9); sawing timber upon it (*R. v. Jones*, 3 *Camp.* 230); a brewer's servants occupying part of a street an unreasonable time, in putting beer into a publican's cellar (*Id. per Ld. Ellenborough, C. J.*); a carrier almost constantly loading his waggons in the street opposite to his warehouse (*R. v. Russel*, 6 *East*, 427); keeping stage coaches in a street for a longer time than is necessary to load and unload them (*R. v. Cross*, 3 *Camp.* 224); setting persons in the footway for the purpose of distributing bills, if the way be thereby greatly obstructed (*R. v. Sarmon*, 1 *Burr.* 516; see *R.*

v. *Gill*, 1 *Str.* 190); exhibiting effigies in a shop window, so as to attract great crowds, and thereby causing the footway to be greatly obstructed (*R. v. Carlile*, 6 *Car. and P.* 637); running a railway along a common highway (*R. v. Morris*, 1 *B. and Ad.* 441); unless authorised to do so by act of parliament (see *R. v. Pease*, *B. and Ad.* 30); suffering a house at a roadside to be ruinous, so as to be dangerous to the passengers (1 *Hawk.* c. 76, s. 147): all these obstructions are nuisances, and punishable upon indictment. But merely holding a fair or market upon or adjoining to a highway, has been holden not to be a nuisance, where it was sanctioned by an uninterrupted custom for twenty years. *R. v. Smith*, 4 *Esp.* 109.

NUISANCE TO RIVERS.—A public navigable river is in law a public highway, and an obstruction to it is a public nuisance, and punishable by indictment. For instance, laying timber in such a river, so as to obstruct vessels in their passage, although the bed of the river be the party's own soil (*Bac. Abr. Nuisance, A.*); erecting a wharf between high and low water mark (*R. v. Ld. Grosvenor*, 2 *Stark.* 511; *R. v. Randall*, *Car. and M.* 496); diverting a portion of it, so as to render the current less navigable (1 *Hawk.* c. 75, s. 11); placing a floating dock in it (*Id.*): all these and the like are deemed public nuisances. In one case, the Court of King's Bench (*dissent. Ld. Tenterden, C. J.*) held that erecting staithes at the side of a public river, and thereby narrowing it, was not a nuisance, the Jury having found that the staithes were productive of a public benefit more than equivalent to the public injury occasioned by them (*R. v. Russell*, 6 *B. and C.* 566); but this has since been over ruled. *R. v. Ward*, 4 *Ad. and El.* 384; see *R. v. Morris*, 1 *B. and Ad.* 441; and see *R. v. Tindall et al.* 6 *Ad. and El.* 143; *R. v. Randall, supra.* Where however by accident or misfortune, a vessel is sunk in a navigable river, the owner is clearly not indictable, as for a nuisance, for the act was not voluntary

upon his part. *R. v. Watts*, 2 *Esp.* 675. So, if the banks of such a river be obstructed, it is not a public nuisance, unless there be a public highway upon them; for the public are not entitled otherwise, at common law, to tow upon the banks of a navigable river. *Ball v. Herbert*, 3 *T. R.* 253. It may be necessary to add, that if a public navigable river change its course, the highway is thereafter in the new channel. 1 *Hawk. c.* 76, s. 4.

NUISANCE TO BRIDGES.—Obstructing the way over or under a public bridge, or doing any thing which has a direct tendency to injure it, is also a public nuisance. See *R. v. Trafford*, 1 *B. and Ad.* 874.

NUISANCE BY CARRYING ON AN OFFENSIVE TRADE.—Carrying on an offensive trade, which is an annoyance not merely to a few individuals, (*R. v. Lloyd*, 4 *Esp.* 200), but to the whole neighbourhood, is also a public nuisance and punishable upon indictment. And therefore a manufactory, in which were made certain noisome and offensive liquors called acid spirit of sulphur, oil of vitriol, whereby the air was impregnated with very offensive smells, was holden to be a nuisance; and *Ld. Mansfield, C. J.*, said that to constitute the offence, it was not necessary that the smell should be unwholesome, it was sufficient if it rendered the inhabitants in the neighbourhood and persons passing uncomfortable, and hindered their enjoying life and property as fully as they otherwise could. *R. v. White, et al.*, 1 *Bur.* 333. But either rendering the air unwholesome, or the houses uncomfortable or untenantable, will make such a trade a public nuisance. *R. v. Davey*, 5 *Esp.* 217. So, if the smells created by it be offensive to the senses, though not unwholesome, it will be a nuisance. *R. v. Neil*, 2 *Car. and P.* 485. An acquiescence by the neighbourhood for fifty years to a person's carrying on such a noxious trade, has been holden by *Ld. Kenyon*, to be a

good defence to an indictment for continuing it. *R. v. S. Neville, Peake*, 93. And Lord Tenterden held that in such a case, if the party had extended his works, but by reason of an improved mode of working not thereby added to the nuisance, he could not be indicted; although if he thereby added to it, it would be otherwise. *R. v. Watts, Moody and M.* 281. It is said to have been decided that setting up such a noxious trade, in a neighbourhood where other such trades had long been borne with, was not indictable, unless the inconvenience to the public was thereby greatly increased. *R. v. B. Neville, Peake*, 91. And if a party set up a noxious trade in a place remote from habitations and public highways, and afterwards new houses be built and new roads made near it, he may lawfully continue the business, although it in fact be a nuisance to the persons inhabiting the new houses, or passing along the new roads. *R. v. Cross, 2 Car. and P.* 483.

NUISANCE BY STEAM-ENGINES.—The furnaces of steam-engines, from being badly constructed or negligently used, may be public nuisances from the quantity of smoke and soot the chimneys emit. And by stat. 1 and 2 G. IV. c. 41, after reciting this, and that by law every such nuisance is abateable as such by indictment, enacts that the court in such a case may award costs to the prosecutor of such indictment, to be paid by the party convicted; (*Id. s. 1*); and may also make an order for remedying the grievance by alteration of the furnace, before passing final sentence upon the defendant. *Id. s. 2*. But this act is not to extend to furnaces or steam-engines, erected solely for the purpose of working mines, or in smelting or manufacturing ores or minerals adjoining to the premises where they are raised. *Id. s. 3*.

OATHS.

The Act of Council, 9 Vict. No. 9, (*Callaghan Sup.* 1580,) is intituled, "An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the Government of New South Wales, and to substitute declarations in lieu thereof, and for the suppression of voluntary and extra-judicial oaths and affidavits." By this act declarations may be substituted for oaths and affirmations theretofore required to be made relative to any of the public revenue of the Colony, or any of the public offices or public departments of the colonial government. s. 1.

In any case where such declaration is so substituted, notice thereof to be given in the *Government Gazette*, and twenty-one days after publication this Act to apply. s. 2.

After twenty-one days, in such case it is declared unlawful to administer or receive any oath, solemn, affirmation, or affidavit, in lieu of which such affirmation shall have been directed by Governor and Executive Council. s. 3.

Persons making false declarations, guilty of *misdemeanor*. s. 4.

This Act does not extend to the oath of allegiance. s. 5. Nor to oaths in judicial proceedings, or in any proceeding for or by way of summary conviction before any Justice or Justices of the Peace. s. 6.

ABOLITION OF EXTRA-JUDICIAL OATHS.—The 7th section declares it unlawful for any Justice of the Peace or other person to administer, or cause, or allow to be received, any oath, solemn affirmation, or affidavit, touching any matter or thing whereof such Justice or other person hath not jurisdiction or cognizance by some Statute, Act, or ordinance in force at the time being. This Act does not extend to any "oath, solemn affirmation, or affidavit, before any Justice in any matter or thing touching the preservation of the peace, or the

prosecution, trial, or punishment of offences, or touching any enquiry held before any Justice of the Peace in the nature of Coroners' inquests respecting sudden deaths, or touching any proceedings before the Legislative Council or any Committee thereof, nor to any oath, solemn affirmation, or affidavit, which may be required by the laws of any foreign or other country out of New South Wales, to give validity to instruments in writing, designed to be used in foreign or other countries respectively."

WILLS AND DEEDS may be verified by declaration. s. 8.

DECLARATION IN CASES NOT SPECIALLY PROVIDED FOR.—The 9th Section declares that, "Whereas, it may be necessary and proper in many cases, not herein specified, to require confirmation of written instruments or allegations, or proof of debts, or of the execution of deeds or other matters: Be it therefore enacted, That it shall and may be lawful for any Justice of the Peace, notary public, or other officer now by law authorised to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form of the schedule to this Act annexed (see post); and if any declaration so made shall be false or untrue, in any material particular, the person wilfully making such false declaration shall be deemed guilty of a misdemeanor." s. 9.

The same fees payable as for oath, solemn affirmation, or affidavit. s. 10.

Where declaration is directed, the wilfully and corruptly making and subscribing any such declaration, being untrue in any material particular, is a misdemeanor. s. 12.

The following is the form directed by the Act to be substituted for oath, &c.

I, A. B., do solemnly and sincerely declare, that _____ and I make this solemn declaration, conscientiously believing the same to be true, and by virtue

of the provisions of an Act made and passed in the ninth year of the reign of Her present Majesty, intituled "An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the Government of New South Wales, and to substitute declarations in lieu thereof, and for the suppression of voluntary and extra-judicial oaths and affidavits."

In all cases where any penalty is to be levied, or distress made, by any Act now or hereafter to be made, any Justice acting under the authority of any such Acts may administer an oath or affirmation for the purpose of levying such penalties or making such distresses. 15 G. III. c. 39.

UNLAWFUL OATHS.—Administering, or causing to be administered, in any manner or form whatsoever, or aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same, to commit any treason or murder, or any felony, punishable by law with death—*felony*. 52 G. III. c. 104, s. 1. Taking such oath—*felony*. *Id.* But persons compelled to take it, excused, if within fourteen days they declare the same, and all they know about it, to a Justice of the Peace. *Id.* s. 2. See also 57 G. III. c. 19, s. 25.

Administering, or causing to be administered, in any manner or form whatsoever, or aiding or assisting at or being present at and consenting to the administering or taking of any oath or engagement, purporting, or intended to bind the person taking it, to engage in any mutinous or seditious purpose ; or to disturb the public peace ; or to be of any association, society, or confederacy formed for any such purpose ; or to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose ; or not to inform or give evidence against any associate, confederate, or other person ; or not to reveal or discover any unlawful combination or confederacy ; or not to reveal or discover any illegal act done or to be done ; or not to reveal or discover any illegal oath or

engagement which may have been administered or tendered to, or taken by such person, or to or by any other person, or the import of any such oath or engagement—*felony*. 37 G. III. c. 123, s. 1. Taking such oath or engagement, not being compelled thereto—*felony*. *Id.* And any person compelled to take such oath shall not be justified or excused, unless within four days after taking the same, if not prevented by actual force or sickness, or if so prevented, then within four days after the force, &c., shall cease, he shall declare the same, and the whole of what he shall know concerning the same, the persons by whom, and in whose presence, and when and where the oath was administered, by information before a Justice of the Peace. *Id.* s. 2.

Persons causing such oaths to be administered, though not present at the time, to be deemed *principals*. *Id.* s. 3.

This Statute is not confined to oaths for a mutinous or seditious purpose: where several persons, about to go armed for the purpose of night poaching, were sworn to secrecy, it was holden to be a case within the Act. *R. v. Broadribb*, 6 C. and P. 571. Where the oath bound the party not to make buttons under certain prices, and to keep all the secrets of the lodge, it was holden to be within the Act. *R. v. Ball*, 6 C. and P. 563. And in all cases where the members of an association are bound by oath to secrecy, they come within the Act. *Id.*; and *R. v. Lovelass*, 1 M. and P. 349, 6 C. and P. 596. It is immaterial in what form the oath may be framed (*Id.*), or whether the party be sworn on the Testament or not, if he believe himself to be bound by the oath administered. *R. v. Broadribb*, 6 C. and P. 571.

FORM OF AFFIRMATION TO BE USED BY QUAKERS OR MORAVIANS INSTEAD OF TAKING OATH.—(See 8 W. IV. No. 2.)

“I, A. B., being one of the people called Quakers (or) one of the persuasion of the people called Quakers, (or) of the united brethren called Moravians, do solemnly, sincerely, and truly declare and affirm,” &c.

FORM OF AFFIRMATION BY SEPARATISTS.—(See 3 W. IV. c. 82.)

“I, A. B., do in the presence of Almighty God solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists; and that the taking of an oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect, and I do also, in the same solemn manner, affirm and declare.”

The mode of swearing a particular sect in Scotland is, not to kiss the book, but by the form of holding up the hand, and the oath is as follows. *Leach*, 319.

“You swear, according to the custom of your country, and the religion you profess, that the evidence you shall give between our Sovereign Lady the Queen and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth, so help you God.”

FORM OF COMMITMENT FOR ADMINISTERING AN UNLAWFUL OATH.

on the day of , in the year of our Lord one thousand eight hundred and , at , did feloniously and unlawfully administer unto one C. D., a certain oath and engagement, purporting and intended to bind the said C. D. not to inform or give evidence against any associate, confederate, or other person of and belonging to a certain unlawful association and confederacy; and which said oath and engagement was then and there taken by the said C. D.; against the form of the statute in that case made and provided. And you the said keeper,” &c.—See stat. 37 Geo. III. c. 123, s. 6.

OBLITERATING RECORDS.

Unlawfully and maliciously obliterating, injuring, or destroying, any record of Court—*misdemeanor*. 7 and 8 G. IV. c. 29, s. 21; see post “*Records*.”

OBSCENE BOOKS OR PRINTS.

See “*INDECENCY*.”

OFFICE.—(BUYING OR SELLING)

BUYING OR SELLING OFFICES.—If any person shall sell or bargain for the sale of, or receive, have, or take any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, or any promise, agreement, covenant, contract, bond, or assurance, or shall by any way, device, or means, contract, or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly,—or if any person shall purchase, or bargain for the purchase of, or give or pay any money, fee, gratuity, loan of money, reward, or profit, or make or enter into any promise, agreement, covenant, contract, bond, or assurance, to give or pay any money, fee, gratuity, loan of money, reward, or profit, or shall by any way, means, or device, contract, or agree to give or pay any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, specified in Stat. 5 and 6 Ed. VI. c. 16, s. 2, or this Act, or within the meaning of either, or for any deputation thereto, or for any part or participation of the profits thereof, or for any appointment thereto, or resignation thereof, or for the consent or voice of any person to any such appointment, then every such person, and also he who shall wilfully and knowingly, aid, abet, or assist such person therein, shall be adjudged guilty of a *mis-demeanor*. 49 G. III. c. 126, s. 3.

The offices specified in Stat. 5 and 6 Ed. VI. c. 16, s. 2, are offices which concern the administration of justice; or the receipt, controlment, or payment of any of the King's treasure money, rent, revenue, account; aulnage, auditorship, or surveying of any of the King's honours, castles, manors, lands, tenements, woods, or hereditaments; or His Majesty's Customs or any other administration or necessary attendance to be had, done, or executed in any of the King's Custom-houses; or the keeping of any of the King's towers, castles, or fortresses, being used, occupied, or appointed for a place of strength

or defence, or which shall concern any clerkship to be occupied in any manner of Court of Record, wherein justice is to be administered.

The offices specified in Stat. 49 G. III. c. 126, are all offices in the gift of the Crown, or of any office appointed by the Crown; all commissioners, civil, moral, or military; all places and employments, and all deputations to any such offices, commissions, places, or employments, in the respective departments or offices, or under the appointment or superintendence or control of the Lord High Treasurer, or Commissioners of the Treasury, the Secretary of State, the Lords of the Admiralty, the Master-General and principal officers of the Ordnance, the Commander-in-Chief, the Secretary at War, the Paymaster-General of the Forces, the Commissioners for the affairs of India, the Commissioners of the Excise, the Treasurer of the Navy, the Commissioners of the Navy, the Commissioners for Victualling, the Commissioners of Transports, the Commissary-General, the Storekeeper-General, and the principal officers of any other public department or office of the Government; and also all offices, commissions, places, and employments belonging to or under the appointment or control of the East India Company.

But the Stat. 5 and 6 Ed. VI. c. 16, does not extend to offices whereof any person is seised of any estate of inheritance (*Id.* s. 4); nor to offices in the gift of the Chief Justice of the Queen's Bench or Common Pleas, or of the Justices of Assize. *Id.* s. 5.

Nor does the Stat. 49, G. III. c. 126, extend to any lawful deputations, where the payment of principal or deputy is out of fees (*Id.* s. 10); nor to the sale of commissions in the army, at the regulated prices. *Id.* s. 7; and see s. 8.

SOLICITING OFFICE FOR MONEY.—If any person shall receive, have, or take any money, fee, reward, or profit, directly or indirectly, or take any promise for money, &c., for any interest, solicitation, petition, request, re-

commendation or negotiation whatever, made or to be made, or pretended to be made, or under any pretence of making or procuring to be made, any interest, &c., in or about, or in anywise touching the nomination, appointment, or deputation to or resignation of any such office; or if any person shall give or pay money for such promise, &c., or if any person for or in expectation of any gain or fee, &c., solicit, recommend, or negotiate, in anywise touching such nomination, &c.—*misdeemeanor*. 49 G. III. c. 126, s. 4. Keeping or advertising places for transacting such negotiations, is likewise a *misdeemeanor*. *Id.* s. 5.

OFFICERS OF JUSTICE.—(MISCONDUCT OF.)

Every malfeasance or culpable nonfeasance of an officer of justice, with relation to his office, is a *misdeemeanor*, and punishable with fine or imprisonment, or both. See 1 *Salk*. 380; *Cro. El.* 654.

PARDON.

The power of pardoning offences is inseparably incident to and is the most amiable prerogative of the Crown; and this high prerogative, the Queen is entrusted with upon a special confidence that she will spare those only whose case (could it have been foreseen,) the law itself may be presumed willing to have *excepted* out of its general rules, which the wisdom of man cannot possibly make so perfect as to suit every particular case. 1 *Show*, 284. The pardons with which we are concerned here are devisable into two classes, viz.—1st. Pardons of course and of common right. 2nd. Pardons of grace and favour.

A pardon is grantable of common right—1st. To persons found guilty of excusable homicide. 2nd. To felons and others who discover their accomplices. This is generally provided by the several Statutes which create the offences as *mala prohibita*. These provisions generally relate to *persons* who are at large, and who entitle themselves to a pardon as matter of right, and who must not only give evidence against, but must actually be the means of convicting by their evidence other offenders. For, on this subject it has been holden, that if the confession of the accomplice be such as on the trial the Jury give no credit to, or it be a partial confession, it gives him no legal right to a pardon. *Cowp.* 335.

3rd. A pardon is grantable to persons to whom the Governor has by proclamation promised his pardon. It is clear that all persons to whom the Governor as the representative of the Queen has by special proclamation in the Gazette or *otherwise*, promised his pardon, and who came in under the royal faith and promise, have a right to a pardon.

Special pardons of grace and favour to individual offenders, are placed in opposition to those of *right*, and are those of most interest in the contemplation of *Justices*; because, respecting them, most is left in the Magistrates' discretion whether the question be considered with a view to the conviction of the principal participators in the offence, or to the pardon of those on whose testimony conviction may have been accomplished.

First then of pardons of grace and favour to individual accomplices, in order to procure the conviction of some principal participators in the offence—Blackstone says, "It has been usual for the Justices of the Peace by whom any persons *charged with felony* are committed to gaol, to admit some one of their accomplices to become a witness, (or, as it is generally termed King's evidence) against his fellows upon an *implied confidence*, which the

Judges of gaol delivery have usually countenanced and adopted, that if such accomplice *make a full and complete discovery* of that and of all other felonies to which he is examined by the Magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted for that or any other previous offence of the same degree." 4 *Com.* 331. In *substance* and in *effect* the doctrine advanced by Sir W. Blackstone is correct, but it should appear not to be technically and precisely so *in law*, by what was laid down by Lord Mansfield in the *King v. Rudd, Cowp.* 336, viz.—“That no authority is given to a Justice of the Peace to pardon an offender and tell him he shall be a witness against others; *he cannot select whom he pleases to pardon or prosecute*; and the prosecutor has even a less pretence to select than a Justice of the Peace.”

However, although the Justices *deceive* the accomplice under a *promise* or *hope* of pardon which in strictness they had no right to make, yet, if he make a full and fair disclosure at the time of his examination of *all he knows*, he will be entitled to a *recommendation to mercy*; and the Supreme Court in this case will bail him, in order that he may apply for a pardon; or the Justices of gaol delivery, on all the circumstances relative to the prisoner's claim of indemnity being laid before them, will exercise their discretion in deferring the trial accordingly; such favour however depends on the accomplice making a *full and fair disclosure*, and therefore, in the well known case of the *King v. Thurtell*, where one of the parties made a disclosure, in consequence of which the body of the murdered man was found, but afterwards *prevaricated*, he was put on his trial with his associate. Mr. Justice Park refusing upon the trial to allow any postponement in order to an application for mercy, he was convicted, but his sentence commuted to transportation for life.

A pardon, *after conviction*, may be either *absolute* or

conditional, for the King may extend his mercy on what terms he pleases ; and, consequently, may annex to his pardon any condition that he thinks fit, whether *precedent or subsequent*, on the performance of which, the validity of the pardon will depend. *Hawk*, b. 2, c. 37, s. 46. But if the party do not perform the condition of the pardon, *the pardon becomes void*, and he may be taken and executed on the first judgment. For, *the condition* of the King's pardon being gone, the party remains in precisely the same situation that he was, the moment before the pardon was granted ; and being brought up to the bar, he may be remanded to his former sentence. 1 *Leach*. 73, 220. *The effect of the pardon is to make the offender a new man ; to acquit him of all corporal penalties and forfeitures annexed to that offence, for which he obtains his pardon, and not so much to restore his former credit, as to give him new credit and capacity.*

PERJURY AND SUBORNATION.

Perjury is defined by *Lord Coke* to be a crime committed when a *lawful* oath is administered in some *Judicial proceeding*, to a person who swears *wilfully, absolutely, and falsely*, in a matter *material* to the issue or point in question. The law takes no notice of any perjury, but such as is committed in some Court of Justice having power to administer an oath, or before some Magistrate or proper officer invested with a similar authority in some proceedings relative to a civil suit or a criminal prosecution ; for it esteems all other oaths *unnecessary* at least, and therefore will not punish for breach of them. The perjury must also be *corrupt* (that is, committed *malo animo*), *wilful, positive, and absolute*, not upon surprise, or the like. It also must be in some point, *material* to the question in dispute. A man may be indicted for

perjury, for swearing that he *believes* a fact to be true, which he knows to be false. 1 *Leach*, 270.

Subornation of perjury is the offence, of procuring another to take such a false oath, as constitutes perjury in the principal. The punishment of perjury and subornation at common law, has been various. It was anciently *death*; afterwards banishment, or cutting out the tongue; then forfeiture of goods, and standing with both ears nailed to the Pillory;* and now it is, fine, imprisonment (hard labour, 3 Geo. IV. c. 114), and Pillory, at the discretion of the Court; and by 2 Geo. II. c. 25, s. 2, the Judge may order the party to be transported, or to be imprisoned and kept to hard labour in the House of Correction for a term not exceeding 7 years.

The false affirmation of a Quaker or Moravian is punishable in the same manner.

EVIDENCE.—The party injured by the perjury is a competent witness to prove it; for he cannot afterwards avail himself of the conviction in any civil suit, either in law or equity. 4 *East*, 572. It is sufficient for a conviction, if any *one assignment* of perjury be proved. There must be *two witnesses*; one alone is not sufficient, because there is, in that case, only one oath against another. But if the assignment of perjury be directly proved by one witness, and strong circumstantial evidence be given by another, or be established by written documents, this would perhaps be sufficient, although it does not appear as yet to have been so decided. 2 *Russ.* 545. Also, if the perjury consist of the defendant's having sworn, contrary to what he had before sworn, on the same subject, this is not within the rule above stated; for the effect of the defendant's oath in the one case is neutralised by his oath in the other; and proof by one witness, will therefore make the evidence *against the defendant* preponderate. 5 *B. and Ald.* 929. n.

* The punishment of the pillory is now abolished.—Ed.

PIGEONS AND HOUSE DOVES.

By the 23rd section of Statute 7 and 8 Geo. IV. c. 29—
 “If any person 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, every such offender, being convicted thereof, before a Justice of the Peace, shall forfeit and pay over and above the value of the bird, any sum not exceeding two pounds.”

If the birds are enclosed in such a manner as that the owner may always take them without the chance of their escaping, the taking is in that case a felony. But if the Pigeon-house be open, which is most commonly the case, they are *wild birds*, and then not the subject of larceny; but any person “killing, wounding, or taking them,” can be punished under the foregoing section.— See form of conviction under title “*Larceny*.”

 PIRACY.

At common law, the offence of piracy consists in committing those acts of robbery and depredation upon the high seas which, if committed on land, would have amounted to felony *there*. 1 *Russ.* 100. To constitute the offence of piracy, it must be proved to be committed *upon the high seas*, within the jurisdiction of the Court of Admiralty. The Admiralty jurisdiction does not extend to any haven, creek, arm of the sea, or other place within the body of a county. 1 *Hawk.* c. 37, s. 11. It is said that those parts of the rivers, arms, or creeks, are deemed within the bodies of counties, where persons can see, *with the naked eye*, from one side to the other. But if a robbery be committed in creeks, harbours, or ports in foreign countries, the Court of Admiralty indisputably has jurisdiction of it, and such offence is consequently piracy. *R. v. Jemott*, Old Bailey, *Arch.*

C. P. 223. If the subject of the same states commit robbery upon each other on the high seas, it is *piracy*. If the subjects of different states commit robbery upon each other upon the high seas, if their respective states be *at amity*, it is piracy—if *at enmity*, it is not ; for it is a general rule, that enemies can never commit piracy on each other ; their depredations being deemed mere acts of hostility. 4 *Inst.* 154. A capture by authority of any prince or state, cannot be treated as piracy. 2 *Sir L. Jenkins*, 790. Acts of hostility by a subject of the realm, against a subject at sea, under colour of a foreign commission (11 and 12 W. III. c. 7, s. 8 ; 18 G. II. c. 30,) were adjudged *piracy*. 2 *East. P. C.* 793. The 9th Section of 11 and 12 W. III. c. 7, enacts—

“ That if any Commander, or Master of a Ship, or any Seaman or Mariner, shall in any place where the Admiral hath jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships, or any barge, boat, ordnance, ammunition, goods or merchandize, or yield them up voluntary to any pirate ; or shall bring any seducing message from any pirate, enemy, or rebel ; or consult, combine, or confederate with, or attempt to corrupt, any Commander, Master, Officer, or Mariner, to yield up, or run away with any ship, goods, or merchandize ; or turn pirate, or go over to pirates ; or make, or endeavour to make, a revolt in the ship, (he) shall be adjudged, deemed, and taken to be a pirate, felon, and robber ; and being convicted thereof, according to the directions of this Act, shall have and suffer the pains of death, loss of lands, goods, and chattels, as pirates, felons, and robbers ought to have and suffer.”*

It has been decided, that making, or endeavouring to make a revolt, with a view to procure a redress of grievances, and without any intent to run away with the

* The Statute 1 Vict. c. 88, Callaghan ; vol. 1, p. 342, directs what punishments are to be inflicted on pirates and accessaries.

ship, or to commit any act of piracy, is an offence within the 9th section, above recited. *R. v. Hastings, R. and M.* 82.

FORM OF COMMITMENT FOR PIRACY.

on _____, at _____, upon the high sea on board of a certain ship called _____, near the (coast of Africa) then being in and upon one C. D. and E. F. piratically and feloniously did make an assault, and then the said C. D. and E. F. in bodily fear and danger of their lives on the high sea aforesaid, then and there piratically and feloniously did put, and the said ship and the apparel and tackle thereof of the value of _____, and one hundred bales of wool of the value of _____, in and on board the said ship, then being of the goods and chattels of certain subjects of our Lady the Queen (unknown), and then and there being in the custody and possession of the said C. D., then and there on the high sea piratically, feloniously, and violently did steal, take, and carry away (and that the said A. B., immediately before committing the piracy aforesaid, did then and there on the high sea, on board of the said ship, feloniously stab, cut, and wound the said C. D.); against the form of the Statute in such case made and provided. And you the said keeper, &c.

PLACARDS, BILLS, &c.

Persons affixing placards or other papers on walls or buildings in Sydney, or defacing walls or buildings with chalk or paint, or in any other manner, upon the complaint of the owner or occupier, to forfeit and pay on conviction any sum not exceeding twenty shillings. 2 Vict. No. 3; *Callaghan*, vol. 2, p. 935.

POLICE.—(IN SYDNEY)

(See also "CONSTABLE.")

See 4 W. IV. No. 7, "An Act for Regulating the Police in the Town and Port of Sydney, and for removing and preventing nuisances and obstructions therein." *Callaghan*, vol. 2, p. 899.

It is deemed unnecessary to set out the provisions of this Act here, as most of them are alluded to under different heads throughout the work, and the Act itself

can always be referred to in Sydney, besides which, most of the provisions are similar (*mutatis mutandis*) to the Towns Police Act following.

POLICE.—(IN COUNTRY TOWNS)

2 Vict. No. 2, *Callaghan*, vol. 2, p. 918, "An Act for regulating the Police in the towns of Parramatta, Windsor, Maitland, Bathurst, and other Towns respectively,* and for removing and preventing nuisances and obstructions, and for the better allignment of streets therein."—16th August, 1838.

POLICE MAGISTRATE.—The Governor may appoint Justices of the Peace to be Police Magistrates in such towns respectively. s. 1.

OATH OF POLICE MAGISTRATE.—Police Magistrate to take oath, before one of the Judges of the Supreme Court, faithfully, impartially, and honestly, to the best of his skill and knowledge to execute all powers and duties of a Police Magistrate. s. 2.

SUPPRESSION OF RIOTS, &c.—Police Magistrate to suppress all riots, tumults, &c. s. 3.

POLICE CONSTABLES.—Police Magistrate to appoint fit and able men as constables. s. 4.

Police Magistrate to make regulations, subject to the approbation of the Governor, for the management of the Police force. s. 5.

Policemen may be suspended or dismissed by Police Magistrate. *Id.*

DRUNK AND DISORDERLY PERSONS.—Police to apprehend any person found drunk in the streets, or public places at any hour of the day, and to convey such person before a Justice of the Peace; and to apprehend all loose, idle, drunken, or disorderly persons found between

* Extended by proclamation to other Towns.

sunset and the hour of eight in the forenoon, lying or loitering in any street, highway, yard, or other place in the town, and not giving a satisfactory account of themselves, and to deliver any person so apprehended into the custody of the constable appointed under this Act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a Justice of the Peace, to be dealt with according to law, or give bail for his appearance before a Justice of the Peace, if the constable shall deem it prudent to take bail in the manner hereinafter mentioned. s. 6.

CONSTABLE AT WATCH-HOUSE MAY TAKE BAIL.—Where any person found lying or loitering about as aforesaid, or charged with any petty misdemeanor, shall be brought without the warrant of a Justice of the Peace into the custody of the constable attending during the night at any watch-house within such towns, such constable may, if he deem it prudent, take bail by recognizance with or without sureties, as he shall think fit, without any fee or reward from such person, conditioned that such person shall appear for examination before a Justice of the Peace at some place to be specified in the recognizance, at the hour of ten in the forenoon next after such recognizance shall be taken, unless that hour shall fall on a Sunday, or Christmas Day, or Good Friday, and in that case at the like hour on the succeeding day; and every recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before a Justice of the Peace; and the constable shall enter into a book to be kept for that purpose in every watch-house the name, residence, and occupation of the party, and his surety or sureties (if any) entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such Justice as shall be present at the time and place when and where

the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the Justice shall cause a record of such recognizance to be drawn up and signed by the constable, and shall return the same to the next General Quarter Sessions of the Peace, with a certificate at the back thereof, signed by such Justice, that the party has not complied with the obligation therein contained; and the Clerk of the Peace shall make the like estreats and schedules of every such recognizance as of recognizances forfeited in the Sessions of the Peace; and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the Justice shall consent thereto, the Justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint, and when the matter shall be heard and determined, either by the dismissal of the case or by binding the party over to answer the matter thereof at the Sessions or otherwise, the recognizance for the appearance of the party before a Justice shall be discharged without fee or reward. s. 7.

PENALTY FOR ASSAULTING CONSTABLE.—Any person assaulting or resisting any of the Police force of such towns in the execution of their duty, or aiding or inciting any person so to assault or resist, to forfeit and pay, on conviction, a sum not exceeding five pounds. s. 8.

PUBLICANS HARBOURING POLICEMEN.—Any victualler or licensed publican, or other person, knowingly harbouring or entertaining any man belonging to the said Police force, or permitting such man to abide or remain in his house, shop, room, or other place during any part of the time appointed for his being on duty elsewhere, being convicted thereof, for every such offence to forfeit and pay a sum not exceeding five pounds. s. 9.

SUNDAY.—**POLICE MAGISTRATE TO CAUSE THE LORD'S DAY TO BE PROPERLY OBSERVED.**—Such Justice shall, as far as in him lies, cause the Lord's Day to be duly

observed, and shall not permit or suffer any house, shop, or store, or other place in such town to be open on that day for the purpose of trade or dealing; except the shops or houses of butchers, bakers, fishmongers, and greengrocers, until the hour of ten in the forenoon, and of bakers between the hours of one and two in the afternoon, and of apothecaries at any hour. And any person who shall trade or deal, or keep open any shop, store, or other place (except as aforesaid) for the purpose of trade or dealing on the Lord's Day shall, on conviction, forfeit and pay for every such offence a sum not exceeding three pounds, nor less than *one* pound. s. 10.

GAMES AND PLAY PROHIBITED ON A SUNDAY,

The 11th Section enacts—

“That the owner or occupier of any public billiard-room or other public place of amusement within any of the said towns, who shall permit or suffer any one to play in his house or premises any game on Sunday shall, on conviction, forfeit and pay a sum not exceeding five pounds, nor less than three pounds. And it shall be lawful for any Justice of the Peace appointed under this Act, and he is hereby required to disperse, or cause to be dispersed, all persons gathering together on Sunday, in any public or open place, for the purpose of gambling or playing at any game, and to take and seize, or cause to be taken and seized, any implements, instruments or animals used or intended to be used therein, and to destroy or carry away the same, and all persons actually gambling or playing as aforesaid shall be prosecuted according to law.”

DAMAGING PUBLIC BUILDINGS, &c.—Any person damaging public property to pay for repairing the same, and if done wilfully to forfeit and pay a sum not exceeding twenty pounds nor less than five pounds. s. 12.

OBSTRUCTING SEWER OR WATER-COURSE.—Any person casting any filth or rubbish into any water-course, sewer, or canal, or obstructing or diverting from its channel any public sewer or water-course within any

such town, to forfeit and pay a sum not exceeding five pounds nor less than one pound, and to pay the cost of removing filth, &c., or restoring watercourse, &c. s. 13.

INJURING PUBLIC FOUNTAINS, &c.—Any person injuring public fountain, pump, cock, or water-pipe, or any part thereof, to pay the cost of repairing the same; and if the injury be wilfully done to forfeit a sum not exceeding twenty pounds nor less than one pound. s. 14.

Any person having in his possession any private key, for the purpose of opening any cock, or in any manner clandestinely or unlawfully appropriating to his use any water from any public fountain or pipe, to forfeit a sum not exceeding twenty pounds, nor less than five pounds. *Id.*

Any person opening, or leaving open, any cock of any public fountain or pump, so that the water shall or may run to waste, to forfeit a sum not exceeding two pounds, nor less than five shillings. *Id.*

Any person washing any clothes at any public fountain or pump, to forfeit and pay a sum not exceeding one pound, nor less than five shillings. *Id.*

BEATING CARPETS, FLYING KITES, BREAKING OR EXPOSING FOR SALE HORSES, THROWING RUBBISH, SLAUGHTERING, &c., IN PUBLIC STREETS, DRIVING BARROWS OR CARRIAGES ON FOOTWAYS, &c.—JUSTICE MAY CONVICT ON VIEW.

The 15th section enacts—

“That if any person or persons shall in any street or public place within any of the said Towns beat or dust any carpet or carpets, or shall fly any kite or kites, or shall drive any carriage or carriages for the purpose of breaking, exercising, or trying horses, or shall ride any horse, mare, or gelding, for the purpose of airing, exercising, trying, shewing, or exposing such horse, mare, or gelding, for sale (otherwise than by passing through such streets or public places); or shall throw, cast or lay, or shall cause, permit or suffer to be thrown, cast or laid, or to remain, any ashes, rubbish, offal, dung, soil, dead animal, blood, or other filth or annoyance, or any mat-

ter or thing, in or upon the carriage way or foot way of any such street or other public place within any of the said Towns, or shall kill, slaughter, dress, scald, or cut up any beast, swine, calf, sheep, lamb, or other cattle, in or so near to any of the said streets or other public places in any of the said Towns, as that any blood or filth shall run or flow upon or over, or be on any or either of any such carriage or foot ways; or shall run, roll, drive, draw, place, or cause, permit or suffer to be run, rolled, driven, drawn, or placed upon any of the said footways of any street or public place within any of the said Towns, any waggon, cart, dray, sledge or other carriage, or any wheel, wheelbarrow, handbarrow, or truck, or any hogshead, cask, or barrel; or shall wilfully lead, drive, or ride any horse, ass, mule, or other beast, upon any of the footways aforesaid: then and in every such case every person so offending, upon conviction before any Justice of the Peace, or upon the view of any such Justice, shall forfeit and pay a sum not exceeding forty shillings nor less than five shillings."

PLACING CARRIAGES, GOODS, TIMBER, BRICKS, &c., ON STREETS, OR FOOTWAYS, &c., &c., NOT REMOVING SAME WHEN REQUIRED, JUSTICE OR CONSTABLE MAY SEIZE, &c.

The 16th Section enacts—

"That if any person shall set, or place, or cause or permit to be set or placed, any stall-board, chopping block, shew-board (on hinges or otherwise), basket, wares, merchandize, casks, or goods of any kind whatsoever; or shall hoop, place, wash, or cleanse, or shall cause to be hooped, placed, washed, or cleansed, any pipe, barrel, cask, or vessel, in or upon or over any of the carriage or foot ways in any streets or public places within any of the said towns; or shall set out, lay, or place, or shall cause or procure, permit or suffer, to be set out, laid, or placed, any coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, upon any of the said carriage ways, except for the necessary time of loading or unloading any cart,

wain, waggon, dray, sledge, truck, or other carriage, or taking up or setting down any fare, or waiting for passengers, when actually hired, or harnessing or unharnessing the horses or other animals from any coach, cart, wain, waggon, dray, sledge, truck or other carriage; or if any person shall set or place, or cause to be set or placed, in or upon or over any of the said carriage or foot ways, any timber, stones, bricks, lime, or other materials, or things for building whatsoever, (unless the same shall be enclosed as hereinafter is directed, or any other matters or things whatsoever, or shall hang out or expose, or shall cause or permit to be hung out or exposed, any meat or offal, or other thing or matter whatsoever, from any house or houses, or other buildings or premises, over any part of either or any of such footways or carriage ways, or over any area or areas of any houses or other buildings or premises, or any other matter or thing from and on the outside of the front or any other part of any house or houses, or other buildings or premises over or next unto any such street or public place, and shall not immediately remove all or any such matters or things being thereto required by any Justice of the Peace, or by any Police constable appointed under this Act, and shall not continue and keep the same so removed; or if any person, having in pursuance of any such requisition as aforesaid, removed, or caused to be removed, any such stall-board, shew-board, chopping-block, basket, wares, merchandize, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, carriage, timber, stones, bricks, lime, meat, offal, or other matters or things, shall at any time thereafter again set, lay or place, expose or put out, or cause, procure, permit, or suffer to be set, laid, placed, exposed, or put out the same, or any of them, or any other stall-board, shew-board, chopping-block, basket, wares, merchandize, goods, timber, stones, bricks, lime, coach, cart, wain, waggon, dray, truck, wheelbarrow, handbarrow, sledge,

meat, offal, or other things or matters whatsoever (save and except as aforesaid) in, upon, or over any of the carriage or foot-ways of or next unto any streets or public places as aforesaid, then, and in every such case, every person so offending shall, upon conviction, forfeit and pay for the first offence, a sum not exceeding forty shillings nor less than five shillings. And also, that not only shall such penalties become payable and to be recovered, but that it shall and may be lawful to and for any Justice or for any police constable appointed under this Act, without any warrant or other authority than this Act, to seize any such stall-board, shew-board, chopping-block, basket, wares, merchandise, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, together with the horse or horses, ass or asses, mule or mules, or other animal or animals, if any shall be thereunto, belonging with the harness, gear, and accoutrements thereof, or any such timber, or other materials or other matters or things aforesaid, or any of them; and in case any of the goods, wares, or merchandize, so seized, shall be perishable, or shall be articles of food, then the same shall be immediately forfeited, and the person or persons who shall seize the same shall deliver the same or cause the same to be delivered to the storekeeper of the Benevolent Society for the time being, and the same shall and may be distributed for the benefit of those supported by the said Society, to and for his, her, or their benefit; but otherwise, such Justice or police constable as aforesaid shall cause the stall, board, basket, cask, goods, coach, cart, waggon, wain, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, horses, asses, mules, or other animals, materials, or other things so seized, and not being of a perishable nature, to be removed to any place appointed for the reception thereof, if any such there be, or otherwise, to such place or places as he or they shall judge convenient, giving parole or written notice of such place or places whereunto the same shall

be removed unto the owner, driver, or other person having interest in the things so seized and removed, if he, she, or they shall be then and there present, and the same shall be there kept and detained until such owner, driver, or other person interested therein as aforesaid, shall cause to be paid the penalty, in which he, she, or they shall be convicted, together with the charges for taking and removing the same, and of keeping such horse or horses, ass or asses, mule or mules, or other animal or animals, (if any). And in case the goods, carriage, horses, animals, materials, or other things so removed, (not being perishable, or articles of food,) shall not be claimed, and the said penalty and charges be paid within five days next after such removal thereof, then and in every such case it shall and may be lawful to and for the said Justice to order the same to be appraised and sold, and the overplus of the money arising from such sale shall be paid to the owner or owners thereof, after deducting the said penalty and such costs, charges, and expenses attending such seizing, removing, keeping, appraising, and selling the same, as the said Justice shall ascertain and allow, provided always, that in any town where no Benevolent Society is established, it shall be lawful for the Police Magistrate for such town to dispose of any such perishable article, or article of food which may be seized as aforesaid, towards any charitable purpose which he may think proper."

Where offence, under the foregoing section, is again committed after previous notice to remove, &c., Justice of the Peace or constable may seize, detain, &c., without fresh notice being given. s. 17.

AWNINGS ALLOWED.—Awnings may be placed in front of shops or houses, but they must be at least seven feet above the height of the footway, and the posts placed close up to the curb-stone, or outer edge of the footway. s. 18.

DISCHARGING FIRE-ARMS, &c.—Persons discharging fire-arms, without any lawful cause, or letting off any

fire-works, in streets or public places, to forfeit and pay a sum not exceeding five pounds, nor less than ten shillings. s. 19.

BURNING SHAVINGS, &c.—Persons burning shavings or other matters or things in the streets, to forfeit and pay a sum not exceeding forty shillings nor less than five shillings. s. 20.

BATHING PROHIBITED—JUSTICE MAY CONVICT ON VIEW, &c.—Persons bathing near to or within view of any public wharf, quay, bridge, street, road, or other place of public resort within the limits of any such town, between the hours of six in the morning and eight in the evening, to forfeit and pay, on conviction before, or in view of, any Justice, a sum not exceeding one pound. Police constables appointed under this Act may, without any warrant or other authority than this Act, arrest and convey such offender before any Justice of the Peace within the town. s. 21.

INDECENCY.—Any individual offending against decency, by the exposure of his or her person in any street or public place of any such town, or in the view thereof, to forfeit and pay, on conviction before a Justice of the Peace, a sum not exceeding ten nor less than five pounds. Constable or other person may apprehend any person he may find in the act of so offending and convey him or her before any Justice of the Peace. s. 22.

KEEPING SWINE, STRAYING OF CATTLE, &c.—Swine not to be kept within forty yards of any street or public place within any such town: nor swine, horses, asses, mules, sheep, goats, or other cattle, to stray or go about, or be tethered or depastured in any street or public place; or penalty not exceeding forty shillings nor less than five shillings. s. 23.

PENALTY FOR NOT REMOVING NUISANCE AFTER NOTICE SO TO DO.

The 24th Section enacts—

“That in case any privy, hog-stye, or any other matter or thing which shall at any time or times hereafter be in

any place within any of the said towns, shall be or become a nuisance to any of the inhabitants thereof, it shall be lawful for any two Justices of the Peace, upon complaints thereof to them, made by any such inhabitants, and after due investigation of such complaint, by notice in writing, to order, that every or any such privy, hog-stye, or other matter or thing being a nuisance, shall be remedied and removed within seven days after such notice shall have been given to the owner or occupier of the premises wherein such nuisance shall exist, or shall have been left for such owner or occupier at his or her last or usual place of abode, on the said premises; and every such occupier neglecting to remedy or remove such nuisance, pursuant to such notice, and to the satisfaction of such Justices, shall forfeit and pay on conviction, before the said Justices, the sum of ten pounds for every such neglect or disobedience; and also it may be lawful for such Justices to indict, or cause to be indicted, for such nuisance, such person or persons so neglecting or disobeying any such notice at the then next Court of General Quarter Sessions to be held within any of the said towns; and such person or persons being found guilty thereof, such nuisance or nuisances shall be removed, taken down, and abated, according to law with regard to public or common nuisances; and the person or persons so offending shall be subject to such punishment for the misdemeanor as the Justices assembled at a General Quarter Sessions within any of the said towns shall direct."

PRIVATE PASSAGES, &C., TO BE KEPT CLEAN.—The owner or occupier of any house or place within any such town neglecting to keep clean all private avenues, passages, yards, and ways within the said premises, so as by such neglect to cause a nuisance, by offensive smell or otherwise, to forfeit and pay, on conviction, a sum not exceeding forty shillings nor less than ten shillings. s. 25.

BUTCHERS' SHAMBLES AND SLAUGHTER-HOUSES.

The 26th section enacts—

“That for preserving the cleanliness of the said Towns and the health of their inhabitants, it shall be lawful for any Justice appointed under this Act, and for any police constable authorised and deputed by any writing under the hand of any such Justice, from time to time, and when and as often as he or either of them shall see occasion to visit and inspect the butchers' shambles and slaughter-houses in any of the said towns for which he or either of them shall be so respectively appointed, and to give such directions concerning the cleansing the said shambles and slaughter-houses both within and without as to him shall seem needful; and any butcher, and the owner or occupier of any such shamble or slaughter-house, who shall obstruct or molest any such Justice or constable in the inspection thereof, or who shall refuse or neglect to comply with such directions within a reasonable time, shall upon the view of any such Justice, or on conviction on the complaint of any such constable, forfeit and pay a sum not exceeding two pounds nor less than ten shillings.”

DRAWING OR TRAILING TIMBER, &c.

The 27th Section enacts—

“That if any person shall haul or draw, or cause to be hauled or drawn, upon any part of the streets or public places within any of the said towns, any timber, stone, or other thing otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other thing, which shall be carried principally or in part upon wheeled carriages, to drag or trail upon any part of such street or public place to the injury thereof, or to hang over any part of any such carriage, so as to occupy or obstruct the street beyond the breadth of the said carriage, every such person so offending shall, upon conviction, forfeit and pay for every such offence the sum of forty shillings over and above the damages occasioned thereby, and it shall be lawful for any police constable to appre-

hend any person whom he shall find in the act of committing any such offence, and to convey such person before any Justice of the Peace to be dealt with according to law."

ENTRANCES TO CELLARS, COAL HOLES, &c., TO BE COVERED AND SECURED. IN DEFAULT JUSTICES MAY CONVICT ON VIEW, &c.

The 28th section enacts—

"That if the owner or occupier of any house, building, or premises, within any of the said towns, having any iron or wooden rails or bars over the areas or openings to any kitchens or cellars, or other part or parts of the said house, building, or premises, beneath the surface of the footway of any streets or public places within the said Town, or having any doorway or entrance into the casement or cellar-story thereof, shall not either keep the same or the rails of such kitchens or cellars in sufficient and good repair, or safely and securely guard, and constantly keep the same securely guarded by a rail or rails, or cover the same over with a strong flap, or trap-door, according to the nature of the case, and so as to prevent danger to any persons passing and repassing; or if any such owner or occupier do or shall leave open, or not sufficiently and substantially cover and keep covered and secured any coal-hole, or other hole, funnel, trap-door, or cellar-flap, belonging to or connected with his or her house, building, or premises (save and except only during such reasonable times as any coals, wood, casks, or other things shall be putting down or taking up out of any such vaults or casement story, or during such reasonable times as the flap, trap-door, or covering thereof shall be altering, repairing, or amending); or if such owner or occupier shall not repair, and from time to time keep in good and substantial repair to the satisfaction of the Justice appointed under this Act, all and every or any such iron or wooden rails, guard rails, flaps, trap doors, and other covering, then and in every such case the person or persons neglecting so to do, shall, for every

or any such offence, on conviction before or in the view of any Justice of the Peace, forfeit and pay any sum, not being less than forty shillings, nor exceeding five pounds.

CELLARS OR OPENINGS BENEATH THE SURFACE OF FOOTWAYS PROHIBITED.

The 29th Section enacts—

“That it shall not be lawful after the passing of this Act for any person to make any cellar, or any opening, door, or window, in or beneath the surface of the footway of any street or public place within any of the said towns, and if any person shall offend in the premises he shall, on conviction before any Justice of the Peace, forfeit and pay the sum of five pounds over and above the expense of remedying or removing any such cellar, opening, door, or window, made contrary to the provisions hereof, such expense to be assessed and allowed by such Justice.”

WELLS EXPOSED TO STREETS TO BE CLOSED IN, &c.

The 30th Section enacts—

“That every person who shall have a well situated between his or her dwelling-house, or the appurtenances thereof, and any street or footway within the limits of any of the said towns, or at the side thereof, or in any yard or place, open and exposed to such street or footway, shall, within the space of three calendar months, from and after the passing of this Act, cause such well to be securely and permanently covered over, and shall not be at liberty to open the same, or to draw water therefrom, unless by means of a pump, closely and securely fixed therein; and if any person, having such well as aforesaid, shall fail to cover and secure the same within the time and in the manner hereby required and directed, every such person shall, upon conviction, for every such offence, forfeit and pay the sum of two shillings and sixpence for every day that such well shall remain open or uncovered, contrary to the provisions of this Act.”

HOLES, &c., MADE FOR VAULTS, FOUNDATIONS, &c., TO BE COVERED IN.

The 31st Section enacts—

“ That if any person or persons shall dig, or make, or caused to be dug, or made, any hole, or leave, or cause to be left, any hole before any vacant ground, or before or behind, or on the side of any house or other tenement or building erected, or being erected, or about to be erected, in and adjoining to any street or public place, formed, or to be formed, or forming, within any of the said towns, for the purpose of making any vault, or vaults, or the foundation or foundations to such houses or other buildings, or for any other purpose whatsoever, and shall not forthwith enclose the same in a good and sufficient manner to the satisfaction of the Police Magistrate of the said town respectively, or shall keep up, or cause to be kept up, and continued, any such enclosure for any time which shall be longer than shall be absolutely necessary in the opinion of the said Police Magistrate, or shall not when thereunto required by the said Police Magistrate, well and sufficiently fence or enclose any such hole or holes, or area or areas, or space or spaces opened or left open, and intended for an area or areas, foundation or foundations, or for any other purpose whatsoever, in the front of, or behind, or on the side of any such vacant ground, house, or other tenement or building, in and adjoining to any such street or public place formed, or to be formed, or forming, within twenty-four hours after he or they shall be required so to do by the said Police Magistrate, and in the manner and with such materials as he shall direct and to his satisfaction, and shall not place a light upon the said enclosure, and keep the same constantly burning from sunset to sunrise during the continuance of such enclosure: then, and in every or any such case, every person so offending, shall forfeit and pay for every such offence, and for every such refusal or neglect, any sum, not being less than forty shillings, nor exceeding five pounds.”

HOUSES TO BE PROVIDED WITH GUTTERS.

The 32nd section enacts—

“That if at any time after the expiration of twelve months from the passing of this Act, any house or building shall not be provided with gutters, or otherwise so constructed as to prevent rain from dropping from the eaves thereof, upon any part of the footways of any street or public place within any of the said towns, the owner or occupier of such house or building shall, on conviction, forfeit and pay the sum of five shillings, and a like sum for every day that the same may not be prevented or remedied by gutters or otherwise.”

NIGHT SOIL, &c., WHEN TO BE REMOVED.

The 33rd Section enacts—

“That if any person or persons shall drive or cause to be driven any cart or other carriage with any night soil or ammoniacal liquor therein through or in any of the streets or public places within any of the said towns between the hours of five o'clock in the morning and ten o'clock at night, or shall fill any cart or other carriage so as to turn over, or cast any of the night soil, ammoniacal liquor, slop, mire, or channel dirt, or filth, in or upon any of the said streets or other public places, it shall and may be lawful for any person or persons whomsoever to seize and apprehend, and to assist in seizing and apprehending the offender or offenders, and by the authority of this Act, and without any other authority or warrant, to convey him or them before any Justice of the Peace within any of the said towns; and such Justice is hereby authorised and required to hear evidence and determine upon such offence; and every such person so offending shall for every such offence forfeit and pay the sum of five pounds: Provided always, that in case the person or persons so offending cannot be apprehended, then the owner or owners of such cart or carriage in which such night soil, or ammoniacal liquor, slop, filth, mire, or channel dirt, shall be put or placed, and also the employer or employers of the person or persons so offending

shall be liable to and forfeit and pay such penalty as aforesaid."

PERSONS EMPTYING OR REMOVING NIGHT SOIL AT IMPROPER HOURS MAY BE APPREHENDED BY ANY PERSON.

The 34th section enacts—

"That if any person or persons shall empty or begin to empty any privy or privies, or take away night soil from any house or premises within the streets or public places within any of the said towns, or shall come with carts or carriages for that purpose, except between the hours of ten at night and five in the morning; or if any person or persons shall put in or cast out of any cart or tub, or otherwise, any night soil in or near any of the streets or public places within any of the said towns, it shall be lawful for any constable (and he is hereby strictly charged so to do), or for any other person or persons whomsoever, without any warrant or other authority than this Act, to apprehend and convey any person or persons found committing any of the said offences, or either of them, to any watch-house within any of the said towns, or to any other place of confinement or security, and from thence to convey him or them as soon as conveniently may be before some Justice of the Peace within any of the said towns, who shall commit every such offender or offenders, upon conviction, to the house of correction or common gaol, for any time not exceeding thirty days, to be computed from the day of commitment; and the owner or owners of any carts, carriages, horses, or beasts, employed in and about emptying and removing such night soil, or coming for that purpose (save and except within the hours hereby allowed), or the employer or employers of any person or persons who shall so put or cast out any such night soil, shall forfeit and pay the sum of five pounds for every such offence."

PENALTY FOR INJURING OR EXTINGUISHING LAMPS.

The 35th Section enacts—

"That any person who shall be convicted of wantonly

or maliciously breaking or injuring any lamp, or lamp-post, or extinguishing any lamp set up for public convenience, within any of the said towns, shall over and above the necessary expense of repairing the injury committed, to be estimated by the Justice before whom such offender shall be brought, forfeit and pay, upon conviction for every such offence, any sum not less than one pound, nor exceeding five pounds; and it shall be lawful for any constable to seize any person whom he shall find in the act of committing any such offence, and to convey him or her to the nearest watch-house or other place of security, there to be detained until he or she can be brought before any Justice of the Peace within any of the said towns, to be dealt with according to law."

DEAD ANIMALS NOT TO BE THROWN INTO ANY PUBLIC WAY, CREEK, OR RIVER.

The 36th Section enacts—

"That it shall not be lawful for any person to throw, or cause to be thrown, any dead animal into any street, lane, road, or other public place, within the limits of any of the said towns, or into any river, creek, or other stream which shall flow through, by, or along any such street, lane, road, or other public place within the same, or to leave, or cause the same to be left, upon the shores thereof; and any person who shall be guilty thereof shall, on conviction, forfeit and pay any sum not exceeding one pound nor less than five shillings, and it shall be lawful for any constable to seize any person whom he shall find committing the said offence, and to take him or her before any Justice of the Peace within any of the said towns, or cause him or her to be detained in any watch-house, or other place of security, until he or she shall be brought before such Justice to be dealt with according to law."

ROCKS NOT TO BE BLASTED WITHOUT NOTICE TO THE POLICE MAGISTRATE.

The 37th Section enacts—

“That any person who shall be desirous of blasting any rock within the limits of any of the towns aforesaid, shall give notice in writing twenty-four hours previously to the Police Magistrate, who shall appoint a time when the same may take place, and give such other directions as he may deem necessary for the public safety; and if any person shall blast, or cause to be blasted, any rock within the limits aforesaid, without giving such notice, or shall not conform to the directions given to him by the said Police Magistrate, he or she shall, on conviction, forfeit and pay for every such offence any sum, not less than ten pounds, nor more than twenty pounds.”

TURF OR GRAVEL NOT TO BE REMOVED FROM STREETS.

The 38th section enacts—

“That any person who shall form, dig, or open, any drain or sewer, or remove, or cause to be removed, any turf, clay, sand, soil, gravel, stone, or other material, used in the formation of the streets, in or from any part of the carriage or footways within any of the said towns, without leave first had and obtained from the Police Magistrate, or who shall wantonly break up or otherwise damage the said carriage or footways, shall, on conviction, forfeit and pay for every such offence, any sum not exceeding five pounds, nor less than one pound.”

AS TO THE DRIVING CARTS, WAGGONS, &c.

The 39th Section enacts—

“And whereas many accidents happen, and great mischiefs are frequently done in the streets and public places in the said towns, by the negligence or wilful misbehaviour of persons driving therein,—Be it therefore enacted, that if the driver of any waggon, wain, cart, or dray of any kind, shall ride upon any such carriage in any street or public place in any of the towns aforesaid, not having some person on foot to guide the same (such light carts as are drawn by one horse and driven or guided with reins only excepted); or if the driver of any carriage whatsoever shall wilfully be

at such a distance from such carriage, or in such a situation, whilst it shall be passing upon such street or public place, that he cannot have the direction and government of the horse or horses, or cattle, drawing the same; or if any person shall ride upon the shafts of any waggon, cart, dray, or other carriage whatsoever; or if the driver of any waggon, cart, dray, coach, or other carriage whatsoever, meeting any other carriage shall not keep his waggon, cart, dray, coach, or other carriage on the left or near side of the road; or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his or her care, upon such street or public place, or by negligence or misbehaviour, prevent, hinder, or interrupt, the free passage of any carriage or person, so in or upon the same, every such driver or person so offending shall, on conviction, forfeit and pay for every such offence any sum not less than ten nor exceeding forty shillings. And it shall be lawful for any police constable, or other person, to seize and convey any person so offending, before any Justice, within any of the said towns, to be dealt with according to law."

FURIOUS OR CARELESS RIDING OR DRIVING, &c.

The 40th Section enacts—

"That any person who shall ride or drive through any street or public place within any of the said towns so negligently, carelessly, or furiously, that the safety of any person shall be actually endangered, shall, on conviction, forfeit a sum not exceeding ten pounds, nor less than two pounds."

PLACARDS, BILLS, &c.

The 41st Section enacts—

"That it shall not be lawful for any person to paste, or otherwise affix, any placard or other paper upon any wall, house, or building, within any of the said towns, nor to deface any such wall, house, or building, by chalk or paint, or in any other manner; and any person who shall be guilty of any such offence shall,

upon the complaint of the owner or occupier of any such wall, house, or building, forfeit and pay, on conviction, the sum of ten shillings."

LIMITS OF TOWNS.—The limits of towns to be marked out by Surveyor-General and published in the Gazette. Surveyor-General and persons appointed by him not to be deemed to commit any trespass by entering upon the property of any individual in order to erect, uphold, or repair any marks of the boundaries of such towns. s. 43.

Police Magistrate of each town to perambulate the limits of the town annually. s. 44.

Carriage and foot ways to be set out, &c. ss. 45, 46, 47.

HOUSES OR BUILDINGS not to be erected within a certain distance of curb stone; and if so erected, the person erecting the same to pay a penalty of £20, and if not removed or abated within one month after notice to that effect from the Police Magistrate, the person erecting to pay the further sum of one pound for every day the same shall remain, contrary to the provisions of the above Act. And two or more Justices of the Peace, the Police Magistrate being one, may grant a warrant to cause such building or erection, so far as the same may be contrary to the Act, to be taken down, and the materials sold. s. 48.

NOTICE OF INTENTION TO BUILD TO BE GIVEN TO POLICE MAGISTRATE.

The 49th Section enacts—

“That after the passing of this Act, no person whatsoever shall begin to erect any house, shop, or other building, in any street, within any of the towns aforesaid, without first serving notice in writing on the said Police Magistrate, on any lawful day between the hours of eleven and three o'clock, stating such intention, and describing the proposed situation of the building: and the said Police Magistrate is hereby required and directed, within seven days after the receipt of such notice, to furnish such person with a paper, signed by

the said Police Magistrate, specifying the provisions of this Act, so far as the same may relate to the erection of such shop, house, or other building ; and if any person shall begin to erect the same without having first served such notice and received such paper, he or she shall forfeit and pay a sum not exceeding ten pounds ; and if the said Police Magistrate shall refuse or neglect to furnish such written paper within seven days after the receipt of such notice, he shall, on conviction, forfeit and pay the sum of ten pounds, unless reasonable cause be shewn."

ENTRANCES, &c., BELOW THE LEVEL OF THE CURB STONE,
TO BE GUARDED.

The 50th Section enacts—

"That every owner or occupier of any house, building, or premises, within the said towns, having any entrance, area, garden, or other open space adjoining the footway of any street or public place within the said towns, beneath the level of the curb stone or exterior edge of such footway, shall protect and guard the same by good and sufficient rails, fences, or other inclosures, so as to prevent danger to persons passing and repassing ; and further, that every such owner or occupier of any such house, building, or other premises, having any steps adjoining the footway of any street or public place, shall in like manner protect and guard the same by rails or other inclosures, so as to prevent the like danger to persons passing and repassing ; and in failure thereof every such owner or occupier shall, as often as he shall be convicted of such offence, either before or in the view of any Justice of the Peace, forfeit and pay any sum not being less than forty shillings nor more than five pounds."

POWERS OF SURVEYOR.

The 51st Section enacts—

"That nothing in this Act contained shall be deemed to interfere with the powers vested in any surveyor by the provisions of any other Act in force within the said Colony."

NAMES OF STREETS—NUMBERS OF HOUSES.—Police Magistrate may affix name of street, &c., to any house, and allot number to each house, which number the owner or occupier is required to paint or affix in legible characters on the door, within fourteen days after written notice, and every person refusing or neglecting to paint or affix such number after notice, on conviction, to pay ten shillings, and the like sum for every week during the continuance of such refusal or neglect. s. 52.

FOOTWAYS TO BE LEVELLED, &c.—And obstructions removed. s. 53.

FLAGGING, PAVING, &c.—Persons desirous of flagging, paving, gravelling, or putting a curb stone to the footway in the front of their houses, to give twenty-four hours' notice before such work shall be begun, to the Police Magistrate, at his office, between the hours of eleven in the forenoon, and three in the afternoon, of any lawful day, and persons commencing such work, without giving the notice required, or neglecting to conform to the directions of the Police Magistrate, to forfeit a sum not less than five nor more than ten pounds, and two or more Justices, the Police Magistrate being one, may order the removal of all work which may be so executed contrary to such directions. s. 54.

OBSTRUCTING PERSONS HAVING CONTROL, &c., IN EXECUTION OF DUTY.

The 55th Section enacts—

“That if any person shall, at any time or times hereafter, in any manner whatsoever, wilfully obstruct, hinder, or molest, any person having the control of the streets, or public places, within any of the said towns, or any Surveyor or Surveyors, or any other officer or officers, person or persons whomsoever, who are or shall be appointed, employed, or authorised to put in execution this Act, in the performance or execution of his or their duty, then every person or persons so offending shall, on conviction, for the first offence, forfeit and pay the sum of five pounds; and for the second offence, the

sum of ten pounds; and, for the third, or any subsequent offence, the sum of twenty pounds.

JURISDICTION OF OFFENCES.

The 58th Section enacts—

“That all complaints of offences against this Act shall be heard and determined in a summary manner by one or more Justice or Justices of the Peace, as hereinbefore mentioned; and it shall and may be lawful for any such Justice or Justices respectively, to summon before him or them, as the case may be, on a day to be appointed in that behalf, the person complained against, or charged with any offence against the provisions of this Act; and thereupon, whether the said party, having been duly summoned, shall attend or not, unless some reasonable excuse for his or her default, to be allowed by the said Justice or Justices, shall be made for his or her non-appearance, the said Justice or Justices, shall forthwith proceed to enquire touching the matters complained of, and shall hear and examine on oath, or affirmation, the witnesses produced concerning the same, and shall give judgment thereon, and also for the costs of the said proceedings, according to law. Provided always, that upon every such complaint so to be heard and determined as aforesaid, an informer shall be considered and is hereby declared to be a competent witness: And provided also, that no person or persons shall be convicted of any offence or offences contrary to the provisions of this Act, in a summary way, before any Justice or Justices of the Peace, after the expiration of one month from the time when such offence or offences shall have been committed.”

WITNESSES.

The 59th Section enacts—

“That it shall and may be lawful to and for any Justice or Justices as aforesaid, to issue a summons, under his or their hands, to any person or persons whomsoever, to attend as witness or witnesses, to give evidence upon oath or solemn affirmation, before such

Justice or Justices, touching any matter of fact contained in any information or complaint for any offence against this Act, whether on the part of the prosecutors or informers, or of the person or persons complained of; and which summons such Justice or Justices as aforesaid are hereby required to issue, if demanded; and if such person or persons summoned as aforesaid, being within the limits of any of the said towns, in which the cause of such complaint shall have arisen, shall refuse or neglect to appear at such time and place, to be for that purpose appointed, without such excuse for his, her, or their refusal or neglect as shall be approved of by such Justice or Justices, or appearing, shall refuse to be examined on oath or solemn affirmation, or to give evidence before such Justice or Justices, then and in every such case, every such person shall forfeit and pay for every such offence, any sum not being less than five pounds, nor exceeding ten pounds."

FINES AND PENALTIES.

The 60th Section enacts—

"That all penalties, forfeitures, and fines, by this Act inflicted and imposed, shall be paid forthwith, or within such time as the Justice or Justices convicting shall order and direct, and in default of such payment, shall be levied by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand or hands of such Justice or Justices as aforesaid; and all the penalties and forfeitures, when recovered (rendering the overplus, if any there be, after deducting all the costs, charges, and expenses of any summonses, informations, complaints, hearings, warrants, and of such distress, and the keeping, appraisement, or sale thereof, or otherwise relating thereto, unto the person or persons whose goods and chattels shall be so distrained and sold) shall be paid and applied as hereinafter is directed; and in every such case where distress is directed to be made, levied or taken by this Act, and sufficient distress shall not be found, and such penalties,

forfeitures, and fines, and costs, charges and expenses, shall not be forthwith paid, it shall and may be lawful for such Justice or Justices as aforesaid, and he or they is or are hereby authorised and required, by warrant or warrants, under his or their hand or hands, to cause such offender or offenders to be committed to *any Common Gaol* or House of Correction, there to remain for any time *not exceeding seven days from the time of such commitment*, where the whole sum to be levied and and remaining unpaid, together with the costs, shall not exceed ten shillings ; *fourteen days*, where the said sum and costs shall not exceed one pound ; *one calendar month*, where the said sum and costs shall not exceed five pounds ; *two calendar months*, where the said sum and costs shall not exceed ten pounds ; and *three calendar months*, where the said sum and costs shall be of any greater amount : unless the said sum to be levied, together with the costs, shall be sooner paid : *Provided* always, that if at the time of conviction it shall appear to such Justice or Justices, either by the confession of the offender or offenders, or otherwise, that the offender or offenders has or have not sufficient goods or chattels whereupon the said penalties, forfeitures, and fines, may be levied within the jurisdiction of such Justice or Justices, no sale shall take place of the goods and chattels of such offender or offenders, but it shall be lawful for such Justice or Justices to commit such offender or offenders to the Common Gaol or House of Correction for such time and in such manner as is hereinbefore mentioned and directed : and provided also, that any one Justice of the Peace may, and is hereby authorised and required, to act in any and every case in which the concurrence of two Justices of the Peace shall not be expressly required by this Act."

Appeal allowed to Quarter Sessions where fine or penalty exceeds five pounds. s. 61.

FINES AND PENALTIES to be paid, one-half to informer or prosecutor, if demanded, and residue to the Queen. s. 67.

The following form is directed by the 62nd Section to be used in all convictions under the above Act:—

FORM OF CONVICTION.

Be it remembered, That on this day of , in the year of our Lord , A. B. is duly convicted before , of Her Majesty's Justices of the Peace, of having, (here state the offence, as the case may be) contrary to the form of an Act in that case made and provided; and I (or we, as the case may be) do declare and adjudge that the said A. B. hath forfeited for his (or her, as the case may be) said offence, the sum of , and also the sum of , for the costs, charges, and expenses, already incurred thereabout.— Given under my hand and seal (or our hands and seals, as the case may be), the day and year first above written."

WATER POLICE.—See Acts of Council, 4 Vict. No. 17 (*Callaghan*, vol. 2, p. 936), "An Act for the further and better regulation and government of Seamen within the Colony of New South Wales and its Dependencies, and for establishing a Water Police," Also, 7 Vict. No. 21 (*Id.* p. 948), an Act to amend the above.

POST OFFICE.

See Acts of Council, 5 W. IV. No. 24 (*Callaghan*, vol. 2, p. 952); 2 Vict. No. 17 (*Id.* 959); and 4 Vict. No. 9 (*Id.* 960.) Also, Imperial Act, 7 and 8 Vict. c. 49 (*Id.* 962.)

Fraudulently taking from the possession of any Post-master or person employed to convey post letters, or from out of any Post-office or place appointed for the receipt or delivery of post letters, any letter, or packet, or mail of letters (sent or to be sent by such post) or fraudulently taking any letter or packet out of such bag or mail—*felony*. 5 W. IV. No. 24, s. 26.

No letter or packet chargeable with postage under the provisions of Act of Council, 5 W. IV. No. 24, "shall be carried for hire or reward otherwise than by post; and if any such letter or packet shall be so carried or conveyed, or be sent or taken charge of for the

purpose of being so carried or conveyed (not being by a person employed in the Post Office or in the conveyance of post letters) the person so sending or conveying such letter or packet, or taking charge of the same for such carriage or conveyance, shall, for every such letter or packet, forfeit and pay a penalty or sum of not less than two pounds nor more than twenty pounds; and that every such letter and packet sent or carried, or taken charge of, to be carried otherwise than by post, shall be deemed in any prosecution for this offence to have been for hire or reward: unless the contrary shall be shewn by the defendant." *Id.* s. 22.

EXCEPTIONS.—Letters exceeding four ounces in weight. Letters or packets concerning goods sent with such goods, and to be delivered therewith. Letters containing any writ or proceeding out of any Court of Justice, or deeds, conveyances, affidavits, or letters of attorney. Letters or packets sent by any person concerning his or her private affairs by any special messenger; and letters and packets *bonâ fide* sent or carried to or from a Post Office, or to or from any place distant five miles or upwards from any Post Office or place appointed for the receipt or delivery of post letters. *Id.* s. 23.

PRIZE-FIGHTING.

Prize-fighting, like any other fighting, is *illegal*, and a breach of the peace. No consent can make it legal; and all the country being present, would not make it less an offence. "Prize-fights are *unlawful assemblies*, and every one going to them, is guilty of an offence, and indictable accordingly, (*R. v. Perkins*, 4 *C. and P.* 537), where it was holden by Pattenon J. that all persons present at a prize-fight, having gone thither with the purpose of seeing the prize-fighters strike each other,

were principals in the breach of the peace. See also *R. v. Billingham*, 1 *M. and R. M. C.* 127. In this case Judge Bayley said, "My advice to Magistrates and to constables is, in cases where they have information of a fight, to secure the *combatants* beforehand, and take them to a Magistrate, who ought to compel them to enter into securities to keep the peace till the next Assizes or Sessions; and if they will not enter into such security, to commit them to prison. In this way the mischief would be prevented, and the fights put a stop to."

It is usual to require a surety for the peace between the two combatants, and *all other* persons. See also ante "Murder."

PROCESSIONS.—(PARTY)

The following Act of Council is intituled "An Act to prevent for a limited time, party processions, and certain other public exhibition in the Colony of New South Wales." (1846.)

1. PREAMBLE.—WHAT PROCESSIONS OR ASSEMBLIES SHALL BE UNLAWFUL.—PROVISO.

Whereas there are in the territory of New South Wales various Societies or Associations, whereof some partake, or are supposed by many persons to partake of a political character; and whereas it is to be apprehended that any procession or meetings, distinguished by any emblem expressive of party feelings or political events, may create religious and political animosities between different classes of her Majesty's subjects, and are also calculated to occasion riots, tumults, and breaches of the public peace, and it is highly expedient and necessary to guard against the same: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That from and after the com-

mencement of this Act, any body of persons who shall meet and parade together, or join in procession, or who shall assemble in any public-house, tavern, or other place within the colony, for the purpose of celebrating or commemorating any festival, anniversary, or political event relating to or connected with any religious or political distinctions or differences between any classes of Her Majesty's subjects, or of demonstrating any such religious or political distinction or difference, and who shall bear, wear, or have among them, any fire arms or other offensive weapons, or shall have publicly exhibited any banner, emblem, flag, or symbol, the display whereof may be calculated to provoke animosity between Her Majesty's subjects of different religious persuasions, or who shall be accompanied by any music of a like nature or tendency, shall be and be deemed to be an unlawful assembly, and every person present thereat shall be and be deemed to be guilty of a misdemeanor, and shall upon conviction thereof be liable to be punished accordingly: Provided that nothing in this Act contained shall extend to any procession or assemblage held in the course of any election of any member to serve in the Legislative Council of New South Wales.

2. JUSTICES TO DISPERSE SUCH PROCESSIONS OR ASSEMBLIES.—NOTICE TO DISPERSE.

And be it enacted, that any Justice or Justices of the Peace shall and may proceed with such assistance as shall be necessary to the place where any procession or meeting of persons hereby declared to be unlawful shall be held or take place, and such Justices, or one of such Justices, or some other person by their or his order, shall then and there read, or repeat aloud, to the persons so assembled a command or notice to disperse, in the words, or to the effect following, that is to say:—
 “ Our Sovereign Lady the Queen doth command and charge all persons being here assembled immediately to disperse themselves, and peaceably to depart, upon the pains contained in the Act of the Governor and Legis-

lative Council of New South Wales, passed in the tenth year of the reign of Her Majesty Queen Victoria, intituled ' An Act to prevent party processions and certain other public exhibitions in the Colony of New South Wales.' ”

3. PERSONS REFUSING TO DISPERSE TO BE APPREHENDED AND PUNISHED—JURISDICTION.

And be it enacted, that the persons so met and assembled together shall forthwith disperse and depart; And in case any one or more of the persons so met or assembled together as aforesaid, shall not disperse and depart within the space of one quarter of an hour from the time of such notice or command being given, it shall be lawful for the same Justice or Justices who shall have read such command or notice, or any other Justice or Justices of the Peace, to cause the person or persons so refusing or neglecting to disperse or depart, to be apprehended by a warrant for that purpose, to be signed by him or them, and such offender or offenders shall thereupon be proceeded against in a summary way for such offence, before any two or more Justices of the Peace before whom he or they may be brought, and such Justices are hereby authorized to hear and determine the complaint; and every person convicted thereof, on the oath of one or more credible witness or witnesses, shall be committed to any gaol or house of correction, and there be imprisoned for any time not exceeding one calendar month, and for a second or any subsequent conviction against the provisions of this Act, for any time not exceeding three calendar months.

4. COMMENCEMENT AND DURATION OF ACT.

And be it enacted, That this Act shall commence and take effect from and after the passing thereof, and shall thenceforward continue in force for three years, but no longer.

PUBLICAN.—PUBLIC-HOUSE.

“The Act of Council, 2 Vic. No. 18, (1838), is intituled, ‘An Act for Consolidating and Amending the Laws relating to the Licensing of Public-houses, and for further regulating the Sale and Consumption of Fermented and Spirituous Liquors in New South Wales.’”
Callaghan, vol, 2. p. 813.

Section 1—

After reciting that it is expedient to reduce into one Act the Laws relating to the Licensing and regulation of Public-houses, enacts—

[Penalty for selling liquor without license.]

“That if any person shall, after the commencement of this Act (1st January, 1839) sell or dispose of, in any house or place, within the Colony of New South Wales, any fermented or spirituous liquors, or any mixed liquors, part of which is fermented or spirituous, or shall permit or suffer any such liquor to be sold or disposed of by any other person in his or her house, or other place, within the said Colony or its Dependencies, without having first obtained, in manner and form hereinafter directed, a license, sufficiently authorising such sale and disposal as aforesaid, every such person shall forfeit for every such *first* offence, the sum of *thirty* pounds, and for every *subsequent* offence, the sum of *fifty* pounds, together with the costs of prosecution—in every case to be recovered before any two Justices of the Peace, as hereinafter provided.

“And every such person shall further, upon conviction of any such offence, be rendered incapable of holding any license whatsoever, under this Act, for the period of *three* years from the time of such conviction.”

Section 2—

[Exceptions.]

“This Act not to apply to any person selling any distilled or spirituous perfume, *bonâ fide* as perfumery, and *not* for the purpose of drinking; nor to any person practising as an apothecary, chemist, or druggist, who may administer or sell any spirituous or fermented liquors as medicines, or for medicinal purposes; nor to any person who, within the towns of Sydney, Parramatta, Windsor, Maitland, and Melbourne,* and such other towns within the said Colony, or its Dependencies, as shall, by the Governor, or acting Governor, for the time being, by a notice to be published in the ‘New South Wales Government Gazette,’ be from time to time declared, to come under the operation of this Act, shall dispose of any quantity not less than two gallons, of any fermented or spirituous liquors, or any mixed liquors, part of which is fermented or spirituous: nor to any person who, within the towns of Liverpool, Campbelltown, Wollongong, Berrima, Goulburn, Bathurst, Penrith, Richmond, Newcastle, Morpeth, Carrington, and Port Macquarie, and such other towns within the said Colony or its Dependencies, as shall by the Governor or acting Governor for the time being, by a notice to be published† in the ‘New South Wales Government

* Extended to other towns.

† The 1st sec. of 3 Vic. I. (No. 13,) of 1838, alters the latter part of this

Gazette,' be from time to time declared to come under the operation of this clause, shall dispose of any quantity not less than two gallons, of any fermented liquors, no part of which is spirituous; nor to any grower or maker of wines from grapes, the produce of the said Colony or its Dependencies, who shall dispose of the same in any quantity not less than ten gallons;* nor to any person or persons who may give wine or beer made from grapes or grain of his, her, or their own growth, in part payment of wages to labourers on lands owned or rented by him, her, or them; nor to any military canteen duly established under the regulations of Her Majesty's Service."

Section 3—

[Licenses how issued.]

"Licenses under this Act to be issued by Colonial Treasurer, or other person appointed by the Governor, and to be of four kinds:—

"Publicans' General License," for sale of all liquors, as per form A.

section, and is as follows:—"Whereas by an Act or Ordinance of the Governor and Council of New South Wales, passed in the second year of the reign of Her present Majesty, intituled 'An Act for Consolidating and Amending the Laws relating to the Licensing of Public-houses, and for further regulating the Sale and Consumption of Fermented and Spirituous Liquors in New South Wales,' it is enacted, That if any person shall sell or dispose of in any house or place within the said Colony, any fermented or spirituous liquors, or any mixed liquors, part of which is fermented or spirituous, without having first obtained a license, such person shall be liable to certain penalties therein mentioned. And whereas, there are certain exceptions in the said recited Act, among others, that the aforesaid enactment shall not apply to any person who, within certain towns therein specified, and such other towns in the said Colony or its Dependencies as shall by the Governor or acting Governor for the time being, by a notice to be published in the 'New South Wales Government Gazette,' be from time to time declared to come under the operation of said exceptions, shall dispose of any quantity not less than two gallons of any fermented liquors, no part of which is spirituous; nor to any person or persons who may give wine or beer made from grapes or grain, of his, her, or their own growth, in part payment of wages to labourers on lands owned or rented by him, her, or them; and whereas it is deemed expedient to authorise the Governor to extend the operation of said first recited case of exception to such other places (not being towns) as the Governor shall from time to time declare by notice in the 'Government Gazette.' And whereas, it is deemed expedient to extend the last-recited case of exception to beer made from sugar, by any proprietor or occupier of any lands, for the use of his, her, or their own establishment: Be it therefore enacted, that from and after the passing of this Act, nothing in the said recited Act contained shall be construed to apply to any person or persons who, within such other places (not being towns) in the said Colony as the Governor or acting Governor, for the time being, by a notice to be published in the 'New South Wales Government Gazette,' shall from time to time declare to come under the operation of the second section of the said recited Act, shall dispose of any quantity not less than two gallons of any fermented liquors, no part of which is spirituous; nor to any person or persons who shall make or brew beer from sugar, for the use of his, her, or their own establishment, and who may give the same in part payment of wages to labourers on lands owned or rented by him, her, or them, any law to the contrary, in anywise, notwithstanding."

* By the 7th Vic. No. 7 (*Callaghan*, vol. 2, p. 843) not less than two gallons; and the growers and makers of such wine are qualified to act as Justices under the above Act.

“Wine and Beer License,” for sale of wine, beer, and fermented liquors only, as per form B.

“Packet License,” as per form C; and

“Confectioners’ License,” for the sale of ginger and spruce beer, as per form D. All Licenses to commence on 1st July in each year; and to be in force for one year, if not forfeited.”

Section 4—

[As to general license.]

“Publicans’ General License to authorise the sale of any fermented or spirituous liquors, or any mixed liquors, part of which is fermented or spirituous, in any quantity, in the house or on the premises specified.

“Proviso.—This license not to authorise any such sale, in any place where a retail shop is kept, upon pretext of refreshment allowed to customers, or otherwise howsoever.”

Section 5—

[Wine and beer license.]

“Wine and Beer License only to authorise the sale of wine, beer, or fermented liquor.”

Section 6—

[Packet license.]

“Packet License to authorise the master or commander of the steam packet or other packet vessel, whilst such vessel shall be actually on her passage, to sell and dispose of any liquor to any passenger on board of such vessel.”

Section 7—

[Confectioners’ license.]

“Confectioners’ license to authorise the sale of ginger and spruce beer only.”

Section 8—

[License for fairs, races, &c.]

“Licenses may be transferred to fairs, races, &c., pro tem., by authority of Petty Sessions, per form E.

“Proviso.—No license to be transferred to fair, race, &c., a distance of more than ten miles, if out of the district of licensed person.”

Section 9—

[Persons disqualified to hold licenses.]

“The following persons disqualified to hold a license under this Act:—

“Any person holding office or employment under the Government.

“Any constable, or deputy, or bailiff.

“Any licensed auctioneer.”

“Any person, or the wife of any person, serving under a sentence for any criminal offence, whether any such sentence be partially remitted or not, unless by a pardon granted on the usual condition of residence in New South Wales, and then only after the same shall have been allowed by Her Majesty, and all such acts performed as are or shall be required by law, for the final confirmation of such pardon.”

“License not to be granted for any premises of which a constable is the owner, landlord, or proprietor, or wherein a constable has any share or partnership.”

“None of the persons hereinbefore named, nor any person holding a license under this Act, shall be received as a surety in any recognizance to be entered into under this Act.”

Section 10—

[Justices disqualified to act.]

“No Justice of the Peace, being a brewer, maltster, distiller, or an importer of, or dealer in wine or any malt or spirituous liquors, or concerned in any partnership with any brewer, maltster, or distiller, or dealer in wine or malt or spirituous liquors, or being the landlord, owner, or part owner of any house licensed, or about to be licensed, or being directly or indirectly interested in any such house, shall sit at, or act at, any meeting of Justices, during the consideration of any application for a certificate for a license, or the transfer thereof, or during the consideration of anything relating thereto, or shall convict, or join in any conviction, or in the consideration or determination of any appeal under this Act.

“PENALTY—one hundred pounds, to be recovered by action of debt in the Supreme Court.”

Section 11—

[As to applications.]

“Application for licenses to be lodged with Clerk of Petty Sessions on or before the first Tuesday in the month of April in each year.

“Applications for Publicans’ General License to be as per form A 1.

“Wine and Beer License as per form B 1.

“Packet License as per form C 1.

“Confectioners’ License as per form D 1.

“Applications for Publicans’ General Licenses and Wine and Beer Licenses to be accompanied by a certificate signed by five householders as per form A 2.”

Section 12—

[As to districts without petty sessions.]

“That if there shall be no established Petty Sessions for the District, or reputed District, within which it is proposed to exercise any such license, then, and in every such case, such notice as aforesaid shall be delivered to the Clerk of the Petty Sessions of the nearest District or place wherein a Police Magistrate shall officiate; and if there be any one or more Justice or Justices of the Peace residing within the District, or reputed District, from which the application shall proceed, the certificate hereinbefore referred to, in the form in the schedule hereunto annexed, marked A 2, shall be signed by one such Justice at the least; and if there be no such resident Justices, then by one Justice of some other District at the least, together with five known and respectable householders of the District from which the application shall proceed; and upon delivery of such notice and certificate, the Petty Sessions of the District to which such application shall be made under this provision, shall receive and determine upon the same, in like manner in all other respects as an application from the District for which such Petty Sessions shall be usually held.”

Section 13—

[As to applications for packet license.]

“That in every case in which the vessel in respect whereof application shall be made, shall ply to or from the harbour of Port Jackson, such application shall be made to the Justices of the District of Sydney; and in every other case, application shall be made to the Justices of either of the towns or places of usual

departure or arrival : Provided, that if such license be refused by the Justices at one of such places, no such license shall be afterwards granted by any other Justices, until the year next following such refusal."

Section 14—

[Annual licensing meeting.]

"That a general meeting (to be called the 'Annual Licensing Meeting') of the Justices of Petty Session acting in and for each District in the Colony, in which Petty Sessions shall be held, shall be holden in their respective Court-houses or usual places of meeting on the third Tuesday in the month of April in every year, for the special purpose of taking into consideration applications for such licenses as aforesaid : And it shall be lawful for the Justices assembled at such meeting to grant to such persons as shall be approved of by the majority of such Justices, after taking the required recognizances, certificates authorising such licenses, in the form in the schedule hereunto annexed, marked E : And it shall be lawful for the Justices to adjourn the consideration of all, or any, of the applications before them from the day of such annual meeting, to such other day or days as the said Justices shall from time to time agree upon : Provided always, that such adjournments do not in the whole exceed three weeks from the day appointed for the said General Annual Licensing Meeting."

Section 15—

[Notice in Government Gazette.]

"That the Clerk of each Petty Sessions shall cause a notice of each "Annual Licensing Meeting," to be inserted at least one calendar month before the holding, in the "Government Gazette," and also to be affixed* to the door of the Court House.

"PENALTY,—for neglect five pounds."

Section 16—

[Recognizances to be entered into.]

"That before the Justices shall deliver to any applicant for a license any certificate to authorise the issue thereof, every applicant shall enter into a recognizance with two sureties in the sum of fifty pounds each, if applying for a Publicans' General License, in the form and with the conditions in the schedule hereunto annexed, marked A 3 ; if for a Wine and Beer License, in the form and with the conditions in the schedule hereunto annexed, marked B 3 ; if for a Packet License, in the form and with the conditions in the schedule hereunto annexed, marked C 2 ; and if for a confectioners' License, in the form and with the conditions in the schedule hereunto annexed, marked D 2 : Provided always, that if it shall in any case appear expedient to the Justices to impose any special conditions upon any applicant for a license, in addition to those imposed by this Act, or contained in the said respective forms, whether as to the extent of accommodation required for travellers or guests in any licensed house, or otherwise as to the regulation thereof, and not contrary to any provision in this Act, it shall be lawful for the said Justices to insert the same in the recognizance in addition to the usual conditions thereof."

* By 2nd sec. 3 Vic. I. (No. 13) of 1839, the Clerk of every Petty Sessions is obliged, under a penalty of ten pounds, to cause a list of the names of all applicants for licenses, together with their places of abode and the description of license applied for to be posted up, on or before the second Tuesday in the month of April in each year, in some conspicuous place inside and outside the Police Office.

Section 17—

[As to applicants absent through illness.]

“That in case any person desirous of obtaining a certificate for a license, shall be hindered by sickness or infirmity, or any other reasonable cause, from attending in person at any such general or adjourned meeting of Justices (such cause of absence being proved to their satisfaction) it shall be lawful for such Justices to certify in favour of such person upon three sufficient sureties to be approved as aforesaid, entering into the required recognizances in the sum of fifty pounds each.”

Section 18—

[Mode of taking recognizance.]

“That all such recognizances as aforesaid, shall be entered into in the presence of the majority of the Justices assembled as aforesaid, and be signed by two at least, of such Justices, except in case where one Justice is authorised to act alone as hereinafter provided : And if any such Justices shall sign a certificate to authorise the issue of a license before the required recognizance shall have been fully entered into, and signed, such Justice or Justices shall severally forfeit a sum of one hundred pounds, recoverable by action of debt in the Supreme Court.”

Section 19—

[Recognizances to be recorded.]

“All recognizances entered into to be recorded in the records of each Petty Sessions, and transmitted within one calendar month to the Clerk of the Peace for the District.”

Section 20—

[List of certificates.]

“List of certificates granted, to be forwarded within fourteen days to the Colonial Treasurer.”

Section 21—

[Fees for licenses.]

“Certificates granted to be void, unless lodged with the money in the Office of Colonial Treasurer, on or before 30th day of June next ensuing each Annual Licensing Meeting.

“If lodged in time, the Colonial Treasurer authorised to issue description of license applied for on payment of the following sums respectively :—

“For Publicans' General License, thirty pounds.

“For Wine and Beer License, ten pounds.

“For Packet License, two pounds.

“For Confectioners' License, one pound.”

Section 22—

[License to defaulter when granted.]

“The Governor authorised (if he shall deem fit) to direct the issue of a license to defaulter, on payment of an additional sum of not more than twenty-five nor less than five pounds.”

Section 23—

[Licensing meeting may be adjourned.—Justices not attending, penalty for.]

“That whenever, at any annual licensing meeting, to be holden for any town

or district as aforesaid, or any adjourned meeting thereof, two Justices qualified to form a Petty Sessions for proceeding under this Act, shall not be present by one o'clock of that day, at the Court-house or other place appointed for the meeting, it shall be lawful for any one Justice of such town or district, being present, to adjourn or further adjourn the said meeting, for one week (any limitation hereinbefore prescribed, to the contrary notwithstanding), and to give notice of such adjournment to all the other Justices of the said town or district, and every such Justice to whom such notice shall be given is hereby required, under a penalty of twenty pounds, recoverable by action of debt in the Supreme Court, to attend such adjourned meeting, for the purpose of granting certificates for licenses under this Act; and if at such adjourned meeting there shall not be present two qualified Justices, it shall be lawful for any one qualified Justice, being present, to grant any certificate for a license or licenses, under this Act. *Provided* always, that nothing herein contained shall be construed as imposing the above penalty, except in default of the presence of two Justices qualified to perform the acts hereby required; nor shall such penalty be enforced, if such default of attendance be occasioned by the illness of a Justice summoned to attend as aforesaid, such prevention by illness being certified to the Justice present at the said adjourned meeting, by the certificate of a medical attendant of the party, or by the affidavit of the party himself."

Section 24—

[Colonial Treasurer may grant packet license, when.]

"And whereas public inconvenience might occasionally be sustained by delaying the issue of a packet license to the master or commander of a vessel conveying passengers in manner aforesaid, until the next meeting of Justices qualified to grant a certificate for the issue thereof: Be it therefore enacted, That it shall be lawful for the Colonial Treasurer of the said Colony for the time being, upon a certificate in the proper form signed by two or more Justices, together with the sum required to be paid for such license, being lodged in the office of the said Colonial Treasurer or of such other person appointed to issue licenses as aforesaid, and the master or commander having entered into the necessary recognizance, to authorise the issue of any such packet license, at any period of the year, to take effect and remain in full force until the first day of July next ensuing the date thereof: *Provided* that applicant for such license shall not have been refused a certificate for a license by any meeting of Justices to which he may have applied for the same."

Section 25—

[Renewal of license by Governor, when.]

"And whereas persons desirous of renewing their licenses, and ready to fulfil the conditions of this Act, may be unable to obtain the necessary certificate to entitle them to a renewal of such licenses, by reason of the non-attendance of any qualified Justice at the Annual Licensing Meeting, or on the day of such adjournment thereof as aforesaid, whereby great inconvenience and loss may be sustained by such persons: Be it therefore enacted, That it shall be lawful for the Governor of the said Colony, whenever he shall be satisfied that any person applying to have his or her license renewed has, from the causes aforesaid, or from any other cause without any default or neglect on his or her part, been unable to obtain the certificate aforesaid, at the time and in manner hereinbefore appointed, to order and direct that a new license be issued to any person so applying, upon his or her entering into the recognizances and paying the duty required by this Act."

Section 26—

[Majority of qualified Justices may recommend license at any time.]

"The majority of the entire number of qualified Justices residing within any

district, may specially recommend licenses at any time, if it shall appear to them that any injustice or material injury will be occasioned by delay in granting the license. The usual recognizance* to be entered into, and certificate granted, signed by all the Justices of the majority, to be laid before his Excellency the Governor, who will (if he shall so deem fit) authorise the license to be issued, upon payment of such sum as shall be determined by the Governor."

Section 27—

[Transferring license, when.]

"Special Petty Sessions of Justices of the Peace, to be held for transferring licenses, on the first Tuesday in each of the months of September, December, and March, in every year."

Section 28—

[Transferring license, how.]

"Such Sessions to transfer the license of any person licensed to the appointee of the original holder, by an endorsement on license, as per form marked I; appointee to enter into recognizance, and produce same certificate as the person originally licensed."

Section 29—

[Death or insolvency of person holding license.]

"That in case of the decease or insolvency of any person holding a license under this Act, his or her executors or administrators or trustees, as the case may be, shall be entitled to carry on the business of the person so licensed as aforesaid, and to act under the authority of the said license, without any renewal or formal transfer thereof, during six months, if the license have so long to run, or until the next licensing day following the date of his or her decease, or of the legal vesting of his or her property in such trustees, as the case may be: Provided that such license shall be subject to the same regulations as if it had continued to be holden by the person to whom the same was granted, and that new recognizances† be entered into by such executors, administrators, or trustees respectively, before the Justices assembled at the next Special Petty Sessions for the district, ensuing the date of such decease or legal vesting as aforesaid, or before any Justice or Justices of the district who shall previously require the same to be entered into."

Section 30—

[Majority of Magistrates may transfer, when.]

"Majority of resident Justices may transfer licenses at any time, when it appears to them that any injustice or material injury, of a public or private nature, will be occasioned by a delay in the transfer; Provided all conditions required by this Act‡ shall be first duly fulfilled."

Section 31—

[Removal of license.]

"That in case of any person having duly obtained a 'Publican's General

* Section 16.

† If new recognizance be not entered into, any party selling under original license, becomes liable to the penalties contained in the first clause of this Act.

‡ Section 28.

License' or a 'Wine and Beer License,' shall be desirous to remove his business from the house expressed in such license to any other house within the same district, at any time after the issuing of his or her said license, and before the next General Licensing Meeting, then upon memorial from such person to the Justices of the district in which the original license was granted, it shall be lawful for the said Justices, or any two or more of them, after such person shall have entered into a new recognizance with such sureties as aforesaid, to grant a certificate authorising the Colonial Treasurer or other person duly appointed to issue licenses as aforesaid, to affix his signature to a memorandum, to be endorsed upon or affixed to the original license, in the form in the schedule hereunto annexed, marked K, or to the effect thereof, by virtue whereof the said license shall be thenceforth transferred during the remainder of the time the same has to run, to the house or premises mentioned in such certificate, and shall cease to apply, except so far as regards acts or liabilities already performed or incurred, to the house and premises for which such license was originally granted."

Section 32—

[Transfer to be reported.]

"That every transfer of a license authorised by any Justices under this Act, whether as regards the person or the house to which the license shall apply, shall within fourteen days after such transfer, be reported to the Colonial Treasurer or such other person appointed to issue licenses as aforesaid, by the Clerk of the Petty Sessions, by which such transfer shall be authorised, under a penalty for every neglect or omission, of five pounds; to be recovered before any one or more Justice or Justices of the Peace."

Section 33—

(Dice, cards, bowls, &c., not to be kept, penalty for.)

"That if any person, holding a license under this Act, except a Packet License, shall have or keep in or about his house, premises, or appurtenances, or at any place connected with the same in any way whatever, any skittle-ground or ball-court, or any dice, cards, bowls, billiards, quoits, or other implements used in gaming, or shall suffer any person resorting thither to use or exercise any kind of said games, or any other unlawful game or sport within his said house, premises, or appurtenances; or if any such licensed person shall offend against the tenor of his or her license, or shall in any respect commit a breach of any condition of the recognizance by him or her entered into, he or she shall, upon being lawfully convicted before two or more Justices of the Peace, forfeit and pay for every such offence a sum of not less than forty shillings or more than twenty pounds, with costs: Provided, however, that the Police Magistrate of the Town of Sydney, or any Bench of Magistrates, of whom the Police Magistrate (if there be such) shall be one, may at their discretion grant a written permission to any licensed person within their respective districts to allow the game of billiards to be played in his or her licensed house on any day, Sunday, Good Friday, and Christmas Day excepted, on payment of the sum of ten pounds, in addition to the sum to be paid in like manner, as hereinbefore is mentioned, for his or her license, and also of the sum of ten pounds hereinafter required to be paid for dispensing of the restrictions, or part thereof, in respect to the hour of closing houses licensed under this Act: And provided further, that for any second or subsequent offence, it shall be lawful for the said Justices, in their discretion, either to proceed to such conviction, as hereby authorised, or before the hearing of the complaint, or at any time before conviction, to issue a summons requiring the person so complained of, or informed against, to appear at the next Court of Quarter Sessions to be holden for the county or division of territory, including the district or place wherein such licensed person resides, then and there to answer to the matter of such complaint or

information, and any other person or persons to appear at such Sessions and give evidence against such licensed person; and the Justices of the Peace at such Sessions shall enquire into the offence charged in the said complaint or information, and if they find that such licensed person hath committed the offence against the tenor of his or her license or recognizance, in the said complaint or information specified, and that such licensed person hath been once or oftener previously convicted of offences against the tenor of his or her license or recognizance, it shall be lawful for the said Justices of such Sessions to adjudge such licensed person guilty of such second or subsequent offence, which adjudication shall be final; and thereupon the said Justices shall have authority to punish the party so convicted by a fine or penalty of not less than ten pounds, nor more than one hundred pounds; or, at the discretion of the said Justices, by declaring his or her recognizance to be forfeited, and also at their discretion, his or her license to be void; and such recognizance shall be forfeited, and such license from thenceforth be void accordingly; and the said person whose license shall be declared void, shall from thenceforth be incapable of receiving or holding any license under this Act, for the space of three years, to be computed from the day of such adjudication: Provided always, that no recognizance shall be declared forfeited unless upon such adjudication by the said Court of Quarter Sessions or Justices as aforesaid, upon such second or subsequent conviction."

Section 34—

[Gaming—Duties of Justices.]

"That it shall be lawful for the majority of the Justices, to be at any time assembled at Petty Sessions in any district (such majority consisting of not less than three Justices), to exercise all the powers lastly hereinbefore given to the next Court of Quarter Sessions, so far as regards the declaring the recognizance of any person holding a Wine and Beer License within the District of such Petty Sessions respectively, to be forfeited; and also at their discretion, his or her license to be void; and the decision of such majority, consisting of three or more Justices, shall be final; and the like incapacity shall follow from a cancellation of a license by their authority, as hereinbefore provided, in the case of the same being cancelled by a Court of Quarter Sessions."

Section 35—

[Names, &c.—Lamp.]

"Publicans to have their names legibly painted, in letters at least three inches long, with the words 'Licensed to retail Fermented and Spirituous Liquors;' (or if only holding a wine and beer license) the words 'Licensed to retail Wine, Beer, and Fermented Liquors,' constantly and permanently remaining, and plainly to be seen and read, on a conspicuous part of the house. A lamp, with two burners, to be kept constantly lighted and burning over the door from sunset to sunrise."*

"PENALTY.—For neglect of any of the foregoing, not less than one, nor more than five pounds."

* By 3rd section 3 Vic. I. (No. 13) of 1839, when lamps are extinguished by accident or boisterous weather, discretionary power is given to the Justice before whom the complaint shall be heard; it will not be obligatory in such cases to convict. Onus of proof of the manner in which lamp was extinguished, thrown on the party complained against.

Section 36—

[Penalty for keeping sign, &c., up when not licensed.]

“Any unlicensed person keeping up any sign, writing, painting, or mark, on his or her house or premises, which may imply or give reasonable cause that such house or premises is licensed, liable to a penalty of twenty pounds.”

Section 37—

[Accommodation of public-house.]

“Every licensed house to contain two sitting-rooms and two sleeping-rooms, independent of the apartments occupied by the family of the publican. There shall also be a place of accommodation, on or near the premises, for the use of the customers, in order to prevent offences against decency; there shall also be stabling for at least six horses, with a sufficient supply of hay, corn, or other wholesome and usual provender, for the horses of travellers.

“Justices authorised to grant certificate upon any other than the foregoing, with respect to the accommodation to be provided, and to insert such conditions in recognizance.

“License to be declared void by two or more Justices, upon proof, that licensed house shall cease to be provided as hereinbefore required, and inserted in recognizance.”

Section 38—

[Refusing to receive traveller—Penalty.]

“Imposes a penalty of not less than five pounds, nor more than twenty pounds, on any publican, upon any line of road in the colony, who shall (without reasonable cause) refuse to receive a traveller or to find any such traveller victuals or lodging, or to receive the horse or horses of a traveller, and to provide the horse or horses with sufficient provender, whether owner lodge in house or not.”

Section 39—

[Goods of stranger not liable to be distrained on for rent.]

“Every public house to be considered as a common inn; and no goods or chattels *bonâ fide* the property of a stranger, and being in such licensed house, shall be seized or distrained for rent for such licensed house, or for any other claim against the house or owner.

“If any such goods, as aforesaid, be seized for rent, &c., it shall be lawful for any two Justices of the Peace to enquire into the matter, and to order such goods to be restored to the owner; and to award such reasonable costs as may be incurred.—Costs to be levied by distress of sale of goods and party seizing or distraining.”

Section 40—

[Ingress and egress of licensed house.]

“That no house for which either a Publican's General License, or a Wine and Beer License shall be granted within the towns of Sydney, Parramatta, Windsor, Maitland, and Bathurst, shall have any ingress or egress, except in the street or streets named in the license for such house; and every such license shall become void, in case any other passage or entrance than the entrance named in such license shall be used, permitted, or allowed to such house: And if the Governor of the said colony for the time being shall cause a Proclamation to be published in the ‘Government Gazette,’ declaring the present section of this Act to be applicable to any other town or towns in New South

Wales, or if the Police Magistrate of any town in the said colony shall cause a notice under his hand to be delivered to the person licensed, in respect of any house licensed as aforesaid, situated within the limits of any such town, that the present section of this Act shall be applicable to the said house, then, and in such cases respectively, the town or towns to be from time to time mentioned in any such Proclamation, or the licensed house or houses to be from time to time particularised in any such notice, shall from the expiration of one month from the date of such Proclamation or notice respectively, be subject to the prohibition and penalty herein made applicable to houses licensed as aforesaid within the said towns of Sydney, Parramatta, Windsor, Maitland, and Bathurst, as fully as if the same had been also expressly included in this section."

Section 41—

[Actions by publicans for liquors.]

"That no person shall maintain any action for, or recover either in the Supreme Court or the Court of Requests, or otherwise howsoever, any debt or demand on account of any liquors sold or disposed of in contravention of this Act, whether the same shall be sold without a license, or by exceeding the authority, or violating the conditions annexed to any license in the express terms thereof, or in the provision of this Act; and further, that no person howsoever licensed shall maintain any actions for, or recover as aforesaid, any debt on account of any spirituous liquors which shall be sold or delivered in any quantity less than two gallons, and delivered and taken away all at one time: Provided however, that nothing herein contained shall extend to prevent innkeepers from keeping an account with *bona fide* lodgers and travellers, in which any charge for spirits may be included, and lawfully recovered, as part of the amount thereof."

Section 42—

[Pledges not to be taken by publicans—money only.]

"That if the holder of any license under this Act shall take or receive from any person whomsoever, in payment or in pledge for liquors, or for entertainment whatsoever, supplied in or out of his or her house or premises, any article of clothing or slops, or any tool, or other article or thing, excepting metallic or paper money, such occupier or possessor of a public-house so offending shall upon conviction before two Justices of the Peace, for such offence, forfeit and pay any sum not less than five pounds, nor more than twenty pounds sterling, independently of such fine or punishment as may attach to so doing under any other Act or regulation now, or hereafter to be, in force in said Colony."

Section 43—

[Imperial measure only to be used.]

"That every licensed person shall sell or otherwise dispose of all liquors (except in quantities less than half-a-pint) by the gallon, quart, pint, or half-pint, of full imperial measure, according to the standard which is by law established in this Colony; and shall also, if required by any guest or customer purchasing such liquor, retail the same in a vessel sized according to such standard; and in default thereof, he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered within thirty days next after that on which such offence was committed, in a summary way, before any one or more Justice or Justices of the Peace."

Section 44—

[Sale of liquors in the Tap regulated.]

“That it shall not be lawful within the town of Sydney, to dispose of any spirituous liquors in that part of a public-house, or adjoining to a public-house, called a Tap, and any person who shall sell or dispose of spirituous liquors in such Tap, shall be subject and liable to all the fines and penalties imposed by this Act upon persons so selling or disposing thereof without a license: And if the Governor of the said Colony for the time being, shall cause a Proclamation to be published in the ‘Government Gazette,’ declaring the present section of this Act to be applicable to any other town or towns in New South Wales, or if the Police Magistrate of any town in the said Colony shall cause a notice, under his hand, to be delivered to the person licensed in respect of any public-house situate within the limits of any such town respectively, that the present section of this Act shall be applicable to the said public-house, then and in such cases respectively the town or towns to be from time to time mentioned in any such Proclamation, or the public-house or houses to be from time to time particularised in any such notice, shall from the expiration of one calendar month from the date of such Proclamation or notice respectively, be subject to the restriction and penalty herein made applicable to public-houses within the town of Sydney, as fully as if the same had been also expressly included in the present section of this Act.”

Section 45—

[No convict to be employed in public-houses.]

“That it shall not be lawful for any person holding any license under this Act, to have, retain, or employ, or to permit, or suffer to be retained or employed, any person suffering under a sentence, whether Colonial or otherwise, for a criminal offence, whether any such sentence shall be partially remitted or not, excepting by a conditional pardon granted and confirmed in such manner as to qualify the holder to apply himself for a license, within the meaning of this Act,* in the care, charge, conducting, or management of the public-house, or place in which such license shall be exercised, or in the business thereof, or the sale of any of the said liquors therein or thereout, during the absence of such licensed person, either on the ground of illness or from any other cause soever under a fine or penalty of fifty pounds for every such offence, to be summarily recovered before two or more Justices of the Peace, and in case of a conviction for such offence, the Justices before whom such licensed person shall be so convicted, may, if they think proper, withdraw or cancel the license so granted to such person, in addition to the payment of the said fine as aforesaid: And if any person under sentence, and not holding such pardon as aforesaid shall be convicted of selling or retailing, either for himself or herself or for any licensed or unlicensed person, any ale, beer, wine, or other fermented or spirituous liquors, contrary to the provisions in this Act contained, it shall be lawful for the said Justice before whom such felon or offender shall be so convicted, to sentence such offender, if a male, to be worked in irons on the roads or public works of the said Colony, for any term not exceeding two years nor less than three months, and if a female, to be confined and kept to hard labour for the like period in any gaol or factory appointed by the Governor for the custody of female offenders: Provided, however, that nothing hereinbefore contained shall be held to apply to the lawful wife of any licensed person, although under sentence as aforesaid.”

* Section 9.

Section 46—

[Reception of convicts therein.]

“That any holder of a ‘Publican’s General License,’ or of a ‘Wine and Beer License,’ who shall knowingly and wilfully admit or receive any convict into his or her house, or any other place held or occupied therewith, except in the presence or by the written direction of the master, mistress, or overseer, of such convict, shall forfeit and pay the sum of five pounds, to be recovered before any one or more Justice or Justices of the Peace: Provided that nothing herein contained shall be construed to extend or apply to any convict holding a ticket-of-leave or other partial or temporary remission of sentence.”

Section 47—

[Disposing of spirits to convicts. Penalty.]

“That any person holding a ‘Publican’s General License,’ or a ‘Wine and Beer License,’ who shall sell or dispose of any liquors as aforesaid, to any convict, or who shall deliver any such liquors to any convict, except with the permission or in the presence of the master, mistress, or overseer, of such convict, and then not exceeding the quantity which such master, mistress, or overseer, is authorised to supply as hereinafter mentioned, shall for the first offence forfeit and pay the sum of five pounds; for the second offence the sum of ten pounds; for the third and every subsequent offence the sum of twenty pounds, to be recovered before any one or more Justice or Justices of the Peace: And every licensed person shall be held responsible for all precautions necessary to prevent the inadvertent sale or disposal of such liquors to any convict in ignorance of his or her being such: Provided however, that if it shall be made to appear to the satisfaction of such Justice or Justices that notwithstanding ordinary precaution in this behalf, the licensed person has been imposed upon by falsehood or fraud, and has thereby unknowingly and unwillingly offended against the present provision, it shall be lawful for the said Justice or Justices to mitigate the said penalty to the sum of one pound; and no conviction in such mitigated sum shall be accounted as a first or second conviction, so as to augment the penalty, upon any future conviction under this Act: Provided always, that nothing herein contained shall be construed to extend or apply to any convict holding a ticket-of-leave or other partial or temporary remission of sentence.”

Section 48—

[Masters giving spirits to assigned servants.]

“Whereas, the unregulated supplying or giving of spirituous liquors to convicts under sentence by their masters or others, has been the cause of frequent crimes: Be it therefore enacted, that it shall not be lawful for any person whomsoever, whether licensed or unlicensed under this Act, either to sell or to supply, or to give (save as hereinafter excepted) any spirituous liquor or mixed liquor, part whereof is spirituous, in any quantity whatsoever, to any convict under sentence, for the purpose of the same being drunk by such convict, or by any other convict; and if any person shall sell, supply, or give any spirituous liquor to any such convict contrary to this enactment, he or she shall for every such offence forfeit and pay (over and above any penalty which may be incurred for the sale of such liquors without a license) a penalty of five pounds, to be recovered before any one or more Justice or Justices of the Peace: Provided however, that such penalty shall not be recoverable in case it shall be satisfactorily proved that the spirituous liquor supplied as aforesaid was administered medicinally, nor in case it shall appear that the same was supplied to any convict by, or in the presence of, or by the written permission of his or her master, mistress, or overseer, in a quantity not exceeding half a gill of spirits, (as measured before being diluted) within six hours; and not exceeding one gill within twenty-four hours; nor in case it shall appear that the same was issued

by a master, mistress, or overseer, in a moderate and reasonable quantity, and without occasioning drunkenness, to convicts actually engaged in sheep washing: And provided, that nothing herein contained, shall be construed to extend, or apply to, any convict holding a ticket-of-leave or other partial or temporary remission of sentence; and provided, that if it shall appear to the satisfaction of such Justice or Justices, that the person supplying the spirits in manner aforesaid, to any convict, had reasonable ground for believing him or her to be a free person, it shall be lawful for such Justice or Justices to mitigate the said penalty to the sum of one pound."

Section 49—

[Supplying liquors to aboriginal natives.—Penalty.]

"And whereas the introduction of intoxicating liquors among the aboriginal natives of New South Wales and New Holland is productive of serious evil to the said aboriginal natives and others: Be it enacted, that if any person whatsoever, whether licensed or unlicensed, under this Act, shall sell, or supply, or give any spirituous liquor, or mixed liquor part whereof is spirituous, in any quantity whatever, or any fermented liquor, or mixed liquor, part whereof is fermented, in any quantity which shall produce intoxication to any aboriginal native of New South Wales or New Holland, he or she shall for every such offence forfeit and pay (over and above any penalty which may be incurred for the sale of such liquor without a license) a penalty of five pounds, to be recovered before any one or more Justice or Justices of the Peace."

Section 50—

[Justices and authorised constables to demand entrance at any time.]

"That it shall be lawful for any Justice of the Peace, or any constable, with a general authority in writing, signed by two Justices of the Peace, together with his assistants, to demand entrance from time to time into any licensed houses, or for any constable specially authorised in any particular instance whether verbally or in writing by any such Justice to demand entrance into any licensed public-house, or other place where any license shall be exercised for the sale of any liquors under this Act, or the appurtenances thereof, at any time by day or night, and if admittance be delayed for such time as shall make it appear to any such Justice or Justices that wilful delay was intended, it shall be lawful for such Justice or Justices to summon the person so offending before the next Court of Quarter Sessions for the district; and upon conviction before such Court of Quarter Sessions, the license of the party so offending shall be forfeited, anything hereinbefore contained to the contrary notwithstanding; and no license shall again be granted for the space of three years from the date of such conviction to any person who shall be so convicted of refusing or wilfully delaying admittance: Provided always, that if such admittance be refused or wilfully delayed, it shall be lawful for such Justice or constable to break into or employ force to enter such public-house or other place as aforesaid, with his assistants, to serve process or for any other lawful purpose."

Section 51—

[Hours for closing.]

"That no person holding a 'Publican's General License,' or a 'Wine and Beer License,' under this Act, shall have or keep his house open for the sale of any liquor, nor shall sell or retail any liquor or suffer the same to be drank or consumed in or at such house at any time before the hour of four o'clock in the morning, nor after nine o'clock in the evening, from the first day of October to the thirty-first day of March, and six o'clock in the morning, and the same hour of nine in the evening, from the first of April to the thirtieth of September, both inclusive, upon any day in the week, nor at any hour on a Sunday, Good

Friday, or Christmas Day, except as hereinafter provided: And if any licensed person shall offend against this provision, he or she shall for every such offence forfeit the sum of two pounds, to be recovered before any one or more Justice or Justices of the Peace, and every separate sale shall be deemed a separate offence: Provided, however, that nothing herein contained shall be construed to prohibit the sale or delivery of such liquor at any time to persons being bona fide lodgers, or inmates, or to travellers seeking refreshment on a journey: And provided also, that it shall be lawful for the Police Magistrates of the town of Sydney, and the Justices of any other District in Petty Sessions assembled, by a special authority in writing to be sanctioned by the majority of such Justices, and to be signed by two at least of such Justices, one of whom shall be the Police Magistrate, if there be one for such District, upon the payment of ten pounds (in addition to the sum hereinbefore required to be paid for his or her license, and the sum of ten pounds hereinbefore required to be paid for permission to keep a billiard table), to dispense with the whole or any part of the restrictions and prohibitions of this present provision so far as may regard any licensed house within such District respectively, and either for a time to be specified in such written authority, or for the whole year; but which said authority it shall be lawful for the said Justices to revoke whenever they shall see fit, by causing a notice to that effect signed by such Justices, to be served upon the person to whom the said authority shall have been given: And provided also, that it shall not be construed to prevent the sale of wine or other fermented liquors, on Sundays, Good Fridays, or Christmas Days, between the hours of one and three o'clock, if the same shall not be sold for the purpose of consumption in or upon the premises, or be allowed to be drunk or consumed in or upon the same."

Section 52—

[Abandoning management of public-house.]

"That if any licensed person shall abandon the occupation of his or her licensed house, as his or her usual place of residence, and permit any person whatsoever to manage, superintend, or conduct the business of such house, or shall, whether residing in such house or not, permit any unlicensed person to become virtually or in effect the keeper thereof, then, or in either of the said cases, upon proof of the fact to the satisfaction of any two or more Justices of the Peace, the license of such house for the current year shall become and be absolutely void, anything hereinbefore contained to the contrary notwithstanding."

Section 53—

[Employment of unlicensed persons.]

"That if any licensed person shall employ any unlicensed person to sell or dispose of by retail as aforesaid any such liquors as aforesaid, in any house, or in any cart, dray, or other carriage, or in any vessel or boat, or in any place whatsoever out of the house or place in which such licensed person is authorised to sell or dispose of the same by virtue of his or her license, and notwithstanding in such house or place, if otherwise than as the servant or agent under the immediate superintendence and control of such licensed person; or if any licensed person shall sell, barter, or lend, to any unlicensed person any such liquors with the knowledge, or upon the understanding, that such liquors are to be sold or bartered by such unlicensed person, contrary to the true intent and meaning of this Act, every such licensed person shall upon conviction before any two or more Justices of the Peace, forfeit and pay for every such offence the sum of fifty pounds."

Section 54—

[Seizure of liquors in unlicensed house, search-warrant for.]

"That upon information on oath being made before any Justice of the Peace

by any constable or credible person, that he or she doth verily suspect and believe that any such liquor or liquors as aforesaid is or are, or have been, sold or retailed by any person not holding a license authorising such sale, in any particular unlicensed house, or other unlicensed place, and such constable or other person shall in such information set forth and show reasonable grounds for such belief and suspicion; then, and in such case, it shall be lawful for such Justice in his discretion to grant his warrant to any constable to enter and search any such house or other place by day; and such constable may break open the doors, if not opened within a reasonable time after demand, and seize all such fermented or spirituous or mixed liquors as aforesaid, as he shall then and there find, and the vessel or vessels in which such liquors shall be contained, and shall and may detain the same until the owner thereof shall appear before two or more Justices to claim such liquors, and shall satisfy the said Justices how and for what purpose he became possessed of the same; or after being summoned shall fail to appear; and if it shall appear to the said Justices, after due enquiry and examination, that such liquors were in the said house or other place for the purpose of being illegally sold or disposed of by retail, then such Justices shall adjudge the said liquors and vessel or vessels to be condemned and forfeited, and the same shall and may be sold; and the proceeds thereof, after the payment of such costs as may be assessed and awarded by such Justices, shall be applied and distributed in equal moieties to the use of Her Majesty, and to or amongst the party or parties so informing; but if otherwise, then such liquors and vessel or vessels shall be forthwith restored to the proper owner."

Section 55—

[Liquors hawked about to be seized and condemned.]

"That it shall be lawful for any Justice of the Peace, Constable, or other peace officer, to seize and take away, or to destroy, or cause to be seized, taken away, or destroyed, all such fermented or spirituous or mixed liquors as aforesaid, as shall be hawked about or exposed to sale in any street, road, footpath, or in any booth, tent, stall, or shed, or in any boat or vessel, or any other place whatever, by any person not licensed to sell the same in such place; and the vessels containing the same, and all the vessels and utensils used for drinking or measuring the same, and any cart, dray, or other carriage, and any horse or horses, or other animal or animals employed in drawing or carrying the same, as well as any boat or vessel used in the conveyance of such liquors as aforesaid; and it shall be lawful for any one or more Justice or Justices of the Peace, on his or their own view, or on confession of the party, or by proof of such offence by the oath of one or more credible witness or witnesses, to convict any person so offending of selling such liquors without a license; and to adjudge him, her, or them, liable to all the penalties imposed by this Act for such offence, and to cause such liquors, vessels, and utensils containing the same, and any cart, dray, or other carriage, horse, or horses, or other animal or animals, and any boat or vessel used in conveying the same, to be sold; and the proceeds thereof, after deducting the expenses of sale, shall be paid, one moiety to the use of Her Majesty the Queen, and the other moiety to the person or persons who may in any such case first seize, inform, or prosecute."

Section 56—

[Spirituous liquors found in possession of holder of Wine and Beer License only.]

"That in case the holder of any 'Wine and Beer License,' under this Act, shall possess or have any spirituous liquor whatsoever, or mixed liquor part of which is spirituous, in or about his or her house or premises, or in any other house or premises in which the same shall be proved, to the satisfaction of any one or more Justice or Justices of the Peace, to have been placed for the purpose of being sold or disposed of by or on behalf of the holder of such license aforesaid, or for the purpose of evading the provisions of this Act in any

manner, then, and in every such case, all such spirituous liquors, or mixed liquors as aforesaid, shall be absolutely forfeited, and the same, with the vessels and utensils used for the same, shall be dealt with and disposed of as herein provided in cases of liquors hawked about or exposed to sale; for which purpose, the same, if in or about the house or premises for which a 'Wine and Beer License' shall be granted, shall be seized by any constable authorised as required by this Act, without any warrant, wheresoever the same shall be found; and if the same shall be in or about any other house or premises, a search-warrant shall be issued as hereinbefore directed in other cases of suspected unlicensed houses."

Section 57—

[Disorderly house.]

"That in case any person whatsoever shall be convicted of keeping a disorderly house, or of illegally selling or retailing any spirituous liquors, contrary to this Act, such person shall, for the term of two years then next ensuing, be liable to the forfeiture of all spirituous liquors whatsoever found in his or her possession, or being his or her property (if exceeding the quantity of half-a-gallon), and upon information on oath being made before any Justice of the Peace, by any constable or credible person, that he or she doth verily suspect and believe that such liquors, either the property or in the possession of any such person as aforesaid, are concealed in any house or place whatsoever, and shall show reasonable cause for such belief and suspicion, it shall be lawful for such Justice to grant such search-warrant, as in the case of a suspicion of the unlicensed retailing of spirits is hereinbefore directed, and the same seizure, condemnation, and forfeiture, sale, and distribution of proceeds, shall thereupon be authorised as in the case last mentioned, save only that the Justices shall not be bound to enquire as to the purpose for which the said liquors were intended, but solely as to the property or possession aforesaid."

Section 58—

[Adulterated liquors.]

"That if any person shall sell, or dispose of, or offer for sale any fermented or spirituous liquor, or any mixed liquor, part of which is fermented or spirituous, which shall be adulterated, or mixed with any deleterious ingredient whatever, he or she shall, on conviction, before any two or more Justices of the Peace, forfeit and pay any sum not less than ten, nor more than fifty pounds."

Section 59—

[Proof of being licensed.]

"That all proceedings whatever against any person for selling, or permitting to be sold, any fermented or spirituous liquors without a license or sufficient license, such person shall, for all purposes connected with those proceedings, be deemed and taken to be unlicensed, unless he or she shall, at the hearing of the case, produce his or her license before, and exhibit the same to, the sitting Justice or Justices, or shall then and there produce other proof which shall be satisfactory to such Justice or Justices, and which he or they shall, in his or their discretion, choose to receive of his or her being a licensed person, and of the description of the license held by him or her."

Section 60—

[Proof of recognizance.]

"That in any proceeding before any Justice or Justices, against any person alleged to be a licensed person, and liable as such to any such proceeding, the

production of his or her recognizance, as entered into and recorded in manner hereinbefore directed, shall be conclusive evidence, not only of such recognizance but also of his or her being licensed in manner therein recited: Provided, nevertheless, that it shall be lawful for any such Justice or Justices (not being assembled as a Court of Quarter Sessions) if he or they shall, in his or their discretion see fit, to admit any other proof which shall be satisfactory to him or them, of any such recognizance, or the contents thereof: or as to the fact of any person being licensed in manner and form alleged in any such proceeding as aforesaid; but in case any question shall arise relating to any such license or recognizance, upon appeal or otherwise, before any Court of Quarter Sessions under this Act, then such question shall be decided only by production of such recognizance as aforesaid."

Section 61—

[License to be produced, when.]

"That every person holding any license under this Act shall, on demand at his or her licensed house or place wherein or whereat such license shall be exercised, produce his or her license to any Justice of the Peace or any constable authorised by any Justice, by any writing under his hand, in that behalf; and if any such licensed person shall refuse or neglect to produce his or her license, he or she shall forfeit and pay for every such refusal or neglect the sum of five pounds, to be recovered before any one or more Justice or Justices of the Peace."

Section 62—

[Persons drinking may be apprehended, when.]

"That whenever any Justice of the Peace, or any chief or other constable, shall find any person drinking in any reputed disorderly house, or in any house, shop, storehouse, or other building, or any booth, shed, or hut, tent, stall, or place, in which or where any ale, beer, wine, cider, ginger-beer, spruce-beer, brandy, rum, or other fermented or spirituous liquors, shall be sold or disposed of by retail, and the license for such sale shall not, on demand, be produced to such Justice or constable, it shall and may be lawful for such Justice of the Peace or constable to apprehend all such persons so found drinking there; and every such person so found drinking shall, upon the view of such Justice, or upon conviction before any Justice of the Peace, forfeit and pay for every such offence a sum not exceeding five pounds, nor less than five shillings, to be recovered in manner hereinafter directed; unless such person shall inform against such unlicensed person, or voluntarily become a witness against him or her, in respect of such act of selling and retailing."

Section 63—

[Proceedings before Justices.]

"Whereas difficulties frequently arise as to the conviction of persons charged with unlawfully selling any such liquors as aforesaid, in disorderly houses: Be it enacted, That in any proceedings before any one or more Justice or Justices of the Peace under this Act, against any person or persons charged with unlawfully selling any such liquors as aforesaid, in a reputed disorderly house, the proof of the reputation of such house, and of any person or persons (not being the owners thereof) being found drinking therein, shall be deemed full and sufficient evidence to warrant such Justice or Justices in convicting the person or persons so found drinking in such house, and the proprietor or proprietors thereof."

Section 64—

[Evidence of selling.]

“And in order to remove any doubts which may arise as to what may be a selling or disposing of liquors, contrary to the true intent and meaning of this Act : Be it enacted, That the delivery of any such spirituous or other liquors as aforesaid, shall be deemed and taken to be good and sufficient *prima facie* evidence of money or other consideration being given for the same, so as to support a conviction, unless proof shall be made to the contrary, to the satisfaction of the Justice or Justices hearing the case.”

Section 65—

[Workmen not to be paid in public-house.]

“That any master or other person employing journeymen, workmen, servants, or labourers, who shall pay or cause any payment to be made to any such journeyman, workman, or labourer, in or at any house in which any of the liquors as aforesaid shall be sold by retail, shall forfeit and pay for every such offence the sum of five pounds, to be recovered before any one or more Justice or Justices of the Peace.”

Section 66—

[Drunkenness.]

“Whereas it is expedient to quiet all doubts as to the applicability to this Colony of the law of England imposing fine and punishment for drunkenness : Be it therefore enacted and declared, That the same law is applicable, and shall be applied accordingly, and that all fines thereby imposed, howsoever disposable by the law of England, shall be distributed within the Colony, in like manner as other fines and penalties recoverable under this Act.”

Section 67—

[Duties of constables with regard to drunkenness.]

“That it shall be lawful for any constable or peace-officer, in any part of the Colony of New South Wales, to apprehend any person whom he shall find drunk, in any highway, street, road, or public place, and such person to convey before a Justice of the Peace, to be dealt with according to law.”

Section 68—

[Punishment for drunkenness.]

“That whensoever, under the law of England so applicable or applied as aforesaid, any person or persons shall become liable to a fine or penalty of five shillings, or to be placed in the stocks, upon conviction of drunkenness, before any Justice or Justices of the Peace, it shall be lawful for such Justice or Justices to award any penalty or sum not more than one pound nor less than the said sum of five shillings ; and if the sum so awarded be not forthwith paid, it shall be lawful for such Justice or Justices to sentence the offender to solitary confinement upon bread and water, for any time not exceeding twenty-four hours, or to be worked on the tread-mill for any time not exceeding twelve hours ; and if such offender shall have been previously convicted of drunkenness, it shall be lawful for such Justice or Justices, in his or their discretion, upon proof of such former conviction or convictions, to augment the penalty or punishment by adding thereto, upon each successive conviction, a further amount of penalty or period of confinement, or working on the tread-mill, not exceeding in the whole the amount or period aforesaid multiplied by the number of convictions inclusive of the conviction whereupon sentence shall be passed : Pro-

vided always, that nothing herein contained shall be construed to prevent such Justice or Justices from acting in any such case as aforesaid, upon any law which is or may be in force, independently of this present enactment, if he or they shall, in his or their discretion, think fit."

Section 69—

[Prohibiting incorrigible drunkards from obtaining drink.]

"That when any person shall, by excessive drinking of spirituous liquors, so mis-spend, waste, or lessen his or her estate, as thereby to expose himself or herself, or his or her family to want or indigent circumstances, or greatly to injure his or her health, or endanger the loss thereof, the Justices of the town or district in which such drunkard shall reside, in Petty Sessions assembled, shall in writing, under the hands of any two such Justices, forbid all persons licensed under this Act to sell to him or her any spirituous liquors for the space of one year; and such Justices or any other two Justices of the Petty Sessions of such district, may at the same or any other time, in like manner, forbid the selling of any such liquors to the said drunkard by the said licensed persons of any other town or district to which the drunkard shall or may be likely resort to for the same."

Section 70—

[Renewal of prohibition.]

"That the said Justices of Petty Sessions, or any two of them, shall in like manner, from year to year, renew such prohibition as aforesaid as to all such persons as have not, in their opinion, reformed within the year; and if any licensed person shall during any such prohibition, after service of a copy thereof upon him or her, or with a knowledge thereof in any other manner acquired, sell to any such prohibited person any spirituous liquor, he or she shall forfeit for every such offence a sum of five pounds, to be recovered before any one or more Justice or Justices of the Peace."

Section 71—

[Penalty for selling liquor to prohibited persons.]

"That whenever the Justices of Petty Sessions in any district shall, in execution of the foregoing provisions, have prohibited the sale of spirituous liquors to any such drunkard, if any person shall, with a knowledge of such prohibition give, sell, purchase or procure for, or on behalf of such prohibited person, or for his or her use, any such spirituous liquors, he or she shall forfeit for every such offence the sum of five pounds, to be recovered before any one or more Justice or Justices of the Peace."

Section 72—

[Convictions.]

"That every conviction shall, by the Justices before whom the same shall have been had, be returnable to the next Court of Quarter Sessions to be holden nearest to the place in which such conviction shall take place; and the record of such conviction shall, unless the same be afterwards quashed by appeal, be received as evidence of such conviction against the party thereby convicted in any prosecution to be instituted against him or her for any offence under this Act; and the Clerk, or Acting Clerk of the Peace, or his Deputy, to whom such conviction shall be returned, shall on such return (if the same relate to a licensed person) cause to be made a memorandum of such conviction in a register, which he is hereby directed to keep, of the names and places of abode of the several persons licensed, and shall in every such memorandum state whether such conviction to be the first, second, third, or other subsequent

conviction for the offence: Provided, however, that production of the record of such former conviction or convictions, shall not be necessary to support a conviction in such augmented penalty as may be consequent thereon, before any Justice or Justices, acting singly or in Petty Sessions: Provided, such Justice or Justices shall be fully satisfied by other evidence as to the fact of such former conviction or convictions, but in case such fact shall be questioned, upon appeal or otherwise, before any Court of Quarter Sessions having jurisdiction therein, under this Act, then the same shall be lawfully established only by production of such record thereof, as aforesaid."

Section 73—

[Constables—neglect of duty.]

"That if any constable or other peace-officer shall refuse or knowingly neglect to execute any part of the duty imposed upon constables or peace-officers by this Act, or to make an immediate report to the Police Magistrate or other Justice of the Peace, or other superior officer to whom he may in the usual course of his duty be required to make such report, after he shall have received information, or shall have otherwise obtained a knowledge of any proceedings in violation of any of the provisions herein contained, such constable or other peace-officer, upon conviction before one or more Justice or Justices of the Peace, of any such refusal or neglect, shall be subject and liable to a fine not exceeding ten pounds, nor less than one pound, or to be imprisoned for any term not exceeding three months for every such offence."

Section 74—

[Recovery of penalties.*]

"That all proceedings in respect to offences committed against the provisions of this Act, which are hereby directed to be had before any one or more Justice or Justices of the Peace, or any Court of Quarter Sessions, shall be heard and determined in a summary way, according to the law in force for the time being, regulating summary proceedings before Justices of the Peace; except only where some other special course of proceedings may be directed by this Act: Provided, however, that in case of the non-payment of any penalty under this Act above the amount of five pounds, and no sufficient distress can be found, it shall and may be lawful for the convicting Justice or Justices by his or their warrant or warrants, to commit any person convicted in any such penalty to any of Her Majesty's gaols for any time not less than two nor more than six calendar months, to be reckoned from the day on which such person shall be actually arrested, and not from the date of such warrant; and for the purpose of ascertaining the same, the constable or other person who shall make the arrest, is hereby required to endorse on the back of such warrant, the date of such arrest, under a penalty of five pounds, which shall and may be recovered in a summary manner before any one or more Justice or Justices of the Peace: Provided also, that in case of any such neglect to endorse the said warrant as aforesaid, the same shall not vitiate any such arrest, but in such case the time of imprisonment shall run from the date of the warrant."

Section 75—

[Witnesses.]

"That if any person shall be summoned as a witness to give evidence before

* See tit. Summary Jurisdiction, post. The Chief or any other constable may sue for fines and penalties under the above Act. See 7 Vict. No. 26 (Callaghan, vol. 2, p. 843.)

any Justice or Justices of the Peace, touching any of the matters aforesaid, either on the part of the prosecution, or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal to be allowed of by such Justice or Justices of the Peace, or appearing, shall refuse to be examined on oath and give evidence before the Justice or Justices before whom such prosecution shall be depending, then every such person shall forfeit for every such offence a sum not less than two pounds, nor more than thirty pounds, to be recovered in a summary way before any two Justices of the Peace."

Section 76—

[Appeal.*]

"That any person who shall think himself or herself aggrieved, by any fine or penalty above the sum of five pounds, imposed, or by any act done by any Justice or Justices under or concerning the execution of this law or ordinance (unless such Act shall relate to the refusal of a certificate for the granting, renewal, or transfer of a license, or the cancellation of a wine and beer license as hereinbefore mentioned), may appeal against such Act to the Court of Quarter Sessions, according to the provisions of the law which shall be in force for the time being, for the general regulation of appeals of such or the like nature."

Section 77—

[Costs of appeal.]

"That in every case where notice of appeal against the judgment of any Justice or Justices in or concerning the execution of this Act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the Court to which such appeal shall have been made or intended to be made, and such Court is hereby required to adjudge and order that the party so having appealed, or giving notice of his intention to appeal, shall pay to the Justice or Justices to whom such notice shall have been given, such sum by way of costs, as shall in the opinion of such Court be reasonable; and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said Court to adjudge and order that the party so refusing or neglecting shall be committed to gaol, there to remain until such sum be paid; and that in every case in which the judgment so appealed against shall be reversed, it shall be lawful for such Court, if they should see fit, to order that the Justice or Justices, whose judgment shall have been so reversed, shall be indemnified from all costs and charges to which he or they shall have been put by such appeal, and to recommend to the said Governor or Acting Governor, who is hereby authorised upon such recommendation, to cause a sufficient sum for this purpose to be paid out of the funds which shall arise from the licenses required to be taken out under this Act."

Section 78—

[Informations and convictions—forms of.]

"That all informations and convictions under this Act, shall be either according to the forms contained in the schedule hereunto annexed, marked F. and G., or according to any other form or forms, which is, or may be prescribed by any Act now, or which shall be for the time being in force, for the general regulation of convictions in summary cases, and that no conviction under this Act, nor any adjudication made on appeal therefrom, shall be quashed

* See tit. Summary Jurisdiction, post.

for want of form, or be removed by writ of *certiorari* or otherwise, 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 there be a good and valid conviction to sustain the same."

Section 79—

[No action except on proof of malice.]

"That no action at law shall lie against any Justice of the Peace, constable, or other peace officer, for or on account of any matter or thing whatsoever, done, or to be done, or commanded by him in the execution of his duty, or office, under this Act, against any party or parties offending, or suspected to be offending against the provisions of this Act, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any person shall be sued for any matter or thing which he has so done, or shall have done in the execution of this Act, he may plead the general issue, and give the special matter in evidence."

Section 80—

[Distribution of penalties.]

"That one moiety of all fines and penalties paid and received by virtue of this Act, shall go to the use of the party or parties informing and suing for the same, and after payment and deduction thereof, all the other the sum or sums of money collected, levied, or received, under and by virtue of this Act, shall be paid into the hands of the Colonial Treasurer, and be appropriated to the use of Her Majesty, Her Heirs, and Successors, for the public uses of the said Colony, and the support of the Government thereof."

Section 81—

[Former Act.]

"That every act and thing required to be done for completing and issuing any license for selling or retailing liquors under the law in force before the commencement of this Act shall be done and completed, and every license issued under the same shall be deemed and taken to have issued, and shall have the same force and effect as any such license issued under this Act; and all and every person, place, matter, or thing, shall in respect of, or in relation to, every such license, be subject and liable to such and the like laws, rules, regulations, provisoes, conditions, powers, jurisdictions, fines, forfeitures, penalties, and proceedings as hereinbefore provided with respect to licenses issued, and all other things directed, in respect thereof, under and by virtue of this present Act, save and except the provisions with respect to the accommodation of stabling and providing provender for horses as aforesaid; and further, that all and every proceeding which shall be actually commenced, in respect of any offence committed or penalty incurred under the law in force, before the commencement of this Act, shall and may be prosecuted and completed under this present Act, in like manner as if such proceeding had been commenced under the provisions hereof."

Section 82—

[Commencement of Act.]

"That this Act shall commence and take effect on the first day of January, in the year one thousand eight hundred and thirty-nine, and that from and after the said day, the Act of the Governor and Council of New South Wales, passed in the third year of the reign of His late Majesty King William the

Fourth, intituled, 'An Act for licensing Public-houses, and for regulating the retail of fermented and spirituous liquors in New South Wales,' and also another Act passed in the sixth year of the reign of His late Majesty, intituled, 'An Act to alter and amend an Act of the Governor with the advice of the Legislative Council, passed in the third year of the reign of His present Majesty, intituled, 'An Act for licensing Public-houses and for regulating the retail of fermented and spirituous liquors in New South Wales,' shall be and the same are hereby repealed, except as hereinbefore excepted, and except so far as any other Act of the said Governor and Council is thereby respectively repealed.'

SCHEDULES TO WHICH THIS ACT REFERS.

(A.)

FORM OF A PUBLICAN'S GENERAL LICENSE.

New South Wales, } Whereas, A. B., of _____, hath deposited in this Office
to wit. } a Certificate from the major part of the Justices of the
Peace assembled at the Annual Licensing Meeting (or at a Special Sessions)
held at _____ on the _____ day of _____, in the year of our Lord one thousand
eight hundred and _____, authorising the issue to the said A. B., under and
by virtue of the Act of the Governor and Council, passed in the second year of
the reign of Her present Majesty, intituled, "An Act for consolidating and
amending the Laws relating to the Licensing of Public-houses, and for further
regulating the sale and consumption of Fermented and Spirituous Liquors in
New South Wales," of the License in the said Act called a Publican's General
License, for the house known (or to be known) by the sign of _____,
situated at _____ in the said Colony of New South Wales; and stating
that the said Justices have taken from the said A. B. and two surceties, the
Recognizance required by the said Act: And whereas, the said A. B. hath paid
into my Office the sum of Thirty pounds sterling as the duty on such License—
Now, I, the Colonial Treasurer of the said colony, (or other person appointed
by the said Governor for the purpose of issuing Licenses under the said Act, as
the case may be), in virtue of the powers vested in me by the said Act, do
hereby License the said A. B. to keep a Common Inn, Alehouse, or Victualling
House, and to sell Fermented and Spirituous Liquors in any quantity, in the
house in which he (or she) now dwelleth (or is about to dwell), being the sign
of _____, situated at _____ aforesaid, and in the appurtenances thereto
belonging, but not elsewhere; and this License shall commence upon the first
day of July next, and continue in force until the thirtieth day of June then
next ensuing, both days inclusive, provided it be not forfeited in the mean time
according to the provisions of the said Act.

Given under my hand and seal, at Sydney, this _____ day of _____, 18____, one thousand eight hundred and _____

N. O. [L. s.]
Colonial Treasurer.

Registered, }
P. Q. } (Or other person as the case may be.)

(A 1.)

FORM OF A NOTICE OF APPLICATION FOR A PUBLICAN'S GENERAL LICENSE FOR AN INN OR PUBLIC-HOUSE.

To the Worshipful the Justices of the Peace, acting in and for the District of _____, in New South Wales.

I, A. B., (state the trade or occupation), now residing at _____ (in

the parish, town, or, district) of _____, do hereby give notice, that it is my intention to apply at the next Annual Licensing Meeting, to be holden for this district, for a Publican's General License, for the sale of Fermented and Spirituous Liquors, in the House and Appurtenances thereunto belonging, situated at _____, (here describe the house proposed to be licensed, specifying the situation of it; the number of sitting-rooms and bed-rooms contained in it, exclusive of those required for the family; the person to whom rented; the present occupier; whether now licensed; and if so, under what sign;) and and which I intend to keep as an Inn or Public-house.

I am free, and am married, having a wife who is free, or a prisoner, or holding a ticket-of-leave, and children (or unmarried as the case may be), and I have held a license (if before licensed, state how many years, and what kind of license.)

I further give notice that I propose C. D., of _____, and E. F., of _____, as my Sureties, to enter with me, into the required Recognizance.

Given under my hand, this _____ day of _____, one thousand eight hundred and _____

A. B.

(A 2.)

FORM OF HOUSEHOLDERS' CERTIFICATE TO BE APPENDED TO THE ABOVE.

We, the undersigned, Householders, residing within the Town (or District) of _____, do hereby certify that the above A. B., of _____, is a person of good fame and reputation, and fit and proper to be licensed to keep an Inn or Public-house, for the sale of Fermented and Spirituous Liquors therein.

Witness our hands, this _____ day of _____, one thousand eight hundred and _____

One
Two
Three
Four
Five

(A 3.)

FORM OF RECOGNIZANCE TO BE ENTERED INTO BY AN APPLICANT FOR A PUBLICAN'S GENERAL LICENSE.

New South Wales, } Be it remembered, that on the _____ day of _____
to wit. } one thousand eight hundred and _____, A. B., of _____,
C. D. of _____, and E. F. of _____, came personally before us, G. H. and I. K., Esquires, Justices of the Peace, acting in and for the District of _____, in the said Colony, and acknowledged themselves to owe to Our Lady the Queen, to wit—the said A. B., the sum of Fifty Pounds, the said C. D., the sum of Fifty Pounds, and the said E. F., the sum of Fifty Pounds of lawful money of Great Britain, to be respectively levied of their several goods and chattels, lands, and tenements, to the use of our said Lady the Queen, Her Heirs and Successors, in case default shall be made in the performance of any of the conditions hereunder written.

The conditions of this Recognizance are such, That whereas the said A. B. is to be licensed pursuant to the Act of the Governor and Council, passed in the second year of the Reign of Her present Majesty Queen Victoria, intituled, "An Act for consolidating and amending the Laws relating to the Licensing of Public-houses, and for further regulating the sale and consumption of Fermented and Spirituous Liquors, in New South Wales," to keep a Common Inn, Ale

House, or Victualling House, and to sell Fermented or Spirituous Liquors, in the house wherein he (or she) now dwells (or is about to dwell), being the sign of _____, situated at _____, in the district (or township) of _____, for twelve months, commencing on the first day of July, one thousand eight hundred and _____; if the said A. B. do keep the Law in selling such Liquors as aforesaid in his (or her) said house and its appurtenances; and do not permit any person to become drunk, or supply or permit any such liquor as aforesaid to be supplied or given to any person in a state of intoxication, or permit such person (not being an inmate thereof) to remain in his (or her) house or premises, or to commit any disorder therein: nor refuse to admit a Magistrate or Constable into any part of the said house or premises at any hour; nor admit or receive any convict, other than his (or her) assigned servant or servants, into his (or her) house, or any place held or occupied therewith; or deliver any Liquors as aforesaid to any convict, except with the written order or in the presence of the master, mistress, or overseer of such convict; and do maintain good order and rule in the said house and premises; (and the following is to be inserted at the discretion of the Justices granting the Licenses) and do also maintain and keep on foot such accommodation for travellers and guests, and their horses and servants, as is required in and by the said Act of the Governor and Council, (and also the additional rooms, and accommodation following, which the said A. B. hath specially undertaken to provide, on condition of his obtaining the said License) that is to say, (here insert any special conditions which the Justices may see fit to impose upon any Innkeeper in these respects), then the said recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year above-written before us.

G. H., J. P.

[L. S.]

I. K., J. P.

[L. S.]

(B.)

FORM OF A WINE AND BEER LICENSE.

New South Wales, } Whereas, A. B., of _____, hath deposited in this Office
to wit. } a Certificate from the major part of the Justices of the Peace,
assembled at the Annual Licensing Meeting, (or at a Special Sessions), held at
_____, on the _____ day of _____, in the year of our Lord one
thousand eight hundred and _____, authorising (pursuant to the Act of the
Governor and Council, passed in the second year of the reign of Her present
Majesty Queen Victoria, intituled, "An Act for consolidating and amending
the Laws relating to the Licensing of Public Houses, and for further regulating
the sale and consumption of Fermented and Spirituous Liquors in New
South Wales.") the issue to the said A. B. of a License for the sale of Wine
and Beer and other Fermented Liquors, in the house of the said A. B., situated
at _____, in the said Colony of New South Wales; and stating that the
said Justices have taken from the said A. B. and two Sureties, the Recognizance
required by the said Act; and whereas the said A. B., hath paid into my Office
the sum of ten pounds sterling as the duty upon such License—Now I, the Colonial
Treasurer of the said Colony, (or other person appointed by the said Governor
for the purpose of issuing Licenses under the said Act, as the case may be), do
hereby License the said A. B. to sell Wine, Beer, and other Fermented Liquors,
in any quantity, in the house in which he (or she) now dwelleth (or is about to
dwell), situated at _____, aforesaid, and in the appurtenances thereto
belonging, but not elsewhere; and this License shall commence upon the first
day of July next, and continue in force until the thirtieth day of June then next
ensuing, both days inclusive, provided it be not forfeited in the meantime,
according to the provisions of the said Act of the Governor and Council: And
provided that the said A. B. shall not sell or dispose of, or permit to be sold or
disposed of, any Spirituous Liquor, or mixed Liquor part whereof is spirituous,

in the said house or its appurtenances, in which case this License shall thereby and thenceforth become and remain absolutely void.

Given under my hand and seal, at Sydney, this _____ day of _____, one thousand eight hundred and _____

Registered }
P. Q. }

N. O. [l. s.]
Colonial Treasurer.

(Or other Person as the case may be.)

(B. 1.)

FORM OF NOTICE OF APPLICATION FOR A WINE AND BEER LICENSE.

To the Worshipful the Justices of the Peace, acting in and for the District of _____, in New South Wales.

I, A. B., (state the trade or occupation) now residing at _____, (in the parish, town, or district), of _____, do hereby give notice, that it is my intention to apply, at the next Annual Licensing Meeting to be holden for this district, for a License for the sale of Wine, Beer, and other Fermented Liquors, in the house and appurtenances thereunto belonging, situated at _____ (if the applicant proposes to keep the house as an Inn, for the entertainment of travellers and lodgers, describe the particulars as required in Form A 1, if not, merely state the person of whom rented, and present occupier.)

I am free, and am married, having a wife who is free, or a prisoner holding a ticket-of-leave, and children, (or unmarried as the case may be), and I have held a License, (if before Licensed, state how many years, and what kind of License.)

I further give Notice, that I propose C. D., of _____, and E. F., of _____, as my Sureties, to enter with me into the required Recognizance.

Given under my hand, this _____ day of _____, one thousand eight hundred and _____

A. B.

(B. 2.)

FORM OF HOUSEHOLDERS' CERTIFICATE, TO BE APPENDED TO THE ABOVE.

We, the undersigned, Householders, residing within the Town (or District) of _____, do hereby certify that the above A. B., of _____, is a person of good fame and reputation, and fit and proper to be Licensed to sell Wine, Beer, and other Fermented Liquors (or to keep an Inn or Public-house for the sale of Wine, Beer, and other Fermented Liquors, as the case may be.)

Witness our hands this _____ day of _____, one thousand eight hundred and _____

One
Two
Three
Four
Five

(B. 3.)

FORM OF RECOGNIZANCE OF AN APPLICANT FOR A WINE AND BEER LICENSE.

New South Wales, } Be it remembered, That on the _____ day of _____,
to wit. } one thousand eight hundred and _____, A. B. of _____,
C. D., of _____, and E. F., _____, came personally before us, G. H.,

and J. K., Esquires, Justices of the Peace, acting in and for the district of _____, in the said Colony, and acknowledged themselves to owe to Our Lady the Queen, to wit—the said A. B. the sum of Fifty Pounds, the said C. D. the sum of Fifty Pounds, the said E. F. the sum of Fifty Pounds, of lawful money of Great Britain, to be respectively levied of their several goods and chattels, lands and tenements, to the use of our said Lady the Queen her Heirs and Successors, in case default shall be made in the performance of any of the conditions hereunder written.

The conditions of this Recognizance are such, That whereas the said A. B. is to be licensed pursuant to the Act of the Governor in Council, passed in the second year of the reign of Her present Majesty Queen Victoria, intituled "An Act for consolidating and amending the Laws relating to the Licensing of Public-houses, and for further regulating the sale and consumption of Fermented and Spirituous Liquors in New South Wales," and to sell Wine, Beer, and other Fermented Liquors, in the house wherein he (or she) now dwells (or is about to dwell) situated at _____, in the District (or Township) of _____, for twelve months, commencing on the first day of July, one thousand eight hundred and _____ : if the said A. B. do not sell or dispose of, or permit to be sold or disposed of, any Spirituous Liquor or mixed Liquor part whereof is Spirituous; and do keep the law in selling Wine, Beer, and Fermented Liquors in his (or her) said house or appurtenances; and do not permit any person to become drunk, or supply, or permit any such Liquor as aforesaid to be supplied or given to any person in a state of intoxication; or permit such person (not being an inmate thereof) to remain in his (or her) house or premises; or to commit any disorder therein; nor refuse to admit a Magistrate or Constable, into any part of the said house or premises at any hour; nor admit or receive any convict other than his (or her) assigned servant or servants, into his (or her) house, or any place held or occupied therewith, or deliver any liquors as aforesaid to any convict except with the written order, or in the presence of the master, mistress, or overseer of such convict; and do maintain good order and rule in the said house and premises; (and the following is to be inserted at the discretion of the Justices granting the licenses) and do also maintain and keep on foot such accommodation for travellers and guests, and their horses and servants, as is required in and by the said Act of the Governor and Council (and also the additional rooms and accommodation following, which the said A. B. hath specially undertaken to provide on condition of his obtaining the said license,) that is to say (here insert any special conditions which the Justices may see fit to impose upon any innkeeper, in these respects) then the said recognizance to be void; otherwise to remain in full force.

Taken and acknowledged the day and year above written before us.

G. H. J.P. [L. s.]
J. K. J.P. [L. s.]

(C.)

FORM OF PACKET LICENSE.

New South Wales, } Whereas, A. B., of _____, being the Master,
to wit. } (or Commander, or Owner or Owners) of the Steam
Packet (or if any other kind of vessel describe it) conveying passengers
between _____ (name the place,) and _____ (name the place,)
being places within the colony of New South Wales, (and its Dependencies,)
hath deposited in this Office a Certificate from the major part of the Jus-
tices of the Peace, assembled at the Annual Licensing Meeting, (or at a
Special Sessions) held at _____, on the _____ day of _____,
in the Year of our lord, one thousand eight hundred and _____, authorising
the issue to the said A. B., under and by virtue of the Act of the Governor and
Council, passed in the second year of the reign of Her present Majesty, intituled

“An Act for consolidating and amending the Laws relating to the Licensing of Public Houses, and for further regulating the sale and consumption of Fermented and Spirituous Liquors, in New South Wales,” of the License in the said Act called a Packet License; and stating that the said Justices have taken from the said A. B., and two sureties the Recognizances required by the said Act; and whereas the said A. B. hath paid into my office the sum of two pounds sterling, as the duty on such license,—Now, I, the Colonial Treasurer of the said Colony, (or other person appointed by the said Governor for the purpose of issuing licenses under the said Act, as the case may be,) in virtue of the powers vested in me by the said Act, do hereby license the said A. B. to retail Fermented and Spirituous Liquors to any passenger on board of such vessel, during the actual passage of such vessel between one such place and another; and this license shall commence upon the first day of July next, and continue in force until the thirtieth day of June then next ensuing, both days inclusive, provided it be not forfeited in the mean time according to the provisions of the said Act.

Given under my hand and seal, at Sydney, this _____ day of _____, one thousand eight hundred and _____

Registered, } N. O. [L. s.]
P. Q. } Colonial Treasurer
(Or other person, as the case may be).

(C. 1.)

FORM OF NOTICE OF APPLICATION FOR A PACKET LICENSE.

To the Worshipful the Justices of the Peace, acting in and for the District of _____, in New South Wales.

I, A. B., being Master (or Commander, or Owner, or Owners,) of the Steam Packet, (or other vessel as the case may be) conveying passengers between _____, (name the place,) and _____, (name the place,) being places within the Colony of New South Wales (and its Dependencies,) do hereby give notice that it is my intention to apply at the next Annual Licensing Meeting to be holden for the said District, for a license for the sale of Fermented and Spirituous Liquors, to the passengers on board such vessel, pursuant to the Act of Council in that case made and provided.

I further give notice, that I propose C. D. of _____, and E. F. of _____, as my sureties to enter with me into the required recognizance.

Given under my hand this _____ day of _____, one thousand eight hundred and _____ A. B.

(C. 2.)

FORM OF RECOGNIZANCE TO BE ENTERED INTO BY THE APPLICANT FOR A PACKET LICENSE.

New South Wales, } Be it remembered, that on the _____ day of _____,
(or as the case may be) } one thousand eight hundred and _____, A. B. of _____,
to wit. } C. D. of _____, and E. F. of _____, came personally
before us G. H. and I. K., Esquires, Justices of the Peace, acting in and for
the District of _____, in the said Colony (or any of its Dependencies as the
case may be,) and acknowledged themselves to owe to our Lady the Queen, to
wit:—The said A. B. the sum of fifty pounds, the said C. D. the sum of fifty
pounds, and the said E. F. the sum of fifty pounds, of lawful money of Great
Britain, to be respectively levied of their several goods and chattels, lands
and tenements, to the use of our said Lady the Queen, her Heirs and Successors,
in case default shall be made in the performance of any of the conditions
hereunder written:—

The conditions of this recognizance are such, that whereas the said A. B. is to be licensed, pursuant to the Act of the Governor and Council, passed in the second year of the reign of her present Majesty Queen Victoria, intituled "An Act for consolidating and amending the Laws relating to the Licensing of Public Houses, and for further regulating the sale and consumption of Fermented and Spirituous Liquors in New South Wales; to retail fermented and spirituous liquors on board the Steam Packet, (or other vessel as the case may be,) carrying passengers between _____, (name the place,) and _____, (name the place,) being places within the Colony of New South Wales, (and its Dependencies,) whereof the said A. B. is Master (or Commander, or Owner, or Owners,) during the actual passage of the said vessel, between one such place and another; if the said A. B. do not sell or dispose of any such liquors as aforesaid, or permit the same to be sold or disposed of, while the said vessel is lying in any port, or harbour, or otherwise contrary to law or the conditions of his license; and do not permit any person to become drunk, or supply or permit any liquor to be supplied, to any person in a state of intoxication, or commit, or suffer to be committed, any disorder on board the said vessel, then the said recognizance to be void; otherwise to remain in full force.

Taken and acknowledged the day and year above written before us.

G. H. J. P. [L. S.]
I. K. J. P. [L. S.]

(D.)

FORM OF CONFECTIONERS' LICENSE.

Whereas, A. B., of _____, hath deposited in this office, a certificate from the major part of the Justices of the Peace assembled at the Annual Licensing Meeting (or at a Special Sessions) held at _____, on the _____ day of _____, in the year of Our Lord one thousand eight hundred and _____, authorising the issue to the said A. B., under and by virtue of the Act of the Governor and Council, passed in the second year of the reign of Her present Majesty, intituled "An Act for consolidating and amending the laws relating to the Licensing of Public-houses, and for further regulating the sale and consumption of Fermented and Spirituous Liquors in New South Wales;" of the license in the said Act, called a Confectioner's License, for the shop (or rooms) of the said A. B., in the town (or District) of _____, limited to the liquors hereinafter mentioned; and stating that the said Justices had taken from the said A. B. and two sureties, the recognizances required by the said Act: And whereas, the said A. B. hath paid into my office the sum of one pound sterling, as the duty on such license: Now, I, the Colonial Treasurer of the said colony (or other person appointed by the said Governor for the purpose of issuing licenses under the said Act as the case may be) in virtue of the powers vested in me, by the said Act, do hereby license the said A. B. to sell Ginger Beer, and Spruce Beer, but no other fermented liquors nor any spirituous liquors, or mixed liquors, part whereof is spirituous, in the shop (or rooms) of the said A. B., situated in _____ aforesaid; and this license shall commence upon the first day of July next, and continue in force until the thirtieth day of June then next ensuing, both days inclusive, provided it be not forfeited in the mean time according to the provisions of the said Act.

Given under my hand and seal at Sydney, this _____ day of _____, one thousand eight hundred and _____

Registered }
P. Q. }

N. O. [L. S.]
Colonial Treasurer.

(Or other person, as the case may be.)

C 1

(D. 1.)

FORM OF NOTICE OF APPLICATION FOR A CONFECTIONER'S LICENSE.

To the Worshipful the Justices of the Peace, acting in and for the District of _____, in the colony of New South Wales.

I, A. B., (state the trade or occupation,) now residing at _____, in the parish town, or district of _____, do hereby give notice pursuant to the Act of the Governor and Council, passed in the second year of the reign of Her present Majesty, intituled "An Act for consolidating and amending the laws relating to the licensing of Public-houses, and for further regulating the sale and consumption of Fermented and Spirituous Liquors in New South Wales;" that it is my intention to apply at the next Annual Licensing Meeting to be holden for this District, for the License in the said Act called a Confectioner's License, for the sale of Ginger Beer and Spruce Beer, in the shop (or rooms) which I now occupy (or intend to occupy,) situated at _____, here describe the house proposed to be licensed, specifying the situation of it; the number and description of rooms which the license is applied for; the person of whom the house is rented, the present occupier, and whether now licensed:—

I am free, and am married, having a wife who is free, or a prisoner, or holding a ticket of leave, and children, (or unmarried, as the case may be,) and I have held a license, (if before licensed, state how many years, for what kind of license, and what District.)

I further give notice that I propose C. D. of _____, and E. F. of _____, as my sureties, to enter with me into the required recognizance.

Given under my hand, this _____ day of _____, one thousand eight hundred and _____

A. B.

(D. 2.)

FORM OF RECOGNIZANCE TO BE ENTERED INTO BY THE APPLICANT FOR A CONFECTIONER'S LICENSE.

New South Wales, } Be it remembered, that on the _____ day of _____, one
to wit. } thousand eight hundred and _____, A. B., of _____, C. D.,
of _____, and E. F., of _____, came personally before us, G. H. and J. K.,
Esquires, Justices of the Peace, acting in and for the District of _____,
in the said Colony, and acknowledged themselves to owe to our Lady the
Queen, to wit:—The said A. B. the sum of fifty pounds, the said C. D. the sum
of fifty pounds, and the said E. F. the sum of fifty pounds, of lawful money of
Great Britain, to be respectively levied of their several goods and chattels,
lands and tenements, to the use of our said Lady the Queen, her Heirs and
Successors, in case default shall be made in the performance of any of the con-
ditions hereunder written.

The Conditions of this Recognizance are such, that whereas the said A. B. is to be licensed pursuant to the Act of the Governor and Council passed in the second year of the reign of Her present Majesty, intituled "An Act for consolidating and amending the Laws relating to the Licensing of Public Houses, and for further regulating the sale and consumption of Fermented and Spirituous Liquors in New South Wales;" to sell Ginger Beer and Spruce Beer, but no other Fermented Liquors, nor any Spirituous Liquors, or Mixed Liquor, part whereof is Spirituous, in the Shop (or rooms) of the said A. B., situated at _____, in the District (or Township) of _____, for twelve months, from the first day of July, one thousand eight hundred and _____; if the said A. B. do not sell or dispose of, or permit to be sold or disposed of, any other Fermented or Spirituous Liquors than such as are authorised by his (or her) said License,

and do in all other respects keep the Law, and the conditions of such his (or her) License, in selling the Liquors so authorised by such License, and do not permit any person to become drunk, or supply or permit any liquor to be supplied to any person in a state of intoxication, or permit such person to remain in his (or her) Shop, Rooms, or Premises, or commit any disorder therein, nor refuse to admit a Magistrate or constable into any part of the said house or premises at any hour, nor admit or receive any convict other than his (or her) assigned servant, or servants, into his (or her) house, or any place held or occupied therewith; or deliver any Liquors as aforesaid to any convict except with the written order, or in the presence of the master, mistress, or overseer of such convict: and do maintain good order and rule in the said Shop (or rooms) and Premises, (here insert any special conditions which the Justices may think fit to impose); then the said Recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year above written, before us.

G. H., J. P. [L. S.]
I. K., J. P. [L. S.]

(E.)

FORM OF CERTIFICATE BY JUSTICES TO AUTHORISE THE GRANTING OF LICENSES.

New South Wales, } At the Annual Licensing Meeting (or an adjournment of
to wit. } the Annual Licensing Meeting) of Her Majesty's Justices
of the Peace, acting in and for the District of , holden at , on
the day of , in the year of our Lord one thousand eight hundred
and , pursuant to the Act of the Governor and Council, passed in the
second year of the reign of Her present Majesty Queen Victoria, intituled
"An Act for consolidating and amending the Laws relating to the Licensing of
Public-houses, and for further regulating the sale and consumption of Fermented
and Spirituous Liquors, in New South Wales," for the purpose of considering
applications made to us for Licenses, pursuant to the said Act: we being the
majority of the Justices assembled at the said Sessions, (or I, being the only
Justice present after such adjournment of the said Sessions, and notice is
required by the said Act), do in virtue of the power vested in us, (or me),
hereby authorise the Colonial Treasurer (or other proper officer) to issue to
A. B. of , the License in the Act called , for (here state the
House, Sign, District, Shop, Room, Steam-packet, Vessel, or other particulars,
according to the description of the License, and nature of the case, and if a
Confectioner's License, specify the particular Liquors allowed to be sold (for the
year commencing from the first day of July next: And we do hereby certify
that we are satisfied the said A. B. is a person of good fame and reputation, and
fit and proper to be licensed as aforesaid; And also that we have taken from the
said A. B. and his Sureties C. D., of , and E. F., of ,
a Recognizance in the sum of Fifty Pounds each, according to the form pre-
scribed in the said Act of the Governor and Council, and with the further
special conditions following, that is to say, (here mention any special
conditions which the Justices may see fit to impose and insert in the Recogni-
zance).

Given under our hands and seals the day of , at the place
aforesaid.

G. H., J. P. [L. S.]
I. K., J. P. [L. S.]

(F.)

FORM OF INFORMATION.

New South Wales, } Be it remembered, that on the day of , in the
to wit. } year of our Lord one thousand eight hundred and ,
at , in the County of , in the Colony of New South Wales,
A. B. came before us, C. D. and E. F., Esquires, two of Her Majesty's Justices
of the Peace for the said Colony, duly authorised in that behalf, and gave us,
the said Justices, to understand and be informed, that after the day of
 in the year of our Lord one thousand eight hundred and ;
and within three months next before the date of exhibiting this information, to
wit, on the day of one thousand eight hundred and ,
G. H. did (here specify the offence in the words of the Act,) whereby and by
force of the Act of Council in such cases made and provided, the said G. H. has
forfeited the sum of sterling, and also the costs and expenses attend-
ing the convicting him, (or her), the said G. H., of the said offence; the said
penalty or sum to be appropriated in the manner directed in the Act of the
Governor and Council in such case made and provided: And the said A. B.
prayeth that the said G. H. may be convicted of the said offence, and that the
said penalty or sum of may be appropriated in manner directed as
aforesaid; and that the said G. H. may be summoned to answer the said in-
formation, and make defence thereto, and that and
material Witnesses to be examined concerning the premises, be also summoned
to testify therein.

Before us this day of , one thousand eight hundred and .

C. D., J. P.

E. F., J. P.

(G.)

FORM OF JUDGMENT ON CONVICTION.

New South Wales, } Be it remembered, that on the day of , in
to wit. } the year of our Lord one thousand eight hundred and and
 , G. H. of , in the Colony of New South Wales, was duly
convicted before us, C. D. and E. F., Esquires, two of Her Majesty's Justices of
the Peace for the said Colony, upon an information in that behalf exhibited
before us (or before other Justices to be named as the case may be) on the
day of , now last past, for that on the day of
 , one thousand eight hundred and , (state the fact or
offence in respect of which the judgment on conviction is had, and that it was
committed in the Colony of New South Wales); And we do in pursuance of
the Act of the Governor and Council, passed in the second year of Her
Majesty's reign, intituled "An Act for consolidating and amending the Laws
relating to the Licensing of Public Houses, and for further regulating the sale
and consumption of Fermented and Spirituous Liquors in New South Wales;"
award, order, and adjudge, that the said G. H. do for such offence forfeit and
pay the sum of pounds, to be appropriated as in and by the said Act is
provided, besides the costs and charges of, and attending this conviction, which
said costs and charges, we the said Justices do hereby ascertain and assess at the
sum of pounds.

Given under our hands and seals the day and year first above written.

C. D., J. P.

E. F., J. P.

[L. S.]

[L. S.]

(H.)

FORM OF A TEMPORARY LICENSE TO SELL FERMENTED AND SPIRITUOUS LIQUORS AT PUBLIC FAIRS.

New South Wales, } Be it remembered that A. B. of , holding a License
to wit. } (describe the nature thereof, and the house, place, or

district, for which the same is granted,) and having applied to the Justices in Petty Sessions for the district of _____, on the _____ day of _____, for authority to exercise the privileges of the said license at a Public Fair (or other place of amusement as the case may be) to be holden at _____, on the _____ day of _____. Now we being the majority of the Justices assembled at such Petty Sessions as aforesaid, do hereby grant to the said A. B. authority to exercise the said license at the said Fair (or other place of amusement) on the _____ day of _____, between the hours of _____ in the morning and _____ in the evening: Provided always (here add any conditions which the Justices may see fit to attach to the grant of the permission applied for.)
Given under our hands on the day and year aforesaid.

C. D., J. P.
E. F., J. P.

(I.)

FORM OF ENDORSEMENT ON LICENSE OF A TRANSFER THEREOF.

Be it remembered that we the undersigned, being the majority of the Justices present at a Special Petty Sessions for the district of _____, held at _____, for the purpose of transferring Licenses, do hereby upon the application of the within named _____ transfer the rights and privileges of the within license, to G. H., for the residue of the term for which the same has now to run, the said G. H. having first exhibited the certificate and entered into the recognizances required by law.

C. D., J. P.
E. F., J. P.

(K.)

FORM OF ENDORSEMENT ON LICENSE OF CHANGE OF HOUSE AND PREMISES.

Memorandum, that upon the Certificate of the proper Justices, that the within named G. H. has entered into a new Recognizance as required by law, upon an application for a change of the House and Premises, in which a License is exercised; I do hereby declare that the within License shall henceforth cease to apply to the House and Premises therein described, and shall apply instead thereof to the House and Premises occupied (or about to be occupied) by the said G. H., situate (described as in the original License.)

C. D.,
Colonial Treasurer,
(or other person as the case may be.)

PUBLIC EXHIBITION—(PLACES OF.)

The Act of Council, 9 G. IV. No. 14, 1828; *Callaghan*, vol. 2, p. 844, is intituled "An Act for Regulating Places of Public Exhibition and Entertainment." It recites "*Whereas it is expedient that provision should be made for guarding against the evil consequences which the*

unrestricted power of opening places of public exhibition and entertainment in the present circumstances of this Colony, must necessarily produce ;” Be it enacted—

“ That if any person or persons shall act, represent, or perform, or cause to be acted, represented, or performed, whether such acting or performance be gratuitous or be for hire, gain, or reward, any interlude, tragedy, comedy, opera, concert, play, farce, or other entertainment of the stage, or any part or parts therein ; or any stage-dancing, tumbling, or horsemanship ; or any other public entertainment whatever, to which admission shall or may be procured by payment of money or by tickets, either transferable or not transferable, or by any other means, promise, token, or consideration, as the price, hire or rent of admission ; or places, seats, or boxes for the day, week, month, or year, or for any less or longer time whatever ; or if any person or persons shall take or receive, or cause to be taken and received, any money, goods, or valuable things whatever, by way of rent, fee, or reward, for the use or hire of any house, room, building, garden, or place, wherein any such exhibitions or entertainments as aforesaid, or any part thereof, shall be acted, represented, performed, exhibited, or done ; or being the owner or occupier thereof, shall permit or suffer the same to be so used and applied : every such person shall, in case the place wherein the same shall be acted, represented, performed, exhibited, or done, be without authority and license from the Colonial Secretary, or the acting Colonial Secretary for the time being, forfeit and pay, for every such offence, the sum of fifty pounds, of lawful money of Great Britain, to be recovered in manner hereinafter mentioned.”

Section 2—

[What deemed a disorderly house.]

“ Every house, room, building, garden, or place, wherein any such exhibition or entertainment as aforesaid, or any part thereof, shall be acted, represented, &c., unless the same be authorised and licensed by the Colonial Secretary as aforesaid, shall be deemed a disorderly house, room, building, garden, or place ; and any constable, or other person authorised by warrant under the hand and seal of one or more Justices of the Peace, may enter such house, room, building, garden, or place, and may seize every person found therein ; and every person, so found, shall be deemed a rogue and vagabond, and be liable to the penalties and punishments inflicted on rogues and vagabonds. Provided always, That if any such exhibitions or entertainments as aforesaid, or any part thereof, shall be acted, represented, performed, or exhibited, in any house, room, building, garden, or place, wherein ale, beer, wine, spirits, coffee, or any other liquors shall be sold or retailed, such place shall be deemed a disorderly house, room, building, garden, or place, and the license or licenses of the persons being the occupier of such place, &c., shall become forfeited and void ; and the person being the holder thereof shall, in addition to such loss of license, forfeit and pay for every such offence the sum of fifty pounds, to be recovered as hereinafter directed.”

Section 3—

[Penalties, how recovered.]

“ All penalties and forfeitures, imposed for offences committed under this Act, shall be recovered in a summary way, before two Justices for the district where any such offence shall be committed, by the oath or oaths of one or more credible witness, or by confession of the offender ; to be levied by distress and sale of the offender’s goods and chattels. If any *overplus*, after costs of distress, to be paid over to the offender ; and, for *want of sufficient* distress, the offender

shall be committed to any House of Correction or Gaol of the district, to be kept to hard labour for any term not exceeding six calendar months.

“The offender may, however, *appeal* to the next Quarter Sessions to be holden in the district.”

Section 5—

“All fines and penalties to be paid into the Treasury.”

PUBLIC HEALTH.

“With the same regard to public health, upon which the statutes relating to quarantine have proceeded, the Legislature appears to have acted in former times, in making persons guilty of felony who, being infected with the plague, went abroad and into company with infectious sores upon them, after being commanded by the Magistrates to stop at home. The statute which contained this enactment, after being continued some time, is now expired; but Lord Hale puts the question—Whether, if a person infected with the plague should go abroad *with intent* to infect another, and another be infected and die, it would not be murder by the Common Law. And he seems to consider it as clear, that though where no such intent appears, it cannot be murder; yet, if by the conversation of such a person, another should be infected, it would be a great *misdemeanor*. 1 *Russ.* 113, 4. In a late case relating to the small-pox infection, it was held that the exposing in the public highway, with a full knowledge of the fact, a person infected with a contagious disorder, is a common nuisance, and as such, the subject of an indictment. 4 *M. and S.* 73. It is also an indictable offence in an apothecary, after having inoculated children with the small-pox, *unlawfully* and *injuriously* to cause them to be exposed in the public street, to the danger of the public health. 4 *M. and S.* 272.”

“The public health may be injured by selling *unwholesome food*, and it is an indictable offence to *mix*

unwholesome ingredients in anything made and supplied for the food of man. And if a master knows that his servant puts into bread what the law has prohibited, and the servant, from the quantity he puts in, makes the bread unwholesome, *the master is answerable criminally*: for he should have taken care that more than is wholesome was not inserted. 3 *M. and S.* 11."

"It is a misdemeanor at Common Law, knowingly to give any person food injurious to eat, whether the offence be excited by malice or a desire of gain; nor is it necessary he should be a public contractor, or the injury done to the public service, to render him criminally liable. 2 *East, P. C.* 822."

"A baker who sells bread containing pernicious ingredients and unwholesome materials, or even alum in a shape which renders it noxious, is guilty of an indictable offence; although a small quantity of alum may be swallowed without injury, if taken in larger quantities it deranges the stomach and occasions constipation of the bowels; its tendency is injurious to health, and it is unfit for the use of man. *Id.* But an indictment will not lie against a miller for receiving good barley to grind, and delivering a mixture of oat and barley in return, which is unwholesome and musty. 4 *M. and S.* The party is left, in such case, to his civil remedy. *Sed quere.*"

PUBLIC WORSHIP.

Affrays and disturbances in a church or churchyard have always been esteemed very heinous offences, as being great indignities to the Divine Majesty, to whose worship and service such places are immediately dedicated; and upon this consideration all irreverent behaviour in those places has been deemed criminal by the makers of our laws. So that many disturbances,

occurring in these places, are visited with punishment which, if they happened elsewhere, would not be punishable at all; as bare quarrelsome words: and some acts are criminal, which would be commendable if done in another place; as arrests by virtue of legal process. See 1 *Russ. on Crimes* (1843) 299.

By Statutes 1 *W. and M. sess.* 1, c. 18, s. 18, and 1 G. I. st. 2, c. 5, s. 4, persons coming into any cathedral, church, chapel, or other congregation, and disturbing the same, or misusing any preacher or teacher, on proof before one Justice by two witnesses, offender to find two sureties, to be bound by recognizances in £50; and on default, commitment to prison till the next General or Quarter Sessions; and on conviction there, penalty £20.

QUARANTINE.

The Acts of Council, 3 W. IV. No. 1, (*Callaghan*, vol. 2, p. 992,) and 5 Vict. No. 12, (*Id.* p. 998), contain several regulations as to quarantine, and assign pecuniary penalties for the breach of them. The only indictable offence created by Act 3, W. IV. No. 1, s. 12, is that of forging certificates required by order of the Governor, which offence is made *felony*.

RAPE.

Rape is the having carnal knowledge of a woman, violently and against her will—*felony*. 3 G. IV. c. 31, s. 16, *Callaghan*, vol. 1, p. 325. The offence is deemed complete upon proof of penetration only, without proof of emission, (*Id.* s. 18); and even although emission be negated by the evidence. *R. v. Cox*, 5 C. and P. 297. And the penetration may be sufficient to constitute the offence, although the hymen be not ruptured. *R. v.*

Hughes, 9 C. and P. 752. The offence of rape is in no way mitigated by shewing that the woman at last yielded to the violence, if such her consent were forced by fear of death or duress. 1 *Hawk.* c. 41, s. 2. Even if the woman be a common strumpet, it is no excuse, if she be forced, for she is still under the protection of the law. *Id.* Nor is it any excuse that the woman consented after the fact. *Id.* Where a man, by fraud, went to bed to a married woman, and she believing him to be her husband, allowed him to have connexion with her, this was holden not to be a rape; but although the party was acquitted of the rape, he was found guilty of and punished for the assault. *R. v. Saunders*, 8 C. and P. 265; *R. v. M^r Williams*, *Id.* 286. A boy under the age of fourteen years is presumed by law incapable to commit a rape, (1 *Hale*, 631), and cannot be convicted of the offence, or of an assault with intent to commit it, (*R. v. Phillips*, 8 B. and C. 736); but he may be found guilty of a common assault, under stat. 1 Vict. c. 85, s. 9, (*Callaghan*, vol. 1, p. 331); see *R. v. Brimilow*, 9 C. and P. 366. A husband cannot be guilty of rape on his own wife; but in both these cases they may be principals in the second degree, and punished for being present, aiding and abetting. *Lord Audley's case*, 3 *How. St. Tri.* 419. Any person present, aiding and abetting, is equally guilty. *R. v. Crisham*, *Car. and M.* 187. As to carnally abusing children, see tit. "Children," ante p. 78.

COMMITMENT FOR RAPE.

on _____, at _____, did violently assault one C. D., and her the said C. D. then and there violently, and against her will, feloniously did ravish and carnally know; against the form of the Statute in such case made and provided. And you the said keeper, &c.

REAL ESTATE—(STEALING DOCUMENTS RELATING TO TITLE.)

Stealing any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title to any real estate, *misdemeanor*. 7 and 8 G. IV., c. 29, s. 23; *Callaghan*, vol. 1, p. 299.

RECEIVING STOLEN GOODS.

1. WHERE THE PRINCIPAL IS GUILTY OF FELONY.—“If any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a felony, either at common law or by virtue of this Act, such person knowing the same to have been feloniously stolen or taken”—*felony*. 7 and 8 G. IV. c. 29, s. 54.

EVIDENCE.—The receipt is proved by the party having the goods in his possession, but under such circumstances as do not raise a presumption that he himself stole them. *R. v. Dursley et al.* 6 C. and P. 399; *R. v. Buttens*; *Id.* 147. The guilty knowledge is usually proved by showing that he bought the goods very much under the market price, or that he concealed them, or from his acts or conversation before or at the time of his receiving them, or from any other circumstances, from which it may fairly be inferred that at the time he received them he knew they had been stolen, or not honestly come by. And the receiving of them, for the purpose of concealment or the like, is as much an offence within the Statute as if the offender had purchased them for the purpose of making a profit of them. *R. v. Richardson*, 6 C. and P. 335; *R. v. Davis*, *Id.* 177.

2. WHERE THE PRINCIPAL IS GUILTY OF A MISDEMEANOR.

—“ And if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof, is made an indictable misdemeanor by this Act, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted”—*misdemeanor. Id.* s. 55. This has reference to goods, &c., obtained by false pretences, and to goods, &c., converted by agents to their own use. 2 *Arch. J. P.* 406.

3. WHERE THE PRINCIPAL IS PUNISHABLE ON SUMMARY CONVICTION.—“ Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, (see “*Conviction*,” ante), 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 have been unlawfully come by, shall, upon conviction thereof before a Justice of the Peace, 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 this Act made liable.” *Id.* s. 60. See also “*Larceny*,” ante.

FORM OF COMMITMENT FOR RECEIVING WHERE THE PRINCIPAL IS GUILTY OF FELONY.

on _____, at _____, twenty yards of cloth, of the value of _____, of the goods and chattels of one C. D., then lately before stolen, taken, and carried away by (some evil disposed person unknown) (or by E. F.) of the said evil disposed person (or E. F.) feloniously did receive, he the said A. B. then and there well knowing the said goods and chattels to have been feloniously stolen, taken, and carried away, against the form of the statute in such case made and provided. And you the said keeper, &c.

COMMITMENT WHERE THE PRINCIPAL IS GUILTY OF A MISDEMEANOR.

on _____, at _____, two silver watches of the value of _____, of the goods and chattels of one C. D., then lately before unlawfully obtained from the said C. D. by one E. F. by false pretences, with intent to cheat and defraud him of the same, of the said E. F. unlawfully did receive, he the said A. B. then and there well knowing the said goods and chattels to have been unlawfully obtained by false pretences, against the form of the statute in such cases made and provided, And you the said keeper, &c.

FORM OF CONVICTION WHERE THE PRINCIPAL IS PUNISHABLE
ON SUMMARY CONVICTION.

one larch tree, of the value of _____, the property of C. D., by (a certain evil disposed person unknown, or one E. F.) then lately before unlawfully stolen, taken, and carried away, from a certain close of the said C. D., wherein it was then and there growing, (or as the case may be) unlawfully did receive from the said (evil disposed person, or E. F.) he the said A. B. then and there well knowing the said tree to have been unlawfully come by, against the form of the statute in such case made and provided. And you the said keeper, &c.

RECOGNIZANCE.

A recognizance is an obligation of record, whereby a man acknowledges that he is indebted to our Lady the Queen in a certain sum of money; which obligation is to be at an end upon the party performing whatever is required of him by a certain condition, written either at the foot or on the back of the recognizance. 2 *Arch. J. P.* 407.

And in all cases where a Justice of the Peace is authorised or required to bind a person, or make him give security, to do anything, he may do so by recognizance, and it is the ordinary and proper form of doing it. Thus binding a man over to prosecute, or a witness to give evidence, is by recognizance.

The recognizance must particularly specify the profession, art, mystery, or trade, of every person so entering into such recognizance, also his Christian and surname, and his place of residence, and if he reside in Sydney the name of the street. 2 *Vict. No. 8, s. 4. Callaghan*, vol. 2, p. 1024.

The recognizance is taken by stating to the party the substance of it, but in the second person:—"You, C. D., acknowledge yourself to owe to our Sovereign Lady the Queen," &c. The Justices must then give each of the parties, sureties, &c., a notice. *Id.* See form of notice, ante p. 109.

Justices of the Peace are bound, before the ensuing Quarter Sessions, to make a return of all forfeited re-

recognizances, fines, &c., to the Clerk of the Peace for the district, "containing the names and residences, trade, profession, or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such Justice or Justices of the Peace." *Id.* s. 1.

As to estreating recognizances, &c., see Act 2 Vict. No. 8, *Callaghan*, vol. 2, p. 1024. For forms see ante p. 108, 109.

RECORDS.

Stealing, or for any fraudulent purpose taking from its place of deposit for the time being, or from any person having the lawful custody thereof; or unlawfully or maliciously obliterating, injuring, or destroying, any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, of, or belonging to, any Court of Record, or relating to any matter, civil or criminal, began, depending, or determining in any such; or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatever, of, or belonging to, any Court of Equity, &c.—*misdemeanor*. 7 and 8 G. IV. c. 29, s. 21. Not necessary to allege in the indictment that the article is the property of any person. *Id.*

RESCUE.

Rescue is the setting a prisoner at liberty, by force, who is in legal custody, against the will of the officer or other person in whose custody he is (2 *Arch. J. P.* 413);

and is punishable at common law. If the prisoner were convicted at the time of the rescue, then, if the prisoner were convicted of treason, the rescuer is punishable as a traitor ; if of felony, the rescuer is also guilty of felony ; and if of misdemeanor, the rescuer is guilty of a misdemeanor. So if the prisoner were not convicted at the time, but were convicted afterwards, and before the trial of the rescuer, the rescuer is punishable in the manner above mentioned (2 *Hawk.* c. 21, s. 7) ; but if the prisoner be acquitted, the rescuer may be indicted as for a misdemeanor, and punished accordingly. 1 *Hale*, 598.

If, on the other hand, the rescuer be tried before the person whom he has rescued, he can be indicted only as for a misdemeanor, and punished accordingly (2 *Hawk.* c. 21, s. 7) ; except in the case of treason, in which case the rescuer is always punishable as a traitor. 1 *Russ.* 384.

RESCUE OF A MURDERER.—“If any person shall, by force, set at liberty, or rescue, or attempt to set at liberty or rescue any person out of prison, who shall be committed for or found guilty of murder, or rescue, or attempt to rescue, any person convicted of murder going to execution, or during execution—*felony.* 25 G. II. c. 37, s. 9. See also 1 Vict. c. 91, s. 1, 2.

RESCUE OF A DISTRESS.—As to the offence of pound breach for the purpose of rescuing cattle distrained damage feasant, see ante p. 222. As to goods or cattle distrained for rent, if they have been impounded, either in or off the demised premises, breaking the pound in order to rescue them is a misdemeanor at common law, and punishable as such ; 1 *Russ.*, 363. As to a rescue of them in this latter case on the way to the pound, it is the subject merely of a civil action, and not of an indictment. *R. v. Bradshaw*, 7 C. and P. 233.

FORM OF COMMITMENT FOR RESCUE.

on the day of , in the year of our Lord one thousand
 eight hundred and , at , whilst C. D., a constable, was con-

416 RESTITUTION OF STOLEN GOODS.—REWARDS.

veying one E. F. to the common gaol at _____, under and by virtue of a warrant of commitment of one of Her Majesty's Justices of the Peace, for having feloniously stolen the goods of J. N., did unlawfully assault and beat the said C. D., and did then and there unlawfully and forcibly, and against the will of the said C. D., rescue the said E. F. out of the custody of the said C. D. And you the said keeper, &c.

FORM OF COMMITMENT FOR A RESCUE OF A DISTRESS.

_____ on _____, at _____, unlawfully and forcibly did break a certain _____, there in which a certain horse was then impounded as a distress for rent, with intent then and there to rescue the said distress, and did then and there unlawfully and forcibly rescue the said horse from and out of the said _____. And you the said keeper, &c.

RESTITUTION OF STOLEN GOODS.

Where goods are obtained by larceny or false pretences, or by receiving them knowing them to have been stolen, and the offender be indicted at the instance of the owner, or his executor, or administrator, and convicted, the property shall be restored to the owner or his representative; and the Court may award a writ of restitution, or order the restitution in a summary way. 7 and 8 G. IV. c. 29, s. 57. 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 notice of its being stolen, taken, obtained, or converted, as aforesaid, in such case the Court shall not award or order the restitution of such security. *Id.*

REWARDS—(FOR STOLEN PROPERTY.)

“Any person who 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, or converted, as aforesaid, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of *felony*." 7 and 8 G. IV. c. 29, s. 58; *Callaghan*, vol. 1, p. 308.

ADVERTISING FOR STOLEN GOODS WITH NO QUESTIONS ASKED.—“If any person 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 enquiry 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 if any person shall print or publish any such advertisement; in any of the above cases every such person shall forfeit the sum of fifty pounds for every such offence, to any person who shall sue for the same by action of debt, to be recovered with full costs of suit. *Id.* s. 59.

RIOT.

A riot is a tumultuous disturbance of the peace, by three or more persons assembling together of their own authority, with an intent mutually to assist one another, against any one who shall oppose them, in the execution

of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the public, whether the act intended were of itself lawful or unlawful. 1 *Hawk.* c. 65, s. 1. The intent may be inferred from the act or general expressions of the rioters; and their actually executing a particular enterprise, is abundant proof of their previous intention to execute it. So their intention mutually to assist each other, may be inferred either from their afterwards actually assisting each other, or from their exclamations or actions, &c., whilst so assembled. See *R. v. Hunt*, 3 *B. and Ald.* 566. And the injury or grievance complained of, and intended to be revenged or remedied by such an assembly, must relate to some private matter or quarrel only, such as the inclosing of lands in which the inhabitants of a particular town have a right of common, or gaining the possession of lands, the title to which is in dispute, or the like; for wherever the intention of such an assembly is to redress public grievances, as to pull down all inclosures generally, to reform religion, to remove evil councillors from the Queen, &c., if they attempt to execute such their intentions with force, this would be a levying of war against the Queen, and high treason. 1 *Hawk.* c. 65, s. 6. Also, as to the act intended to be done, it is immaterial whether it be lawful or unlawful: as for instance, it is lawful to abate a nuisance, if done peaceably; but if three or more join in doing it in a violent and tumultuous manner, it is a riot; for the law will not suffer persons to seek redress of their private grievances, by such dangerous disturbances of the public peace. 1 *Hawk.* c. 65, s. 7.

It seems agreed, that if a number of persons, having met together at a fair or market, or any other lawful or innocent occasion, happen on a sudden quarrel to fall out, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it; because the design of their meeting was

innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it. 1 *Hawk.* c. 65, s. 3. Yet it is said, that if persons innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot; because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. *Id.* However it seems clear, that if, in an assembly of persons met together on any lawful occasion, a sudden proposal should be started of going together in a body to pull down a house or inclosure, or to do any other act of violence, to the disturbance of the public peace, and such motion be agreed to, and executed accordingly, the persons concerned cannot but be rioters, because their associating themselves together for such a new purpose, is no way extenuated by their having met at first upon another. 1 *Hawk.* c. 65, s. 3.

And to constitute a riot, the purpose intended must be actually executed: if not executed, the assembly would not amount in law to a riot, but to an unlawful assembly or rout only;—an unlawful assembly, where the enterprise is merely contemplated, but nothing further done for the purpose of carrying it into execution;—a rout, where the enterprise is not only contemplated, but the parties take some steps towards carrying it into execution, (1 *Hawk.* c. 65, ss. 8, 9); it is a riot, only where what was contemplated is actually carried into execution. And the execution of such enterprise must be attended with such circumstances either of actual force or violence, or at least of an apparent tendency thereto, as are naturally calculated to strike terror into the people: as the show of armour, threatening speeches, or turbulent gestures: for every such offence must be laid to be done

in terrorem populi. 1 *Hawk. c. 65, s. 5*, and see *s. 4*. See also *R. v. Hughes, 4 Car. and P. 373*; *R. v. Cox et al. id. 538*. And it seems that wherever three persons or more use force and violence in the execution of any design whatever, wherein the law does not allow the use of such force, all who are concerned therein are rioters. *Id. s. 2*. On the other hand, three or more persons may assemble, for the purpose of executing a wrongful act, and actually execute it, without being rioters, if they do it without threats or other circumstances of terror. *Id. s. 5*. It is said that women are punishable as rioters, but infants under the age of discretion are not, (1 *Hawk. c. 65, s. 14*), and as to the age of discretion, see "Infants," ante.

The punishment for riot at common law is by fine or imprisonment, or both.

HOW, AND BY WHOM SUPPRESSED. 1. BY PRIVATE PERSONS.—A private person may lawfully endeavour to prevent those whom he sees engaged in a riot or rout, from executing their purpose, and he may stop those whom he shall see coming to join them. 1 *Hawk. c. 65, s. 11*. And for this purpose he may lawfully arm himself, and may make use of his arms, in suppressing the riot, if it become necessary; but it is not prudent or advisable for private persons thus to use arms, of their own authority, in ordinary cases, as under pretence of keeping the peace, they may be guilty of enormous breaches of it; it is only in case of riots that savour of rebellion, that such violent methods seem proper. *Id.*

And what may be thus done by a private person, may also be done by the military, even although they be not at the time acting under the orders of a Justice of the Peace. But they must be cautious not to use their arms in such a case, where there is no actual necessity, except indeed in their own defence in case they should be attacked.

2. BY CONSTABLES, &c.—Constables and other peace officers also, not only may do, but they are bound by the

duty of their office to do, all that in them lies towards the suppressing of a riot, and they may command all other persons to assist them in doing so. 1 *Hawk.* c. 65, s. 11. But in order to support an indictment against a person for refusing to aid and assist a constable in the execution of his duty in quelling a riot, it is necessary to prove, first, that the constable actually saw a breach of the peace committed by two or more persons; secondly, that there was a reasonable necessity for the constable calling upon other persons for their assistance and support; and, lastly, that the defendant was duly called upon to render his assistance, and that without any physical impossibility or lawful excuse, he refused to give it; and whether the aid of the defendant, if given, would have proved sufficient or useful, is not the question or the criterion. *Reg. v. Brown*, 1 *C. and M.* 314, *per Alderson B.*

SPECIAL CONSTABLES.—"In all cases where it shall be made to appear to any two or more Justices of the Peace by information on oath of five respectable householders of the county, city, division, or place for which such parties are acting, that any tumult, riot, or felony, has taken place, or is likely to take place, and may reasonably be apprehended, such Justices may and are hereby authorised to call upon, nominate, and appoint, by precept in writing under their hands, any householders or other persons (not legally exempt from serving the office of constable) residing within their respective divisions, to act as Special Constables for such time and in such manner as to the said Justices shall seem fit and necessary for the preservation of the public peace, and for the prevention and suppression of any tumult, riot, or felony; and the said Justices are empowered to administer to such persons so appointed the usual oaths administered by law to all Special Constables." 1 *G. IV.* c. 37, s. 1.

OATH TO BE ADMINISTERED.

"I, A. B. do swear that I will well and truly serve our Sovereign Lady the Queen, in the office of Special Constable, for the of

without favour or affection, malice or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to Law. So help me God."

"If such person so appointed shall refuse to act, he shall be liable to the same fines, penalties, and punishments, as persons refusing to take on themselves the office of constable, are now subject to."* s. 2.

3. BY JUSTICES OF THE PEACE.—By stat. 34 Ed. III. c. 1, Justices of the Peace shall have power to restrain rioters, and to pursue, arrest, take, and chastise them, according to their trespass and offence, and to cause them to be imprisoned and duly punished according to the law and custom of the realm. If any Justice of Peace, therefore, find persons riotously assembled, he may not only arrest the offenders himself, and bind them to their good behaviour, or imprison them until they find bail, but he may also authorise others to arrest them by a bare parol command, without warrant; and the persons so commanded may pursue and arrest the offenders, as well in his absence as in his presence. 1 *Hawk.* c. 65, s. 16. If Justices fail in their duty in this respect, it is a high misdemeanor, punishable upon indictment or information with fine or imprisonment, or both. See *R. v. Pinney*, 3 *B. and Ad.* 947.

Also, by stat. 13 H. IV. c. 7, if any riot, assembly, or rout of people against the law, be made in the realm, (whether in the presence of Justices of the Peace, or in their absence, 1 *Hawk.* c. 65, s. 22,) the Justices of the Peace, three or two of them at the least, and the sheriff or under-sheriff of the county where such riot, &c., shall be made, shall come with the power of the county, if need be, to arrest them, and shall arrest them; and the

* If a constable, when chosen, refuse to be sworn, a Justice of the Peace may bind him over to the Assizes or Sessions, there to be indicted; but there can be no commitment but only indictment on refusal; and, if found against him, a good fine may be put on him, and he may then be committed for that cause. 2 *Str.* 920; *Cro. Car.* 567.

same justices and sheriff or under-sheriff shall have power to record what they shall find so done in their presence against the law, and by that record such trespassers and offenders shall be convicted, in the manner and form contained in the statute of "Forcible Entries," see ante p. 182. As to the power of the county, or *posse comitatus*, above mentioned, it is enacted by stat. 2 H. V. c. 8, s. 2, that the king's liege people, (not being clergymen, women, persons decrepit, or infants under the age of fifteen,) being sufficient to travel, shall be assistants to such justices, upon reasonable warning, to ride with them in aid to resist such riots, routs, and assemblies, on pain of imprisonment, and to make fine and ransom to the king. And it has been holden, that those who attend the justices in order to suppress a riot, may take with them such weapons as shall be necessary to enable them effectually to do it, and that they may justify beating, wounding, and even killing such rioters as shall resist, or refuse to surrender themselves. 1 *Hawk.* c. 65, s. 21.

Justices are authorised to require the immediate attendance of any body of military which may be quartered near at hand to assist in quelling a riot. But the Justice is not bound to go with the military in person; it is enough if he gives them authority. *The King v. the Mayor of Bristol*, 3 *B. and Ad.* 947.

THE RIOT ACT.—THE PROCLAMATION, AND HOW MADE.—Every Justice of the Peace, Sheriff of a county, or his Under-sheriff, and the Mayor, bailiff, and other head officer of any city or town corporate, within the limits of their respective jurisdictions, on notice or knowledge that persons, to the number of twelve or more, are unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall resort to the place where such unlawful, riotous, and tumultuous assembly shall be, and there make or cause to be made proclamation, in the order and form following, that is to say: the Justice or other person so authorised as aforesaid, shall go among the rioters, or

as near to them as he can go with safety, and with a loud voice command or cause to be commanded silence to be while the proclamation is making ; and after that, he shall openly and with loud voice make or cause to be made proclamation, in these words, or like in effect. 1 G. I. st. 2, c. 5, s. 2 :—

Our sovereign lady the Queen chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the act made in the first year of King George the First, for preventing tumults and riotous assemblies. God save the Queen.

Where these words “God save the Queen” were omitted, the proclamation was holden to be bad. *R. v. Child et al. 4 Car. and P. 442.*

OPPOSING THE MAKING OF PROCLAMATION.—And if any person do or shall, with force and arms, “wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt, any person or persons that shall begin to proclaim or go to proclaim, according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such persons so beginning or going to make such proclamation as aforesaid, shall be adjudged felony” 1 G. I. st. 2, c. 5, s. 5.

RIOTERS REMAINING AFTER PROCLAMATION.—And “if any persons to the number of twelve and more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any one or more Justice or Justices of the Peace, or by the Sheriff of the county, or his Under-sheriff, or by the Mayor, bailiff, or bailiffs, or other head officer or Justice of the Peace of any city or town corporate where such assembly shall be, by proclamation to be made in the King’s name in the form herein directed, to disperse themselves, and peaceably to depart to their habitations, or to their

lawful business, shall, to the number of twelve or more, notwithstanding such proclamation made) unlawfully, riotously, and tumultuously, remain and continue together by the space of one hour after such command or request made by proclamation :—then such continuing together to the number of twelve or more shall be adjudged felony," 1 G. I. st. 2, c. 5, s. 1.

So, "persons unlawfully, riotously, and tumultuously assembled, to the number of twelve or more, to whom proclamation should or ought to have been made, if the same had not been hindered as aforesaid, shall likewise, in case they or any of them to the number of twelve or more shall continue together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made," be guilty of felony, 1 G. I. st. 2, c. 5, s. 5.

APPREHENSION OF THE RIOTERS.—And "if such persons, so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, then it shall and may be lawful to and for every Justice of the Peace, sheriff, or under sheriff of the county where such assembly shall be—and also to and for every high and petty constable, and other peace officer within such county—and also to and for every mayor, Justice of the Peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace officer of any city or town corporate, where such assembly shall be,—and to and for such other person and persons as shall be commanded to be assisting unto any such Justice of the Peace, sheriff, or under-sheriff, mayor, bailiff, or other head officer aforesaid (who are hereby authorised and empowered to command all his Majesty's subjects of age and ability, to be assisting to them therein), to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation

made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his Majesty's Justices of the Peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law ;"—and if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed or hurt, in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them: then every such Justice of the Peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace officer, and all and singular persons being aiding or assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the king's Majesty, his heirs and successors, as against all and every other person and persons, of, for, or concerning, the killing, maiming, or hurting, of any such person or persons so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt, as aforesaid. 1 G. I. st. 2, c. 5, s. 3.

For offences against this Act, the prosecution must be commenced within twelve months. *Id.* s. 8.

FORM OF COMMITMENT FOR RIOT.

on the day of , in the year of our Lord one thousand eight hundred and , at , together with divers other evil-disposed persons, unlawfully, riotously, and routously, did assemble and gather together, to disturb the public peace, and did then and there unlawfully, riotously, and routously, (make a great noise, riot, and disturbance;" or, "assault and beat one C. D.;" or as the case may be), "to the great disturbance and terror of the Queen's subjects. And you the said keeper," &c.
 Misdemeanor at common law.

FORM OF COMMITMENT OF RIOTERS FOR REMAINING AFTER PROCLAMATION.

on the day of , in the year of our Lord one thousand eight hundred and , at , in the said county, together with divers other evil-disposed persons, unlawfully, riotously, and routously, did

assemble and gather together ; and notwithstanding proclamation made in that behalf by one of Her Majesty's Justices of the Peace for the said county, commanding and requiring them to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, the said A. B., C. D., and E. F., together with other persons to the number of twelve and more, feloniously, riotously, and tumultuously, did remain and continue together by the space of one hour after such command so made by the said proclamation as aforesaid. And you the said keeper," &c.

See stat. 1 G. I. st. 2, c. 3, s. 1.

FORM OF COMMITMENT FOR OPPOSING THE MAKING OF PROCLAMATION.

on _____, at _____, with force and arms, feloniously did wilfully and knowingly oppose, obstruct, and hinder J. P., Esquire, one of Her Majesty's Justices of the Peace for the said colony, who was then and there beginning (or going) to make proclamation to a certain unlawful, riotous, and tumultuous assembly there, to disperse themselves, according to the statute for preventing tumults and riotous assemblies, whereby such proclamation was not then made, against the form of statute in such case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR RIOTOUSLY DEMOLISHING CHURCH, HOUSE, MACHINERY, &c.

for that they, together with divers other persons unknown, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at _____, in the said colony, unlawfully, riotously, and tumultuously, did assemble together, to the disturbance of the public peace ; and being so unlawfully, riotously, and tumultuously assembled together, as aforesaid, did unlawfully, feloniously, and with force (begin to) demolish, pull down, and destroy the dwelling-house of G. H., there situate ("any church or chapel, or any chapel for the religious worship of persons dissenting from the united Church of England and Ireland, duly registered or recorded ; or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary ; or any building or erection used in carrying on any trade or manufacture, or any branch thereof ; or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof ; or any steam engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine") : against the form of the statute in that case made and provided. And you the said keeper, &c. See 7 and 8 G. IV. c. 30, s. 8. Callaghan, vol. 1, p. 332.

SACRILEGE.

(See "BURGLARY AND HOUSEBREAKING," also "BURNING.")

SEAMEN.

The laws relating to Seamen will be found at length in *Callaghan*, vol. 2, from p. 936 to p. 951 (*Water Police Act*), and from p. 1117 to 1170 (*Imperial Act—1844*). See also the 10th Vict. No. 3, “An Act to Prevent the Desertion of Seamen belonging to Foreign Ships and Vessels.”—1846.

Two or more Justices of the Peace may hear and determine on assaults committed in any part of the world on board any ship belonging to a British subject: Provided the complaint be made and prosecuted within three months after the alleged assault, or within three months after the parties shall be within the jurisdiction of such Justices. 7 and 8 Vict. c. 112, s. 44; *Callaghan*, vol. 2, p. 1156.

Justices of the Peace may issue warrants to search for and apprehend seamen deserting from foreign vessels. 10 Vict. No. 3, s. 3.

SEARCH WARRANT.

If goods be stolen, and the owner, or any person on his behalf, state to a Justice of the Peace, upon oath, a reasonable ground for suspecting that they are in the house, or upon the premises of a particular person, the Justice may grant a search warrant, for the purpose of searching such house or premises for them. And by stat. 7 and 8 G. IV. c. 29, (against larceny and other offences of that kind,) if any credible witness shall prove upon oath, before a Justice of the Peace, 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 by this Act, either upon indictment or summary conviction, shall have been committed, the Justice may grant a warrant

to search for such property, as in the case of stolen goods. *Id.* s. 63. So, a search warrant may be granted to search for goods stolen from a wreck. See *Id.* s. 19. There are other instances, which the reader will find mentioned in the course of this work.

HOW OBTAINED.—The party requiring a search warrant must go before a Justice of the Peace of the county or other jurisdiction where the premises intended to be searched are situate, and make oath of circumstances, showing a reasonable ground for suspecting that the goods are upon those premises. He must also show upon oath, either that the goods were stolen, or that he has reason to suspect that they have been stolen; for a positive oath that a felony was committed of goods is not necessary to justify a Magistrate in granting a search warrant for them. *Elsee v. Smith*, 1 *Dowl. and Ry.* 97. If the Magistrate be satisfied with the grounds of suspicion thus stated, he will grant his warrant.

FORM OF THE WARRANT.—The warrant is directed to a constable. It should require him to search some specified place; and it should require him to do so in the day time (2 *Hale*, 150), unless there be some very cogent reason for doing otherwise.

HOW EXECUTED, &c.—In executing the warrant, the owner of the goods, or some person who can identify them, should accompany the constable. If the house, or other place specified in the warrant, be open, when they reach it, they may enter it, and search for the goods; if shut, the constable must demand admission, and if it be refused, he may break the door open. This will be justifiable on the part of the constable, whether the goods be found in the place or not. 2 *Hale*, 151. The constable then searches the place for the goods; and he must take care not to seize any but those designated in the warrant, or such as will be *likely* to substantiate the charge of stealing the goods that were specified. See *Crozier v. Cundy*, 6 *B. and C.* 232. If he find the goods, or any part of them, he seizes them, and also

apprehends the person in whose house, &c., he has found them, and he carries both before a Justice of the Peace, who will then examine into the matter in precisely the same manner as he would if the party had been brought before him charged with larceny or receiving stolen goods.

If he think a sufficient case be made out against the prisoner, he commits him, and leaves the goods in the hands of the constable, to be produced at the trial. If the goods appear to have been stolen, but that the prisoner is not implicated in the theft, he discharges the prisoner, leaving the goods still in the hands of the constable, that they may be made available if the real offender be apprehended. But if it appear that the goods were not stolen at all, then not only is the prisoner discharged, but the goods are delivered back to him. 2 *Arch. J. P.* 429.

FORM OF SEARCH-WARRANT.

Colony of New South Wales, } To the constable of
to wit, } Whereas it appears to me,
J. P., Esquire, one of the Justices of our Lady the Queen, assigned to keep the
peace in the said colony, by the information on oath of A. I., of , in
the colony aforesaid (farmer), that he hath probable cause to suspect, and doth
suspect, that the following goods, to wit, , have,
within days last past, by some person or persons unknown, been
feloniously taken, stolen, and carried away, out of the house of the said A. I., at
aforesaid, in the colony aforesaid; and that the said A. I. hath
probable cause to suspect, and doth suspect, that the said goods, or part thereof,
are concealed in the dwelling-house of A. O., of , in the said
colony (farmer). These are, therefore, in the name of our said Lady the Queen,
to authorise and require you, with the necessary and proper assistants, to enter
in the day-time into the said dwelling-house of the said A. O., at
aforesaid, in the colony aforesaid, and there diligently to search for the said goods;
and if the same, or any part thereof, shall be found upon such search, that you
bring the goods so found, and also the body of the said A. O. before me, or some
other of the Justices of our said Lady the Queen, assigned to keep the peace in
the colony aforesaid, to be disposed of and dealt with according to law.
Given under my hand and seal, at , in the said colony, the
day of , in the year of the reign of .

SECURITIES—(PUBLIC OR PRIVATE.)

If any person shall steal any tally, order, 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 this Kingdom, or of Great Britain, or of Ireland, or of any Foreign State, or in any Fund of any Body Corporate, Company, or Society, or to any deposit in any Savings' Bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money, or for payment of money, whether of this Kingdom or of any Foreign State, or shall steal any warrant or order for the delivery or transfer of any goods, or valuable thing, every such offender shall be deemed 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 mentioned in the warrant or order; and each of the several documents hereinbefore enumerated, shall throughout this Act be deemed for every purpose to be included under and denoted by the words "valuable security." 7 and 8 G. IV. c. 29, s. 5; *Callaghan*, vol. 1, p. 296.

SERVANTS, CLERKS, ETC.

(See "LARCENY," and "EMBEZZLEMENT," ante; also "MASTER AND SERVANT.")

For the punishment of depredations committed by Clerks or Servants in cases not punishable capitally, it is enacted—

1. AS TO LARCENY.—"That if any clerk or servant shall steal any chattel, money, or valuable security, belonging to, or in the possession or power of his master, every such offender, being convicted thereof, shall be

liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned, for any term not exceeding three years, and (if a male,) to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment." 7 and 8 G. IV. c. 29, s. 46, *Callaghan*, vol. 1, p. 304.

2. AS TO EMBEZZLEMENT.—“ If any clerk or servant, or any person employed for the purpose, or in the capacity of a clerk or servant, shall, by virtue of such employment, receive, or take into his possession, any chattel, money, or valuable security, for, or in the name, or on the account of his master, and shall fraudulently embezzle the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security, was not received into the possession of such master, otherwise than by the actual possession of his clerk, servant, or other person so employed ; and every such offender, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned.” *Id.* s. 47.

And for preventing the difficulties that have been experienced in the prosecution of the last mentioned offenders, it is enacted—

“ That it shall be lawful to charge in the indictment, and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master, within the space of six calendar months from the first to the last of such acts. And in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin, or valuable security ; and such allegation, so far as regards the description of the property, shall be

sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin, or valuable security, of which such amount was composed, shall not be proved; or, if he shall be proved to have embezzled any piece of coin, or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him, in order that some part of the value thereof should be returned to the party delivering the same, and such part shall be delivered accordingly." *Id.* s. 48.

This section enables the prosecutor to charge *three* distinct acts of embezzlement by the same individual, provided they have been committed against the same master within six calendar months from the first to the last. As to evidence, and what constitutes embezzlement, see ante p. 159.

COMMITMENT FOR EMBEZZLEMENT BY A CLERK OR SERVANT.

Commencement as usual.

On &c., at &c., in the said Colony, being then Clerk (or Servant) to A. B., did receive and take into his possession certain (money, to the amount of £ , and upwards) or (certain chattels, to wit, &c.,) for, and in the name, and on the account of the said A. B., his master. And the said (money) feloniously did then embezzle, against the form of the statute, &c. And you the said keeper, &c. (Conclude as usual.)

SESSIONS OF THE PEACE.

The term Session of the Peace is used to designate a Sitting of Justices for the execution of those purposes which are confided to them by their Commission, and by several Acts of Parliament, and of the Legislative Council.

The Petty Sessions is a Meeting of two or more Justices of the Peace, holden of their own mere motion, for the execution of some power vested in them by Law. There are some occasions on which, though a *single* Magistrate *may* proceed, it is advisable and usual to

procure the attendance of two or more. With respect to the cases in which one Magistrate *may* act, but in which he should, in his discretion, seek the assistance of another,—Mr. Talford, in his valuable edition of Dickenson's Sessions, observes, "That it is obviously impossible to suggest any general rules. A Magistrate will probably think it advisable to adopt the latter course, in cases which affect large pecuniary interests; which involve questions arising on Statutes or Acts of difficult interpretation; and, in all cases, where any doubt may reasonably be expected; and where his decision would be final. Cases will also sometimes occur, in which, though not in themselves difficult, *local circumstances* may render the concurrence of two or more Magistrates advisable; in order that justice may not only be fully and fairly, but *satisfactorily* administered.

A *Special Session* is a meeting of Justices, holden on a special occasion, for the execution of some particular branch of their authority, convened by reasonable notice to the other Magistrates of the district: as licensing public-houses, electing Chairman of Quarter Sessions, &c., &c.

A *General Sessions of the Peace* is a Court of Record, holden before two or more Justices, for execution of the authority given them by the Commission of the Peace, and certain Statutes and Acts of Council. *Cro. Cir. Com.* 13.

The Sessions cannot be held without the presence of *two Justices*. 1 *Bl. Com.* 354, N. See also 11th Geo. IV. No. 13, s. 2.

SHEEP.

The Act of Council, 10 Vict. No. 8, (*Callaghan, Sup.* 1655), is intituled "An Act to consolidate and amend the laws now in force, for preventing the extension of the

diseases called the scab, and the influenza or catarrh in sheep and lambs in the Colony of New South Wales.”

The first section recites and repeals all former Acts relating to the scab and catarrh in sheep.

Section 2—

[Infected sheep not to be driven, depastured, or kept near public way.]

And be it enacted, That if any person shall turn out, keep, depasture, drive or conduct, or permit or suffer to be turned out, kept, depastured, driven, or conducted, any sheep infected with the disease, called the scab, or with the disease called the influenza or catarrh, within a quarter of a mile of any public road or way used as a public way, or upon any land whatsoever not being in the actual possession and occupation of such person, he shall forfeit and pay for every such offence any sum not less than five pounds, nor more than fifty pounds.

Section 3—

[Nor on public way.]

And be it enacted, That if any person shall drive or conduct, or permit or suffer to be driven or conducted, any sheep infected as aforesaid, upon or along any public road, or way used as a public way, he shall forfeit and pay for every such offence any sum not less than five pounds, nor more than fifty pounds.

Section 4—

[Notice to be given of infected sheep being near public way.]

And be it enacted, That whenever any sheep infected as aforesaid, shall be turned out, kept, or depastured upon any land which may be intersected or crossed by any public road, or by any way used as a public way, it shall be the duty of the proprietor or person in charge of such sheep to cause public notice to be given of such infection, by affixing such notice in writing in distinct legible characters, at some conspicuous place at each point of entrance of such road or way into the said land, and every such notice shall be kept and continued so affixed so long as any sheep infected as aforesaid shall be kept or depastured on such land: And if any proprietor, or person in charge of any such infected sheep, shall wilfully omit or neglect to cause notice to be affixed and continued as aforesaid, he shall forfeit and pay for every such offence any sum not less than five pounds, nor more than ten pounds.

Section 5—

[Abandonment of infected sheep.]

And be it enacted, That if any person shall wilfully set at large and abandon any sheep infected as aforesaid, he shall forfeit and pay for every sheep so set at large and abandoned, any sum not less than one pound, nor more than fifty pounds.

Section 6—

[Casting such sheep into streams or water holes.]

And be it enacted, That if any person shall cast or cause to be cast into any stream or waterhole, the carcass of any sheep which at the time of its death was infected as aforesaid, he shall forfeit and pay for every sheep so cast as aforesaid, any sum not less than one pound, nor more than five pounds.

Section 7—

[Justices to have power to order the seizure, inspection, and detention of sheep suspected to be infected.]

That if from any information on oath made before any Justice of the Peace, by any proprietor or overseer in charge of sheep, or any constable, it shall appear to such Justice that there is reasonable cause to suspect and believe that any infected sheep are turned out, kept, depastured, driven, or conducted, contrary to the provisions of this Act, it shall be lawful for such Justice to issue a warrant under his hand, to some fit and proper person to be named in such warrant, to authorise him to examine any such sheep, and if necessary to cause the same to be driven to the nearest pen where the same are ordinarily kept, or to some other convenient place, for examination; and if such sheep shall appear to be infected as aforesaid they shall be detained until any information that may be filed under the provisions of this Act, in respect of such sheep, shall be heard and determined, provided such information be exhibited within at least forty-eight hours after such sheep shall have been discovered to be infected as aforesaid: And any proprietor or person in charge of such sheep who shall refuse to allow the same to be examined, or shall refuse or neglect, when so required, to cause them to be driven to the nearest pen, or to some other convenient place for examination, shall forfeit and pay for every such offence, any sum not less than five pounds, nor more than twenty pounds,

Section 8—

[Slaughtering infected sheep.]

That if any person shall have in his possession, for the purpose of slaughtering for sale, or shall slaughter or cause to be slaughtered for sale, any sheep infected as aforesaid, or shall expose the carcass, or any part thereof, in any public shop, stall, market, or other place, he shall for every such offence forfeit and pay any sum not less than five shillings, nor more than twenty pounds. And it shall be lawful for the convicting Justices to direct that the flesh of all such infected sheep so slaughtered as aforesaid shall be seized, condemned, and destroyed in such manner as they may think fit.

Section 9—

[Recovery of penalties.]

That all penalties and forfeitures incurred under the provisions of this Act may be sued for and recovered by any proprietor of sheep, or the overseer or superintendent of any such proprietor, or by any constable by information in the manner hereinafter mentioned: and the matters contained in any such information may be heard and determined by any two or more Justices of the Peace in a summary way, in the manner hereinafter mentioned.

Section 10—

[The manner in which penalties are to be sued for and recovered.]

That it shall be lawful for any proprietor of sheep, or the overseer or superintendent of any such proprietor, or any constable, to exhibit an information in writing before any one Justice of the Peace, informing of any offence against the provisions of this Act, and on perusal of such information, if the same be a valid one, such Justice is hereby required to grant a summons in writing under his hand, directing the attendance of the party informed against at a time and place to be therein mentioned, to appear before any two or more Justices of the Peace to answer the charge contained in the said information: and if such summons shall be served personally on the person so informed against, or shall be left at his last known or usual place of abode, a reasonable time (but in no

case less than twenty-four hours) before the time therein mentioned for such person's appearance, then upon the appearance of the party so summoned at such time and place as aforesaid, or on proof to be then given *oed voce* on the oath of the person by whom the summons, was so served as aforesaid, and the production of the original summons it shall be lawful for any two or more Justices of the Peace then and there being, thereupon, or for any two or more Justices of the Peace at any future period to which the matter may be adjourned by any one Justice, if two should not be present, to proceed to hear and determine in a summary manner the matter informed of in the said information; and on conviction of the person informed against it shall be lawful for either of the convicting Justices, on non-payment of the penalty and such costs as such Justices may award to issue at any time, not more than fourteen days from the day of conviction, under his hand and seal, a warrant of distress returnable on such day as he may think proper to insert therein, such return not being more than fourteen days from the day of the date of such warrant, authorising any constable to proceed to levy on the goods of the person so convicted, if any such can be found, for the amount of such penalty and costs, together with the sum of five shillings for such distress: And the said goods forthwith to seize and carry to the nearest Police office; and the said goods so seized shall be sold at twelve of the clock on the third day after such seizure, unless the full amount of penalty and costs be sooner paid; and the surplus, if any shall remain after the payment of such penalty and costs, shall be paid to the person so convicted if demanded within three calendar months, and if not so demanded shall be paid to the Colonial Treasurer of the said Colony for the general purposes of the government thereof: and if sufficient goods cannot be found before the return day of the said warrant whereon to levy for the said penalty and costs, it shall be lawful on the same being certified by writing on the back of such warrant to the convicting Justices, or one of them, under the hand of the person appointed to execute the same, for either of the said convicting Justices, forthwith, by warrant under his hand and seal, to commit the person so convicted to the nearest common gaol to the place where the conviction took place, for any period not exceeding fourteen days where the penalty awarded shall not be more than five pounds, and not exceeding three calendar months where the penalty awarded shall be of greater amount, such term of imprisonment to be computed from the time of arrest only: Provided always, that no conviction shall take place under this Act, unless within three calendar months after the commission of the offence complained of.

Section 11—

[Power to subpoena witnesses, and mode of compelling them to attend and answer.]

That it shall be lawful for any Justice issuing any summons under this Act, or for any one of the Justices before whom the matter of any information may come on to be heard and determined, to issue a subpoena under his hand for the attendance of any person, at a time and place to be therein mentioned, to appear and give evidence at the hearing of any such matter, and to bring with him and produce at such hearing any necessary documents under his control, that may be specified in such subpoena; and every such subpoena shall be served by delivering a copy thereof personally to the person so subpoenaed, and shewing the original at the time of such service, which service shall be at a reasonable time, and in no case less than twenty-four hours before the time specified therein for the attendance of such witness; and if any person having been subpoenaed shall not attend at the time and place mentioned in his subpoena, without reasonable cause, or, having attended there, shall refuse to be sworn, or to affirm, or shall refuse to answer any legal question that may be put to him, without alleging for such refusal a sufficient excuse, to be then allowed by the Justices hearing the case, such person shall, for every such offence, forfeit and pay any sum not more than twenty pounds, to be recovered in the manner and within the time hereinbefore mentioned for the recovery of penalties under this Act.

Section 12—

[No penalty in any case to exceed one hundred pounds.]

And be it enacted, that no penalty imposed under any of the provisions of this Act shall in any case exceed the sum of one hundred pounds.

Section 13—

[Appropriation of fines and forfeitures.]

That all fines and forfeitures imposed by this Act shall be paid one moiety to Her Majesty, her heirs and successors, for the public uses of this territory, and in support of the government thereof, and shall be applied in such manner as may from time to time be directed by any Acts of the said Governor and Legislative Council: and the other moiety to the use of the informer or party prosecuting, who shall also be entitled to his or her costs and charges over and above such fines and forfeitures, to be ascertained and assessed by the Justices before whom the case is heard.

Section 14—

[Certiorari taken away.]

And be it enacted, That no conviction made under this Act shall be removed by writ of certiorari or otherwise into the Supreme Court of the said colony.

Section 15—

[Interpretation.]

That in the interpretation of this Act the words "public road or way used as a public way" within the boundaries of location, shall be construed to mean any road or way used uninterruptedly by the public for not less than six years, without any opposition from the proprietor of the land over which such road or way passes; and without the boundaries of location, any road or way over which sheep, cattle, horses, or drays have been usually or commonly driven by the inhabitants of the district or the public generally; and the word "sheep" shall be taken to include lambs as well as sheep: and wherever any word shall be used importing the singular number or the masculine gender only, the same shall be understood to include several matters, as well as one matter, several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such understanding; and also that all sheep shall be deemed to be infected within the meaning of this Act which may have been infected as aforesaid, or mixed with sheep infected as aforesaid, at any time within six weeks previously.

 SHOPS, &c.—(STEALING IN.)

If any person shall break and enter any shop, warehouse, or counting-house, and steal therein any chattel, money, or valuable security, he shall be liable, on conviction, to transportation, or imprisonment. 7 and 8 Geo. IV. c. 29, s. 15; *Callaghan*, vol. 1, p. 298. See form under "Larceny."

SLANDER.

(See ante p. 271, tit. "LIBEL.")

Slander is not considered to be cognisable by Justices of the Peace, unless the words used directly tend to a breach of the peace, in which case any Justice may bind the party over to be of good behaviour. 3 B. 856.

SLAUGHTERING CATTLE.

The Act of Council, 5 W. IV. No. 1, 1834, is "An Act for regulating the Slaughtering of Cattle." *Callaghan*, vol. 2, p. 733.

Section 1, enacts—

[Slaughter-houses to be licensed.]

"That from and after the 31st day of August, 1834, no person shall keep a Slaughtering-house or place for slaughtering cattle, intended for sale, or barter, or for shipping, without being duly licensed; and, that if after the said 31st day of August, 1834, any person shall slaughter, or cause to be slaughtered, any cattle as aforesaid, in any house or place not licensed, as directed by this Act, such person shall forfeit and pay the sum of ten pounds for each and every head of cattle so slaughtered."

Section 2, enacts—

[Mode of obtaining license.]

"That any person or persons who may be desirous of obtaining a license for a Slaughtering-house or place for slaughtering cattle, shall on some day in the month of August next, apply for the same, in writing, to the Bench of Justices of the Peace nearest to his, her, or their usual place of residence, and such Bench of Justices, two or more being present, if they be satisfied that such applicant or applicants is, or are, of unexceptionable character, shall issue and deliver to the person or persons so applying, a license under the hands of any two of them in manner and form hereinafter set forth, to be in force until the 31st day of December next, the person or persons so applying, paying into the hands of the Clerk of the said Bench of Justices the sum of two shillings and six pence for every such license. Provided always, that every such application for a license, shall particularly specify and describe the house or place intended to be so licensed, and that the Justices shall consider that the situation of such house or place shall not be objectionable."

Section 3, enacts—

[Justices may grant licenses.]

"That it shall and may be lawful for any Bench of Justices, two or more being present, to grant, in manner as aforesaid, a license for a slaughter-house or

place for slaughtering cattle, within the District of such Bench, to any unexceptionable person who may or shall apply for the same at any meeting of such Bench, and such license shall remain in force until the 31st day of December following."

Section 4, enacts—

[Inspectors of slaughter-houses.]

"That it shall be lawful for His Excellency the Governor to appoint, or cause to be appointed, within the towns of Sydney, Parramatta, Liverpool, Windsor, Richmond, Bathurst, and Maitland, respectively, and also within such other Towns or Districts as the said Governor shall, from time to time appoint, by a notice to be published in the 'Government Gazette', some persons to be called 'Inspectors of Slaughter-houses and of Cattle intended for Slaughter,' and every person who shall be so appointed, shall, and he is hereby required and directed to repair, without delay, to the place or places within his District, to which he shall have information of any cattle having been slaughtered, or of any cattle intended to be slaughtered, and also in all cases, in which notice shall have been given to him, or left at his place of residence, of the intention to slaughter any cattle; and every such Inspector shall examine the said cattle slaughtered, or so intended to be slaughtered in his District, and shall take a particular description thereof, with the colour, mark or marks, brand or brands, sex, and apparent age, together with the time or place of slaughter, which particulars he shall carefully enter, or cause to be entered, in a book to be kept by him for that purpose, and which book such Inspector shall produce for examination to the Justices assembled at every Court of Quarter Sessions for his District, and for the information of any Justice or Justices within the said District, whenever he shall be so required, and such Inspector shall also make a weekly return to the Bench of Justices of the District, of the number of cattle so slaughtered as aforesaid."

Section 5, enacts—

[Notice of slaughtering to be given to inspector.]

"That every person intending to slaughter any cattle in any Town or District in which an Inspector shall be appointed as aforesaid, shall first give twelve hours' notice, in writing, to such Inspector, of the cattle intended to be slaughtered, specifying the place and time, under the penalty of five pounds for each and every head of cattle which shall be so slaughtered, without such notice having been given thereof as last mentioned, unless it shall be made to appear to the Justices, before whom such fine shall be sought to be recovered, that such notice could not have been given, and that owing to some unforeseen accident, it was necessary that such cattle should have been immediately slaughtered, and in all cases in which any cattle shall have been slaughtered within any such Town or District, without having been previously inspected as aforesaid, notice thereof shall be immediately given to the said Inspector, and the skins of such cattle shall be kept or preserved for three days, and be produced on demand at the place of slaughter to the Inspector for the Town or District wherein such cattle shall have been slaughtered, under the penalty of five pounds for every skin so neglected to be preserved and produced."

Section 6, enacts—

[Book for descriptions of cattle slaughtered.]

"That every keeper of a licensed house, or place for slaughtering cattle, excepting in any of the Towns or Districts for which Inspectors shall be appointed as aforesaid, shall keep a book, in which he or she shall enter a particular account and description of all cattle slaughtered, in such house or place, specifying the colour, mark or marks, sex, and apparent age of such cattle, and if

purchased, containing the name of the person from whom the same shall have been so purchased, and the time of slaughter; and a report of all cattle slaughtered, with the particulars above stated, is to be transmitted monthly, in writing, under the hand of such keeper of each slaughter-house, to the Bench of Justices of the District; and, if any such keeper of a licensed slaughter-house shall neglect to keep such book or record, or shall make a false entry therein, or shall fail or refuse to make such monthly report to the Bench of Justices of the district, or to produce such book or record when so required by any Justice, he or she, for every such offence, shall forfeit and pay a sum not exceeding five pounds.

Section 7, enacts—

[Previous sections not to extend to private residences.]

“That nothing hereinbefore contained shall extend to any person or persons slaughtering at his, her, or their own residences or farms, cattle for his, her, or their family, or labourers.”

Section 8, enacts—

[Justice may demand to see any skin.]

“That it shall and may be lawful for any Justice of the Peace, to demand the skins of any cattle whatsoever that may have been slaughtered, within one month previous to the date of such demand, or a full and satisfactory account to whom the skin has been sold, or in what manner disposed of, and any person or persons who, upon such demand, shall refuse or neglect to produce the skins of any cattle that have been slaughtered, or in case the same cannot be produced, to give a full and satisfactory account of how, and in what manner the skins have been disposed of, shall, on conviction of every such offence, forfeit, and pay a sum not exceeding ten pounds.”

Section 9, enacts—

[As to destroying brand, &c.]

“That if any person shall cut out, burn, or otherwise destroy or deface any brand which shall have been upon any skin, or shall be in possession of any such skin, from which the brand shall have been cut or burnt, or otherwise destroyed or defaced, without being able to give a satisfactory account thereof, every such person shall, upon conviction of every such offence, forfeit and pay a fine of ten pounds.”

Section 10, enacts—

[As to tanners, &c., purchasing skins.]

“That every tanner, or other person, purchasing a raw hide or skin, from which any brand shall have been cut or burnt out, or destroyed, or otherwise defaced, shall, upon conviction of any such offence, forfeit and pay a fine of ten pounds.”

Section 11, enacts—

[Justices, inspectors, or constables to enter suspected places.]

“That it shall and may be lawful, from and after the said 31st day of August next, for any Justice of the Peace, Inspector, or any constable, to enter any house or place licensed as aforesaid, at any time of the day or night, where there shall be good cause to suspect that stolen cattle have been slaughtered, and to make such search and enquiry therein as shall seem necessary for the discovery of the offence and the offender.”

Section 12, enacts—

[As to hindrance to such entrance.]

“That if there shall be any obstruction or hindrance given to any Justice of the Peace, Inspector, or constable, so as to prevent him or them, or any of them, from entering any premises, licensed as aforesaid, for the purpose of examining any cattle or skins, the person or persons so offending shall be deemed and taken to be guilty of a misdemeanor, and shall be dealt with accordingly, as in cases of misdemeanor at common law.”

Section 13, enacts—

[Inspector's fees.]

“That it shall be lawful for any such Inspector appointed, or to be appointed as aforesaid, to ask, demand, and receive the sum of threepence for each and every head of cattle or skin inspected by him, under the authority of this Law or Ordinance, to be paid by the keeper of such licensed house or place, and to be recovered before any one or more Justice or Justices of the Peace.”

Section 14, enacts—

[Slaughter-houses to be on banks of rivers, &c.]

“That no slaughter-house or place for slaughtering cattle, shall be licensed in any town, unless within sixty feet of an accessible creek or river, or if a sea-port on the sea-beach, within a like distance of high water mark, and if not on the banks of such waters, or if there should be no such waters as aforesaid, within or adjoining any such town, then not within the boundaries thereof.”

Section 15, enacts—

[Justices, &c., to visit slaughter-houses.]

“That for preserving cleanliness in towns, and the health of persons residing therein, it shall be lawful for any Justice of the Peace, and for any Constable authorised and deputed by any writing, under the hand of any Justice, from time to time, and when and as often as he or either of them shall see occasion, to visit and inspect any butcher's shamble or licensed slaughter-house, which may be situated within the reputed boundaries of any town, and to give such directions concerning the cleansing any such shamble or slaughter-house, both within and without, as to him shall seem needful; and any butcher, and the owner or occupier of any such shamble or slaughter-house, who shall obstruct or molest any Justice or Constable in the inspection thereof, or who shall refuse or neglect to comply with such directions within a reasonable time, shall upon the view of such Justice, or on conviction, on the complaint of any such Constable, forfeit and pay for every such offence, a sum not exceeding two pounds.”

Section 16, enacts—

[Guns not to be used.]

“That if any person or persons shall discharge any gun or pistol, or any kind of fire arms, in any road, street, or market place, or in any town, for the purpose, or under the pretence of killing or maiming any cattle, every person so offending, shall, upon conviction of every such offence, forfeit and pay a fine not exceeding five pounds, or be subject to imprisonment for a term not exceeding one month.”

Section 17, enacts—

[Justices may issue summons.]

“That, in all offences committed against the directions of this Act, except as

hereinbefore provided, it shall be lawful for any Justice of the Peace to issue his summons, commanding the person against whom information had been given to appear before any two or more Justices, who are hereby authorised to hear and determine the case in a summary way; and, on conviction thereof, to order and direct the offender or offenders to forfeit and pay such sum as they, in their discretion, shall think proper, according to the limitations and provisions of this Act respectively mentioned, and in case such sum so adjudged to be paid by such offender or offenders, be not paid within three days, it shall and may be lawful for such Justices, or either of them, to issue their or his warrant to levy the same by distress of the offender's goods or effects; or in default of effects, to commit the offender or offenders to the nearest common gaol within the said colony, for a term not exceeding three months; and if any person convicted as aforesaid, shall hold a license under this Act, such license shall become null and void from and after the date of such conviction."

Section 18, enacts—

[Convict.]

"That when any offence against this Act shall be committed by a transported felon or offender, such felon or offender being convicted of the said offence, shall, and may, at the discretion of the Justice or Justices before whom such conviction shall take place, be punished for the same as any transported felon or offender convicted of a misdemeanor, or of disorderly conduct is liable to be punished."

Section 19, enacts—

[Appeal.]

"That if any person, not being a transported felon or offender, convicted of any offence or offences punishable by this Act, before any one or more Justice or Justices of the Peace as aforesaid, shall think himself or herself aggrieved by the judgment of such Justice or Justices, such person shall have liberty to appeal from any such conviction to the next Court of Quarter Sessions of the Peace, which shall be held nearest to the place where such offence shall have been committed, and that the execution of every such judgment so appealed from shall be suspended, in case the person so convicted shall, with two sufficient sureties, immediately before such Justice or Justices, enter into a bond, or recognizance, to His Majesty, his heirs and successors, in the penal sum of double the amount of the penalty so incurred or forfeited, which bond or recognizance respectively such Justice or Justices is, and are, hereby authorised and required to take, and such bond or recognizance shall be conditioned to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said Court of Quarter Sessions, and to pay such costs as the said Court should award on such occasion; and the Justices of the said Court of Quarter Sessions are hereby authorised and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party, and such decision shall be final between the said parties, to all intents and purposes."

Section 20, enacts—

[No certiorari.]

"That no conviction before any Justice or Justices under this Act, nor any adjudication made on appeal therefrom, shall be quashed for want of form or be removed by writ of certiorari, or otherwise into the Supreme Court, and no warrant or commitment shall be held void, by reason of any defect therein. Provided it be therein alleged that the party has been convicted, and that there be good and valid conviction to sustain the same."

Section 21, enacts—

[Fines and forfeitures.]

“That all fines and forfeitures levied or paid under and by virtue of this Act, shall, at the discretion of the Justices, be paid half to the informer, or a part thereof, and the remaining part, together with such sums as may be received for licenses under this Act, be appropriated to the use of His Majesty, his heirs and successors, for the public uses of the colony, and the support of the Government thereof.”

SCHEDULE REFERRED TO.

FORM OF LICENSE FOR SLAUGHTERING CATTLE.

We, the undersigned, being _____ of Her Majesty's Justices of the Peace for the Territory of New South Wales, do certify, that by virtue of the authority vested in us by an Act of the Governor and Council, passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled “An Act for regulating the Slaughtering of Cattle,” Mr. _____ is hereby licensed to slaughter cattle in his _____ situated and being in _____, and that this license is to remain in force from the date hereof, until the 31st day of December, one thousand eight hundred and _____.

Given under our hands and seals, at _____, this _____ day of _____, one thousand eight hundred and _____.

Registered by }
 A. B. } Clerk to the Magistrates.

SODOMY.

By Lord Lansdowne's Act, 9 Geo. IV. c. 31, s. 15, it is enacted—

“That any person convicted of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer death as a felon.” (For Evidence, see tit. “Rape,” ante.)

STABBING.

(See “ATTEMPTS AT MURDER.”)

STAGE CARRIAGES.

The Act of Council 6 W. IV. No. 2 (of 1835); *Callaghan*, vol. 2, p. 737: “An Act for Regulating Stage Carriages in New South Wales.”

Section 1, enacts—

[Stage carriages to be licensed.]

“That from and after the first day of October next (1835), it shall not be lawful for any person to keep, use, or employ any stage carriage, unless such person shall have a license in force to do so, granted to him under the authority of this Act by two or more Justices of the Peace in manner hereinafter mentioned, nor unless the several particulars directed to be painted on every such carriage shall be painted thereon.”

Section 2, enacts—

[What vehicles to be deemed stage carriages.]

“Every coach, or other carriage or vehicle, used, employed, or let out for the purpose of conveying passengers for hire to or from different parts of New South Wales, and which, when travelling along any highway or other road, shall travel at the rate of three miles or more in the hour, without regard to the number of wheels, or to the number of passengers which the same shall be able or fitted to contain or carry, or to the number of horses by which the same may be drawn, or to its being an open or close carriage, shall be deemed and taken to be a stage carriage within the meaning of this Act, provided that each passenger to be carried or conveyed by any such carriage or vehicle, shall be charged or shall pay a separate and distinct fare for his or her place or seat therein, or conveyance thereby.”

Section 3—

[Licenses how granted.]

“Licenses to be granted by two or more Justices in Petty Sessions, in the form annexed, marked A.”

Section 4—

“Justices to examine stage carriage, and determine the number of passengers to be carried.”

Section 5—

[Applicant for license.]

“Applicant for license to make requisition for the same, specifying his or her Christian and surname and place of abode, and every proprietor or part proprietor.”

“Penalty for default ten pounds.”

Section 6—

[Particulars specified in license.]

“Particulars to be specified in license, name and address of every proprietor or part proprietor, the extreme places from which and to which the carriage is to go or pass, the greatest number of passengers to be conveyed by such carriage, stating the number of inside and outside passengers separately.”

Section 7—

[License to be renewed.]

“Licenses to be renewed annually, and to be in force from the date until the thirtieth day of September following.”

Section 8—

[Fee.]

“Fee of five shillings to be taken for each license, and to be accounted for as directed in 4 William IV. No. 5, (*Callaghan*, vol. 1, p. 494), intituled ‘An Act for appointing the fees to be taken in the several Courts of Police and Petty Sessions, &c.’”

Section 9—

[Penalty on carriages not licensed.]

“Penalty of £20 on any person keeping, using, or employing a stage carriage not licensed.”

Section 10—

[Name of proprietor to be painted.]

“Name of proprietor to be painted in letters one inch in length on the carriage, as also the places to and from where it is to go, as well as the number of passengers licensed to carry inside and out.”

“PENALTY,—for neglect, five pounds.”

Section 11—

[Height and bearing of carriage.]

“No outside passenger or luggage shall be carried on the top or roof of any stage carriage, the top or roof of which shall be more than eight feet nine inches from the ground, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right or off wheel, to the centre of the track of the left or near wheel.”

“PENALTY,—on *driver* five pounds.”

Section 12—

[Number of passengers.]

“Any licensed stage carriage with four wheels or more, if licensed to carry nine passengers, to carry not more than five outside; if twelve passengers, not more than eight outside; if fifteen passengers, not more than eleven outside; if eighteen passengers, not more than twelve outside; if more than eighteen, not more than two additional passengers outside, for every three additional in the whole.”

“PENALTY,—on *driver* five pounds.”

Section 13—

[Outside passengers.]

“Number of outside passengers to be exclusive of driver, but inclusive of conductor or guard, should there be one.”

Section 14—

[Box seat.]

“No person to sit on luggage on the top; not more than one person to sit on the box with the driver.”

“PENALTY,—on driver five pounds.”

Section 15—

[Carrying more passengers than licensed for.]

“If greater number of persons be carried than licensed, the proprietor and driver shall each forfeit five pounds.”

Section 16—

[Passengers may require any Toll-keeper to count.]

“Passengers may require any Toll-keeper to count the number of passengers on the coach.”

“PENALTY,—on driver if he refuse to allow the examination, five pounds; and if more passengers than licensed, double the penalty imposed in Sec. 16.”

“PENALTY,—on toll-keeper refusing or neglecting to make the examination, five pounds.”

“PENALTY,—on any person endeavouring to evade such examination by descending previous to reaching the gate, and re-ascending after passing the same, ten pounds.”

Section 18—

[Driver quitting the box.]

“Penalty of five pounds imposed upon the driver, should he quit the box before a proper person shall stand at the horses heads, or for permitting any other person to drive, or quitting the box without reasonable cause; a like penalty on the guard for firing off his arms except for necessary defence, a like penalty on driver, conductor, or guard for neglect of luggage, or exacting more than lawful fare, or not accounting faithfully to employer, or assaulting or abusing passengers.”

Section 19—

[Intoxication, &c., of driver, &c.]

“Penalty of five pounds on driver, conductor, or guard, for intoxication or negligence, or wanton or furious driving, or other misconduct, whereby the safety of any passenger or property may be endangered.”

Section 20—

[Proprietor liable.]

“Proprietor liable when driver, conductor, or guard, cannot be found.”

Section 21—

[Penalties—how recovered.]

“All penalties to be recovered as directed in 5th William IV. No. 22, of 1835, intituled ‘An Act to regulate summary proceedings before Justices of the Peace.’”

Section 22—

[Summons.]

“Service of summons to be held good if left with the known or acting book-keeper of carriage.

Section 23—

[Information.]

“Information to be laid against the nearest proprietor.”

Section 24—

“Proprietor liable if driver or guard be a convict.”

Section 25—

[Prosecutions.]

“All prosecutions to be commenced within fourteen days, except for neglect of painting names and number of passengers, which may be at any time, if not remedied within one month, to be considered a new offence.”

Section 26—

[Actions.]

“Any action against persons for anything done in pursuance of this Act to be commenced within three months. Defendant may plead the general issue. Defendant may have treble costs if he obtains a verdict.”

[Appeal if penalty exceed five pounds.]

(A.)

LICENSE FOR A STAGE CARRIAGE.

NEW SOUTH WALES.—Whereas, of _____, in the said Colony, the proprietors of a certain stage carriage, being a _____ running upon or with _____ wheels, and which said stage carriage is called or known by the name of the _____, have applied to us _____, Justices of the Peace assembled in Petty Sessions, for the District of _____, to grant to him a license to authorize him to keep, use, and employ the said stage carriage, between _____ aforesaid and _____ aforesaid : And whereas, we the said Justices having had this day exhibited to us the said stage carriage, and having examined the same, and being satisfied that the said carriage is calculated safely and conveniently to carry the number of passengers hereinafter mentioned, do hereby in pursuance of the authority in us vested by the Act of the Governor and Council passed in the Sixth Year of the Reign of His Majesty King William the Fourth, entitled “An Act for regulating stage carriages in New South Wales,” authorize and license the said _____, to carry and convey between _____ aforesaid and _____ aforesaid the number of _____ passengers in and by the said stage carriage, that is to say, the number of _____ passengers in the inside, and _____ passengers on the outside thereof, subject to the several regulations and provisions of the said recited Act.

This license to cease and determine on the Thirtieth day of September, one thousand eight hundred and _____

Given under our hands, this _____ day of _____, 18 _____.

SUICIDE.

“Self-murder may be mentioned as a peculiar instance of malice, directed to the destruction of a man’s own life, by inducing him deliberately to put an end to his existence, or to commit some unlawful malicious act, the consequence of which is his own death. 4 Bl. Com. 189. If one encourages another to commit suicide, and is pre-

sent abetting him while he does so, such person is guilty of murder as a principal. And if two encourage each other to murder themselves, and one does so, the other being present, but failing in the attempt on himself, the latter is a principal in the murder of the first; but if it be uncertain whether deceased really killed himself, or whether he came to his death by accident before the moment when he meant to destroy himself, it will not be murder in either." *R. and R. C. C.* 523. Sir William Blackstone in his Commentaries says, "he shall be buried ignominiously in the highway, with a stake driven through his body." But this is now altered by Statute 4th Geo. IV. c. 52, which allows the remains of persons against whom a finding of *felo de se* is had, to be privately buried in a church-yard, without any stake being driven through the body of such person, but the interment must take place within twenty-four hours from the finding of the inquisition, and between the hours of nine and twelve o'clock at night.

The second section provides that the rites of Christian burial are not to be performed on the interment of such persons.

SUMMARY JURISDICTION.

(See also ante "CONVICTION.")

The Act of Council 5 W. IV. No. 22, (*Callaghan*, vol. 2, p. 705), is intituled "An Act to regulate Summary Proceedings before Justices of the Peace."*

The 1st section, after reciting that it is expedient and necessary to make provision for regulating Summary Proceedings before Justices of the Peace, in the cases and in the manner hereinafter mentioned, enacts—

* Some Acts direct a particular course of proceeding to be adopted in summary convictions, and where such is the case of course it must be followed; otherwise the provisions of this Act must be adopted.

“That from and after the passing of this Act (2 June, 1835), in all cases wherein, by any Act or Acts heretofore made and passed, or hereafter to be made and passed, any proceedings shall have been, or shall be, or is by this Act directed to be had, or matter authorised to be heard and determined, by or before one Justice, or by or before two or more Justices, in a summary way (and no particular mode of proceeding shall have been, or shall be by any such Act directed in that behalf), it shall be lawful for any one Justice to receive the original information or complaint, and to issue the summons or warrant requiring the parties and witnesses to appear before himself, or before any two or more Justices as the case may require.

“Upon the appearance of the defendant, or his or her contempt by not appearing, after having been duly summoned in manner hereinafter mentioned, and after sufficient time for his or her appearance; and proof thereof* on oath, to the satisfaction of the Justice or Justices as the case may be, such Justice, or any two or more Justices (as the case may require) shall and may proceed to examine into, and hear and determine the matter in a summary way, and examine upon oath all necessary witnesses produced, and give his or their judgment thereon.

“And in case such Justice or Justices shall convict the defendant, and award against him or her any fine or pecuniary penalty, and he or she shall neglect to pay the same fine or penalty, together with the costs and charges of, and attending such conviction, to be assessed and ascertained by the said Justice or Justices, into the hands of the said convicting Justice, or one of the said convicting Justices (in case there shall have been more than one such Justice) within one week next after such conviction (without any previous demand of such penalty) then it shall be lawful for such Justice or Justices, or either of them, or for any other Justice of the Peace (at his or their discretion) to cause such fine or penalty, and costs and charges, to be levied by distress and sale of the goods and chattels of the offender; the overplus, after deducting the charges of such distress and sale, to be rendered to the said offender: Proviso—That if upon the return of the officer charged with the execution of the said distress, it shall appear that no sufficient distress can be found, or the party adjudged to pay any money shall, at the time of the said adjudication or conviction, declare that he or she has no goods or chattels on which the said distress can be levied, then the convicting Justice or Justices, or either of such Justices, or any other Justice of the Peace, may, by warrant, commit such offender to one of His Majesty's Gaols, there to remain for any time, from such commitment, not exceeding fourteen days, where the whole sum and costs to be levied does not exceed ten shillings; one calendar month, not exceed one pound; two calendar months, not exceed five pounds; three calendar months, when sum and costs shall be of greater amount, unless the said sum and costs to be levied shall be sooner paid.”

Section 2.—SERVICE OF SUMMONS.

“That in all cases, in which no other mode of proceeding shall have been, or shall be in that behalf provided, the directing of any summons to any person whatsoever, in the name or names by which he or she is, or has been usually known, whether the same be the real or the feigned or assumed name or names of such person, and the leaving of such summons at his or her then, or last usual place of abode, or the affixing a copy thereof on one of the doors, or some other conspicuous part on the outside of such abode (such service being proved on the oath of the person so serving such summons, and it being also in like

* Should defendant not appear, affidavit must be made of the due service of the summons before any further proceedings can be taken.

manner proved to the satisfaction of the sitting Justice or Justices, at the hearing of the case, that the person so serving such summons, hath endeavoured to serve the same on the party, but without effect), shall be deemed to be a legal and effectual service on such party, as fully to all intents and purposes, as if the same summons had been personally served on such party, and as if the same had been directed in his or her proper and real names; and that every summons may direct the party to appear, either before the Justice or Justices issuing the same, or before any one or more Justice or Justices generally, as the case may require (without naming any Justice); Provided that such summons shall direct the party so to appear at a time and place certain, to be named in such summons."

Section 3.—TO REGULATE APPEALS.

"That in all cases in which any person shall be, or is now entitled to appeal from any judgment or conviction of any Justice or Justices, under or by virtue of any such Act as aforesaid (and no other mode of proceeding shall have been, or shall be in that behalf provided), then if such person (in case a pecuniary penalty shall have been awarded) shall pay into the hands of the convicting Justice, or one of the convicting Justices (as the case may be) the full amount of such penalty, together with the assessed costs and charges, within one week next after such conviction, or (in case no pecuniary penalty shall have been awarded) shall, within one week next after the date or time of such judgment or conviction had, enter into a bond to the convicting Justice or Justices, to the use of His Majesty, His Heirs and Successors, with two sufficient sureties to be approved of by such convicting Justice, or Justices, conditioned to prosecute such appeal with effect, and to abide the event of the same appeal, and to pay the full amount of all such costs as shall or may on such appeal be awarded against the appealing party, then it shall be lawful for such person to appeal from such judgment or conviction, to the next General Quarter Sessions, (unless such Sessions shall be held within six days next ensuing, and in that case, to the General Quarter Sessions next but one afterwards.)

"Provided—That the matter of every such appeal shall be heard and determined by the Justices assembled and meeting at a Court, or adjourned Court of General Quarter Sessions, holden at such one of the places, which shall or may be appointed for the holding of General Quarter Sessions, as shall happen to be the place (or nearest to the place), where the judgment or conviction appealed from, shall have been had.

"And the Justices at such Sessions so assembled, shall hear and thereupon finally determine the matter of every such appeal in a summary way, and their judgment thereon shall be final and conclusive, to all intents and purposes, nor shall any writ of *certiorari* afterwards be allowed.

"And such Justices, at such Sessions so assembled, are upon such appeal hereby authorised to award in all cases such costs as to them shall appear proper, to be paid by either party, not exceeding in the whole the sum of ten pounds, on any one appeal.

"And in case the appeal shall be allowed, and the conviction or judgment appealed from be quashed, then (in cases where a pecuniary penalty was awarded) the whole amount of such penalty, and of the costs and charges aforesaid, shall be forthwith, on demand, returned to the party so appealing."

Section 4.—WITNESSES.

"That if any person shall be summoned to appear as a witness, to give evidence before any such Justice or Justices, touching any of the matters aforesaid, and shall neglect to appear at the time and place for that purpose

appointed, without a reasonable excuse for such neglect, every such person shall for every such offence, forfeit and pay a penalty or sum of not less than two pounds, nor more than twenty pounds, which said penalty shall and may be recovered by proceeding before any one Justice of the Peace, who is hereby authorised to hear and determine such offence, in a summary way; and shall be levied, and go to be distributed in the manner by this Act directed, with respect to all other cases by this Act intended to be provided for."

Section 5.—FORM OF CONVICTION.

"That in all cases (except where a particular form of judgment or conviction shall have been, or shall be by any such Act directed to be used in that behalf) a judgment or conviction in the form, or to the effect of the form (as the case shall happen to be) prescribed by the Schedule to this Act annexed, marked A, shall be good, valid, and effectual, to all intents and purposes whatsoever; without setting forth or stating in any such conviction the name of any informer or witness, or the particular place where the offence was committed, or whether the defendant appeared, or was, or was not summoned to appear, and without setting forth or stating the evidence or facts, in any further or more particular manner than shall be necessary to show that the offence was one against the true intent and meaning of the Act creating such offence.

"And no conviction whatsoever (whether under this or any other Act, and whether a particular form shall have been, or shall be in that behalf directed or not) shall be quashed in any case, for any mere error or mistake in any name, or date, or title, or in any matter of description only; but in all cases, regard shall be had alone to the substantial merits and justice of the case."

Section 6.—DISTRIBUTION OF PENALTIES.

"That in all cases where by any Act a pecuniary penalty of uncertain amount shall have been, or shall be, or is by this Act imposed (that is to say, a penalty or sum of not less nor more than an amount in that behalf specified, the amount of any such penalty, within the limits so prescribed) shall be in the discretion of the convicting Justice or Justices; every penalty awarded by such Justice or Justices (except where otherwise provided by any such Act) to be divided, one-half to the informer or party prosecuting, and the other half to His Majesty, his heirs, and successors, for the public uses of the colony.

"Informer to be entitled to costs and charges, over and above penalty."

SCHEDULE REFERRED TO.—(A.)

(Being a Form of Judgment or Conviction by this Act referred to.)

New South Wales, } Be it remembered, That on this day of ,
 } 18 , of , was duly convicted before
 me, A. B. (or us, A. B. and C. D.) one (or two or more, as the case may be) of
 Her Majesty's of the Peace, on an information in that behalf, exhibited before
 , on the day of , now last past; for, that on
 the day of , 18 , (state the fact or offence in respect
 of which the judgment or conviction is had), and I (or we) do, in pursuance of
 the Act in such case made and provided, for (state the principal subject of the
 Act, but not the title) award, order, and adjudge, that (set forth the adjudica-
 tion, and if awarding a penalty, as follows) the said do for such
 offence (where necessary, add, being his or her second, or third, or subsequent

offence, as the case may be) forfeit and pay the sum of _____ pounds, to go, and be distributed, as in and by the said Act (or, if such Act shall not have specifically provided for, and distribution of, such penalty, here state the title of the Act providing for such distribution) is provided, besides the costs and charges of and attending this conviction, which said costs and charges I (or we), the said Justice (or Justices) do hereby ascertain and assess at the sum of _____.

Given under my hand and seal (or our hands and seals) the day and year first above written.

SUMMONS.

See "CONVICTION," ante.

In offences against some particular Statutes, it is directed whether the Justice of the Peace is to issue a summons or warrant, but in other cases where there is a discretionary power it is perhaps better to issue a summons in the first instance; but in breaches of the peace, larcenies, and other felonies, and in all cases where the King is a party, or between party and party, where the body of the offender is liable, a warrant is the usual process. It is usual not only to fix a day in the summons, but the hour of the day, for the appearance of the party; and if the party appears at the hour mentioned, and the Justice is absent, he is not to go away, but must wait during the remainder of the day; for many things may happen to prevent the immediate attendance of the Justice.

In all cases where two or more Justices are authorized to hear and determine a complaint, one Justice may take or receive the original information, and issue the summons or warrant requiring the party to appear before two Justices. And after examination on oath into the merits of the complaint, and the adjudication by such two Justices, &c., all subsequent proceedings to enforce obedience thereto, whether respecting any fine, penalty, imprisonment, costs, or other matter, now enacted, or to be hereafter enacted, may be enforced by either of the said Justices, or any other Justice for the same district.
3 G. IV. c. 23, s. 2.

SUNDAY.

The profanation of the Lord's Day, says Sir William Blackstone (Com. vol. 4, p. 63) vulgarly but improperly called *Sabbath-breaking*, is an offence against God and religion, punished by the Municipal Law of England. For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity; and the corruption of morals, which usually follows its profanation; the keeping one day in seven holy, as a time of relaxation and refreshment, as well as for public worship, is of admirable service to the State, considered merely as a civil institution. It humanizes by the help of conversation and society, the manners of the lower classes; which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week, with health and cheerfulness; it imprints on the minds of the people, the sense of that duty to God, so necessary to make them good citizens; but which yet would be worn out, and defaced by an unremitted continuance of labour, without any stated times of re-calling them to the worship of their Maker."

Any keeper of a public-house, who allows any person to commit any disorder in his house, or to remain there tippling or drinking, at any hour on a Sunday, forfeits his recognizance, by the express terms of it; besides the penalties and disabilities specified in the 33rd section of the Licensing Act. See title "*Publican*," ante.

The 5th Vict. No. 6, is "An Act to prohibit shooting for sport, pleasure, or profit, on Sunday." 1841.

1. PREAMBLE—PENALTY FOR SHOOTING ON SUNDAY—PERSONS OFFENDING MAY BE ARRESTED.

"Whereas the practice of shooting on the Lord's Day, at pigeon matches, and for pleasure or profit, greatly prevails in some parts of the Colony to the manifest dishonor of religion; and whereas it is expedient

to prohibit so scandalous and indecent a practice, and to punish persons who may be guilty of so offending: Be it therefore enacted, &c., That from and after the passing and publication of this Act, any person who shall be found engaged in shooting at any pigeon match, or for pleasure, sport, or profit of any kind whatsoever, on Sunday, or who shall be found carrying fire arms on that day, except as hereinafter provided, shall be deemed guilty of a misdemeanor, and on conviction before any Justice of the Peace shall forfeit and pay a penalty or sum of not more than five pounds nor less than forty shillings; and it shall be lawful for any constable, without any warrant or other authority than this Act, to arrest any person who shall be found shooting or carrying fire arms contrary to the provisions hereof, and such person to convey, with all convenient dispatch, before a Justice of the Peace to be dealt with according to law."

2. NOT TO EXTEND TO TRAVELLERS OR CONSTABLES CARRYING FIRE ARMS FOR PROTECTION.

" Provided always, and be it enacted, that nothing in this Act contained shall be deemed to extend to travellers *bonâ fide* carrying fire arms for the protection of their lives and property, or the property of their employers, on the public roads of the colony, or to constables and other persons carrying fire arms for lawful purposes."

3. LIMITATION OF PROSECUTION.

" And be it enacted, that no person shall be prosecuted for any offence under this Act, unless the prosecution shall be commenced within ten days next after the time the offence shall have been committed.

4. RECOVERY AND APPLICATION OF PENALTIES.

" And be it enacted, that the penalties imposed by this Act, shall be recovered and applied, and may be appealed against in the manner directed by an Act of the Governor and Legislative Council of New South Wales, passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled, ' An Act

to regulate summary proceedings before Justices of the Peace.'” See ante “*Summary Jurisdiction.*”

TRADING ON SUNDAY.—“No tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business or work of their ordinary callings, upon the Lord’s Day, or any part thereof—works of necessity and charity only excepted; and that every person, being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit the sum of five shillings.” 29 *Car. 2*, c. 7, s. 1; *Callaghan*, vol. 2, p. 1207.

And “no person whatsoever shall publicly cry, shew forth or expose to sale, any wares, merchandize, fruit, herbs, goods or chattels whatsoever, upon the Lord’s Day, or any part thereof, upon pain of forfeiting the same.” *Id.*

The words, “or other person whatsoever,” are meant to include all persons *ejusdem generis* with those previously mentioned, but not others. See *Sandiman v. Breach*, 7 *B. and C.* 96. The Act however shall not extend to prohibit the dressing of meat in families, or to dressing or selling meat in inns, cook shops, or victualling houses, for such as otherwise cannot be provided (*Id.* s. 3.); nor to the crying or selling of milk before nine o’clock in the morning, or after four o’clock in the afternoon. *Id.* s. 3. As to bakers, see ante p. 58.

TRAVELLING ON SUNDAY.—No drover, horse courser, waggoner, butcher, higgler, their or any of their servants, shall travel, or come into his or her inn or lodging, upon the Lord’s Day or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offence. 29 *Car. 2*, c. 7, s. 2. This extends to a stage van (*R. v. Middleton*, 4 *D. and R.* 424, 3 *B. and C.* 164), but not to stage coaches. *Sandiman v. Breach*, 7 *B. and C.* 96. By Act of Council the amount of tolls at turnpike gates and ferries are doubled on Sundays. 2 *W. IV.* No. 12, s. 5.

EXCEPTIONS.—All persons going to or returning from their proper church, chapel, or other place of worship. Who are exempt from toll. *Id.* s. 8.

UNLAWFUL SPORTS ON SUNDAY.—There shall be no concourse of people, out of their own parishes, on the Lord's-day, for any sport or pastimes; nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any persons within their own parishes, on pain that every offender, being convicted within a month after the offence before one Justice, shall forfeit 3s. 4d. to the poor, to be levied by the constable or churchwardens by distress, or in default of distress, the offender to be set in the stocks for three hours. 1 *Car.* 1, c. 1.

PROCEEDINGS FOR PENALTIES.—The prosecution for a penalty for trading or travelling on Sunday must be commenced within ten days after the offence committed; 29 *Car.* 2, c. 7, s. 4; and may be before any Justice of the county, &c., who shall issue his warrant to the constable or churchwardens to seize the goods cried, showed forth, or put to sale as aforesaid, and to sell the same, and to levy the penalty by distress upon the goods of the offender; and in default of distress, the offender shall be set publicly in the stocks for two hours. *Id.* s. 2. The penalty, if paid, shall go to the poor of the parish; but the Justice may give the informer a portion of it, not exceeding a third part. *Id.* There can be only one penalty recovered for any number of instances of trading by the same person on the same Sunday. *Cripps v. Durden*, *Cowp.* 640; see 2 *Arch. J. P.* 522.

FORM OF CONVICTION FOR TRADING ON SUNDAY, UNDER
29 *CAR.* 2, c. 7, s. 1.

For that E. F., of _____, on _____, at _____, being then and there a [grocer], and being then above the age of fourteen years, did then and there do and exercise certain worldly labour, business, and work in his ordinary calling of [grocer] aforesaid upon the Lord's-day, to wit, the day aforesaid, by then and there [selling to one C. D. one pound weight of tea], the same not being a work of necessity or charity; against the form of the statute in such case made and provided: wherefore the said E. F., &c.

SURETIES FOR THE PEACE.

A surety for the peace is simply a recognizance, entered into by a party, with one or more sureties, or by the party alone (if his own recognizance be deemed sufficient), before a Justice of the Peace out of Sessions, or before the Quarter Sessions, conditioned for his keeping the peace or being of good behaviour for a certain time. See ante, tit. "*Recognizance*." And authority to require it, is given to Justices of the Peace, by these words in their commission:—"And to cause to come before you or any one or more of you, all those within the said colony who to any one or more of our people, concerning their bodies or the firing of their houses, shall have used threats, to find sufficient security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such security, to cause to be safely kept." See ante p. 232, and see *Re Dunn*, 10 *Law J.* 29 m, 12 *Ad. and El.* 599.

And, therefore, if a Justice of the Peace be satisfied, upon oath, that a party has reasonable ground to fear, either from the direct threats of another, or from his acts or words, that such other person will inflict or cause to be inflicted upon him some personal injury, or that such person will burn his house or cause it to be burnt, the Justice is bound to cause this security to be given. See 1 *Hawk.* c. 60, s. 6. And the same, if the threats be used against the wife or child of the party. *Dalt.* c. 116. But this does not extend to a man's servants, for they may themselves apply for sureties of the peace against persons from whom they fear a personal injury; nor does it extend to threats as to a man's goods, for it is not a case within the authority thus given. *Dalt.* c. 116.

There is also an ancient statute, 34 *Ed.* 3, c. 1, upon this subject, which, after ordaining that certain persons should be assigned to keep the peace in every county, enacts that they shall have power "to restrain the offen-

ders, rioters, and all other barrators," to inquire of all those who have been "pillors and robbers" beyond sea, and who go wandering idle about the realm, "and to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the King and his people," "to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor others passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders." Some of the ancient text writers infer from this, that sureties for good behaviour may be required in an infinity of cases mentioned by them; Lord Coke construes the words "all them that be not of good fame" to mean all persons justly suspected of an intention to break the peace; Hawkins says that this is too narrow a construction, and that the words mean all persons of evil fame, and guilty of grossly immoral conduct; and Dalton makes out a long list of offences, those persons who have committed or are likely to commit which, may be bound over to their good behaviour. But it may be advisable for Justices, even at sessions, to refrain from acting under this statute of Edw. 3, where no complaint requiring such sureties has been made, except in cases where a man is convicted of some offence directly against the peace, under circumstances from which it reasonably may be inferred that he will be again guilty of the same or the like offence, as soon as he has an opportunity, unless he be bound over to his good behaviour.

HOW OBTAINED.—The party wishing to obtain sureties for the peace, must go to a Justice of the Peace, and state to him his complaint upon oath. See Form post. Upon the complaint being made, the justice has to consider whether the facts stated show a reasonable ground for the party's fear of personal injury; and if there be any ambiguity in the threats, it is for the Justice to give them such a construction as he thinks right, and his de-

cision in that respect will be final (*R. v. Tregarthen*, 5 *B. and Ad.* 678.), if the oath on which the complaint was founded be sufficient to warrant it. *Re Dunn*, 10 *Law J.* 29 *m.*, 12 *Ad. and El.* 599. If he think that sureties ought to be given, and the party complained of be not present, he may issue his warrant to bring him before him. See Form post.

This is executed in the same manner as any other warrant to apprehend a party. See tit. "*Arrest.*" As soon as the party is apprehended and brought before the Justice, the complaint is read over to him, and he is asked if he have any cause to show why he should not give the required sureties. And here it is necessary to mention, that the party complained of cannot be allowed to controvert the truth of the facts stated in the complaint (*Lord Vane's case*, 2 *Str.* 1202; *R. v. Dogherty*, 13 *East*, 171.); all he is allowed to do, is to show that the complaint is preferred from malice only (See *R. v. Parnell*, 2 *Burr.* 806), or explain any parts of the complaint that may be ambiguous. *R. v. Bringloe*, 13 *East*, 174, *n.*

If the Justices order the sureties to be given, and the defendant either refuse to give them, or cannot do so, the Justice should commit him. See Form post.

THE RECOGNIZANCE.—The Justice may bind the party over for a limited time, or until the next Quarter Sessions. In binding him over for a limited time, the Justice has a very extensive authority: where a Justice of Peace bound a party over to keep the peace for two years, the Court of King's Bench held that he did not exceed his authority, (*Willis v. Bridger*, 2 *B. and A.* 278); and according to Hawkins they have authority to bind over even for life. 1 *Hawk.* c. 60, s. 15. But the usual way is to bind the party over to the next sessions, to do what shall be then and there enjoined him by the Court, and in the mean time to keep the peace or be of good behaviour; unless indeed it appear that the parties are too poor to bear the expense of going to the sessions.

As to the mode of proceeding at sessions, see *Arch. Sess. Practice*, p. 389. The amount of the security required is entirely in the discretion of the justice. *R. v. Holloway*, 2 *Dowl.* 525.

The recognizance is taken in manner mentioned, ante tit. "*Recognizance*": and the form is the same as is there mentioned, but it is conditioned thus, if the party be bound over to the sessions:—*The condition of this recognizance is such, that if the above-bounden A. B. shall appear at the next General Quarter Sessions of the Peace, to be holden at* *do and receive what shall be then and there enjoined him by the Court, and in the mean time shall keep the peace (or be of good behaviour) towards Her Majesty and all her liege people, and especially towards C. D. of* *, yeoman, then the said recognizance to be void, or else to stand in full force and virtue.*

Or if the party be bound for a limited time, then the condition is thus:—*The condition of this recognizance is such, that if the above-bounden A. B. shall keep the peace (or be of good behaviour) towards Her Majesty and all her liege people, and especially towards the said C. D. of* *, yeoman, for the term of* *calendar months now next ensuing:—then the said recognizance is to be void, or else to stand in full force and virtue.*

This recognizance must be certified to the next Quarter Sessions, there to remain of record. 3 *Hen.* 7, c. 1; 1 *Hawk.* c. 60, s. 18.

If a warrant be out against the party, at the time he thus enters into recognizance, the Justice may give him a *supersedeas*, so as to prevent his being apprehended; but in practice it is usual merely to give him a note or order to the like effect, directed to the constable.

If the party be in prison, under a commitment, at the time he thus enters into recognizance, the Justice must send a *liberate* to the gaoler to discharge him.

HOW FORFEITED.—If when bound to appear at the sessions, the party fail to appear, the recognizance is forfeited, (3 *H.* 7, c. 1), unless perhaps he be prevented

from doing so by illness or the like. *Dalt.* c. 120 ; 1 *Hawk.* c. 60, s. 18. So, if he have done actual violence to the complainant, or to any of Her Majesty's subjects, or caused it, (*Id.* s. 20), or have been one of an unlawful assembly *in terrorem populi*, or challenged any person to fight, (*Id.* s. 21), or threatened to beat him in his presence, (*Id.*) though not in his absence, (*Dalt.* c. 121) ; or have assaulted a person, unless such assault be in law justifiable, (1 *Hawk.* c. 60, ss. 23, 24) :—in these and the like cases, the recognizance is forfeited. But words of mere anger will not amount to a forfeiture. *Id.* s. 22.

Nor will words of mere anger, or even slander, be a breach of a recognizance for good behaviour. 4 *Inst.* 181. But it will be forfeited, not only for such acts as would amount to a forfeiture of a recognizance of the peace, but for doing any thing to the terror of the people, going accompanied with armed numbers, speaking words tending to sedition, or the like. 1 *Hawk.* c. 61, s. 6 ; *Year Book*, 2 *H.* 7, 2.

HOW DISCHARGED.—A recognizance to keep the peace, &c., is discharged by the death or demise of the king in whose reign it was taken. 1 *Hawk.* c. 60, s. 17. So, if the complainant die, and the party be in custody for not finding sureties, the Justice may issue a *liberate* to the gaoler to discharge him. *Dalt.* c. 118.

If the party be bound to appear at the sessions, and appear accordingly, and no application be then made against him, his recognizance shall be discharged. See *Dalt.* c. 120.

But where an application was made to the Court of King's Bench to discharge recognizances taken before a Justice of the Peace, on the ground that the words construed by him to amount to a threat, were used merely in a metaphorical sense, and did not bear such an interpretation : the court refused to interfere, saying that it was for the Justice to judge in what sense the expressions were used. *R. v. Tregarthen*, 5 *B. and Ad.* 678.

FORM OF INFORMATION BEFORE A JUSTICE OUT OF SESSIONS
TO REQUIRE SURETY OF THE PEACE, OR GOOD BEHAVIOUR.

Colony of New South Wales, } Be it remembered, that on, &c. A. B.,
to wit. } of (gentleman) came personally before
me, J. P. one of Her Majesty's Justices of the Peace in and for the
said Colony at, &c., and, on his oath, informeth me, that C. D. of &c. (labourer),
did on, &c., at &c., most violently and maliciously declare and threaten, &c., and
did also, on &c. (Here state the defendant's threats and act.) And that, from
the above premises, he, this complainant, is afraid that the said C. D. will do him
some grievous bodily injury; and therefore prays that the said C. D. may be
required to find sufficient sureties to keep the peace (or to be of good behaviour,
as may be required) towards him, this complainant. And this complainant also
says, that he doth not make this complaint against, nor require such sureties from
the said C. D. from any hatred, malice, or ill will, but merely for the preservation
or his life and person from injury.

Sworn before me,

J. P. :

A. B.

WARRANT THEREON.

Colony of New South Wales, } To , constable of , in the said
to wit. } Colony, and all others whom this may concern.

Forasmuch as A. B. of , in the said Colony, (gentleman,) hath this
day made information on oath, before me, J. P., one of Her Majesty's
Justices of the Peace for the said Colony, at, &c., that C. D. of, &c., (labourer),
did on , at , (here set forth the complaint, as in the first form,
but in the third person and past tense), and therefore the said A. B. hath prayed
that the said C. D. may be required to find sufficient sureties to keep the Peace
(or be of good behaviour, as the case may be) towards him, the said A. B.

These are therefore to command you in Her Majesty's name forthwith to apprehend
the said C. D., and bring him before me, or some other of Her Majesty's
Justices of the Peace for the said Colony, on &c., at &c., to answer the said complaint,
and to find sufficient sureties, as well for his appearance at the next
General Quarter Sessions of the Peace to be holden at , as also in the mean
time to keep the peace (or be of good behaviour) towards Her Majesty and all
her liege people, and especially towards the said A. B., (for such term as shall
be then enjoined him.) And to be further dealt with, according to Law.

Given under my hand and seal, the day of , &c.

J. P. (Seal.)

COMMITMENT FOR WANT OF SURETIES.

Colony of New South Wales, } To A. F. the Constable of , in the said
to wit. } Colony, and also to the Keeper of Her Majesty's
Gaol at , in the said Colony, and others whom this may concern.

Whereas, A. B. of , &c. (here recite the complaint, as in the Warrant
foregoing.) And whereas the said C. D. was this day brought and appeared before
me, J. P., one of Her Majesty's Justices of the Peace for the said Colony,
at, &c., to answer the said complaint. And I, the said Justice, have ordered
and adjudged, and do hereby order and adjudge, that the said C. D. shall enter
into his own recognizance in the sum of (one hundred pounds) with two
sufficient sureties, in the sum of (fifty pounds) each conditioned (as well for his
appearance at the next general Quarter Sessions, to be holden at , to do
what shall be then and there enjoined him by the Court) as also in the meantime
to keep the peace (or be of good behaviour, as the case may be) towards

Her Majesty and all her liege people, and particularly towards the said A. B. for the term of (twelve calendar months) new next ensuing. And in so much as the said C. D. hath refused, and still refuses to enter into such recognizance, and to find such sureties as aforesaid, I do hereby require and command you, the said constable, forthwith to convey the said C. D. to the common gaol of _____, and to deliver him to the keeper thereof, together with this warrant. And, I do also require and command you, the said keeper, to receive the said C. D. into your custody in the said gaol, and him there safely keep for the space of (twelve calendar months) unless he, in the mean time, enter into such recognizance, with such sureties as aforesaid to keep the peace, in the manner and for the term above mentioned. Herein fail not.

Given under my hand and seal, the

day of _____, &c.
J. P. (Seal.)

SWEARING.

Any person profanely cursing or swearing, and being thereof convicted, on confession or oath of witness before one Justice, shall forfeit as follows, viz., a day labourer, common soldier, sailor, or seaman, 1s.; every other person under the degree of a gentleman, 2s.; every person of or above the degree of a gentleman, 5s.; double penalty for any second offence; and for any other offence after the second, treble. To the poor. 19 G. II. c. 21, s. 1, 10.

Any person swearing in the presence and hearing of a Justice of the Peace may be immediately convicted without further proof. *Id.* s. 2.

If in the presence and hearing of a constable, if the party is unknown to him, the constable may seize him, and forthwith carry the offender before the next Justice, who may convict on the oath of the constable. *Id.* s. 3.

If the offender is known to the constable, he shall make information without delay to some Justice, that he may be convicted. *Id.*

And such Justice may immediately, on the oath of the constable, or any other person, summon the offender to appear before him, and on proof of the offence convict him; and if the penalty is not immediately paid, with costs, or security given, commitment to the House of Correction to hard labour for ten days. *Id.* s. 4. And

for six days further if he do not pay the charges of the information and conviction. *Id.* s. 10.

A private soldier or sailor not immediately paying, or giving security for payment of, the penalty and costs, instead of commitment, shall be set in the stocks for one hour for every offence, and for two hours for any number of offences committed at the same time. *Id.* s. 5.

A Justice of the Peace omitting his duty : penalty £5, half to the poor, half to him that will sue in any Court of record. *Id.* s. 6.

Constable neglecting his duty : penalty 40s. ; remedy, distress, half to the informer, half to the poor. For want of distress, commitment to the house of correction to hard labour for one month. *Id.* s. 7.

The Act sets forth the form of the conviction ; but no person to be prosecuted for any offence against this Act, unless it be within eight days after the offence committed. *Id.* s. 8, 12. No certiorari. *Id.*

So much of this Act as directs it to be read four times a year in churches and chapels, is repealed by the 4 G. IV. c. 31.

INFORMATION FOR PROFANELY CURSING OR SWEARING.

New South Wales, }
 to wit. } Be it remembered, that on the day of ,
 in the year of our Lord , at in the ,
 aforesaid, A. B., of , labourer, cometh before me, J. P., one of Her
 Majesty's Justices of the Peace for the said Colony, and informeth me, that
 C. D., of , in the said , within eight days last past, to
 wit, on the day of , now last past, at , in the said ,
 [being then and there a day labourer" (" day labourer, common soldier, com-
 mon sailor, or common seaman"), or "being then and there under the degree
 of a gentleman, to wit, a baker," or being then and there a gentleman], did
 profanely [curse one curse," or "swear one oath], in these words, to wit,
 contrary to the form of the statute in such case made and provided : Whereby,"
 &c., as in the Form ante, p. 142 to the end.

CONVICTION.

: Be it remembered, that on the day of , in the
 year of Her Majesty's reign, C. D. was convicted before me, J. P., one of His
 Majesty's Justices of the Peace for the , aforesaid" [or mayor, justice, or

other chief magistrate, of the city or town of _____, " as the case may be], " of swearing" ["one or more profane oath or oaths, or of cursing one or more profane curse or curses," as the case shall be]. "Given under my hand and seal, the day and year first aforesaid.

J. P.

This form is given by Stat. 19 Geo. 2. c. 21, s. 8. It must be fairly written (on parchment) and returned to the next General or Quarter Sessions. Id. No certiorari. Id.

THIMBLE-RIGGING.

Thimble-rigging is an indictable offence, punishable with fine or imprisonment, or both. See report of a case tried at the Southampton Sessions, October, 1841.

THREATENING LETTERS.

Knowingly sending or delivering any letter or writing demanding of any person, with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; or accusing, or threatening to accuse, any person of any crime punishable by law with death, transportation, or pillory, or of any assault with intent to commit any rape, or of any infamous crime (as hereafter defined), with a view or intent to extort or gain from such person any chattel, money, or valuable security—*felony*. 7 and 8 G. IV. c. 29, s. 8; *Callaghan*, vol. 1, p. 296. And for defining what shall be an infamous crime within the meaning of this Act, be it enacted, That the abominable crime of buggery, committed either with mankind or with beast, and any assault with intent to commit the said abominable crime, and 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. *Id.* s. 9.

EVIDENCE.—The evidence must be, that the prisoner made accusations in question with a felonious intent, namely, *to extort or gain money*. The prisoner's declaration made, subsequent to the writing of the letter, may be received, for the purpose of explaining the terms of the letter, if the letter be doubtful. The prosecutor must prove the receipt of it, and the sending of it by the prisoner. *Car. C. L.* 288. And the letter should be produced. The intent must clearly appear.

There is an offence mentioned above, namely, the feloniously threatening of a person, without the sending of any letter. The threats used in such case, must be accurately ascertained, for they must be proved as laid in the indictment. And it must be shown also, that the intent was to extort money.

FORM OF COMMITMENT FOR SENDING THREATENING LETTER.

on the day of , in the year of our Lord one thousand eight hundred and , at aforesaid, knowingly and feloniously did send ("send or deliver") to (the said) C. D. a certain letter ("letter or writing") directed to the said C. D., demanding money (or, "a certain chattel, to wit, ," or, "a certain valuable security, to wit, ,") of and from the said C. D., with menaces, and without any reasonable or probable cause; against the form of the Statute in that case made and provided. And you the said keeper, &c.

FORM OF COMMITMENT FOR THREATENING TO ACCUSE A MAN OF A CRIME.

on the day of , in the year of our Lord one thousand eight hundred and , at , and feloniously did threaten (the said) C. D. to accuse ("accuse or threaten to accuse") him, the said C. D., of having (attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B.) with a view to extort and gain money ("chattels, money, or valuable security") from the said C. D.: against the form of the Statute in that case made and provided. And you the said keeper, &c.

TREASON.

It is deemed hardly necessary in this loyal part of Her Majesty's dominions, to insert this Title; therefore we shall not dwell on it at any length.

Although Treason and suspicion of Treason are not comprehended within the meaning of the Commission of the Peace, yet, being offences against the Peace of the Queen and the State, any Justice of the Peace, either upon his own knowledge, or complaint of other parties, may cause an offender to be apprehended, and take the examination of the party, and the information of all others who can give material evidence. Justices cannot admit such offenders to bail. There are no accessories in High Treason, all are principals. Petit Treason is now abolished, by 9 G. IV. c. 31, s. 2.

TREES, SHRUBS, ETC.

TREES, &c., GROWING IN A PARK OR PLEASURE GROUND—STEALING.—“If any person 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. every such offender (in case the value of the article or articles stolen, or 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 to be punished in the same manner as in case of simple larceny; and, if any person 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 hereinbefore mentioned, every such offender (in case the value of the article or articles stolen, or the amount of the injury done shall exceed the amount of five pounds), shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in case of simple larceny.” 7 and 8 G. IV. c. 29, s. 38, (Callaghan, vol. 1, p. 303.) See “Larceny.”

TREES, &c., GROWING ELSEWHERE—STEALING.—“If any person 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, where-soever the same may be respectively growing, the stealing of such article or articles, or the injury done being to the amount of a shilling at the least, every such offender being convicted thereof before a Justice of the Peace shall, for the first offence, 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 if any person so convicted, shall afterwards be

guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall, for such second offence, be committed to the common Gaol, or House of Correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting Justice shall think fit; and if such second conviction shall take place before two Justices, they may further order the offender (if a male) to be publicly or privately whipped after the expiration of four days from the time of such conviction, and if any person so twice convicted, shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in case of simple larceny." *Id.* s. 39. See "Conviction."

TREES, &c., IN PARK OR PLEASURE GROUND—MALICIOUS INJURY TO.—"If any person 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, respectively, growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, every such offender (in case the amount of injury done shall exceed the amount of one pound), shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years; or to be imprisoned for any term not exceeding two years, and (if a male) to be once, twice, or thrice, publicly or privately whipped (if the court think fit), in addition to such imprisonment.

"And if any person 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, respectively, growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed the sum of five pounds), shall be guilty of felony, and being convicted thereof, shall be liable to any of the punishments which the court may award for the felony hereinbefore last mentioned." 7 and 8 G. IV. c. 30, s. 19. See "Malicious Injuries."

TREES, &c., ELSEWHERE, MALICIOUS INJURY TO.—"If any person 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 respectively growing, the injury done being to the amount of one shilling, at the least, every such offender being convicted before a Justice of the Peace shall, 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 if any person so convicted, shall afterwards be guilty of any of the said offences, and shall be thereof convicted in like manner, every such offender shall, for such second offence, be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting Justice shall think fit. And if such second conviction shall take place before two Justices, they may further order the offender (if a male) to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction; and if any person so twice convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof shall be liable to any of the punishments which the court may award, for the felony hereinafter last mentioned." *Id.* s. 20. See forms under "Larceny," and "Malicious Injury."

TRESPASS.

(See "IMPOUNDING," also "MALICIOUS INJURIES.")

TUNNEL WATER.

The 4th William IV. No. 1, 1833, is "An Act for protecting from Encroachment and Damage, and for facilitating the formation of the tunnel for supplying with water the town and port of Sydney, in the colony of New South Wales."—*Callaghan*, vol. 2, p. 1284.

INJURING PIPES, PUMPS, TUNNEL, &c.—"If any person shall injure or destroy any pipe, pump, cock, or other thing used in the conducting or distributing of water from said tunnel, or any of the branches thereof: or shall cause filth, soil, or rubbish, to be cast or to flow into the same, or into any part thereof; or shall otherwise injure or obstruct the passage of the water which may be conducted through the same; every such person shall, on proof that the same was wilfully or negligently done, forfeit and pay a sum not exceeding twenty pounds, nor less than five pounds. And if any person shall unlawfully and maliciously break, injure, or destroy, any part of the said tunnel, or any of the branches thereof; or any public reservoir, basin, or tank, used for retaining the water from the said tunnel, every such offender shall be guilty of felony; and being convicted thereof, shall, at the discretion of the court, be transported for the term of seven years, or be imprisoned for any term not exceeding four years; and (if a male) shall be once, twice, or thrice publicly or privately whipped (if the court think fit), in addition to such imprisonment." s. 4.

APPROPRIATING WATER, &c.—"No person (without the sanction of the Governor, or officer authorised by him in that behalf), shall appropriate to his use any water from said tunnel, under penalty of a sum not exceeding twenty pounds, nor less than five pounds. And any pipe, conduit, &c., laid for appropriating such water without authority may be cut off and seized. Any person opening any cock, or pump, to cause the water aforesaid to run waste, shall forfeit for every such offence not more than one pound, nor less than five shillings." s. 5.

WELLS.—"The earth is not to be dug to a greater depth than six feet, by sinking a well or shaft within fifty feet of the tunnel, under penalty of not more than twenty pounds, nor less than ten pounds." s. 6.

OBSTRUCTING.—"Obstructing any surveyor, artificer, servant, &c., acting under this Act, incurs for any such offence a penalty of five pounds." s. 7.

FINES, &c.—"All fines and penalties are recoverable before two or more Justices of the Peace within the town of Sydney. In case of non-payment, to be levied by distress and sale of offender's goods by warrant of said Justices. Where the penalty exceeds five pounds, such offender may appeal to the Quarter Sessions to be holden next after the expiration of ten days after conviction. Provided that he enter into a bond to His Majesty to double the amount, to abide the judgment of said court and pay costs."

Section 9.—

"No *Certiorari* allowed."

APPROPRIATION OF PENALTIES.—"One moiety of every penalty shall (if demanded) be paid to the person first informing or prosecuting; the residue to his Majesty, his heirs, &c., for the public uses of the colony."

TURNPIKE.—(TOLL, &c.)

Maliciously throwing down or destroying any turnpike-gate, or any chain, rail, or post belonging thereto, or any building, or weighing engine, erected for the collection, &c., of any toll—*misdemeanor*; fine or imprisonment, or both. 7 and 8 G. IV. c. 30, s. 14; *Callaghan*, vol. 1, p. 333.

By the Act of Council, 2 William IV. No. 12, 1832, Section 2; *Callaghan*, vol. 2, p. 1265,

“The Governor may, by Proclamation, appoint places where Toll-gates and Ferries are to be established or continued.”

Section 3.—TOLLS TO BE TAKEN.

“The following Tolls, and no higher, are to be demanded, paid, and taken, at the turnpike gates, viz. :—

	£	s.	d.
For every sheep, lamb, pig, or goat.....	0	0	0 $\frac{1}{4}$
For every ox, or head of neat cattle.....	0	0	1
For every horse, mare, gelding, ass, or mule.....	0	0	2
For every cart, dray, or other such vehicle with two wheels, drawn by one horse or other animal.....	0	0	3
Ditto if drawn by two horses or other animals.....	0	0	4
Ditto if drawn by three horses or other animals.....	0	0	5
Ditto if drawn by four horses or other animals.....	0	0	6
For every horse or other animal above four drawing a cart, dray, or other such vehicle with two wheels.....	0	0	1
For every wain, waggon, or other such carriage with four wheels, drawn by two horses or other animals.....	0	0	8
Ditto if drawn by three horses or other animals.....	0	0	9
Ditto if drawn by four horses or other animals.....	0	0	10
And for every horse or other animal above four, drawing a waggon, or other such carriage, with four wheels.....	0	0	2
For every gig, chaise, or other such carriage, with two wheels, and drawn by one horse or other such animal.....	0	0	6
Ditto if drawn by two horses or other animals.....	0	0	9
For every coach, chariot, or other such carriage, with four wheels, and drawn by one horse or other animal.....	0	0	9
Ditto if drawn by two horses or other animals.....	0	1	0
Ditto if drawn by three horses or other animals.....	0	1	3
Ditto if drawn by four or more horses, &c.....	0	1	6

Section 4.—CARRIAGES FASTENED TO OTHERS.

“Carriages, &c., with four wheels, tied or secured to other carriages, &c., shall pay the same rate of toll as if drawn by two horses, and every carriage, dray, &c., with two wheels, the same rate of tolls as if drawn by one horse. Provided, that if the carriages, &c., so tied, have any goods conveyed therein, other than the harness, &c., they shall pay double toll.”

Section 5.—TOLLS DOUBLED ON SUNDAY.

“Tolls at turnpike gates and ferries are to be doubled on each and every Sunday.”

Section 6.—SECOND TOLL NOT PAYABLE WITHIN TEN MILES.

“Where toll has been paid at any one turnpike gate, no toll shall be payable at any other within ten miles from the former, and they may be passed any number of times on the same day without fresh toll.”

Section 7.—FERRY DUES.

“The following are the tolls or ferry dues:—

For every foot passenger	0	0	2
For every horseman	0	0	6
For every horse, mare, gelding, ass, or mule, drawing or not drawing .	0	0	6
For every gig, dray, or cart, with two wheels only	0	1	0
For every waggon, carriage, or other vehicle, with four wheels.....	0	1	6
For every ox, or head of neat cattle, drawing or not drawing, being more than ten in number	0	0	3
For every ox, or head of neat cattle, drawing or not drawing, not ex- ceeding ten in number	0	0	4
For every sheep, lamb, pig, or goat.....	0	0	0½

Section 8.—GOVERNOR, CLERGYMEN ON DUTY, AND PERSONS GOING TO OR FROM CHURCH, EXEMPT FROM TOLL.

“No toll or ferry dues to be paid by the Governor, or those in actual attendance on him; or for horses, &c., or vehicles, belonging to the Government; or by Clergymen on duty; or by persons going to or returning from public worship on Sundays, Christmas Day, or Good Friday; or for Post-office mails; or carts, &c., carrying manure; or for any horse, beast, carriage, or other vehicle, which shall only cross any turnpike road, or shall not pass thereon above the distance of two hundred yards; * or for any horse or other beast going or returning from his usual place of pasture.”

Section 9.—PERSONS EXEMPT FROM TOLL.

“All officers and soldiers in military uniform, dress, or undress, are exempt, and all horses, carriages, &c., employed in Her Majesty’s service, to carry baggage, &c.”

As to the Leasing of Tolls, &c., see the Act from Section 10 to 18.

Section 19.—LIST OF TOLLS.

“The lessees are to keep up a board, with a list of tolls and dues, &c. And

* The exemption as to carriages, &c., passing for a less distance than two hundred yards on the road, extends to cases where they quitted the road on the opposite to that on which they entered it, as well as on the same side. 5 Taunt. 340. As to carriages crossing the road. 2 Chitt. Rep. 412.

if such lessee shall neglect to keep up such list, &c. ; or be absent by day or night ; or take greater toll than he is entitled to ; or take toll from a person exempt, and who shall claim such exemption ; or shall extort, under colour of his office, any sum of money, or thing of any value whatsoever, for or in lieu of toll ; or shall not permit persons to read such board ; or shall refuse to tell his Christian and surname to any person asking to know the same, on payment of toll ; or if he shall give a false name to such person ; or shall refuse or omit to give, gratis, a ticket on payment of tolls ; or on toll being paid, shall wilfully detain, or delay any passenger from passing through ; or if he shall use any scurrilous or abusive language to any traveller ; for each any every such offence, he shall pay any sum not exceeding five pounds, to be recovered as hereinafter mentioned."

Section 20.—PERSONS REFUSING TO PAY TOLL.

"If any person liable to pay toll refuse to pay, the Collector may prevent him from passing, and may shut the gates against him."

Section 21.—PERSONS EVADING TOLL.

"Persons evading the payment of toll by forging a ticket, passing through forcibly, or taking beasts from carriage, &c., shall forfeit any sum not exceeding five pounds."

Section 22.—BOATS NEAR FERRY.

"No person to employ for hire any boats, when a ferry is established, within one mile of such ferry, under penalty of twenty shillings."

Section 23.—

Any Person guilty of the following Offences, to be fined for every such Offence, 40s., viz. :

"Damaging or obliterating table of tolls ; injuring posts or fences by road sides, set up near quarries or pits for security ; causing any injury to any bridge or mile-stone ; casting rubbish in drains by the side of road ; taking any materials off the road ; putting up any erection to reduce the breadth of road ; erecting any building or fence within the distance of forty-five feet (if within three miles of a town,) or if beyond that distance from a town, within forty feet from the centre of the road ; breaking the surface of the road ; lighting fires, &c., within one hundred yards of a road ; racing horses or baiting bulls on any road ; collecting mobs ; preventing persons or carriages passing ; digging pits within forty-five feet of the centre, unless fenced in : one moiety to informer, the other to Her Majesty."

Section 25.—FURIOUS DRIVING.

"Coachmen injuring any one by furious driving, or wilful misconduct, to be guilty of a misdemeanor, and punished by fine and imprisonment."

Section 26.—NAMES OF OWNERS TO BE PAINTED ON CARTS, &c.

"For discovery of offenders, the Christian and surnames, and the name of residence of the proprietor, shall be painted on every cart, waggon, &c., upon the off shaft, before the same be used on a turnpike road.

"Penalty,—for neglect, a sum not exceeding forty shillings."

Section 27.—NUISANCES.

“Prevents nuisances on roads, under penalty of forty shillings.”

Section 28.—WINDMILLS.

“No windmill to be erected within two hundred yards of any high road.”

Section 29.—JURISDICTION.

“A Justice of the Peace, on complaint of any of the following offences, or on his own view, or on the confession of the party, may fine the offender forty shillings, or, in default of payment, commit him to the House of Correction for one month, unless it be sooner paid. And any driver, (as hereinafter mentioned,) may be apprehended without a warrant and brought before a Justice.

“Any driver of a waggon, wain, cart, or dray, riding on any such carriage, without having any one to guide the same (light carts with reins excepted,) a driver causing damage to any person or carriage by furious driving, or quitting the road, or going at a distance from his vehicle, or shall not drive on the left side of the road, or by negligence or misbehaviour prevent or interrupt persons from passing.”

Section 30.—JURISDICTION.

“One or more Justices of the Peace may hear and determine in a summary manner, all offences against this Act. No person to be convicted after three months from the time of the commission of the offence.”

Section 31.—APPEAL.

“Gives appeal to Quarter Sessions, and the judgment appealed from, to be suspended. Provided, the appellant enter into a bond, with two sureties, immediately before such Justice or Justices, in double the amount of penalty. And in case it be a judgment of imprisonment, a recognizance in twenty pounds, with two sureties in ten pounds each.”

Section 34.—TOLLS HOW APPLIED.

“All tolls to be applied towards making and upholding public roads, &c.”

Section 35.—MARKET DUES.

“The lessee may proceed in a summary manner before any Justice of the Peace, for recovery of market dues; and the Justice, on conviction, may fine the offender in a sum not exceeding twenty shillings; one half to the informer, the other to Her Majesty. And, if such fine be not paid, may issue a warrant of distress to levy the same; and, in default of sufficient distress, may commit the offender to the Gaol or House of Correction, for a period not exceeding fourteen days.”

VAGRANT.

The Act of Council 6 Wm. IV. (No. 6.) 25th August, 1835, is intituled, “An Act for the prevention of

Vagrancy and for the punishment of Idle and Disorderly Persons, Rogues and Vagabonds, Incorrigible Rogues in the Colony of New South Wales." *Callaghan*, vol. 2, p. 1279.

The first section enacts —

"That any person who having been transported to the Colony, shall be convicted therein of any capital or transportable offence, shall within one week after having become free, register his or her place of residence, with the Justices of Petty Sessions.

"Also every change of residence within one week after making the same.

"If change of residence be to another district, the change must be notified to the Petty Sessions of both districts, the one changed from, and the one changed to.

"The Clerk of Petty Sessions to register the name, residence, and description of every such person, and shall give, if required, a certificate of same without fee or reward.

"If there be no Petty Sessions, the notice to be given to the nearest Justice of the Peace."

Section 2 declares that the following persons shall be deemed to be Idle and Disorderly characters :—

"Every person who having been transported as stated in first section, who shall fail to register his residence, or change of residence.

"Every such person who after having been summoned by a Justice of the Peace to appear and give an account of his or her means of support, shall fail to do so, without a lawful excuse.

"Every person who having no visible or lawful means of support, shall not give a good and sufficient account of his or herself to any Justice of the Peace.

"Every person not being a black native or the child of any black native, who being found lodging or wandering in company with any of the black natives of the colony, and shall not satisfy any Justice of the Peace, that he or she hath a fixed place of residence, and lawful means of support, and that such lodging or wandering hath been for some temporary and lawful occasion only.

"Every common prostitute wandering in any street or public highway, or being in any place of public resort, who shall behave in a riotous or indecent manner.

"Every habitual drunkard having been thrice convicted of drunkenness within the preceding twelve months, who in any street or public highway, or being in any place of public resort, shall behave in a riotous or indecent manner.

"And the holder of every house which shall be frequented by reputed thieves or persons who have no visible lawful means of support, and every person found in any such house in company with such reputed thieves or persons who shall not, being thereto required by any Justice, give a good account to the satisfaction of such Justice, of his or her means of support, and also of being in such house upon some lawful occasion.

"Any person wandering abroad or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing, or procuring, or encouraging any child or children so to do.

"PUNISHMENT.—Committal to the nearest gaol or house of correction, with hard labour, for any time not exceeding three months."

Section 3 declares that the following persons shall be deemed Rogues and Vagabonds, viz. :—

“ Every person committing any of the offences hereinbefore mentioned, after having been before committed as an idle and disorderly character.

“ All persons going about as gatherers of alms under false pretence of loss by fire or other casualty; or as collectors under false pretence.

“ All persons imposing or endeavouring to impose upon any charitable institution, or private individual, by any false and fraudulent representation, either verbally or in writing, with a view to obtain money or some other benefit or advantage.

“ Every person wilfully and obscenely exposing to view in any street, road, highway or public place, any obscene print, picture, or other indecent exhibition.

“ Every person wilfully and obscenely exposing his or her person in any street, road, or public highway, or in the view thereof, or in any place of public resort.

“ Every person playing or betting at any unlawful game.

“ Every person playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance.

“ Every person having in his or her custody or possession any picklock, key, crow, jack, bit or other implement, with intent feloniously to break into any dwelling-house, warehouse, coachhouse, stable, or out building, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act.

“ Every person being found in or upon any dwelling-house, warehouse, coachhouse, stable, or outhouse, or in any enclosed yard, garden, or area, for any unlawful purpose.

“ Every suspected person or reputed thief frequenting any river, canal or navigable stream, dock or basin, or any quay, wharf, or warehouse, near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony.

“ Every person apprehended as an idle and disorderly character, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

“ PUNISHMENT.—Committal to nearest gaol or house of correction for any time not exceeding six calendar months, and to be kept to hard labour.

“ Every picklock, key, crow, bit, &c., to be forfeited.”

Section 4 declares that the following persons shall be deemed Incurable Rogues, viz. :—

“ Every person who shall break or escape out of any place of legal confinement before the expiration of the term confined for.

“ Every person committing an offence against this Act, which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be and duly convicted thereof.

“ Every person apprehended as a rogue and vagabond, and violently resisting any constable or other peace-officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended, to be committed to the nearest gaol or house of correction, until the next Quarter Sessions, and kept to hard labour.” (See s. 9.)

Section 5.—OFFENDERS MAY BE ARRESTED.

“ Any person may apprehend any offender against this Act, and deliver him or her to a constable.

"If constable neglect or refuse to take such offender, to be punished."
(See s. 10.)

Section 6.—OFFENDERS TO BE SEARCHED.

"All offenders against this Act to be searched, as also their trunks, boxes, bundles, parcels, or packages, to be inspected in the presence of a Justice of the Peace.

"Any money found upon offender, to be appropriated towards defraying the expense of apprehending and conveying him or her to the gaol or house of correction, and maintaining such offender whilst there.

"If there be not money sufficient for the purpose found, the Justices of the Peace may order any other effects found, to be sold for the purpose."

Section 8.—WITNESSES.

"Justices are authorised to bind over parties, by recognizance, to prosecute and give evidence as to incorrigible rogues, and such other offenders as may appeal to Quarter Sessions."

Section 9.—QUARTER SESSIONS.

"Justices at Quarter Sessions authorised to examine into the circumstances of the case of any person committed as aforesaid as an incorrigible rogue (s. 4), and to order (if they think fit) that any offender shall be further imprisoned and kept to hard labour for any time not exceeding one year; and to order further (if they think fit) that such offender, not being a female, be punished by whipping, at such time and place as they shall deem expedient."

Section 10.—CONSTABLE NEGLECTING HIS DUTY.

"Any constable neglecting his duty, or any person disturbing or hindering any constable or other person in the execution of this Act, or aiding, abetting or assisting in so doing, on conviction, liable to a fine of a sum not exceeding five pounds; in default of immediate payment, confinement and hard labour, not exceeding three calendar months, or until such fine be paid."

Section 11.—LODGING HOUSES, &c.

"Lodging-houses, &c., suspected to conceal offenders against this Act, may be searched and every suspected person found therein to be apprehended."

Section 12.—APPEAL.

"Persons aggrieved by any determination under this Act, may appeal to the next Quarter Sessions.

"Notice in writing, containing the ground of appeal, to be given to the Justice of the Peace whose decision is appealed against, within seven days after decision, and recognizance with two sureties to be entered into, personally to appear and prosecute such appeal.

"Upon notice given and recognizance entered into, Justice of the Peace authorised to discharge offender from custody.

"Court of Quarter Session to hear and determine appeal."

Section 13.—FORM OF CONVICTION.

"Any proceedings under this Act not to be quashed for informality, and all convictions to be drawn up in the following form, viz. :—

to wit. } Be it remembered, That on the day of
 } A.D. 18 , at , in the Colony of New South
 Wales, A. B. is convicted before me, C. D., one of her Majesty's Justices of the
 Peace in and for the said Colony, of being an idle and disorderly person (or a
 rogue and vagabond, or an incorrigible rogue) within the intent and meaning
 of the Act in Council, made in the sixth year of the reign of his Majesty King
 William the Fourth, intituled "An Act for the Prevention of Vagrancy and
 for the Punishment of Idle and Disorderly Persons, Rogues, and Vagabonds,
 and Incorrigible Rogues, in the Colony of New South Wales," that is to say,
 for that the said A. B. on the day of , at
 in the said Colony (here state the offence proved before the Magistrate), and
 for which said offence the said A. B. is ordered to be committed to her Majesty's
 gaol at , (or house of correction), there to be kept to hard labour for
 the space of , (or until the next Quarter Sessions).

Given under my hand the day, year, and at the place first above written.

J. P.

"The conviction to be filed of record, and certified copies thereof to be
 evidence, and returns thereof made as in cases of other convictions."

Section 14.—ACTIONS.

"Should an action be brought against any Magistrate, &c., for anything done
 under this Act, and a verdict be in his favour, he shall be entitled to treble
 costs."

Section 15.—

"Every action must be commenced within three calendar months after cause
 of action or complaint shall have arisen. Defendant may plead the general issue,
 and give the special matter in evidence."

Section 16.—APPROPRIATION OF PENALTIES.

"All fines, penalties, &c., recovered under this Act, shall be appropriated as
 follows: viz., such part as Justices shall think fit to be paid for any reasonable
 expenses that may have been incurred by any person, by reason of the prosecu-
 tion of the offence for which any such fine, penalty, &c., shall have become
 payable, and the residue thereof to the person or persons who shall inform and
 sue for the same."

WAGES.

(See "MASTER AND SERVANT.")

WARRANT.

A warrant is a precept under *hand* and *seal* to some
 officer or officers authorising and commanding some act,

as for instance, a warrant to a constable, &c., to apprehend a certain person. See ante, title "*Commitment*," p. 91. A warrant to a gaoler to receive and imprison a person.* *Id.* p. 105. A warrant to constable, &c., to distrain. See "*Distress*." To search (see "*Search Warrant*."), &c. All warrants must be precise and certain, that is they must contain the name of the party to be apprehended or committed, &c., (as the case may be) or if the name be not known an accurate description,—height, age, marks, &c., &c. (1 *Hale*, 577.); the date when issued must also appear on it, as also the name or description of the party to whom it is directed,† and a description of the offence for which it is issued. A general warrant to apprehend "all persons suspected" would be bad. 2 *Hale*, 112.

A warrant to apprehend ought not to be issued without a previous examination, and an information or complaint on oath. See *Arch. Rob.* 398. Any Justice of the Peace may issue a warrant to apprehend a person for felony, misdemeanor, or any offence against the peace. *Butt v. Conant*, 1 *Brod. and Bing.* 548. It is not very usual, however, in cases of misdemeanor, to issue a warrant in the first instance, unless in aggravated cases, or where there is a likelihood of the party's absconding, if he be apprized of the complaint being made against him. In ordinary cases it is usually deemed sufficient to issue a summons in the first instance, and if that be disobeyed then to issue a warrant. 1 *Arch. J. P.* 225.

In cases of summary conviction, unless expressly authorised by statute or Act, Justices cannot issue warrants for apprehension: the proper course is to summon the

* It may be here remarked that in no case can a gaoler detain any person committed by a Justice of the Peace, unless he receive with the person committed a valid warrant of commitment under the hand and seal of such Justice. See title "*Commitment*," p. 105; also "*Conviction*," p. 136.

† Warrants to apprehend are usually directed—"To the Constable of B. and to all other Peace Officers in the said Colony."

party, and if he do not appear, to hear the case *ex parte*. See "Conviction," p. 123.

Any Justice may issue a warrant on complaint on oath, for the apprehension of a servant who has absconded before the expiration of his term of service. See title "Master and Servant"; or for the apprehension of a bushranger, see title "Bushranger." Justices of this Colony may also endorse warrants issued in Van Diemen's Land for the apprehension of offenders escaped from that Colony to this. See Act of Council, 2 Vict. No. 11; *Callaghan*, vol. 1, p. 501, "An Act to facilitate the Apprehension of Offenders escaping from the Island of Van Diemen's Land, or from South Australia, to the Colony of New South Wales."

All warrants must be under the *hand and seal* of the Justice granting the same.

As to the mode of execution of a warrant to apprehend, see title "Arrest."

See forms of warrants under titles "Commitment," "Conviction," "Bushranger," &c.

WEIGHTS AND MEASURES.

The Act of Council, 3 Wm. IV. No. 4, 1832, is intitled "An Act for establishing Standard Weights and Measures, and for preventing the use of such as are false and deficient."

Section 1.—STANDARDS DECLARED.

"Whereas certain Weights and Measures of the standard now in force and in use in the United Kingdom of Great Britain and Ireland, denominated Imperial Weights and Measures (a schedule of which marked with the letter A is hereunto annexed)* have been deposited in the Colonial Treasury, in the town of Sydney, enacts, that the said several Weights and Measures now deposited in the Colonial Treasury in Sydney as aforesaid, shall be there safely kept, and shall be, and they are hereby declared to be, the Standard Weights and Measures of New South Wales."

* See at the end of Title.

Section 2.—COPIES TO BE DEPOSITED WITH CLERKS OF PETTY SESSIONS.

“That it shall be lawful for the Governor of the said Colony to cause copies and models of the several Weights and Measures so deposited in the Colonial Treasury in Sydney as aforesaid, to be carefully made; and upon every such Weight or Measure being verified upon oath before such Governor, and approved of by him, to cause a mark or stamp to be legibly impressed or engraven thereon, to shew that the same hath been so verified and approved; and such mark or stamp shall consist of such letters and figures that are commonly used to signify His Majesty's name or mark, together with S. W. or S. M. signifying standard weight, or standard measure, as the case may be, and the number of pounds, or other denomination of such Weight or Measure; and such copies or models, after having been so verified, approved and marked, shall be deposited with the respective clerks of the several and respective Petty Sessions appointed to be holden in the said Colony; and shall be by them respectively, safely, and securely kept, for the purpose of reference, as hereinafter directed. And if any such clerk shall falsify, or otherwise wilfully injure such copies or models so deposited with him as aforesaid, he shall, on conviction before any such Petty Sessions, forfeit and pay, for every such offence, the sum of fifty pounds, to be recovered and applied as hereinafter directed.”

Section 3.—IN CASE OF LOSS OF STANDARDS.

“In case the said standard Weights or Measures, or the copies or models thereof, shall be lost, destroyed, defaced, or otherwise injured, another Weight or Measure shall be provided, with the approbation of the Governor for the time being; of the same size and weight or measure so lost, destroyed, defaced, or otherwise injured; and the same shall thereupon be deemed to be a true and genuine weight or measure, to all such and the like intents and purposes as the weight or measure which shall have been lost, destroyed, defaced, or injured.”

Section 4.—ACCESS ALLOWED FREELY TO STANDARDS.

“All persons who may be desirous of comparing and adjusting any weights and measures, shall have access to all such copies and models of the standards so deposited as aforesaid, at all reasonable times, on the payment of such fee as is hereinafter mentioned; and it shall be the duty of the respective clerks of the several and respective Petty Sessions as aforesaid (such clerks respectively having been first duly sworn before such Sessions well and faithfully to execute the trust reposed in them) to compare every weight and measure as shall be brought before them respectively with such copies or models as aforesaid; and for every examination of any such weight or measure, the clerk who shall make the same shall be entitled to demand and receive of the person who shall cause the same to be made the sum of three-pence for every Weight and Measure so compared, and no more. And if any such clerk shall fail, neglect, or refuse to compare any such Weights and Measures, at all such reasonable times as he shall be thereunto required, he shall, on conviction before any such Petty Sessions, forfeit and pay the sum of ten pounds, to be recovered and applied as hereinafter directed.”

Section 5.—EXAMINERS OF BALANCES TO BE APPOINTED.

“As soon as conveniently may be after the commencement of this Act, or Ordinance, the Justices in their respective Petty Sessions, and any single Justice of the Peace, where there shall be no Petty Sessions appointed to be held, shall, and they are respectively directed to appoint one or more person or persons in their respective districts, who shall have the power to examine the balances, weights, and measures, within their respective districts and limits, who

shall be duly sworn well and faithfully to execute the office in him or them reposed by virtue of such appointment, and of this Act or Ordinance, which oath the said Justice or Justices are hereby respectively directed and empowered to administer."

Section 6.—THEIR DUTIES.

"It shall and may be lawful to and for the person or persons so to be appointed examiners as aforesaid, and they are hereby required, as often as such Justices in Petty Sessions respectively, or single Justices, where there shall be no Petty Sessions respectively, shall direct, in the day time, to enter into the shop, house, mill, store, outhouse, and other places near to such shop, mill, store, or house, and into the stall or standing place of any person or persons within their respective districts and limits, who shall sell by retail, and by weight or measure, any wares, provisions, goods, or merchandise, or any liquid or dry goods, or other articles whatsoever, and then and there to search for, view, and examine all balances, and all weights and measures of length and capacity therein, and to seize any false or unequal balance or balances, and any weight or weights, measure or measures, not being according to the standard, or the copies or models thereof as hereinbefore is mentioned, which shall upon such search be found therein, and to detain the same, to be produced before the next Petty Sessions, which shall be holden for the district or place within which any such balance, weight, or measure, shall have been seized as aforesaid; or in case there shall happen to be no Petty Sessions appointed within such district or place, at the nearest place appointed for holding Petty Sessions; and such Justices are hereby respectively authorised and required to enquire into, hear, and determine in a summary way, all informations, matters, and things, touching such seizures, and the person or persons in whose shop, house, mill, storehouse, outhouse, premises, stall, or standing place, any such false or deficient balance or balances, weight or weights, measure or measures, shall be found, shall, upon conviction thereof, upon view or confession, or upon the oath of one or more credible witness or witnesses, forfeit all such false and deficient balances, weights, and measures; which balances, weights, and measures, so forfeited, shall be broken, and otherwise disposed of, as such Justices before whom such conviction shall have taken place shall order and direct; and shall also forfeit and pay for every such false and deficient balance, weight, or measure, any sum of money not exceeding the sum of forty shillings, nor less than five shillings, as the said Justices before whom any such person or persons shall be convicted as hereinafter mentioned, shall, in their discretion, order and adjudge, together with the costs and charges attending such conviction."

Section 7.—PERSONS OBSTRUCTING EXAMINERS.

"If any person shall wilfully obstruct, hinder, resist, or in anywise oppose, any of the persons authorised and empowered to view and examine such Balances, Weights, and Measures, in the execution of his office; or if any person selling or retailing by weight or measure, shall refuse to produce his or her Balances, Weights, or Measures, in order to be viewed or examined, he or she, who shall so offend, shall for every such offence, on being duly convicted on oath before any two or more Justices of the Peace, forfeit and pay any sum not exceeding five pounds, nor less than forty shillings, as such Justices shall adjudge; and such forfeiture and penalty shall be levied and recovered in the manner hereinafter directed."

Section 8.—NO OTHER BUT STANDARD WEIGHTS AND MEASURES TO BE USED.

"That from and after the first day of March, 1833, it shall not be lawful for any person to bargain, sell, or deliver in payment, barter, or exchange, any goods, wares, merchandise, or other thing, by any other Weights or Measures

than by such as shall agree with the said Standard Weights and Measures, or the copies and models thereof as aforesaid (except as hereinafter excepted), upon pain of forfeiture for each and every such offence, the sum of forty shillings, to be recovered and applied as hereinafter mentioned. Provided, however, that nothing hereinbefore contained shall apply to contracts or bargains for the sale, exchange, or delivery of any goods, wares, merchandise, or other thing *bond fide* made and entered into before the said first day of March, 1833; but that all goods, wares, merchandise, and other things so contracted and bargained for, as last aforesaid, shall and may be sold and delivered according to the ratio or proportion which the Weights or Measures in use in the Colony at the time such contracts or bargains shall have been made, shall bear to the Standard Weights and Measures established by this Act or Ordinance."

Section 9.—HEAPED MEASURE.

"That in every sale, barter, or exchange of any goods or things which shall be contracted and agreed to be delivered by heaped measure, the bushel measure which shall be used, being of standard capacity as aforesaid, shall be made round, with a plain and even bottom, and shall be nineteen inches and a half from outside to outside of such standard measure, and shall be heaped up in the form of a cone, and such cone shall be equal in height to at least three-fourths of the depth of the said measure; and the outside of the said measure shall be the extremity of the base of the cone; and the measure of all fractions and multiples of a bushel shall also be round, and the diameters of such measure shall be at least double the depth thereof."

Section 10.—STRICKEN MEASURE.

"That in every sale, barter, and exchange of any goods or things which shall not be contracted or agreed to be delivered by heaped measure, the measure shall not be heaped but shall be struck with a round stick or roller, straight, and of the same diameter from end to end."

Section 11.—JURISDICTION OF JUSTICES.

"That any two or more Justices of the Peace in Petty Sessions assembled, shall have power and authority to hear and determine, in a summary way, all offences against this Act or Ordinance; and upon the conviction of any offender or offenders the Justice or Justices before whom such conviction shall take place shall cause the amount of the forfeiture or forfeitures which shall be levied or paid by virtue of any such conviction, to be applied towards the payment of a just and reasonable recompense and satisfaction of such person or persons as shall be appointed to examine balances, weights, and measures, as hereinbefore directed, and towards the other expenses of carrying this Act into execution: and the residue (if any) shall go to the use of his Majesty, his heirs and successors. And in case such penalties and forfeitures, with the said costs and charges, shall not be forthwith paid, it shall be lawful for such Justices, or either of them, and they and he are and is hereby authorised and required, by warrant under their or his hands and seals, or hand and seal, to commit such offender or offenders to the gaol or house of correction, for any time not exceeding three calendar months, unless the penalties, costs, and charges, in which such offender or offenders shall be convicted, shall be sooner paid."

Section 12.—FORM OF CONVICTION.

"That the Justices of the Peace before whom any offender shall be convicted as aforesaid, shall cause the conviction to be made out in the manner and form following, or in any other form to the same effect (*mutatis mutandis*), that is to say—

Be it remembered, That on the _____ day of _____, one thousand eight hundred and _____, at _____, before us _____ and _____, Esquires, Justices of the Peace in and for the said Colony of _____, was duly convicted before us, the said Justices, for that he, the said _____, on the _____ day of _____ now last past, at _____, contrary to the form of the Act in Council in that case made and provided (here state the offence); and we, the said Justices, do declare and adjudge, that the said _____ hath for such offence forfeited the said balances (weights or measures, as the case may be), and hath also forfeited the sum of _____, of lawful British money, to be applied as the said Act directs: and the further sum of _____, of like lawful money, for the reasonable costs and charges attending this conviction.

Given under our hands and seals, at _____, on the day and year first above written.

Section 13, enacts—

“That no proceedings to be had touching the conviction of any offender or offenders against this Act, shall be removed by writ of Certiorari, or by any other writ or process whatsoever, into any other of His Majesty’s Courts within the Colony.”

Section 14.—WEIGHTS AND MEASURES USED IN QUEEN’S OFFICES.

“That nothing in this Act or Ordinance contained shall be deemed or taken to apply to the Weights and Measures now used by His Majesty’s Officers in the said Colony for ascertaining any rates or duties payable to His Majesty, His Heirs and Successors, upon the importation into the said Colony of any goods, wares, merchandise, or other thing, or upon spirits distilled therein, unless His Majesty’s pleasure shall be first had and signified to such effect. And in case His Majesty’s pleasure shall be first had and signified, and as soon as conveniently may be thereafter, it shall be lawful for the Governor of the said Colony for the time being, with the advice of the Council, to cause accurate Tables to be prepared and published, in order that the several rates and duties may be adjusted and made payable according to the respective Standards of Weight and Measure established by this Act or Ordinance; and that immediately from and after the publication of such Tables, the several rates and duties thereafter to be collected by His Majesty’s said Officers, shall be collected and taken according to the calculation in the Tables to be prepared and published as aforesaid.”

Section 15.—ACT NOT TO APPLY TO SALE OF MEDICINE, &c.

“That nothing in this Act or ordinance contained shall be deemed or taken to extend or apply to the sale of medicines, or precious metals, or precious stones; or to the weights or measures *bona fide* used for the sale thereof, and for no other purpose.”

Section 16.—COMMENCEMENT AND DURATION OF ACT.

“That this Act or ordinance shall commence and take effect from and after the first day of March, 1833.”

SCHEDULE (A) REFERRED TO.

List of Standard Weights and Measures deposited in the Colonial Treasury, Sydney:

STANDARD MEASURES OF LENGTH.	STANDARD WEIGHTS.
One yard	Fifty-six pounds
One foot	Twenty-eight pounds
One inch	Fourteen pounds
	Seven pounds
STANDARD MEASURES OF CAPACITY.	Four pounds
One bushel	Two pounds
One half-bushel	One pound
One peck	One half-pound
One gallon	One quarter-pound
One half gallon	Two ounces
One quart	One ounce
One pint	Eight drams
One half pint	Four drams
One gill	Two drams
One half-gill	One dram.

WIFE.

A married woman may demand surety of the peace against her husband threatening to beat her outrageously, and so may the husband against his wife; and in all criminal cases the wife may be a witness against her husband where she is the party aggrieved, but not so in civil cases. A married woman cannot be bound by recognizance but by her sureties only. 1 *Arch. J. P.* 574.

WIVES AND CHILDREN,* DESERTION OF.—“ If after the passing of this Act, (4th Vict. No. 5,) it shall at any time be made to appear to any Justice of the Peace that any married woman hath been (whether before or after the passing of this Act,) unlawfully deserted by her husband, or hath been left by him without means of support, it shall be lawful for such Justice, upon complaint on oath by her, or any reputable person on her behalf, to cause a summons to be issued directing the husband to appear before two Justices to shew cause why she should not be supported by him; and in any such case of

* See post section 7, p. 488.

desertion, it shall be lawful for the Justice, upon proof thereof upon oath, to issue a warrant for the husband's apprehension, in order to compel such appearance." 4 Vict. No. 5, s. 1; *Callaghan*, vol. 2, p. 1303.

ORDER FOR MAINTENANCE.—"Upon the day appointed for such appearance (whether the party shall have been taken on such warrant, or cannot, after strict inquiry and search, be found to be taken thereon, or shall appear upon such summons, or having been summoned, shall fail to appear,) such two Justices or any other two Justices, then sitting, shall proceed to inquire into the matter of such complaint; and if they shall be satisfied that the wife is in fact without means of support, and that her husband is able to maintain her, or to contribute to her maintenance, then such Justices shall make an order in writing, directing him to pay either weekly or monthly, at their discretion (and to such person, or in such manner for her use as they may think fit) such moderate sum or allowance as they shall consider proper: Provided that upon any application by or on behalf of the husband or the wife, or for any other cause, it shall be lawful for the Justices to postpone or adjourn the inquiry from time to time as they shall deem it expedient." *Id.* s. 2.

JUSTICES MAY ORDER SALE OF GOODS—WHEN.—"If in any case it shall appear to the Justices (in addition to the particulars last aforesaid) that the husband hath deserted his wife, it shall be lawful for them in and by such order as aforesaid, to authorise and direct some person forthwith to seize and sell such husband's goods and chattels, and to demand and receive his rents, or such portion of them respectively as the said Justices shall think fit, and to appropriate the proceeds towards the payment of such allowance in such manner as they shall from time to time direct; and the like order may be made, and authority be given by any two Justices, upon complaint made for that purpose before them in any case where the husband shall have left the said

colony, or any of its respective dependencies in which he shall have theretofore usually resided (and that fact shall appear on oath to them), without the previous issue either of a warrant or summons." *Id.* s. 3.

PROOF OF MARRIAGE.—"Any woman making complaint to any Justice of having been actually deserted as aforesaid by her husband, or left by him without sufficient means of support, shall produce before such Justices appointed to inquire into the matter of such complaint, direct evidence of her marriage with the person against whom the complaint is made; or in case of her inability to produce such direct evidence to the satisfaction of the Justices aforesaid, shall make affidavit before them setting forth the time, place, and circumstances of the said marriage; and her affidavit shall be deemed sufficient to authorise such Justices to make an order for her maintenance by her husband in the manner provided by this Act; and such order shall continue in force, until it be rescinded by the same, or any two other Justices upon such proof as they shall deem sufficient being given before them, of the falsity of the averments sworn to by the woman as hereinbefore directed: Provided, that it shall be in the discretion of the Justices upon any reasonable cause shewn for such desertion or refusal of maintenance, to decline making any such order." *Id.* s. 4.

PENALTY FOR FALSELY DEPOSING.—"Any woman who shall falsely depose in such affidavit as aforesaid, to the fact of her marriage with any man, for the purposes of obtaining from the Justices an order for any sum or allowance to be made by such man, for or towards her support, shall on conviction thereof suffer such punishment as may by law be inflicted on persons convicted of wilful and corrupt perjury." *Id.* s. 5.

MARRIED CONVICT WOMAN DESERTED.—"Where any married woman who is under an unexpired sentence or order of transportation, shall have been deserted, or left without support by her husband; the like proceedings

may be had, and the like order made as aforesaid, on the application of the Principal Superintendent of Convicts, or of the chief constable of the district in which such woman usually resided." *Id.* s. 6.

CHILDREN DESERTED.—“ Complaint may be made as aforesaid (either by the mother or any reputable person) in case of the desertion by any father of his child or children, or where any child shall have been left by the father without adequate means of support; and the like proceedings may thereupon in every such case be taken against the father, and such inquiry be had touching his ability to maintain such child or children, and the like order or orders be made in respect thereof as are hereinbefore directed or authorised, respectively, with regard to the desertion or maintenance of a wife.” *Id.* s. 7.

ILLEGITIMATE CHILDREN INCLUDED.—“ The preceding section shall extend to and include illegitimate children as well as children born in wedlock, provided that no man shall be taken to be the father of any illegitimate child upon the oath of the mother only. Provided also, that in every case where it shall appear to the Justices that the mother of an illegitimate child is able to contribute to its support, it shall be lawful for them to direct that she shall so contribute as well as the father, in such proportions respectively, and in such manner as such Justices shall think fit; and if in any such case it shall appear that the mother only is of such ability, it shall be lawful for the Justices to make an order in respect of her alone.” s. 8.

PROCEEDINGS FOR ENFORCING ORDERS OF JUSTICES.—“ It shall be lawful for the Justices by whom any order shall have been made under this Act, touching the support of any wife or child, or for any other two Justices, from time to time, in a summary way, (with or without any application for that purpose,) to make such orders in writing as they may think necessary, for better securing the payment and regulating the receipt of the allowance directed for such wife’s or child’s support, or

for investing and applying the proceeds of the goods or rents, if any, directed to be sold or collected; or for ensuring the due appropriation of such allowance to the *bonâ fide* purposes of maintenance, or for causing the child or children to be properly brought up and educated; and any one Justice shall have power at any time in a summary way to inquire into the disobedience or alleged disobedience of, or non-compliance with, any such order, or with any order made by any Court of Quarter Sessions, as hereinafter mentioned, and for that purpose to summon and examine all proper parties and witnesses, and to enforce compliance, or punish the non-compliance with such order, either by committal of the offending party until the same shall have been complied with, or by the imposition of a fine not less than five pounds nor more than fifty pounds." s. 9.

Proceedings under this Act to be in accordance with the Summary Jurisdiction Act. 5 W. IV. No. 22. (See ante, "*Summary Jurisdiction.*") s. 10.

QUARTER SESSIONS MAY MODIFY ORDERS.—“It shall be lawful for any Court of Quarter Sessions holden for the district within which any order under this Act shall have been made (whether an appeal against the same shall have been entered or not), to quash, confirm, or vary, any such order, either in the whole or in part, at their discretion, or to substitute a new order in lieu thereof; and for that purpose every order made by any two Justices under this Act shall be transmitted by such Justices, under their hands and seals, to the Clerk of the Peace of the district, within twenty days next after the making of such order.” s. 11.

TWO JUSTICES MAY BIND APPRENTICES.—“It shall be lawful for any two Justices sitting in Petty Sessions, with the consent of either of the parents, if living and within the Colony, but if otherwise than without such consent, to bind by Indenture, and put out any child in respect of whose maintenance any order shall have been made under this Act (such child having attained the age of

thirteen years, but not otherwise) an apprentice until he or she shall attain the age of twenty-one years, to any master or mistress willing to receive such child in any trade, business, or employment whatsoever; and every such binding shall be as effectual in the law to all intents and purposes, as if the child had been of full age, and had bound himself or herself to be such apprentice; Provided that such two Justices previously to executing such Indenture shall inform themselves as fully as they can of the child's age, which age shall be inserted in such indenture, and shall thereupon, for the purposes of this provision, be taken to be the child's true age without further proof." s. 12.

ASSIGNMENT OR REVOCATION OF INDENTURE.—“In the event of the death of any such master or mistress, his or her executor or administrator may (with the approbation of any one Justice) assign any such indenture for the residue of the term then unexpired therein; and any two Justices sitting in Petty Sessions may, in case of such death, or upon the application of the master or mistress in any other case assign any such indenture to any other person, or may absolutely revoke any indenture in any case upon proof of ill-usage of the apprentice, and put out such apprentice anew: Provided that in every such case of assignment the assignee shall be as much bound to perform the several covenants of the indenture as if he or she had been the master or mistress originally named therein.” s. 13.

Convictions not to be quashed for want of form, nor removed by *certiorari*. s. 14.

LIMITATION OF ACTIONS AGAINST JUSTICES.—“No action of law shall lie against any Justice of the Peace for any matter or thing which may be done or commanded by them in pursuance of the provisions of this Act or ordinance, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen, and if any Justice or Justices shall be sued

for any matter or thing done in pursuance of this Act or ordinance, the defendant or defendants in any such action may plead the general issue, and give this Act or ordinance and the special matter in evidence." s. 15.

APPLICATION OF PENALTIES.—“The amount of every fine imposed under this Act shall be appropriated and applied as follows, that is to say, one moiety thereof as the Justice or Justices, as the case may be, shall in his or their discretion direct, either wholly for the use of the wife or child in respect of whose maintenance the original order shall have been made, or partly for that use, and partly for the use of the informer or party prosecuting, and the other moiety thereof shall be paid into the hands of the Colonial Treasurer, and be appropriated to the use of her Majesty, her heirs and successors, for the public uses of the said colony, and the support of the government thereof.” s. 16.

WILLS.

“If any person shall, either during the life of a testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any Will, Codicil, or other Testamentary Instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a *Misdemeanor*.” 7 and 8 G. IV. c. 29, s. 22. *Callaghan*, vol. 1, p. 299. See forms under title “Larceny.”

WITNESS.

(See “EVIDENCE.”)

WOOD.—(DEAD.)

The Act of Council, 9 Vict. No. 14, is intituled, “An

Act to punish summarily the Stealing of Dead Wood.”
(1845.)

Section 1, after declaring that it is expedient to mitigate the severity of the law with regard to stealing dead wood, enacts—

“That any person stealing any dead wood lying on land in the occupation of another person, the wood so stolen being of the value of one shilling at least, shall for the first offence forfeit and pay over and above the value of the wood so stolen, a sum not exceeding five pounds, to be recovered before one or more Justices of the Peace in a summary way ; and if any person so convicted shall be afterwards guilty of the said offence, every such offender shall forfeit and pay a sum not exceeding ten pounds, to be recovered in a summary way before two or more Justices of the Peace ; and if any person so twice convicted shall again offend, and be convicted thereof, then and not otherwise he shall be deemed guilty of larceny.”

Section 2, enacts—

“That it shall be sufficient to allege in the information that the person charged has stolen wood, without stating whether the wood so stolen was alive or dead, and that the said Justice or Justices may convict the offender under this Act, or under the 39th section of an Act of Parliament, passed in the seventh and eighth years of the reign of his late Majesty King George the Fourth, intituled, ‘An Act for consolidating and amending the laws of England relative to larceny, and other offences connected therewith.’”

WOUNDING.

(See “ATTEMPTS TO MURDER.”)

WRECK

JUSTICES, CONSTABLES, &c., TO ASSIST SHIPS IN DISTRESS.—Sheriffs, justices of the peace, and all mayors, bailiffs, and other head officers of corporations and port towns near adjoining to the sea, and all constables, head-boroughs, tithingmen, and officers of the customs in all places, shall, on application by the commander or chief officer of any ship or vessel in danger of being stranded or run on shore, command the constables of the several ports nearest to the sea coasts where any such ship shall

be in danger, to summon and call together as many men as shall be thought necessary, to the assistance and for the preservation of such ship or vessel so in distress and the cargo ;—and if there be any vessel, either man of war or merchant's ship, belonging to Her Majesty or any of Her subjects, riding at anchor near such place where such ship is so in distress, the officers of customs and constables above mentioned may demand of the superior officers of such ship, assistance by their boats and such hands as they can conveniently spare, for the said service and preservation of the said ship so in distress ; and on such superior officer's refusal or neglect to give such assistance, he shall forfeit £100, to be recovered by the superior officer of the said ship so in distress, with costs, in any of Her Majesty's courts of record. 12 Anne, stat. 2, c. 18, s. 1. This statute, and also stat. 26 G. II. c. 19, make provisions for the payment of salvage to the persons who shall assist.

HINDERING THEM FROM SAVING THE SHIP, &c.—And if any person, besides those empowered by the said officer or his deputy, and the constables, shall enter or endeavour to enter on board any such ship so in distress, without leave of the commander or other superior officer, or of the officer of the customs or his deputy, or of the constable, or some or one of them employed for the service and preservation of the said ship ;—or if any person shall molest him, them or any of them, in the saving of the said ship or goods,—or shall endeavour to impede or hinder the saving thereof,—or, when any such goods are saved, shall take out or deface the marks of any such goods before the same shall be taken down in a book to be provided for that purpose by the commander or ruling officer and the first officer of the customs : such person shall, within twenty days, make double satisfaction to the party grieved, at the discretion of the two next Justices, or, in default thereof, shall by them be sent to the next house of correction, to be employed in hard labour for twelve months ; and the com-

mander or superior officer of the said ship in distress; or the said officer of the customs or constables on board the same, may repel by force any such person as shall, without such leave or consent, press on board the same, and thereby molest them in the preservation thereof. *Id.* s. 3.

As to assaults on Justices and others in the execution of their duty, in endeavouring to preserve a vessel or goods wrecked, see *ante*, p. 36.

JUSTICES, &c., TO CALL A MEETING TO AID.—The Justices of the Peace, mayors, bailiffs, collector of the customs, or chief constable, who shall be nearest to where the ship, goods, or effects, shall be stranded or cast away, shall forthwith give public notice for a meeting to be held, as soon as possible, of the sheriff or his deputy, the Justices of the Peace, mayors, or other chief magistrates of towns corporate, coroners, and commissioners of the land tax, or any five of them, who shall aid in the execution of this Act and of Stat. 12 Anne, *supra*, and who shall employ proper persons for saving the same. 26 G. II. c. 19, s. 6.

WHOSE ORDERS TO BE OBEYED.—And to prevent confusion on contradictory orders, the persons assembled to save any vessel or goods as aforesaid, shall conform in the first place to the orders of the master or other officers or owners, or persons employed by them; and for want of their presence or directions, then to the order of the officers of the customs, next to those of the officers of excise, then of the sheriff or his deputy, then of a justice of the peace, then of a mayor or chief magistrate, then of the coroner, then a commissioner of the land tax, then a petty constable or other peace officer:—and any person wilfully and knowingly acting contrary to such orders, shall forfeit not exceeding £5, to be levied by distress by the warrant of one justice, and in case of non-payment, he shall be committed to the house of correction for not more than three months. 26 G. II. c. 19, s. 13.

See also *ante*, “*Assaults*,” p. 36; “*Malicious Injuries*,” p. 282

APPENDIX.

Several references have been made throughout the work to Bills under the consideration of the Legislature; all those passed in time to be inserted, and which are of general importance to Magistrates in the execution of their duties, will be found in this work. For others, such as those relating to auctioneers, distillation, and hackney carriages, which, from their length and the late period at which they were passed, could not be inserted here, the reader is referred to the Acts themselves.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by proper documentation, such as receipts or invoices, to ensure the integrity of the financial data. This section also outlines the procedures for reconciling accounts and identifying any discrepancies that may arise.

The second part of the document provides a detailed overview of the accounting cycle, from the initial journalizing of transactions to the final closing of the books. It explains how each step contributes to the overall financial picture and how errors can be identified and corrected. The document also includes a section on the preparation of financial statements, such as the balance sheet and income statement, and how they are used to assess the organization's financial health.

Finally, the document concludes with a discussion on the role of the accounting department in providing valuable insights and advice to management. It highlights the importance of clear communication and collaboration between the accounting team and other departments to ensure the most effective use of resources and the achievement of organizational goals.

APPENDIX.

APPROPRIATION OF FINES AND PENALTIES.

11th Vict. No. 29.—An Act to amend an Act, intituled “An Act for the more effectual appropriation of Fines and Penalties, in certain cases, in the Colony of New South Wales.” Assented to 2nd October, 1847. See ante p. 175.

[Appropriation of fines and penalties under Acts of Parliament adopted in New South Wales.]

Whereas by an Act of the Governor and Legislative Council of New South Wales, intituled, “An Act for the more effectual appropriation of Fines and Penalties, in certain cases, in the Colony of New South Wales,” passed in the second year of the reign of Her present Majesty, provision was made for the appropriation, in this Colony, of certain fines and penalties, which in England are directed by certain statutes to be paid for the use of the poor of any parish, township, or other place: And whereas there are certain other laws and statutes in force within the realm of England, and which are also applicable to the said Colony, and which direct the appropriation of fines, forfeitures, and penalties, for the use of the general rates of the county, riding, or division, in which the township or place is situated, and it is expedient that such fines, forfeitures, and penalties, should be paid in like manner as prescribed by the said recited Act of Council: Be it therefore enacted, by his Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, that whenever any law or statute that is or shall be in force within the realm of England, and which shall be in other respects applicable to the said Colony, or which shall have been or shall be adopted in the said Colony, shall direct the appropriation of any fine, forfeiture, penalty, or sum of money, or any part thereof, to be paid to the overseers of the poor for the use of county or other rates, or to any person or persons, or for any purpose or purposes applicable to the state or circumstances of the said Colony, the same shall be and is hereby required to be paid at the discretion of the Justice, Judge, or Court, imposing the fine, forfeiture, or penalty, to the Treasurer or other authorized officer of any benevolent or charitable institution established, or to be established, in any district of the said Colony, for the relief of such poor persons as through age, accident, or infirmity, are unable to support themselves: Provided, that in any district, except as hereinafter provided, in which there is no such benevolent or charitable institution, the same shall be paid towards the support of the Benevolent Asylum in the City of Sydney: Provided also, that all fines, forfeitures, or penalties, which may be levied in those parts of the district of Port Phillip, where no such institution exists, shall be paid towards the support of the Melbourne Hospital.

[Not to affect the Royal prerogative.]

II. Provided always, and be it enacted, That nothing herein contained shall abridge or interfere with Her Majesty's Prerogative; and provided also that it

shall be lawful for the Governor of the said Colony (whenever he shall see fit) to remit the whole or any part of any of such fines, forfeitures, or penalties; and every such fine, forfeiture, or penalty, so remitted, shall become null and void, any conviction, suit, or other proceeding to the contrary notwithstanding.

ASSAULTS.—(INDECENT.)

Indecently assaulting any female child under the age of twelve years, whether such assault be with or without the consent of such child—*misdemeanor*. 11 Vict. No. 30, s. 4. See ante pp. 31 and 78.

CROWN LANDS.

PROCLAMATION.

By His Excellency Sir Charles Augustus Fitz Roy, Knight Companion of the Royal Hanoverian Guelphic Order, Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, &c., &c.

I, Sir Charles Augustus Fitz Roy, the Governor aforesaid, do, by this my Proclamation, publicly notify and declare, that Her Most Gracious Majesty the Queen has been pleased, by the Order in Council hereto annexed, to make and establish the Rules and Regulations therein contained, for regulating the occupation of the Waste Lands of the Crown in the Colony of New South Wales; and I do hereby notify and proclaim, that such Rules and Regulations shall and will come into effect within the said Colony, on and from the date of this my Proclamation thereof.

Given under my Hand and Seal, at Government House, Sydney, this seventh day of October, in the year of Our Lord one thousand eight hundred and forty-seven, and in the eleventh year of Her Majesty's reign.

(L. S.) CHS. A. FITZ ROY.

By His Excellency's command,

E. DEAS THOMSON.

GOD SAVE THE QUEEN!

9th and 10th Vict. c. 104.—“An Act to amend an Act for Regulating the Sale of Waste Land belonging to the Crown in the Australian Colonies, and to make further Provision for the Management thereof.” 28th August, 1846.

[Her Majesty may demise for a term of years, or grant licenses for occupation of Waste Lands in New South Wales, &c.]

Whereas it is expedient to make further regulations respecting the occupation

of the Waste Lands belonging to the Crown in the Colonies of New South Wales, South Australia, and Western Australia, and for that purpose to repeal so much of an Act passed in the Session of Parliament holden in the fifth and sixth year of her Majesty's reign, intituled "An Act for regulating the Sale of Waste Lands belonging to the Crown in the Australian Colonies," as would prevent such regulations from taking effect: be it therefore enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for her Majesty to demise for any term of years not exceeding fourteen, to any person or persons any Waste Lands of the Crown in the Colonies of New South Wales, South Australia, and Western Australia, or to grant to any person or persons a license for the occupation for any term of years not exceeding fourteen of any such Waste Lands, and to reserve upon such demise or license any such rent or pecuniary or other service, and to insert therein such conditions and clauses of forfeiture, as shall in manner hereinafter mentioned be prescribed and authorized, any thing in the said recited Act to the contrary in anywise notwithstanding: Provided always, that every such demise or license shall be made or granted subject to the rules and regulations hereinafter provided for.

[Appropriation of proceeds.]

II. And be it enacted, that the rent or pecuniary service so reserved on any such demise or license as aforesaid shall be applicable to such and the same purposes only, and shall be applied in such and the same manner as the sums produced by the sale of lands effected under the authority and in pursuance of the said recited Act.

[Justices may dispossess persons unlawfully occupying Waste Lands.—Not to extend to Occupiers of a certain time.]

III. And whereas it may be necessary that effectual provision should be made for protecting such Waste Lands as aforesaid from being occupied without authority, and also for dispossessing any person in the occupation of any such Waste Lands as aforesaid, in case of the forfeiture of any such demise or license, or in case of the breach or non-performance of the conditions thereof, or in case of the holding over by any such persons or person after the expiration of any such demise or license, or after the end of the term for which the same may have been granted or made; be it enacted, that on information in writing for that purpose preferred by the Governor for the time being of any such Colony as aforesaid, or by any person authorized by any such Governor on that behalf, to any Justice of the Peace acting in and for any of the Colonies aforesaid, or in and for any County or other district thereof, setting forth that any person or persons is or are in the unlawful occupation of any of the Waste Lands of the Crown in any such Colony, or is or are in the occupation of any such Lands in virtue or under colour of any such demise or license as aforesaid, although such demise or license had been forfeited, or although the conditions thereof had been broken or unfulfilled, or although such demise or license had expired, or although the term for which the same had been granted or made had come to an end, it shall be the duty of such Justice to issue his summons for the appearance before any two Justices of the Peace, at a place and a time therein to be specified, of the person or persons against whom any such complaint shall be so made, and at the time and place so to be specified such two Justices (on the appearance of the person or persons charged, or on due proof of the service on him, her, or them, or at his, her, or their usual place of abode, of any such summons) shall proceed to hear and inquire of the truth of the matter and things which may be alleged in any such information, and on being satisfied of the truth thereof, either by the admission of the person or persons charged, or on other good and sufficient evidence, the said Justices shall issue under their hand a warrant addressed to the Sheriff or Deputy Sheriff, or Commissioner, or other officer of the Colony or district acting for or on behalf of Her Majesty, commanding and

requiring him forthwith to dispossess and remove any such person or persons from any such Waste Lands of the Crown as aforesaid, and to take possession of the same for and on behalf of Her Majesty; and it shall be the duty of any such Sheriff, Deputy Sheriff, Commissioner, or other such officer as aforesaid, to carry such warrant forthwith into execution according to the tenor and exigency thereof: Provided always that nothing hereinbefore contained shall extend to any person having occupied Waste Lands within the boundary of location without interruption for the space of twenty years next before the passing of this Act.

[Penalties for the unauthorized occupation and use of Crown Lands.]

IV. And be it enacted, that from and after the day when this Act shall come into effect in the manner hereinafter mentioned any person, unless claiming under a sale or demise from her Majesty, or from some person acting in the name and on behalf of her Majesty, who shall be found occupying any Waste Lands of the Crown in any of the Colonies aforesaid, either by residing or by erecting any hut or building thereon, or by clearing, enclosing, or cultivating, any part thereof, or who shall depasture any cattle thereon, and who shall not previously have obtained a license from the said Governor for the occupation of such lands, or who shall occupy or depasture as aforesaid after such license shall have been determined by forfeiture or otherwise, shall be liable on conviction thereof to the penalties following, that is to say, for the first offence a sum not exceeding ten pounds, for the second offence a sum not exceeding twenty pounds nor less than ten pounds, and for the third or any subsequent offence a sum not exceeding fifty pounds nor less than twenty pounds: Provided always, that no information shall be laid or brought for any second or subsequent offence until the expiration of fourteen clear days from the date of the previous conviction.

[Mode of recovering penalties.]

V. And be it enacted, that the penalties hereinbefore imposed shall be recovered in a summary way before any one or more Justice or Justices of the Peace, upon the information or complaint on oath of the Governor for the time being of any such Colony as aforesaid, or of any person authorized by any such Governor on that behalf.

[Her Majesty in Council may make Rules and Regulations respecting the Occupation of Waste Lands, or preventing Abuses incident thereto.]

VI. And whereas it may be expedient that various rules and regulations should be made respecting the more effectually making demises or licenses for the term aforesaid of any such Waste Lands as aforesaid, and respecting the reservation on such demises or licenses of any such rents or other pecuniary services, and respecting the insertion therein of such conditions and clauses of forfeiture as aforesaid, and respecting the division of the said Colonies into districts, within which alone such demises or licenses may be made to take effect, and respecting the renewal of any such demises or licenses, and respecting the conflicting claims of different persons to obtain any such demise or license, and respecting any right of pre-emption which it may be proper to give the holders of any such demise or license, and respecting the forfeiture of any such demises or licenses on the conviction of any holders thereof of certain offences in any such Colony, and respecting any other matters and things which may be requisite, either for carrying into more complete effect the occupation in manner aforesaid of such Waste Lands as aforesaid, or for preventing the abuses incident thereto; be it enacted, That it shall be lawful for Her Majesty, by any order or orders in Council, to make and establish all such rules and regulations as to Her Majesty shall seem meet for the purposes aforesaid, or for any of them, and any such rules and regulations again to repeal, renew, alter, and amend, and that all such orders in Council shall have the force and effect of law in the Colonies aforesaid: Provided always, that nothing herein contained shall be construed to authorize the sale of any Waste Lands in the said

Colonies otherwise than in conformity with the provisions of the said Act, except to persons who shall be in actual occupation thereof under such demise or license as aforesaid, or to authorize the sale of any such lands for a lower price than the minimum price at that time established therein by the authority of the said recited Act: Provided also, that all such orders in Council shall be laid before Parliament within one month from the day of the date thereof respectively, if Parliament shall then be in session, or if not, then within one month next after the commencement of the then next ensuing Session of Parliament, and that no such order, repealing, renewing, altering, or amending, any such former order, shall be of any force or effect till the lapse of six months next after such repealing, renewing, altering, or amending order shall have been so laid before Parliament; and that all such orders in Council shall be published forthwith in the "London Gazette."

[Protection of persons acting in execution of the Act.]

VII. And for the protection of persons acting in execution of this Act: Be it enacted, that all actions or other proceedings for anything done under this Act shall be commenced within six calendar months after the matter complained of was committed, and not otherwise; and notice in writing of such action, and the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in every such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action was 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, together with costs incurred up to that time; and if a verdict shall pass for the defendant, or the plaintiff become nonsuited, or discontinue such action after issue joined, or if, upon demurrer or otherwise, 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 hath by law in other cases; and although a verdict shall be given for the plaintiff in 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, and of the verdict obtained thereupon.

[Proceedings not to be quashed or removed by certiorari.]

VIII. And be it enacted, that no order, judgment, or other proceeding made touching or concerning the matters aforesaid, or touching and concerning the conviction of any offender or offenders against this Act, shall be quashed or vacated for want of form only, or be removed or removable by certiorari, or any writ or process whatsoever, into any superior Court of jurisdiction in any such Colony.

[Definition of the words "Governor," and "Waste Lands."]

IX. And be it enacted, that the word "Governor," as employed in this Act, is intended to describe the officer for the time-being administering the Government of any of the Colonies aforesaid; and the words "Waste Lands of the Crown," as employed in this Act, are intended to describe any Lands in the said Colonies whether within or without the limits allotted to settlers for location, and which now are or hereafter shall be vested in Her Majesty, her heirs and successors, and which have not been already granted or lawfully contracted to be granted by Her Majesty, her heirs and successors, to any other person or persons in fee simple, and which have not been dedicated or set apart for some public use.

[Her Majesty may by Order in Council delegate certain powers to the Governor.]

X. And be it enacted, that it shall and may be lawful for Her Majesty, by any such Order in Council as aforesaid, to delegate to the Governor of any of the

Colonies aforesaid (on such conditions as Her Majesty shall see fit to impose) all or any of the powers hereby vested in Her Majesty, save only so far as respects the powers so to be exercised by Her Majesty as aforesaid by and with the advice of her Privy Council.

[Recited Act not to apply to land situated in New Zealand.]

XI. And be it enacted, that from and after the passing of this Act the said recited Act shall not apply to land situate in the Colony of New Zealand: Provided nevertheless, that nothing herein contained shall extend to invalidate any Act done in the said Colony, in pursuance of the said recited Act before or within one month after the passing of this Act shall have been made known by Proclamation by the Governor of the said Colony to the inhabitants thereof.

[Recited Act repealed where repugnant to this Act.]

XII. And be it enacted, that the said recited Act, so far as it is repugnant to this present Act, or would prevent the execution thereof, shall be and the same is hereby repealed.

[Commencement of Act.]

XIII. And be it enacted, that this Act shall take effect and have the force of law in each of the said Colonies of New South Wales, Southern Australia, and Western Australia, from and after a day to be specified by the Governor of each of such Colonies in some Proclamation to be issued by him for that purpose.

ORDER IN COUNCIL—RULES AND REGULATIONS.

At the Court at Osborne, Isle of Wight, the 9th day of March:—

PRESENT:

THE QUEEN'S MOST EXCELLENT MAJESTY,	
HIS ROYAL HIGHNESS PRINCE ALBERT,	
LORD PRESIDENT,	EARL OF AUCKLAND,
LORD PRIVY SEAL,	VISCOUNT PALMERSTON,
LORD CHAMBERLAIN,	BISHOP OF LONDON,
LORD CAMPBELL.	

Whereas by an Act passed in the present year of Her Majesty, intituled, "An Act to amend an Act for regulating the sale of Waste Lands belonging to the Crown in the Australian Colonies, and to make further provision for the management thereof," after reciting that it might be expedient that various rules and regulations should be made, respecting the more effectually making demises or licenses for any term of years not exceeding fourteen, of any such Waste Lands as therein mentioned, and respecting the reservation on such demises or licenses, of any such rents or other pecuniary services, and respecting the insertion therein of such conditions and clauses of forfeiture as are therein mentioned, and respecting the division of the said Colonies into districts within which alone such demises or licenses might be made to take effect, and respecting the renewal of any such demises or licenses, and respecting the conflicting claims of different persons to obtain any such demise or license, and respecting any right of pre-emption which it might be proper to give to the holders of any such demise or license, and respecting the forfeiture of any such demises or licenses, on the conviction of any holders thereof, of certain offences in any such Colony, and respecting any other matters and things which might be requisite, either for carrying into more complete effect the occupation in manner therein mentioned, of such Waste Lands as aforesaid, or for preventing the abuses incident thereto; it was enacted, That it should be lawful for Her Majesty, by any Order in Council, to make and establish all such Rules and Regulations as to Her Majesty

should seem meet for the purposes aforesaid, or for any of them, and any such Rules and Regulations again to repeal, renew, alter, and amend; and that all such Orders in Council should have the force and effect of law in the Colonies aforesaid :

And whereas it is expedient that the Rules and Regulations hereinafter contained, should now be made and established, for regulating the occupation of the Waste Lands of the Crown in the Colony of New South Wales, it is hereby Ordered by the Queen's Most Excellent Majesty, by and with the advice of the Privy Council, that within the said Colony of New South Wales, the Rules and Regulations comprised in the following Chapters shall henceforth be observed, and have the force and effect of law.

CHAPTER I.

AS TO THE DIVISION OF THE LANDS IN NEW SOUTH WALES.

[Classification of Lands.]

I. The lands in the Colony of New South Wales shall, for the purposes of the present Order, be considered as divided into three classes, and be dealt with accordingly, as they may be situated in districts to be denominated respectively as the settled, the intermediate, and the unsettled districts.

[Settled Districts.]

II. The settled districts of the Colony shall comprehend:—

First—the nineteen contiguous counties, the boundaries of which were settled and proclaimed before the 1st January, 1838.

Second—The counties or reputed counties of Macquarie and Stanley.

Third—The lands which may be within a distance of twenty-five miles, to be measured or reckoned from any point of the corporate limits of the town of Melbourne in the county of Bourke.

Fourth—The lands which may be within the distance of fifteen miles from any point of the outward limits of the town of Geelong, in the county of Grant.

Fifth—The lands which may lie within the distance of ten miles from any point of the outward limits of each of the following towns or townships, viz:—

Portland, in the county of Normanby. Alberton, in the district of Gipps Land, Eden, in the county of Auckland. Bathurst, in the county of Roxburgh. Wellington, in the county of the same name.

The town which has been established at the head of the navigation of the river Clarence.

The town of Macquarie in the county of Macquarie.

The town of Ipswich in the county of Stanley.

Sixth—The lands which may lie within the distance of three miles from any part of the sea, throughout the extent of the Colony, measured in a straight line.

Seventh—The lands which may lie within the distance of two miles from either of the two opposite banks of any of the following rivers, viz:—

The Glenelg from a point to be fixed by the Governor, not lower than where the Glenelg receives the waters of the Crawford, nor higher than where it receives the waters of the Wannon.

The Clarence from a point to be fixed by the Governor, at a distance not less than ten miles above the Government township, at the head of the navigation, and not less than fifty miles from the sea (measured in a straight line).

The river now known by the name of the Richmond, from a point to be fixed by the Governor, at a distance not less than twenty miles from the sea, measured along the course of the river.

[Intermediate Districts.]

III. The intermediate districts shall comprehend the lands lying within the counties or reputed counties of Bourke, Grant, and Normanby, in the district of Port Phillip which are not hereinbefore directed to be included in the settled lands; also all the lands in the county or reputed county of Auckland, which are not included in the settled lands as hereinbefore mentioned; also the entire district of Gipps Land, except the parts included in the settled lands as hereinbefore mentioned; also the counties, either already formed or intended to be formed, between the county of Auckland and the county of St. Vincent; also any county or counties of which the boundaries may be fixed and proclaimed on or before the 31st December, 1848.

[As to the unsettled districts.]

IV. The unsettled districts shall comprehend all the lands of New South Wales, excepting such lands as are now, or hereafter lawfully may be, comprehended within the limits of the settled and intermediate lands within the said Colony.

CHAPTER II.

RULES TO BE ENFORCED WITHIN THE UNSETTLED DISTRICTS.

[Leases for fourteen years.]

I. It shall be lawful for the Governor for the time being of the said Colony, and the officer for the time being administering the Government of the Colony, and he is hereby empowered to grant leases of runs of land within the unsettled districts, to such person or persons as he shall think fit, for any term or terms of years, not exceeding fourteen years in duration, for pastoral purposes, with permission, nevertheless, for the lessee to cultivate so much of the lands respectively comprised in the said runs as may be necessary to provide such grain, hay, vegetables, or fruit, for the use and supply of the family and establishment of such lessee, but not for the purposes of sale or barter; and so, nevertheless, that such leases shall in no case prejudice, interrupt, or interfere with the right of the Governor or other officer for the time being administering the Government of the said Colony to enter upon any of the lands comprised in the said leases for any purpose of public defence, safety, improvement, convenience, utility, or enjoyment, agreeably to the provisions for those purposes contained in the 9th section of the second chapter of this Order in Council, or otherwise.

[Amount of rent, how to be regulated.]

II. The rent to be paid for each several run of land shall be proportioned to the number of sheep or equivalent number of cattle which the run shall be estimated as capable of carrying, according to a scale to be established for the purpose, by authority of the Governor. Each run shall be capable of carrying, at least, four thousand sheep, or equivalent number of cattle, according to the scale aforesaid, and not in any case be let at a lower rent than ten pounds per annum, to which two pounds ten shillings per annum shall be added for every additional thousand sheep, or equivalent number of cattle which the run shall be estimated as capable of carrying.

[Mode of estimating number of sheep which a run will carry.]

III. In order to estimate the number of sheep or cattle which each run will carry before the granting of the said lease as hereinbefore mentioned, the intended lessee or occupier shall name a valuer, and the Commissioner of Crown Lands shall either act as valuer, or name one to act for him; and these two valuers

shall have power to choose, if necessary, an umpire; but if they cannot agree in the choice of an umpire, he shall be appointed by the Governor, or the officer for the time being administering the government of the said Colony.

[The rent of runs not to interfere with the assessment on sheep and cattle.]

IV. The rents to be paid according to the scale above mentioned, are to be reserved exclusively of any existing assessments of taxes or rates on sheep and cattle, and are to be paid without abatement on account of the existing or any future assessment of taxes or rates on sheep and cattle, and in no way to interfere with the right of the Colonial Legislature to impose from time to time such assessments as may be deemed advisable.

[Rent when and where to be paid, and penalty for non-payment.]

V. The rent for each run shall be payable yearly in advance, at such time and place as shall be respectively specified in the lease of the said run of land. In the event of default being made in payment of the rent, the lease shall be forfeited, but the lessee shall be permitted to defeat the forfeiture, and prevent its becoming absolute and indefeasible, by payment, within sixty days from the date of the original rent day, of the full annual rent, with the addition of a sum equal to one equal fourth part of the yearly rent so due from him, by way of penalty; but unless the whole of the said yearly rent, with such penalty as aforesaid, shall be duly paid within the term of sixty days, counting from the original rent day inclusive, the lease shall be absolutely and indefeasibly forfeited. And it shall be competent to any individual to demand of the Governor, or of the officer for the time being administering the government of the Colony, or of any officer or officers acting by his authority for the present purpose, that a fresh lease of the run so forfeited be offered to sale, under the general rule hereinafter provided for that purpose in section 12 of this chapter.

[During the lease, the land saleable only to occupant.]

VI. During the continuance of any lease of lands occupied as a run, the same shall not be open to purchase by any other person or persons except the lessee thereof. But it shall be lawful for the Governor or the officer for the time being administering the government of the said Colony, to sell to such lessee any of the lands comprised in the lease granted to such lessee, provided that the quantity of the lands sold to such lessee shall not be less than one hundred and sixty acres, and that the price to be paid for the same shall not be below the general minimum price of one pound for each acre: Provided also, that if the portion or lot of any such run sold to such lessee be less in extent than three hundred and twenty acres, the expenses of the survey of the portion so sold shall be paid by the purchaser.

[Form and water frontage of any lots sold within runs.]

VII. Every lot to be sold under the provisions before mentioned shall be subject to the following conditions:—

First—Each lot must be rectangular, unless the features of the country, or the course of any river or stream, render a deviation from the rectangular form necessary; and in every case, two sides at least of the lot must be directed to the cardinal points of the compass.

Second—The two opposite sides of any stream or watercourse which, according to the practice of the department of the Surveyor-General, ought to form a boundary between different sections or lots, shall in no case be included in the same lot.

Third—No single lot shall have more than four hundred and forty yards of water frontage for one hundred and sixty acres, or more than a like proportion of water frontage for any quantity greater than one hundred and sixty acres, but the water frontage shall be reckoned according to the distance from one extreme point thereof to the other in a right line, and not according to the bend-

ings of the watercourse or river; and the Governor or officer for the time being administering the government of the said Colony, shall have the right of refusing to sell any lot or lots, in every case where it may appear to him that the sale of such lot or lots respectively, might give an undue command over water required for the beneficial occupation and cultivation of the lands adjoining either side of any stream or watercourse.

[Reserves from sale and special prices.]

VIII. It shall be lawful for the Governor or Officer for the time being administering the government of the said Colony, to except, out of any such sale or sales as aforesaid, all such lands as it may appear to him expedient to reserve for any of the public uses for which it is enacted by the third clause of the Act passed in the fifth and sixth years of her Majesty, chapter 36, intituled "An Act for regulating the sale of Waste Lands belonging to the Crown in the Australian Colonies," that lands required for public uses may be excepted from sales authorized by that Act, and if there be reason to suppose that any of the lands applied for under the regulations hereby expressed possess peculiar advantages, whether of water frontage or otherwise, which would render it fit that a higher price should be paid for such lands, the Governor or the Officer for the time being administering the government of the said Colony, or any Officer authorized by him for the purpose, may require the said lands to be assessed by valuers appointed, in manner provided in section 3 of the second chapter of this Order in Council, in order that the value, if estimated by them or their umpire at more than one pound per acre, the higher amount may be paid for such lands accordingly.

[Grants for public purposes.]

IX. That nothing in these Regulations, or in any lease to be granted under the powers hereby vested in the Governor, shall prevent the said Governor or Officer for the time being administering the Government of the said Colony, from making grants or sales of any lands within the limits of the run or lands comprised in such lease, for public purposes, or disposing of in such other manner as for the public interest may seem best, such lands as may be required for the sites of churches, schools, or parsonages, or for the construction of high roads or railways and railway stations, or other internal communications, whether by land or water, or for the use or benefit of the aboriginal inhabitants of the country, or for public buildings, or as places for the interment of the dead, or places for the recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, or landing places on the sea coast or shores of navigable streams, or for the purpose of sinking shafts and digging for coals, iron, copper, lead, or other minerals, and effectually working coal, or iron, or copper, lead, or other minerals, or for any other purpose of public defence, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the Colony; but so that the quantity of land which may be granted or sold to any railway company shall not exceed in all the rate of one hundred acres for every mile thereof in length.

X. That if at any future period a railroad be made through or near to the districts comprising unsettled lands, all lands within the distance of two miles from that railroad shall, notwithstanding any lease of the run within which such lands shall be situated, be liable to be sold at the end of each successive year from the date of the said lease; provided that at least sixty days previous notice shall have been given to the lessee, and so that such lessee shall be entitled to all the same conditions reserving to the previous lessee the right of pre-emption and the value of improvements as are hereinafter mentioned, with reference to the case of a sale at the expiration of the full term of such lease.

[Mode of acquiring leases of existing runs.]

XI. All occupants of Crown lands who shall have been in licensed occupation of

the same for at least one year at the time when this Order in Council shall come into effect, are to be entitled to demand leases of their respective runs under the present regulations; within six months from the date of the publication of this Order in Council by the Governor or other officer administering the Government of the said Colony, but not afterwards; and all occupants who have been in licensed occupation of their lands for a shorter period than the term of one year, shall be entitled upon the expiration of the same term of one year, without having forfeited their respective licenses, to demand leases of their respective runs, under the regulations herein contained; provided such lease shall be lawfully demanded within six months after the expiration of the said term of one year, but not afterwards.

[Mode of acquiring leases of forfeited or vacant runs.]

XII. When any run of lands, after being occupied, shall be forfeited, or become vacant without the previous occupant's having exercised his right of renewal hereinafter reserved, it shall be competent for any person desirous of acquiring a lease of such run of lands, to give notice to the Governor or Officer for the time being administering the Government of the said Colony, of his, her, or their desire to purchase anew the lease of such run of lands, and immediately after such notice the Governor or Officer administering the Government of the said Colony shall direct sealed tenders to be sent in at such time and place, and in such form as he shall think fit, by the person giving such notice as aforesaid; and also by such other person (if any) as may be disposed to enter into competition for the said lease; and every tender so to be made shall state the term of years for which it is proposed to take the said run, and whether in addition to the minimum rents required agreeably to the provisions contained in sections 2 and 3 of the second chapter of this Order in Council, it is proposed to offer any, and if any, what amount of premium for the lease; and the said tender or tenders shall be opened in the presence of two or more persons authorized by the Governor or officer for the time being administering the Government of the said Colony for that purpose, and if there shall be more than one tender, the tenders shall be opened at the same time, and if there shall be only one tender the lease of the run shall be given to the person making such tender, provided the rent offered shall be admissible under the provisions contained in sections 2 and 3 of this chapter of the Order in Council; but if there shall be more competitors than one, the lease of the run shall be given to such person or persons as shall tender the highest amount of premium for the same; but if two or more tenders shall be made for the same run and no one of them be higher than all the rest, a future day shall be announced by the persons who open the tenders, on which day it shall again be competent to all persons to offer fresh tenders in the same manner as hereinbefore provided in regard to the first tenders.

[Mode of acquiring leases of new runs.]

XIII. If any individual be desirous to acquire a new run of land which has never been occupied before, he shall be at liberty to send in a sealed tender, at such time and place, and in such form, as may be appointed by the Governor or officer administering the Government of the said Colony for receiving tenders for new runs, and shall set forth in his tender a clear description of the run for which he applies and of the boundaries of the same, and shall state whether, beyond the amount of rent to be ascertained as hereinbefore provided, he is willing to offer any, and if any, what amount of premium for the lease, and such tenders shall be in all respects dealt with as hereinbefore provided in section twelve of this Order in Council for tenders for runs, which have been forfeited or fallen vacant, save and except that if it shall occur that two or more persons have thus applied for different runs, of which part of one run would include part or the whole of another run, the Governor or officer for the time being administering the Government of the said Colony, or the person or persons authorized by him to act in this behalf, shall declare what shall be the several runs, for which it shall be

competent to parties to tender, and another day shall then be named, at which the previous applicants, and all other persons shall be at liberty to offer fresh tenders for the runs so delivered.

[Mode by which a lease may be forfeited.]

XIV. A lease shall be liable to forfeiture in three modes :—

First—It shall be forfeited for non-payment of rent, as provided in section 5 of the 2nd chapter of this Order in Council.

Second—It shall be forfeited absolutely, immediately upon any conviction for felony against the lessee ; and

Third—In the event of his conviction by a Justice of the district for any offence against the law, the case may be enquired into within three months after the conviction by two or more Justices, who if they think fit, may adjudge the lease to be forfeited with or without compensation for the value of the improvements, according to the nature of the offence : Provided always, that no such adjudication of forfeiture pronounced by the Justices, shall take effect until confirmed by the Governor or officer administering the Government of the said Colony.

[Conditions of sale after the expiration of a lease.]

XV. Upon the expiration of a lease, it shall be competent for the Governor or officer administering the Government of the said Colony, to put up all or any part of the lands included in a run for sale, subject to the following conditions :—

First—The previous lessee shall have the option of purchasing the land for its fair value in an unimproved state, which shall never be estimated at less than £1 per acre.

Second—If declined by the previous lessee, the value of any improvements on the land offered for sale shall be ascertained by valuers appointed under the provisions contained in section 3 of the second chapter of this Order in Council : Provided nevertheless, that the sum so to be estimated and allowed for, is in no case to exceed the amount of the actual outlay made by the lessee.

Third—The upset price shall then consist of the joint value of the land and the improvements, and if the land be sold, the amount of the improvements shall be paid over to the previous lessee, and only the balance be retained by the Government.

[Conditions of renewal.]

XVI. If no part of the run be sold, the previous lessee shall be entitled to a renewal of the lease of the whole, or if any part of the run, not amounting in all to one equal fourth thereof, be sold, such lessee shall be entitled to a renewal of the lease for the remaining parts of the lands comprised in his run, subject to the reservation of an increased rent described in the next hereinafter following section of these rules and regulations ; and provided, nevertheless, that the boundaries of the different classes of land in the Colony shall not in the mean while have been so far extended as to bring the said run within the class of settled lands ; and provided also, that if brought within the class of intermediate lands, the lessee shall only obtain a renewed lease of the said run under the rules hereinafter laid down as applicable to that class of lands.

[Amount of rent on all after the first lease of run.]

XVIII. The rent of every lease of a run of land, after the expiration of the first lease granted under this Order in Council, is to be paid by any new lessee on the number of sheep and cattle which the run shall be estimated to carry in its improved, instead of its unimproved state, in the same manner as provided for in section 3 of the second chapter of this Order in Council ; but as an encouragement to improve, the lessee, whose lease shall be renewed, is to be exempt from paying any increase beyond fifty per cent. upon the amount of rent reserved under the expired lease.

CHAPTER III.

RULES APPLICABLE TO INTERMEDIATE LANDS.

[Leases for eight years but with a liability to sales under certain restrictions at the end of every year.]

I. Within lands coming under the description of intermediate lands the interest in runs shall be acquired, held, and determined, upon the same terms and conditions as above laid down for unsettled lands, excepting that the leases shall not be made for more than eight years in duration, and that at the end of each successive year from the date of the lease, it shall be competent for the Governor or Officer for the time being administering the Government of the said Colony, provided he shall have given sixty days' previous notice, to offer for sale all or any part of the lands within any such run, subject to the same conditions in favour of the lessee as are above laid down in case of a sale at the expiration of the full term of a lease of unsettled lands.

CHAPTER IV.

RULES APPLICABLE TO SETTLED LANDS.

I. Within the boundaries of the settled lands, it shall be competent for the Governor or Officer for the time being administering the Government of the said Colony, to grant leases of lands exclusively for pastoral purposes, for terms not exceeding one year; and it shall further be competent for the Governor or Officer for the time being administering the Government of the said Colony, if he deem it expedient, to make general rules, under which the holders of purchased lands within such districts of settled lands may be permitted to depasture, free of charge, any adjacent Crown Lands: Provided that the depasturage of such unsettled lands free of charge shall in no way interfere with the right of the Government at any time to dispose of the same, either by sale or by lease for one year as above mentioned.

And the Right Honorable Earl Grey, one of Her Majesty's Principal Secretaries of State, shall give the necessary directions herein accordingly.

WM. L. BATHURST.

Colonial Secretary's Office,
Sydney, 7th October, 1847.

LEASES OF CROWN LANDS BEYOND THE SETTLED DISTRICTS.

1. His Excellency the Governor, in reference to his Proclamation of this date, publishing Her Majesty's Order in Council, regulating the occupation of Waste Lands of the Crown within this Colony, deems it proper to caution the Licensed Occupants of Waste Lands of the Crown beyond the settled districts, that the rights conferred on them by the 11th section of cap. II. of the Regulations must be exercised within the periods in that section prescribed, by relation to the date of the Proclamation above referred to, publishing the said Order in Council.

2. The applications must be lodged in the office of the Colonial Secretary, in Sydney, if the lands for which the Lease is applied for be situated within the Sydney or Middle District; or of His Honor the Superintendent at Melbourne, if within the Southern or Port Phillip District; and in order to preserve uni-

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formity, the applicants will be required to use the printed forms—copies of which may be obtained from the Commissioners of Crown Lands beyond the Settled Districts, as well as at the Office of the Superintendent at Melbourne, and at this Office.

3. All such applications must set forth the names and clear descriptions of the runs applied for, and of the boundaries of the same, as prescribed with respect to new runs, by the 13th section of chap. II. of the Order in Council. In such descriptions it will be necessary to refer to leading geographical features, and marked or determined boundary lines, as well as to the names of the occupants of adjacent Lands, and to give the length and general direction of the several boundary lines with reasonable certainty; and also to state the supposed extent of the runs, and the number of sheep, or equivalent number of cattle, which each run may be estimated as capable of carrying.

4. An abstract of all applications received will, from time to time, be published in the "New South Wales Government Gazette," or "Port Phillip Government Gazette," for the information of all parties concerned.

5. Persons who object to the claims of others, either wholly or in part, as comprising lands to the lease of which they may conceive themselves entitled, are recommended to lodge in the office of the Colonial Secretary, or Superintendent of Port Phillip, caveats referring to such claims, and specifying the lands to which their objections extend, and the grounds on which they prefer their claims to the same.

6. It will be impossible that the issue of leases should take place immediately on demands being made for them. In many cases the Government may not be able until the end of the year 1848, to determine whether the particular runs applied for, will be included in the intermediate or unsettled districts, and in all cases it will be necessary to consider and decide on the claims of applicants—to verify the descriptions of the runs—and to estimate the number of sheep or cattle which each run will carry—and the rent accordingly to be paid. His Excellency however desires at the same time to intimate, that all practicable despatch will be used, for the purpose of putting the occupants of Crown Lands in possession of the leases, to which they may be entitled under Her Majesty's regulations.

By His Excellency's command,

E. DEAS THOMSON.

CROWN LANDS—ASSESSMENT UPON STOCK.

The 11th Vict. No. 18.—"An Act to authorize, for a limited time, an assessment upon Stock pastured beyond the settled Districts of New South Wales." [Assented to 17 September, 1847.]

[Preamble.—Yearly assessment on stock.]

Whereas it is necessary to make provision for the protection and good government of all persons residing beyond the settled districts of the Colony of New South Wales, and by reason thereof it is expedient that an assessment should be raised and levied upon all stock pastured beyond the said settled districts: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, that in each and every year, there shall be levied and paid upon and in respect of the stock of every person pasturing or keeping the same, upon any lands situate beyond the settled districts of the said Colony, as the same now are, or hereafter may be, defined,

the assessment following, that is to say :—for every sheep, the sum of one half-penny, for every head of cattle, the sum of one penny halfpenny, and for every horse, the sum of three-pence; which assessments, respectively, shall be paid by the person assessed, before the first day of April in each year, at the office of the Colonial Treasurer in Sydney, or Sub-Treasurer at Melbourne, or to such other officer or officers, or at such other place or places, as shall be appointed in that behalf, by the Governor for the time being.

[Persons pasturing stock to make returns to Commissioner.—Penalty for neglect.]

II. And be it enacted, that every person pasturing or keeping stock as aforesaid, shall make, or cause to be made, to the Commissioner of the district wherein the said stock is pastured, a Return, on the first day of January, or within fourteen days thereafter, in each and every year, according to the form contained in the schedule hereunto annexed, marked A, of all sheep, cattle, and horses, kept and pastured by him, as aforesaid; and if any such person shall fail or neglect to make, or cause to be made, such return at the time so appointed, or shall omit to deposit the same with the said Commissioner, in manner hereby required, he shall, on conviction before any two or more Justices of the Peace, forfeit and pay for every such offence, a sum not less than forty shillings, nor exceeding fifty pounds.

[Commissioner to impound and sell stock not so returned, unless in the mean time claimed, and all charges paid.—Proviso.]

III. And be it enacted, That after the first day of March in each year, it shall and may be lawful for the Commissioner and his assistants in each and every district, (but subject to such directions as the Governor may think proper to give in any case) to seize and drive to the nearest or most convenient pound all cattle and horses pasturing as aforesaid, whereof a return shall not by that time have been made by the person keeping or pasturing the same, in conformity with the provisions in that behalf hereinbefore contained, and the said cattle and horses to sell and dispose of at such pound, according to the ordinary course of sales of cattle and horses impounded for trespasses, unless, in the mean time, the owner thereof shall have claimed the same, and shall pay, by way of penalty, to the said Commissioner, or poundkeeper, the sum of two shillings and sixpence for every head of such cattle and horses, together with the expenses chargeable thereon for poundage and food, which penalty and expenses the owner of such cattle and horses shall be liable to pay: Provided always, that upon such claim being made by a person who shall satisfy the said Commissioner or poundkeeper that he is the lawful owner of any such cattle and horses so impounded, and upon such payment as last aforesaid, the said cattle and horses shall be restored to such owner: And provided further that all moneys realized by any such sale as hereby authorized, and all payments made as aforesaid, shall be forthwith transmitted by or through the said Commissioner to the Colonial Treasurer at Sydney, or the Sub-Treasurer at Melbourne, or to such other officer as may in that behalf be appointed by the Governor, and the surplus realized by any such sale as aforesaid over and above the amount of such penalty as last aforesaid, and the expenses aforesaid, shall be paid to the owner of any such cattle and horses so sold, upon a certificate from the said Commissioner of his being such owner.

[Returns to be verified by declaration.]

IV. And be it enacted, That the person making such return as aforesaid, shall verify the same by a declaration in the form or to the effect prescribed in the said schedule, (which declaration any Justice of the Peace is hereby empowered to administer) that the several matters and things contained in such return are true, to the best of his knowledge and belief; and if any person shall wilfully make therein any false statement as to any material particular, he shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to fine and imprisonment, or either.

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[Commissioner to make annual return to Colonial Treasurer, according to which assessment to be charged.]

V. And be it enacted, That the several Commissioners shall, at the beginning of each and every year, make an assessment on the stock pastured within their respective districts, and shall on or before the first day of February then next ensuing, make a return thereof to the said Colonial Treasurer or Sub-Treasurer, or other person appointed as aforesaid, in the form, and containing the several particulars, set forth in the Schedule to this Act annexed, marked with the letter B, according to which Return the assessment, hereinbefore mentioned, shall, upon notice as hereinafter provided, be due and payable as aforesaid, by the persons therein assessed, except in so far as the same may be affected by any order made on appeal, under the provisions hereinafter contained.

[Commissioner to give notice to parties of amount of assessment.]

VI. And be it enacted, that the said several Commissioners shall, not less than one calendar month previous to the time hereinbefore appointed for the payment of the said assessment, cause a notice in writing, in the form contained in the Schedule hereunto annexed marked C, to be served upon each person assessed, or to be left at the residence of such person (if within the district), or with the superintendent or person having the charge of his stock (if the owner thereof shall not reside within the district), apprising him of the amount of the assessment with which he is liable, and requiring him to pay the said amount at the office of the said Colonial Treasurer, or of the said Sub-Treasurer, or other place appointed as aforesaid, before the first day of April next ensuing.

[Persons aggrieved to appeal to Petty Sessions.]

VII. And be it enacted, that any person assessed as aforesaid, who shall consider himself aggrieved by such assessment, may appeal to the nearest Court of Petty Sessions : Provided that within ten days after the service of the said notice of assessment, the person assessed, or some one on his behalf, shall give to the said Commissioner a notice, in writing, of his intention to make such appeal upon some day to be therein mentioned, not later than fourteen days after the date of such last mentioned notice ; and the Justices sitting in Petty Sessions shall hear and determine the matter of the said appeal in a summary way, and shall make such order therein as to them shall seem meet, according to the true intent and meaning of this Act ; and in case of the dismissal of the appeal, or the affirmance of the said assessment, wholly or in part, or in case the party assessed, or some person on his behalf shall not appear to prosecute the appeal, the Court shall order and adjudge the person so assessed to pay, within ten days, the amount of such assessment, or of such part thereof as they shall have determined to be payable, into the office of the said Colonial Treasurer or Sub-Treasurer, (or other place appointed as aforesaid) and also such costs and expenses as may be awarded to the said Commissioner by the said Court ; and if such assessment, costs, and expenses be not paid within such time, the said Court shall and may issue a warrant to levy the amount thereof by a distress and sale of a sufficient part of the stock, in respect of which such assessment shall have been made as aforesaid, and the surplus if any, after payment of such assessment, costs, and expenses, shall be paid to the owner of such stock.

[In cases of refusal or neglect to pay assessment, &c., Colonial Treasurer to issue warrant to levy amount.]

VIII. And be it enacted, That in case any person liable to pay any such assessment as aforesaid, or in case any person so adjudged to be liable to payment of the said assessment, or any part thereof, upon appeal or notice of appeal as aforesaid, shall refuse or neglect to pay the same upon the day appointed by such notice, or within the time appointed in case of appeal as aforesaid, as the case may be, it shall and may be lawful for the said Colonial Treasurer, or Sub-Treasurer at Melbourne, or other person appointed by the Governor in that be-

half, and he is hereby required forthwith after the expiration of one month from the day or time so appointed, to issue a warrant, under his hand, to the Commissioner in whose district any person so refusing or neglecting to pay as aforesaid shall reside, directing the said Commissioner and his assistants to levy the amount which such person is so liable to pay as aforesaid, together with an additional sum, equal to one-fifth part of that for which he is so liable, by way of penalty for such refusal or neglect, by a distress of a sufficient part of the stock, in respect of which the assessment shall have been made as aforesaid; and such Commissioner and his assistants, to whom such warrant shall be so directed, are hereby authorized, under and by virtue thereof, to distrain, take, and drive to the nearest or most convenient pound, such and so many of the stock of the party in said warrant mentioned, as shall be sufficient (when sold) to pay the amount of such assessment and penalty, and the costs and expenses of making such distress, and the payment of the maintenance of such stock, till sold; and the said stock (or a sufficient part thereof) to sell and dispose of at such pound, according to the ordinary course of sales of stock impounded for trespasses (unless previously thereto the said assessment, penalty, costs, and expenses shall be paid); and the proceeds thereof shall be applied to the payment of the assessment, penalty, costs, and expenses aforesaid, and the surplus (if any) shall be paid to the owner or superintendent of the said stock: Provided, however, that when such warrant shall be so issued as aforesaid, in case the amount of the assessment and penalty therein mentioned shall be tendered to the person charged with the execution of such warrant, then and in such case the said person shall and he is hereby authorized to accept and receive the said amount, and to give a receipt for the money so received, and to refrain from making and executing the said distress.

[Mode of recovering penalties.—5 William IV. No. 22.]

IX. And be it enacted, That all penalties, fines, and forfeitures, incurred or imposed under this Act, shall and may be sued for and recovered in a summary way, before any one or more Justice or Justices of the Peace, under and according to the provisions of an Act made and passed by the Governor of New South Wales, with the advice of the Legislative Council thereof, in the fifth year of the reign of His late Majesty King William the Fourth, intituled, "An Act to regulate summary proceedings before Justices of the Peace."

[All actions for things done under this Act to be brought within six months.—Plaintiff shall not recover if tender of amends made before action brought, or a sufficient sum paid into Court after action brought.]

X. And for the protection of persons acting in execution of this Act: Be it enacted, That all actions for anything done under this Act, shall be commenced within six calendar months after the fact was committed, and not otherwise; and notice in writing of such action, and the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action, and in every such action, the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; 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, together with costs incurred up to that time; and if a verdict shall pass for the defendant, or the plaintiff become nonsuited, or discontinue such action after issue joined, or if upon demurrer or otherwise, 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 hath by law in other cases.

[Appropriation of sums payable under this Act.]

XI. And be it enacted, That all sums of money payable under and by virtue of this Act, shall be paid to Her Majesty, Her heirs and successors, for the

maintenance of a police force and other local purposes beyond the said settled districts, and shall be applied thereto, in such manner as may from time to time be directed by any Acts to be passed by the Governor and Legislative Council of the said Colony.

[No *certiorari*.]

XII. And be it enacted, That no order, judgment, or other proceeding made, touching and concerning any of the matters aforesaid, or touching and concerning the conviction of any offender against this Act, shall be quashed or vacated for want of form only, or be removed or removable by *certiorari*, or by any writ or process whatsoever, into Her Majesty's Supreme Court of New South Wales.

[All informations to be brought by Commissioners.]

XIII. And be it enacted, That all prosecutions, suits, actions, informations, or complaints, to be brought under or by virtue of this Act, or upon or by reason of the breach of any of the provisions thereof, shall and may be so brought by any Commissioner for and on behalf of Her Majesty, Her heirs and successors; but nevertheless such Commissioner shall and may be admitted to give evidence in or upon any such prosecution, suit, action, information, or complaint; and that upon any proceeding before Justices of the Peace under this Act, it shall not be necessary to have a formal information, but it shall be sufficient that the cause of complaint or proceeding shall be stated with reasonable distinctness, by affidavit or deposition.

[All prosecutions, &c., for breaches of this Act to be brought within twelve months.]

XIV. And be it enacted, that no prosecution, suit, or complaint, shall be brought under or by virtue of this Act, by reason of the breach of any of the provisions thereof, after the lapse of twelve calendar months from the occurrence of the matter or thing to which such prosecution, suit, or complaint, may relate: Provided nevertheless, that nothing herein contained shall be deemed to extend to any information or prosecution for the wilfully making and subscribing any false declaration.

[Interpretation of clause.]

XV. And be it enacted, that in the construction of this Act the term "Commissioner" shall be deemed and taken to mean a Commissioner of Crown Lands appointed by the Governor for the time being; and the term "District" shall be deemed and taken to mean the limits within which a Commissioner of Crown Lands has been, or may hereafter be appointed to act; and the term "stock" shall be deemed and taken to mean and include sheep, cattle, and horses; and the word "sheep" when specifically used in this Act, shall be deemed and taken to mean and to include rams, ewes, wethers, and lambs: and the word "cattle" when specifically used in this Act, shall mean and include bulls, cows, oxen, heifers, steers, and calves; and the word "horses" when specifically used in this Act, shall mean and include horses, mares, geldings, colts, and fillies; and unless there be something in the subject or context repugnant to such construction, every word importing the singular number or the masculine gender only shall be understood to include, and shall be applied to several persons, matters, or things, as well as one person, matter, or thing, and females as well as males respectively.

[Commencement of Act.]

XVI. And be it enacted, that this Act shall commence from and after the thirty-first day of December now next ensuing, and shall thenceforth continue in full force and effect, for a period of five years, and no longer.

CROWN LANDS—ASSESSMENT UPON STOCK. 515

SCHEDULES REFERRED TO.

A.

First Day of January, 18 . . . , in
 Return of Live Stock, kept and pastured by Mr. . . . , in
 the District of . . . , beyond the settled Districts of the Colony,
 rendered in conformity with the Provisions of the Act of the Governor and
 Council, Victoria, No. . . .

STATION.	Person Superintending.	Estimated Extent of Run.	Stock on Station belonging to, or in charge of Mr. . . .		
			Horses, and how branded.	Cattle, and how branded.	Sheep, and how marked.

I, A. B., do solemnly declare that, to the best of my knowledge and belief, the foregoing is a true and faithful account of all sheep, horses, and cattle, of every kind kept or pastured by me, or under my charge, on the several stations above mentioned, within the district of . . . ; and I make this declaration by virtue of the Act of the Governor and Council of New South Wales, Victoria, No. . . .

A. B.
 Proprietor or Superintendent,
 (as the case may be.)

Declared before me, at
 this . . . day of . . . , 18 . . .)
 J. P. . . .)

516 CROWN LANDS—ASSESSMENT UPON STOCK.

B.

First Day of 18 .
 Yearly Return of Live Stock in the District of
 with a Statement of the amount of Assessment chargeable thereon in accord-
 ance with the Provisions of the Act of the Governor and Council,
 Victoria, No.

Stations or Runs.	Persons Assessed.		Persons Superintending.	Estimated Extent of each Run.	Stock at each Station.			Amount of Assessment.	TOTAL.
	Lessees.	Licensed Occupants.			Horses, Three-pence per Head.	Cattle, Three half-pence per Head.	Sheep, one halfpenny per Head.		

Signature of
 Commissioner.

C.

• District of

No. |

Commissioner of Crown Lands Office,
 , 18 .

The Amount with which you are assessed for the year from 1st January to 31st December, 18 , under the provisions of the Act of the Governor and Council Victoria, No. , on the undermentioned Stock pastured by you in this District, is as follows, viz. :—

....Horses	at 3d. per head	£	s.	d.
....Head of Cattle	at 1½d. per head			
....Sheep	at ½d. per head			

£

which said sum of pounds, shillings, and pence, you are hereby required to pay at the Office of the Honorable the Colonial the Treasurer,

in Sydney (or at _____, as the case may be) before the first day of April next.

Or if you consider yourself as having any just cause for appealing against the said assessment, you will please to observe that notice of such appeal must be lodged with me within ten days from the date of the delivery of this notice, in the manner prescribed by the said Act. As witness my hand at this _____ day of _____, 18 _____.

Commissioner of Crown Lands.

To _____ }
_____ }

JURY.

11th Vict., No. 20.—“An Act to consolidate and amend the Laws relative to Jurors and Juries in New South Wales.” [Assented to, 17th September, 1847.]

[Preamble.—Qualification of Jurors.]

Whereas the laws relative to the formation and return of juries for the trial of civil and criminal issues, in the Colony of New South Wales, are numerous and for the most part temporary, and it is expedient to consolidate and amend the same: Be it therefore enacted by His Excellency the Governor of New South Wales, by and with the advice and consent of the Legislative Council thereof, That every man, except as hereinafter excepted, above the age of twenty-one years, residing within the Colony of New South Wales, who shall have, within the said Colony, in his own name, or in trust for him, a clear yearly income arising out of lands, houses, or other real estate, or a clear yearly income arising partly from real and partly from personal estate, of at least thirty pounds by the year, or a clear real or personal estate of the value of at least three hundred pounds, shall be qualified and shall be liable to serve on juries for the trial of all issues, civil and criminal, and for the assessment of damages in all actions at law in this Colony.

[Exemptions from serving on juries.]

II. Provided always, and be it enacted, That all Judges of the Supreme Court, Commissioners of the Courts of Requests, Chairman of the Courts of General and Quarter Sessions of the Peace, and all ministerial officers of the said Courts respectively; all Members of the Executive and Legislative Councils for the said Colony, and the respective ministerial officers thereof; all persons holding offices under the departments of the Customs and Colonial Distilleries, and of the Colonial Secretary, the Surveyor-General, the Treasury, Audit Office, and Post Office respectively; the persons respectively holding the office of Mayor, Town Clerk, and Principal Surveyor, of the City of Sydney, and the Town of Melbourne; all clergymen in holy orders, priests of the Roman Catholic faith, and other ministers of religion having established congregations; all barristers, attorneys, solicitors, and proctors, duly admitted to practise and actually practising; all coroners and gaolers; all physicians, surgeons, apothecaries, and druggists, in actual practice; all military and naval officers on full pay; all licensed pilots and masters of vessels actually employed in trading; all Sheriff's

officers, stipendiary Magistrates, constables, and peace officers; all household officers, and servants of the Governor of the Colony; all schoolmasters and parish clerks; or such other persons, either holding office, or being in the public service, as the Governor of the Colony may think it expedient to exempt, and shall accordingly exempt, from service on juries (and of which exemption notice shall be given to the Sheriff) either generally or for a limited period; all managing directors, managers, cashiers, and tellers of any banking establishment; all persons above the age of sixty years, who shall claim exemption at any Court of Petty Sessions held for correcting the jury lists as hereinafter provided; and all persons incapacitated from discharging the duty of jurymen by disease or infirmity, shall be, and are hereby absolutely freed and exempted from being returned, and from serving upon any juries whatsoever, and shall not be inserted in the lists to be prepared by virtue of this Act.

[Disqualifications for serving on juries.]

III. Provided also, and be it declared and enacted, that no man not being a natural born subject of the Queen, and no man who hath been, or shall be, attainted of any treason or felony, or convicted of any crime that is infamous, (unless he shall have obtained a pardon thereof, or shall be within the benefit and protection of some Act of Parliament giving the force and effect of a pardon under the great seal for such crime), and no man who has been twice convicted, in any part of the British dominions, of any treason, felony, or infamous crime, is or shall be qualified to serve on any jury under this Act.

[Jurors' districts created.]

IV. And be it enacted, that the police district of Sydney shall be the jurors' district for Sydney, in respect of all Courts to be holden within that city, by or before the Supreme Court or any Judge thereof; and that the said police district of Sydney aforesaid shall be the jurors' district for the said city, in respect of all Courts of Quarter Sessions held therein; and that all other parts of the county of Cumberland, without the said police district of Sydney, shall be the jurors' district for the town of Parramatta; and that the jurors' district for every other town or place within the said Colony, at which any Court for the trial by jury of civil and criminal issues, and the assessment of damages, or any Court of General or Quarter Sessions of the Peace, has been or shall hereafter be appointed to be holden, shall comprise a circuit of thirty miles around every such town or place, and be called the "jurors' district" for such town or place: Provided always, that wherever and whenever, from the relative distances of the places for holding any two of such last mentioned Courts, the said circuit of thirty miles around each of them would in the direction between them be partially identical, then the respective jurors' districts for such Courts respectively shall, in such direction as aforesaid, be limited and bounded by a straight line between the points of intersection of such circuits.

[Clerk of Petty Sessions, in the first week in August, in every year, to require chief constable to make out, by the middle of September, a true list of men in the district liable to serve as jurors.]

V. And be it enacted, that the clerk, or senior clerk of Petty Sessions, if there be more than one, of the police district in which shall be situated any town or place where any such Court for the trial by jury of civil and criminal issues, and assessment of damages, or of General or Quarter Sessions of the Peace, has been or shall hereafter be appointed to be holden, shall within the first week in August in every year, issue a notice in writing to the chief constable of the said police district, in the form in Schedule A hereto annexed, requiring him to make out, before the fifteenth day of September then next ensuing, a true list of all men within the jurors' district of such town or place liable to serve on juries according to this Act, and shall, at the same time, furnish him with the form of return set forth in the Schedule hereto annexed marked B.

[Lists to be prepared by chief constables.]

VI. And be it enacted, that the chief constables in every such police district as aforesaid shall forthwith, after the receipt of the said notices, prepare and make out in alphabetical order a true list of every man residing within their respective jurors' districts, and being within the distances hereinbefore specified respectively, who shall be qualified and liable to serve on juries as aforesaid, with the true Christian and surname correctly and legibly written at full length, and with the true residence, degree, calling, or business, and nature of the qualification, of every such man, in the proper columns of the said form of return; and the chief constables of other police districts, within which portions of any such jurors' district as aforesaid may happen to be, are hereby required to assist such first mentioned chief constables in preparing and making out such lists as aforesaid, by communicating to them respectively the residences, names, additions, and nature of qualifications, of all persons within such last mentioned police districts, as shall be liable and qualified to serve on juries at any such town or place as aforesaid.

[Lists to be published by chief constables.]

VII. And be it enacted, that the chief constable of each police district, within which any such town or place as aforesaid shall be situate, having made out, according to this Act, a list of every man qualified and liable to serve on juries as aforesaid, shall, within the first week of the month of September, fix a true copy of such list upon the principal doors of the Court Houses in his jurors' district, having first subjoined to every such copy a notice subscribed with his name, and stating that all objections to the list will be heard by the Justices of the Peace on the first Tuesday in the month of October then next; and shall likewise keep the original list, or a true copy thereof, to be inspected by the inhabitants of the said jurors' district, at any reasonable time within the month of September, without fee, to the end that due notice may be given of any names improperly inserted or omitted in the said list.

[Lists to be corrected by Justices.—Lists to be forwarded by the clerks of the Bench to the Sheriff.]

VIII. And be it enacted, that the said clerks of Petty Sessions shall respectively, before the twentieth day of September in every year, cause all the Justices resident within the jurors' districts respectively, to be summoned to attend a special Petty Sessions at the usual places of meeting of the Petty Sessions, for the police districts in which such towns or places as aforesaid shall be situate, on the first Tuesday in the month of October then next, for the purpose of correcting and allowing the jury list for such jurors' districts; and the said Justices shall hold a special Petty Sessions accordingly; and the said Justices, or any two of them, shall sit *de die in diem* until the said lists shall be corrected and allowed as hereinafter provided; and the chief constable of every such district shall then and there produce the list of men qualified and liable to serve on juries as aforesaid, by him prepared and made out as hereinbefore directed; and thereupon the Justices attending such Sessions shall examine the said list, and shall strike out therefrom the names of all persons not liable to serve, or disqualified from serving upon such juries, and also the names of those who are disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and also the names of all men of bad fame or of immoral character and repute; and it shall be lawful for such Justices to insert in such list all names improperly omitted, and to correct all errors and inaccuracies therein; and if the said Justices shall be divided in opinion upon any question as to the striking out or adding of any name, the decision thereof shall be determined by ballot; and when every such list shall be duly corrected, at such Sessions, it shall be allowed by the Justices present, or two of them, who shall sign the original list and two fair copies thereof, with their allowance thereof; and the clerk of the Bench at each such Court of Petty Sessions shall receive every list so allowed, and forthwith transmit one of such duplicate fair

copies to the Sheriff of the Colony, and shall keep the said original corrected list amongst the records of his office, and have the other fair copy thereof ready to be produced in the Supreme Court, or Circuit Court, or in any Court of Quarter Sessions, when the same shall be required therein.

[Lists to be recorded by Sheriff.—Jurors' book to be made from lists by Sheriff.]

IX. And be it enacted, that the said Sheriff shall keep the lists so transmitted to him by the clerks of the Benches among the records of his office; and shall within ten days from the receipt of the said lists cause to be fairly and truly made out therefrom, a book for each such jurors' district as aforesaid, to be called the "jurors' book" for the district of (*naming the district*), and shall, in the said book, cause to be transcribed the names of all persons contained in the said lists for each jurors' district, together with the addition of the respective residences, degree, calling, or business and qualifications, of the said persons, in alphabetical order, beginning under each letter of the alphabet with the surname of each person, and such "jurors' book" shall be kept by the said Sheriff among the records of his office, and shall be ready to be produced in Court upon the trial of every issue, and shall be brought into use on and from the first day of January, after the allowance of the said list, and shall be used for one year then next following, or until a new list shall have been duly prepared, corrected, and allowed, in and for another year.

[Sheriff to make out special jury list. See 18 of 4 Vict. No. 28.]

X. And be it enacted, that immediately after making out the said "jurors' books" respectively, the Sheriff shall make out from each of the said books, a list of the names of every man therein described, as an Esquire, or person of a higher degree, or as a Justice of the Peace, or as a Merchant (such merchant not keeping a general retail shop) or as a Bank-director, or as a Member of the Council of the City of Sydney or Town of Melbourne; and shall in such list insert the said names in alphabetical order, together with the respective places of abode and additions of the said persons; and shall prefix to every name in such list its proper number from the first name down to the last, in a regular arithmetical series; and every such list shall be called "the special jurors' list" for the same district as the said "jurors' book" from which it has been so made out, and shall be, by the said Sheriff, annexed thereto, to be kept and produced therewith; and the said Sheriff shall forthwith transmit a copy of each of such special jury lists to the clerks of the Petty Sessions from whence he shall have received the general list from which the same shall have been extracted; and such special jury list shall be kept by the said clerk of Petty Sessions ready to be produced in any such Court as aforesaid, when required therein.

[Jury lists for newly created Courts.]

XI. And be it enacted, That in case the Governor of the Colony of New South Wales shall by any proclamation or proclamations, issued and published as by law is required, direct a Circuit Court or Circuit Courts, or any Court of General or Quarter Sessions of the Peace, to be holden at any town or place where provision shall not have been theretofore made for the preparing and settling of the jury lists for such town or place, it shall be lawful for the said Governor to direct the Bench of Magistrates of the district wherein such town or place shall be situate, to cause jury lists for such town or place to be prepared; and thereupon the said Bench of Magistrates shall, in pursuance of such direction, and they are hereby authorized and required to prepare and cause to be prepared, within three months after the receipt of any such direction, lists of all jurors within the jurors' district for such town or place, and thereupon the clerks of Petty Sessions, chief constables, justices, and sheriff, shall do and perform, within the said period of three months, all such acts, matters, and things, in and towards preparing, correcting, and allowing the jury lists, and making out the jurors' book and special jury list for every such jurors' district, as are hereinbefore required to be ordinarily done in the months of

August, September, and October, in each and every year; and all such jury lists, when settled, shall come into force, and the persons whose names shall be therein set down, shall be liable to serve as jurors immediately after the jurors' book for such newly appointed town or place shall have been made out by the said sheriff; and each of the said lists shall respectively continue in force until new lists shall have been allowed, and a new jurors' book shall have been made out, under the provisions hereinbefore contained.

[General jury precepts how issued.]

XII. And be it enacted, That it shall be lawful for the Chief Justice of the Supreme Court of New South Wales, the resident Judge for the district of Port Phillip, and any Chairman of the Courts of General and Quarter Sessions of the Peace, and they are hereby respectively required, from time to time, and as often as occasion shall demand, to issue a precept or precepts, under their hands and seals, according to the form set forth in the schedule hereto annexed, marked C, to be called a "general jury precept," and to be directed to the sheriff of the Colony, requiring him to summon jurors for the trial of issues and assessment of damages in the said Supreme and Circuit Courts, and in the said Courts of General and Quarter Sessions: provided always, that the said "general jury precept" shall not, at any one time, require the said sheriff to summon more than forty-eight, nor less than thirty-six names of jurors; and shall specify the time when, and the place where, the attendance of such jurors is required; and shall be issued and delivered to the said sheriff eight clear days before the time so specified for such attendance, if the same be required in the City of Sydney or town of Melbourne, and in all other cases fourteen clear days before the time of such attendance.

[Special jury precepts, how issued.]

XIII. And be it enacted, That whenever a jury or juries of twelve or of four special jurymen shall be required in the Supreme Court, or in any Circuit Court of this colony for the trial of any issues, as hereinafter is provided, it shall be lawful for the Chief Justice of the Supreme Court, and the resident judge for the district of Port Phillip (as the case may require) and they are hereby respectively directed, from time to time, and as often as occasion shall demand, to issue one or more general "special jury precepts," under his hand and seal, according to the form set forth in the schedule hereto annexed, marked C, to be called "special jury precepts;" and whenever a jury or juries of twelve common jurors shall be required, it shall in like manner be lawful for the said Chief Justice, or resident Judge, and he is hereby directed to issue a general common jury precept, under his hand and seal, according to the said form, to be called a "common jury precept;" and such precepts respectively shall be directed to the sheriff of the Colony, requiring him to summon a competent number of special jurors, or of common jurors, (as the case may be) not less than twice nor more than three times the number of the jurors to be impanelled; and every such precept shall be issued and delivered to the sheriff eight clear days before the time so specified for the attendance of the jurors, if the same be required in the city of Sydney, or town of Melbourne, and in all other cases fourteen clear days before the time of such attendance.

[Names of jury, how chosen in pursuance of general precept.]

XIV. And be it enacted, That as often as a "general jury precept," as hereinbefore provided, shall be delivered to the sheriff, he shall, and is hereby required to summon the persons whose names shall appear on the said "jurors' book," for the district within which the attendance of the said jurors is by the said "general jury precept" required, according to the order in which the said names so appear in said "jurors' book," from the first name down to the last, until every such person shall have been summoned in succession; and the same order shall be observed in each succeeding year, the sheriff beginning, every year, with the names in the "juror's book" for that year next after the names

of the persons appearing by the "juror's book" for the year preceding, to have been last summoned for such year; and if, through any casualty there shall be no "jurors' book" for any particular district, in existence for the current year, it shall be lawful to summon jurors for such district from the "jurors' book" for that district of the year preceding; and as often as a "special jury precept" shall be delivered to the sheriff, he shall and is hereby required to summon the persons whose names shall appear in the special jury list for the jurors' district within which the attendance of the said special jurors shall be required, in the same order, and subject to the same provisions in all respects *mutatis mutandis*, as are above prescribed with respect to the summoning of jurors under a general jury precept: provided always, that no Justice of the Peace shall be summoned or impanelled as a juror to serve at any General or Quarter Sessions of the Peace: provided also, that the names of all persons so summoned in pursuance of each such "general jury precept," whether issued by the said Chief Justice, resident Judge, or chairman, shall be chosen in the manner and succession hereinbefore required, without any further distinction whatsoever, priority being given by the said sheriff to every such "general jury precept," according to the time of its receipt at his office.

[Jury how summoned in pursuance of general precept.]

XV. And be it enacted, That upon the receipt of any such "general jury precept," or "special jury precept," the sheriff shall forthwith issue a summons in writing, to the several jurors so required to be summoned, signed by himself, or his deputy, to the effect as in the schedule D, to this Act annexed; and the said summons shall be delivered to every such juror, or shall be left at his usual place of abode at least four clear days before the attendance of such juror is required in the city of Sydney or town of Melbourne, and in all other cases at least eight clear days before the time specified for such attendance.

[Sheriff's return to general precept.]

XVI. And be it enacted, That upon the day, and at the place named, in every such "jury precept" for the appearance of the jurors thereby required to be summoned, the sheriff shall, by himself or his deputy, return the said "jury precept" into the Court holden at the place where such jurors are so required to attend; and shall annex to the said "precept" a pannel containing the names, in alphabetical order, of the persons so summoned by him, in pursuance of the said "jury precept;" and shall also, therewith, furnish to the clerk of the said Court the names of the said persons, with their respective additions, and places of abode, written upon separate pieces of card, each piece of card being, as nearly as may be, of equal size: provided that no omission or informality, with respect to any lists, or precepts, or panels returned in pursuance of this Act, shall affect or invalidate any verdict returned by a jury, which shall in other respects be according to law.

[Mode of trial by jury appointed for crimes and misdemeanors.]

XVII. And be it enacted, That all crimes and misdemeanors prosecuted in the Supreme Court, the Circuit Courts, or Courts of General and Quarter Sessions, shall be tried by a jury consisting of twelve men chosen and returned according to the provisions of this Act, and every such jury shall be subject to the same rules, regulations, and manner of proceeding, as are observed upon any criminal trial in the Court of Queen's Bench in England, as nearly as may be, and so far as the same may not be specially provided for in this Act.

[Criminal special Jury.]

XVIII. And be it enacted, That as often as any application shall be made to the Supreme Court by Her Majesty's Attorney-General, or other prosecutor, or by or on behalf of any defendant in any criminal cause depending in the said Supreme Court, or in any Circuit Court, for a special jury to try the issue in such cause, (except in cases of treason or felony) it shall be lawful for the said Court to

order a special jury to be summoned for the trial of such issue ; and every such special jury shall be taken from the special jurors' list, for the jurors' district within which such cause is to be tried, and shall be summoned, struck, and sworn, in like manner as is hereinafter directed and provided for summoning, striking, and swearing, special juries for the trial of civil issues, and shall be liable to the same fines and forfeitures, and entitled to the same exemptions as are hereinbefore authorized with respect to such juries ; Provided, however, that any defendant making application for a special jury shall serve a notice in writing, of such application upon the Attorney-General, or other prosecutor, at least four clear days before the time of his making the same.

[Power reserved to Courts issuing precepts and making orders, &c., as heretofore.]

XIX. Provided always, and be it enacted, That the Supreme Court and Circuit Courts, and all Courts of Oyer and Terminer and Gaol Delivery, and Courts of General Quarter Sessions of the Peace, shall respectively have and exercise the same power and authority as they have heretofore had or exercised in issuing any writ or precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any issue before any of such Courts respectively, or for the amending or enlarging any panel of jurors returned for the trial of any such issue ; and the return to every such writ, precept, award, or order, shall be made in the manner heretofore used and accustomed in such Courts respectively in England, save and except that the jurors shall be qualified according to this Act.

[Mode of trial in civil issues.]

XX. And be it enacted, That (except in such cases as are hereinafter mentioned) all actions at law, and all civil issues of fact in the Supreme Court, shall be tried, and all damages and sums of money recoverable in any such action after judgment by default or demurrer, other than such damages as are usually assessed or computed by the Court, or some officer thereof, shall be assessed before one or more Judge or Judges of the said Court, whether the trial or assessment shall be had in the said Court, or in any Circuit Court in this Colony, by a jury consisting of four persons duly qualified according to law as special jurors, and returned and chosen as hereinafter mentioned.

[But if plaintiff or defendant apply to the Court for such purpose, the trial may be had before a jury of twelve persons.]

XXI. Provided always, and be it enacted, That if either of the parties, plaintiff or defendant, in any action, at any time after issue joined, shall apply to the said Court for that purpose, in the same manner as he would now have to apply for a trial by jury, it shall be lawful for the said Court to order, that the trial shall be had by a jury consisting of twelve persons, who shall be returned, under the provisions of this Act, either from amongst the class of special jurors, or in cases to be tried on Circuit, partly from each class, as the Court shall think fit to order.

[Trial by jury in unprovided cases to be governed by English rules.]

XXII. And be it enacted, That in every such case of trial or assessment as aforesaid, and in every other case whatsoever of trial by jury, under the provisions of this Act when no other mode of proceeding is by this Act specially provided, the jurors and jury, and every assessment or trial by them shall, as far as may be practicable, be subject to the same rules and manner of proceeding as would in England be observed in an action at law in the Courts of Westminster, or on a trial at *Nisi Prius*.

[Common jury, how sworn in criminal trials.]

XXIII. And be it enacted, That upon calling on for trial, by a jury of twelve persons, any criminal issue joined in the said Supreme Court or Circuit Courts,

or in the said Courts of General Quarter Sessions, the Clerk of the Court shall, in open Court, put the pieces of card furnished by the Sheriff as before mentioned, into a box provided for that purpose, and shall draw out therefrom the said pieces of card, one after the other, until twelve men shall appear without just cause of challenge, which said men being duly sworn, shall be the jury to try such issue; and in case the whole number of the said cards shall be exhausted by challenge or otherwise, before twelve men are duly sworn, it shall be lawful for either the Crown or the prisoner to pray a *tales*; whereupon the Court or Judge, or Chairman, as the case may be, may command the Sheriff or his deputy, forthwith to appoint as many good and lawful men of the bystanders, (being qualified and liable to serve as jurors for such district of the Colony) as may be sufficient to make up twelve men for the trial of the said issue: Provided however, that the pieces of card containing the names of the jurors so drawn and sworn as aforesaid, shall be kept apart by themselves until such jury shall have given in their verdict, and the same shall have been recorded, or until such jury shall, by consent of the parties, or by leave of the Court, be discharged, and then the said pieces of card shall be returned to the box, there to be kept with the other names remaining undrawn, and so *toties quoties* as long as any issue remains to be tried: Provided also, that where no objection shall be made on behalf of the Queen, or any other party, it shall be lawful for the Court to try any such criminal issue with the same jury that shall have previously tried, or been drawn to try, any other such issue, without their names being returned to the box and redrawn, or to order the name or names of any man or men on such jury, whom both parties may consent to withdraw, or who may be justly challenged or excused by the Court, to be set aside, and another or other names to be drawn from the box, and to try such issue with the residue of such original jury, and with such man or men whose name or names shall be so drawn, and who shall appear and be approved as indifferent, and so *toties quoties* as long as any such issue remains to be tried by such jurors.

[Right of challenge.]

XXIV. And be it declared and enacted, that challenge to the array and to the polls of jurors may be made, and shall be allowed in every Court in the Colony, for such and the like cause, in such and the like form and manner, and under and subject to the like laws, rules, and regulations, in every respect, as by law is or are established, used, and practised, in like cases in her Majesty's Courts of Record at Westminster: Provided also, that in all inquests to be taken before any of the Courts hereinbefore mentioned, wherein the Queen is a party, notwithstanding it be alleged by them that sue for the Queen, that the jurors of those inquests, or some of them, be not indifferent for the Queen, yet such inquests shall not remain untaken for that cause; but if they that sue for the Queen will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the Court, and it shall be proceeded to the taking of the same inquisitions, as it shall be found if the challenges be true or not, after the discretion of the Court: Provided always, that nothing hereinbefore contained shall affect, or be construed to affect, the power of any Court to order any juror to stand by until the panel shall be gone through, at the prayer of those prosecuting for the Crown, as has been heretofore accustomed, and that no person arraigned for murder or other felony shall be admitted to any peremptory challenge above the number of twenty.

[Striking jury in civil cases.]

XXV. And be it enacted, that at the opening of the Court upon any sitting for the trial of any civil issue under the provisions of this Act, the clerk or other ministerial officer of the said Court, shall put together in a box provided for that purpose, the pieces of card furnished by the Sheriff, as hereinbefore directed, containing the names, places of abode, and additions of the jurors returned in the jury panel; and upon any such issue being called on to be tried, such clerk

or officer shall, in open Court, draw out the said cards one after another, until twice the number of jurors required to be impannelled shall appear, and after all causes of challenge allowed shall remain indifferent and approved of, or until the whole of such cards shall be exhausted; and in case of a sufficient number of the jurors named on such cards not being in attendance, the full number of jurors so directed to be drawn shall be completed by appointment of the Sheriff or his deputy from amongst the bystanders, being persons returned in the Sheriff's books as jurors either special or common.

[Impannelling jury in civil cases.]

XXVI. And be it enacted, That in civil issues, upon twice the number of jurors required to be impannelled being completed, a list of their names shall be delivered, by the Sheriff, or his deputy, to the plaintiff, or his attorney or counsel, by whom one-fourth of the whole number of names contained in such list shall or may be struck therefrom, and the list so reduced shall then be delivered to the defendant, or his attorney or counsel, by whom an equal number of names shall or may be also struck therefrom; and the jurors whose names shall then remain upon such list, or the first four or twelve jurors, whose names shall then be thereon, (as the case may require), shall be the jurors for the trial of the issue or issues in question, and be sworn and impannelled accordingly; and after every such trial, the cards so drawn as aforesaid, shall be returned to the box, to be kept with the others remaining undrawn, and so *toties quoties* as long as any issue shall remain to be tried by such jury.

[Trying different issues by the same Jury in civil cases.]

XXVII. Provided always, and be it enacted, That where no objection shall be made on behalf of any plaintiff or defendant, it shall be lawful to try any number of different issues with the same jury that shall have been previously drawn for, or have tried any other issue or issues, without having their names returned to the box, or the Court or Judge may order the name of any juror or jurors whom the parties may consent to withdraw, or who may be challenged or excused to be set aside, and another juror or jurors to be drawn from the box from the names remaining undrawn, and who shall be subject to the same mode of striking as the original juror or jurors, to try the issue or issues with the residue of such original jury, and so *toties quoties* as long as any issue shall remain to be tried.

[Where damages assessed only.]

XXVIII. And be it enacted, That the provisions contained in the three preceding sections, shall be equally in force with respect to all cases in which damages shall be assessed only: Provided that in every such case where the defendant shall not appear, either in person or by counsel or attorney, the list of jurors may be reduced on his behalf by the clerk or other officer of the Court; and the like course shall be pursued in every case where there shall be an issue or issues for trial, and either of the parties, plaintiff or defendant, shall not so appear.

[Cases of difference of opinion in jury provided for.]

XXIX. And be it enacted, That in every civil trial or assessment of damages under this Act, where the jury shall have remained six hours or upwards in deliberation, if all of them shall not agree as to the verdict to be given, or amount of damages to be assessed, the decision of three-fourths in number of them shall be taken and entered as the verdict or assessment of all; and if after having remained in the whole twelve hours or upwards in deliberation, three-fourths in number of the jurors shall not concur in any such verdict or assessment, then such jurors shall be discharged, and the cause shall or may, without any new process for that purpose, be again set down for trial or assessment (as the case may be) either at the same or any subsequent sittings, as the Court or presiding Judge may think fit to order.

[View, how granted.]

XXX. And be it enacted, That whenever it shall appear expedient to any Judge of the Supreme Court in any cause depending in the said Court, that some of the jury should have a view of any place in dispute in the cause, it shall be lawful for such Judge to order such view upon the payment, by the party applying for the same, of such sum as to the said Judge may seem reasonable ; and such sum shall be paid over to such jurors as shall have such view, and shall attend the trial, and shall be taxed and allowed as other costs in the cause, and two or more jurors as the Judge shall direct, mutually chosen by the parties, or in case the parties cannot agree, nominated by the Sheriff, shall be shewn the place, by two persons appointed by the said Judge, and in every such case the said viewers if in attendance upon the Court shall be the first of the jurors named in the Sheriff's list, whether they shall be in the panel returned for the particular day of trial or not, and shall not be struck therefrom by either party, and such viewers so in attendance, together with so many of the jurors whose names shall first stand on the reduced list, as may be necessary to make up the full number of jurors required, shall form the jury to try the cause.

[Allowance to common jury.]

XXXI. And be it enacted, That every juror, summoned in pursuance of any precept as aforesaid, who shall attend the Supreme Court, or any Circuit Court, or any Court of General or Quarter Sessions of the Peace, shall for every day during his attendance upon such Court, (whether he shall have actually served upon a jury or not,) be entitled to receive a compensation for such attendance at the rates mentioned in the schedule hereto annexed, marked E : provided however, that in all cases in which there may be a regular steam conveyance, or the passage can be conveniently made, wholly or in part, by water, the allowance of such portion of the journey as shall be or might have been performed by water, shall be limited to the actual amount of the steerage or cabin passage money, payable according to the station in life of the juror : provided also, that every talesman serving with such jurors shall be entitled to the same compensation as a juror residing within five miles of the said Court.

[Fund for such allowance in civil causes.]

XXXII. And be it enacted, That in every action at law there shall be paid by the plaintiff into the hands of the Prothonotary (to be by him paid over to the Sheriff,) on entering the cause for trial in every case of assessment of damages, the sum of one pound ; and in every case of a trial by a jury of four, the sum of two pounds ; and in every case of a trial by a common jury of twelve men, the sum of three pounds ; and in every case of trial by a special jury of twelve men, the sum of six pounds, which said several amounts shall be allowed as costs in the cause : Provided that when the order for such jury of twelve shall have been made on the application of the defendant, the said sum of three pounds or six pounds, as the case may be, shall be paid by such defendant, on the making of the order, into the hands of the prothonotary, (to be by him paid over to the Sheriff) or such order shall lapse, and not take effect ; and the said sums, together with the amount of all fines on jurors, shall form a fund in the hands of the Sheriff for paying the expenses of civil jurors as aforesaid, and shall be applied accordingly for that purpose, and be accounted for by him in like manner as other public monies are directed to be accounted for by the Sheriff.

(Costs of Special Jury unless Judge certify.)

XXXIII. And be it enacted, that the party applying for or electing a special jury of twelve, for the trial of any civil issue, shall pay all expenses occasioned by the trial of the cause by the same, and shall not have any further allowance for the same upon taxation of costs, than such party would be entitled to in case the cause had been tried by a common jury, or a jury of four as hereinbefore directed, unless the Judge before whom the cause be tried, shall, immediately

after the verdict, certify under his hand that the same was a cause proper to be tried by a jury of twelve special jurors.

(Qualification of jurors upon inquests under writs of inquiry and commissions.—Juries upon coroners' inquests.)

XXXIV. And be it enacted, that no man shall be liable to be summoned or impannelled so to serve as a juror upon any inquest or inquiry, by or before any Sheriff or Coroner, by virtue of any writ of inquiry, or by or before any Commissioner appointed under the Great Seal of the Colony, or the Seal of the Supreme Court, who shall not be duly qualified according to this Act to serve as a juror: Provided always, that nothing herein contained shall extend to any inquest before any Coroner, by virtue of his office, but that Coroners, when acting otherwise than under a writ of inquiry, may respectively take and make all inquests and inquiries by jurors of the same description as they have been used and accustomed to do before the passing of this Act: Provided, however, that in thinly populated districts it shall be lawful for any Coroner, at his discretion, to swear a jury of any number not less than five, and the verdict of such jury shall be as valid and effectual in law as if the accustomed number were impannelled and sworn.

(Liabilities of clerks and constables.)

XXXV. And be it enacted, that every clerk of Petty Sessions, or chief constable, who shall wilfully neglect or refuse to execute any of the duties hereinbefore prescribed and appointed to be by him executed, shall, for every such neglect or refusal, forfeit any sum not exceeding fifty pounds, whereof one moiety shall be paid to the Colonial Treasurer, for the purposes of the General Revenue of the said Colony, and the other moiety shall, with full costs, go to any person suing for the same by action of debt in the Supreme Court, or in any Court of Petty Sessions in the said Colony, to the extent of the jurisdiction of such Court.

[Liability of Justices.]

XXXVI. And be it enacted, that every Justice of the Peace, who shall have been summoned, as hereinbefore directed, to attend at any Special Petty Sessions, for correcting and allowing any jury list, who shall fail or neglect to attend such Special Petty Sessions, without any reasonable cause for such non-attendance, shall be liable to a fine not exceeding the sum of ten pounds, which shall be summarily imposed by the Supreme Court of the Colony, upon the motion of the Attorney-General, and upon the fact of such non-attendance being duly proved on affidavit to the satisfaction of the said Court; and the clerk of the Bench shall, at the said Special Petty Sessions, make an entry in writing of the name of every Justice of the Peace residing in the jurors' district, and so summoned as aforesaid, distinguishing those that attended, and those that were absent at the correction and allowance of the said list as aforesaid; and shall, at the final adjournment of the said Special Petty Sessions, transmit a certificate thereof to the Attorney-General, verified by declaration, which certificate shall be taken to be *prima facie* proof of the non-attendance of the Justices therein stated to have been absent from the said Special Petty Sessions.

(Liability of Sheriff.)

XXXVII. And be it declared and enacted, that the Sheriff shall, by himself or his deputy, be in attendance upon the said Supreme Courts, Circuit Courts, and Courts of General and Quarter Sessions of the Peace within the said Colony, during every sitting of the said Courts; and in every case of non-attendance upon any of the said Courts shall be liable to a fine, not exceeding fifty pounds, to be summarily imposed, at the discretion of the Court, for such non-attendance, and if he shall neglect or refuse to discharge the duties hereinbefore required of him, or shall otherwise fail well and faithfully to do and perform all or any of the acts, matters, and things, hereby required to be by him performed, he shall, for

every such breach of duty, be summarily fined a sum not exceeding fifty pounds, at the discretion of the Court, in relation to which such duties, acts, matters, and things were required to be discharged, done, and performed.

[Liability of viewers.]

XXXVIII. And be it enacted, That if any juror, who shall have had a view of any place in dispute in any cause, according to the provisions hereinbefore contained, shall make default when the cause in which he was appointed a viewer shall be called on for trial, it shall be lawful for the Court or Judge, unless reasonable cause be shewn, to set upon such viewer a fine not exceeding the amount of ten pounds, over and above the fine to which he shall be liable, under the provisions hereinafter contained, for non-attendance as a juror.

[Liability of jurors making default.]

XXXIX. And be it enacted, That if upon calling over the names upon any jury panel returned as hereinbefore required, any person appearing thereon shall fail to attend, or after appearance shall wilfully withdraw himself from the presence of the above mentioned Courts, it shall be lawful for such Courts respectively at their discretion, summarily to impose any fine, not exceeding twenty pounds, upon the party so failing to attend, or withdrawing himself, unless good cause for such defaulter's absence be made to appear, on oath, to the satisfaction of the said Courts respectively: Provided always, that it shall be lawful at any time for the said Courts respectively to exempt from attendance, either during the session or for any less period, any person summoned as a juror, who may to such Courts respectively shew, on oath, sufficient grounds for such exemption: Provided also, that no juror summoned for the trial of civil issues shall be compelled to attend at any sittings for more than three consecutive days, unless the presiding Judge shall otherwise order.

[Liability of coroners' jurors.]

XI. And be it enacted, that if any man being duly summoned and returned to serve as a juror upon any inquest or inquiry, before any Sheriff or Coroner, or before any of the Commissioners hereinbefore mentioned, shall not, after being openly called three times, appear and serve as a juror, every such Sheriff, or in his absence the Under Sheriff, and such Coroner and Commissioner respectively, are hereby authorized and required (unless some reasonable excuse shall be proved on oath, affirmation, or solemn declaration, if required) to impose such fine upon every man so making default as they shall respectively think fit, not exceeding five pounds; and every such Sheriff, Under Sheriff, Coroner, and Commissioner, respectively, shall make out and sign a certificate containing the Christian name and surname, the residence and trade or calling of every man so making default, together with the amount of the fine imposed, and the cause of such fine, and shall transmit such certificate to the Clerk of the Peace for the county or district in which every such defaulter shall reside, on or before the first day of the Quarter Sessions next ensuing; and every such Clerk of the Peace is hereby required to copy the fines so certified on the roll on which all fines or forfeitures imposed at such Quarter Sessions shall be copied; and the same shall be estreated, levied, and applied, in like manner, and subject to the like powers, provisions, and penalties, in all respects, as if they had been part of the fines imposed at such Quarter Sessions.

[Punishment for embracery.]

XXI. And be it declared and enacted, That any person who shall corruptly influence, or attempt to influence any juror, and every juror consenting thereto, shall be guilty of a misdemeanor, and shall, upon conviction thereof in any Court of competent jurisdiction, be liable to fine and imprisonment, at the discretion of such Court.

[Recovery of fines in Supreme Court.—In Quarter Sessions.]

XXII. And be it enacted, That all fines imposed under this Act, by the said

Supreme Court or Circuit Courts, or by any Judge thereof, shall be levied in the same manner as any other fines imposed by the Supreme Court, or in the manner next hereinafter mentioned ; and all fines imposed by any Court of General or Quarter Sessions, or by any chairman thereof, by virtue of this Act, shall be levied and recovered in the manner appointed by the Act of the Governor and Legislative Council, passed in the second year of Her Majesty's reign, intituled, "An Act for the more effectual recovery of fines, and enforcement of forfeited recognizances imposed and entered into by and before Justices of the Peace in New South Wales," and all such fines howsoever imposed, shall go and be applied to the fund hereinbefore provided for the payment of jurors.

[District of Port Phillip.]

XLIII. And be it enacted, That in all matters and things to be done in the district of Port Phillip, under and by virtue of this Act, which are not specially provided for herein, the words "Governor," "Supreme Court," "Judge," "Attorney General," "Prothonotary," and "Sheriff," as often as they occur throughout this Act, shall be held respectively to be applicable to the Superintendent, Supreme Court, Resident Judge, Crown Prosecutor, Deputy Registrar, and Deputy Sheriff of the said district of Port Phillip.

[Commencement of Act.—Acts repealed.]

XLIV. And be it enacted, That this Act shall commence and take effect on the first day of October next, and that from and after that date the Acts passed in the second, fourth, and fifth years of the reign of King William the Fourth, and respectively intituled, "An Act to amend an Act, intituled, 'An Act for regulating the constitution of juries, for the trial of civil issues in the Supreme Court of New South Wales ;'" "An Act to continue for a limited time an Act of the Governor and Council of New South Wales, intituled, 'An Act for regulating the constitution of juries, and for the trial of issues in certain cases, in the Supreme Court of New South Wales, and to make further provision for trial by jury in criminal cases in the said Colony ;'" "An Act to continue for a limited time, an Act of the Governor and Council of New South Wales, intituled, 'An Act for regulating the constitution of juries, and for the trial of issues in certain cases, in the Supreme Court of New South Wales, and to make further provision for trial by jury ;'" and also an Act passed in the second year of Her present Majesty's reign, intituled, "An Act to provide for trial by jury at the Courts of Quarter Sessions, to be held at Melbourne and Port Macquarie ;" and also two Acts passed in the third year of Her present Majesty's reign, intituled respectively, "An Act to make further regulation with respect to trial by jury in criminal issues, in the Colony of New South Wales, and to amend the form of proceeding in criminal prosecutions in said Colony ;" and "An Act to provide for trial by jury at Courts of Quarter Sessions to be held at Berrima ;" and also two other Acts passed in the seventh and eighth years of Her Majesty's reign, intituled respectively, "An Act to further amend and continue for a limited time, an Act intituled, 'An Act for regulating the constitution of juries, and for the trial of issues, in certain cases, in the Supreme Court of New South Wales,'" and "An Act to amend the laws regulating trial by jury in New South Wales, in so far as they relate to the trial of civil causes," shall be repealed : Provided always, that no Act repealed by any of the Acts hereinbefore recited, shall be revived by the repeal of the said herein recited Acts.

[Jury lists for 1848 to be prepared, published, &c., in October, November, and December ; but present jury lists to continue in force until new lists shall come into effect.]

XLV. And whereas it is expedient and necessary that after the passing of this Act, and in the present year one thousand eight hundred and forty-seven, the lists of jurors should be prepared, published, and corrected, in different months from those hereinbefore mentioned : Be it enacted, That the clerks of Petty Sessions, chief constables, Justices, and Sheriffs, shall, during the present year, do and perform all such acts, matters, and things, in and towards pre-

paring, publishing, correcting, and altering the jury lists, and making out the jurors' book and special jury list for each jurors' district within the months of October, November, and December, as are hereinbefore required to be ordinarily done in the months of August, September, and October, in each and every year, and all such jury lists when settled, shall come into force, and the persons whose names shall be therein set down shall be liable to serve as jurors immediately after the jurors' book for each district shall have been made out by the Sheriff, and each of such lists shall continue in force until new lists shall have been allowed, and a new jurors' book shall have been made out, under the provisions hereinbefore contained: Provided always, that until such jury lists shall come into effect under the provisions of this Act, the jury lists which are now, and shall be in operation at the time of the passing thereof, shall continue in full force and effect.

SCHEDULE E.

	s.	d.
Common Jurors and Jurors summoned under a General Jury Precept, residing within five miles of the Court, per diem	2	6
The same where residing more than five miles from the Court, per diem	5	0
And for every mile of distance beyond five miles, between such Juror's residence and the Court	0	8
Special Jurors summoned under a Special Jury Precept, if residing beyond two miles, and within five miles of the Court, per diem	5	0
The same where residing more than five miles from the Court, per diem	7	6
And for every mile of distance beyond five miles, between such Juror's residence and the Court	1	0
Every bystander sworn on a trial	5	0

(i. e. 4d. each way.)

(i. e. 6d. each way.)

LANDLORD AND TENANT.

BRIEF SUMMARY OF THE LAW OF LANDLORD AND TENANT,* BY JOHN HUBERT PLUNKETT, ESQ., HER MAJESTY'S ATTORNEY-GENERAL.

It is a fundamental maxim, and necessary principle of English law, "That all land is held of the King either *mediately* or *immediately*," that is, "That the King is the universal *Landlord* and original proprietor of all the land in the colony, and that no man does or can possess any part of it, but what has been derived either *mediately* or *immediately*, as a grant from him."

The *thing* holden, whether it consist of land or houses,

* See post "Tenements Act," and "Act to facilitate the Granting of Leases."

is called a *tenement*—the possessor thereof a *tenant*—and the manner of possession a *tenure*.

A *fee simple* is the highest estate or inheritance which a subject can have; if unincumbered, he may grant, or sell, or make his will of such estate; and if he make no will, it *descends* after his death to his heirs of the whole blood. All other estates and interests are derived out of a fee simple, and as the owner of such estate has an absolute power of alienation, it necessarily follows, that he may grant *leases* without any limitation.

The *contract*, which usually creates the relation of landlord and tenant, is called a *lease*; the parties to such contract are the owner of the soil and the farmer, or *terre tenant*, who are called *lessor* and *lessee*. By the terms of the lease, the landlord grants to the tenant the possession of the land for a life or lives, for a number of years certain, or at will. The *tenant*, on the other hand, usually engages to pay in consideration of such grant, a certain sum of money, or other recompense, at stated periods during the term, which payments are called *rents*.

A lease must be for a shorter time than the lessor or landlord possesses in the premises; for otherwise, it would be an *assignment*, not a *lease*. The tenant should always take care that the landlord has sufficient interest in the premises, to enable him to give a good title by the lease.

All leases for a longer term than three years, must be *in writing*, for it is enacted by the Statute of Frauds 29 Chas. II. c. 3, "that leases made by parol (that is *verbally*) will be void, if they exceed *three years* from the time of making."

When a freehold estate is created by lease, livery of *seizin* must be given to the lessee; therefore an *actual* possession, should be given along with a lease for a life or lives. And where a lease is for a term of years, there must be an entry by the lessee. 4 *Cr. Dig.* 67. The words "demise, lease, and to farm let" are the proper ones to constitute a lease; but any other words which

show the intention of the parties, that one shall divest himself of *possession*, and the other come into it for a certain time, whether they run in the form of a license, covenant, or agreement, are of themselves sufficient, and will in construction of law, amount to a lease, as effectually, as if the most proper words have been used for that purpose. But on the other hand, if the most proper form of words of leasing are made use of; yet, if on the whole instrument, there appear no such intent, but that it is *only preparatory*, and relative to a *future lease, to be made*; the law will rather do violence to the words, than break through the intent of the parties, by construing it a present lease, where the intent was manifestly otherwise. It is essential to attend to this distinction between what is a lease, and what is only an *agreement* until a lease be granted, for the landlord cannot distrain for rent under such *agreement*. It was decided in a late case "that there can be no distress, unless in cases where there is an *actual demise* at a *fixed* and *specific* rent; therefore, when a party entered on premises under a memorandum of agreement *for a future lease*, with a purchasing clause, it was held that, *that* not amounting to a demise, the lessor could not distrain for rent, which would have been due under the terms of the agreement. 5 *Bar. and Ald.* 322. His only remedy is an action for use and occupation in such case; also, such an agreement is no defence to an ejectment. 8 *T. R.* 118.

A *covenant* should always be inserted for payment of rent, as the lease, if once assigned, might be assigned to a succession of beggars. *Wat. on Con.* 266.

In a lease *for life*, it is material that it be made to *commence on the same day* on which it was executed. This is grounded on the mode of granting *freeholds* at common law, where it was required that actual and present possession should be given of the thing granted; which could not be done of an estate which was not to commence until *afterwards*. 5 *Co.* 94.

A lease for life therefore, to begin at Michaelmas next, would be void. To preserve this requisite, some attention is necessary to the wording of a lease for life; if it be made to commence "*from the day of the date*" (which has too frequently been done) the day on which it is dated will be excluded, and the lease consequently void. *Loft. Rep.* 296. It should therefore be made to commence "*from henceforth*" "*from the making hereof,*" or the like, which expressions include the day of making. *Co. Litt.* 45; *Fin. L. and T.* 287.

A lease for years, which required no livery at common law, may begin at any period that may be agreed on by the parties. It is necessary, however, that it should have a certain beginning and ending, otherwise it will be void. *Co. Litt.* 45.

A lessee who covenants to pay rent, and to repair, with an exception of casualties by fire, is liable on the covenant for rent, though the premises be burnt down, and not rebuilt by the lessor after notice. 1 *Term. Rep.* 310.

If a lease be granted for seven, fourteen, or twenty-one years, the lessee only has the option, at which of the above periods the lease shall determine, 3 *B. and P.* 399, 442. So, where the lease was for fourteen or seven years, on the ground, that every doubtful grant must be construed in favour of the grantee. 9 *East.* 16. A covenant in a lease not to assign, does not extend to an under lease for part of the house. 2 *Bl. Rep.* 766.

FORM OF AGREEMENT FOR LETTING A HOUSE, &c., FOR THREE YEARS.

Memorandum made the _____ day of _____, 184____, between A. B. of _____ and C. D. of _____, as follows:—

The said A. B. doth hereby let unto the said C. D. a house and garden, with the appurtenances, situate in (describe the place here), for three years certain, the rent to commence from the 25th day of March next, at the yearly rent of £ _____, payable quarterly; the first payment to be made on the 25th June next.

The said C. D. doth agree, to take the said house and garden of the said A. B. for the said term and rent, payable in manner aforesaid; and that he will at the expiration of the term, have the house in as good repair as he found it. In witness whereof, we have set our hands.

Witness present, }
G. F. }

A. B.
C. D.

AGREEMENT FOR LETTING A HOUSE BY THE YEAR.

Memorandum made this day of , 184 , between A. B. of
 and C. D. of , as follows:—
 The said A. B. doth hereby let unto the said C. D. a dwelling-house (No. 4,
 in street, Sydney, or as the description may be) for the term of one year
 certain, and so on, from year to year, until half a year's notice to quit, be given
 by either party, and until the said notice shall be expired, at the yearly rent of
 £ , payable quarterly, to commence on the 25th March next. The said A. B.
 doth also agree, to pay all taxes, and to keep the said house in all necessary
 repairs, so long as the said C. D. shall continue therein; and the said C. D.
 doth agree to take the said house of the said A. B. for the said term and rent,
 until the expiration of half a year's notice to quit as aforesaid. Witness our
 hands the day and year above written.

Witness present, } A. B.
 E. F. } C. D.

These agreements will hold good instead of leases, if the parties are satisfied with them, but if a real deed of lease containing all the usual covenants be intended, it is advisable to employ a person properly qualified to draw it. And it is recommended, if possible, that a lease should be drawn up at first, in preference to relying on any mere agreement. The following is the ordinary form in use:—

INDENTURE OF LEASE FOR A TERM.*

This Indenture made the day of , in the year one thousand eight
 hundred and , between A. B. of of the one part, and C. D. of
 of the other part.

Whereas the said A. B. hath agreed to demise the messuage, lands, tenements,
 and hereditaments hereinafter described to the said C. D. for the term of
 years, to commence from the delivery of these presents, under and subject to the
 rents, covenants, and conditions hereinafter contained on the part of the said C. D.

Now this Indenture witnesseth, that in pursuance of the said agreement, and
 in consideration of the rent hereinafter reserved, and of the covenants, conditions,
 and agreements hereinafter contained on the part of the said C. D., his executors,
 administrators, and assigns, to be respectively observed, and performed, and
 also in consideration of five shillings of lawful money to the said A. B. in hand
 paid by the said C. D., at or before the sealing and delivery of these presents,
 the receipt whereof is hereby acknowledged. He the said A. B. hath demised,
 leased, and to farm let; and by these presents, doth demise, lease, and to farm
 let unto the said C. D., his executors, administrators, and assigns, all that, &c.;
 and all houses, &c., with the appurtenances thereunto belonging, to have and to
 hold the said demised premises hereby demised or intended so to be, unto the
 said C. D., his executors, administrators, and assigns, from the delivery of these
 presents, for and during the full end and term of years next ensuing.

Yielding and paying thereout yearly and every year during the said term unto
 the said A. B. his heirs and assigns, the clear yearly rent of £ of lawful
 money of Great Britain, by four equal quarterly payments, that is to say, on the
 day of , the day of , the day of , and the
 day of , in every year, the first of each quarterly payments to be

* See post "Act to facilitate the Granting of Leases."

made on the day of next ensuing the date and delivery of these presents. And the said A. B. doth for himself, his heirs and assigns, covenant, promise, and agree to and with the said C. D., his executors, administrators, and assigns, that it shall and may be lawful for the said C. D., his executors, administrators, and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, use, occupy, possess, and enjoy the said premises hereinbefore described and intended to be hereby demised, and every part thereof, to, and for his and their own use and benefit absolutely without any let, hindrance, suit, trouble, or disturbance whatsoever of, from, or by the said A. B., or his heirs, or any other person lawfully or equitably claiming from, through, or under him or them. And the said C. D. doth hereby for himself, his executors, administrators, and assigns, covenant, promise, and agree to and with the said A. B., his heirs, and assigns, in manner following, that is to say,—that the said C. D., his executors, administrators, and assigns, shall and will from time to time, and at all times, during the continuance of the said term hereby granted, well and truly pay, or cause to be paid unto the said A. B., his heirs, and assigns, the said yearly rent or sum of £ , of such lawful money as aforesaid, upon the several days and times, and in manner hereinbefore mentioned and appointed for payment of the same, according to the true intent and meaning of these presents; provided always, that if the yearly rent as aforesaid or any part thereof, shall be unpaid for the space of ten days next after any or either of the days on which the same ought to be paid as aforesaid, then, and in such case, it shall be lawful for the said A. B., his heirs, and assigns, into the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess and enjoy, as in his and their former estate, and so much of the same term as shall be then unexpired, shall cease and determine; any thing herein contained notwithstanding.

In witness whereof, the respective parties have put their hands and affixed their seals.

Signed, sealed, and delivered in presence of E. F.

} A. B. seal.
} C. D. seal.

ASSIGNMENT.

An assignment must necessarily be in writing. There is no particular form necessary, so that the words be sufficiently clear to be understood by the parties. The operative words usually employed to effect an assignment, are “give, grant, bargain, sell, transfer, assign, and set over.” An assignment will be valid (under 29 Cha. II. c. 3) made by a mere memorandum or “note in writing, signed by the party (1 *Wils.* 27.)” Where an assignment can be made, the assignee has the whole term of the assignor made over to him; and all the covenants of the assignor will be binding on the assignee. If a lessee assign over his term, the lessor is not obliged to accept him for his tenant, but may still look to his lessee; if, however, he receive rent of the assignee, knowing of the assignment, he has determined his elec-

tion, and shall not afterwards have an action of debt against the lessee, for rent due after the assignment, though it has been held that he may, notwithstanding, maintain an action on the lessee's *covenant*, that being a personal engagement, which is not waived by the assignment. *Noy. Max.* 170. *B. N. P.* 159.

UNDER LEASE.

When a lessee or tenant grants only part of his term to another, it is called an *under lease*. The under lessee must fulfil his contracts with the lessee; but he has nothing to do with the original lease granted by the landlord, the premises are however liable to be distrained on, if the head landlord's rent be not paid.

An under tenant cannot discharge himself of the rent due to his immediate landlord, by a voluntary payment to the superior landlord; but he may do it under the coercion of a threatened distress, and in that mode only.

TENANCY AT WILL.

The Courts now always incline to construe this once uncertain and precarious tenure to be a tenancy from year to year.

TENANT AT SUFFERANCE.

When a lease is expired, and the tenant keeps possession without any new contract, he is a tenant at sufferance at the former rent. But, when the landlord accepts of rent, after the expiration of the lease, the tenant may hold the premises from year to year, and becomes entitled to half a year's notice to quit, in like manner as a tenant from year to year. 3 *T. R.* 13.

TENANT FROM YEAR TO YEAR.

Every tenancy of a definite duration is a *term*, and of

the nature of a term of years, though for a less period than a year, as for half a year, or a quarter of a year, &c. *Litt.* 67. An estate from year to year may be created either by the *parol* or *written* agreement of the parties. The qualities that distinguish it from proper terms of years, and from estates at will, are, that it is now raised by construction of law alone, instead of an estate at will, in every instance where a possession is taken, with the consent of the legal owner, and when an annual rent has been paid, but without there being any conveyance or agreement confirming a legal interest: and that, whether it arises from express agreement, or by implication of law, it may, unless surrendered or determined by a regular notice to quit, subsist to an indefinite period, if the estate of the lessor will allow it; or, for the whole term of his estate, when it is of a limited duration, unaffected by the death either of the lessor or lessee. *Wat. Con.* 29. Courts of law (as was before mentioned) strongly incline against *implying* estates at will, holding demises, where no certain term is mentioned, to be tenancies from year to year, so long as both parties please, especially where an annual rent is reserved. *2 Bl. Com.* 147. See also the case in *4 Taint.* 128, in which Chambre, J. observed "A mere general letting is a letting at will;" if the lessor accepts yearly rent, or rent measured by any aliquot part of the year, the Courts have said that is evidence of a taking for a year. The Courts have a great inclination to make every tenancy a holding from year to year, if they can find any foundation for it. When an agreement is made *by parol* for a longer term *than three years*, which we have before seen, is void as to the duration of the term, it will endure as a tenancy from year to year, regulated in any other respect by the agreement. *5 T. R.* 471. When a tenancy from year to year has commenced, it continues against any person to whom the lessor may afterwards grant the reversion (*1 T. R.* 378), and the interest of tenant from year to year does not determine by his death,

but devolves upon his executors or administrators. 3 *T. R.* 13. The tenancy can only be determined *at the end of the year*, and upon giving a full half year's notice to quit. 1 *T. R.* 159. And there is no distinction between houses and land in this respect.

OF THE NOTICE TO QUIT.

WHO NOT ENTITLED TO.—A notice to quit is not necessary where the tenancy is for a *defined* term, because both parties are aware of the termination of the tenure; thus, where there is a lease for a year certain, or for one or more lives, the notice need not be given. So, if the occupier is merely let into possession *as caretaker* to another, or *as servant*, no notice is necessary: so, a mortgager, being merely a tenant at sufferance to the mortgagee, may be ejected without notice to quit. 3 *East.* 450. And as there is no privity between the reversioner and a tenant at sufferance, the latter may be ejected without any notice. *Ch. L. and T.* 11. Neither is notice necessary where the possession is *adverse*. *Cowp.* 622. In all other cases, where a party has obtained possession of premises belonging to another, and the owner does any act from which a jury may infer that he intends to acknowledge him as a tenant, tenancy from year to year is created, and the party will be entitled to a regular notice to quit, before he can be ejected.

The time for giving notice may be different from half a year by agreement or the custom of particular places. 2 *Bl.* 1224, 3 *Bur.* 1603. And where a house is taken *by the month*, a month's notice is sufficient. 1 *Esp.* 94. And a weekly reservation of rent is *prima facie* evidence of a weekly holding. 6 *Esp.* 4. But on a tenancy from year to year, to quit at a quarter's notice, the quarter must end with a year of the tenancy. 1 *Taunt.* 555.

The notice must be "*at the time of the year the tenancy commenced*;" that is, if the tenancy begin on the first of November, the notice cannot (except by agreement as

aforesaid) require the tenant to quit on the first of May, or at any other time of the year but the first day of November ; if it commence on the first of March, the notice must end with the first of March, and no other day, and so on.

It may be observed, that, although a *parol* notice is sufficient, (5 *Esp.* 197,) yet it is advisable to give a *written notice* ; and the terms of it should be clear and definite ; though the Courts will, if possible, so construe it, as to give it effect. 14 *East.* 245.

It seems advisable, where there is any doubt as to the time of the year at which the tenancy commenced, to give a general notice as follows ; *To quit at the expiration of the current year of the tenancy, which shall expire next after the end of one half year, from the service of the notice.*" 2 *Esp.* 589. If a notice to quit is personally served on the tenant, and he makes no objection, it may, under circumstances, amount to *prima facie* evidence of the commencement of the tenancy. 2 *Camp.* 647. And where the tenant being applied to by his landlord respecting the commencement of his holding, informs him that it began on a certain day, and the landlord gives the tenant a notice to quit, agreeably to the information received, the tenant will be precluded from contending that his tenancy commenced on a different day, though the information given proceeded on a mistake. 2 *Esp.* 635. It is not necessary for a landlord to give notice to any one but his tenant, notwithstanding he has *under-let* part of the demised premises. 2 *N. R.* 230, 3 *Taunt.* 95. The notice must be given by the persons interested, or their agent lawfully authorized for that purpose, *at the time* of giving the notice ; for a subsequent assent by the landlord will not be sufficient to establish, by relation, a notice given, in the first instance, without authority. *Adams Eject.* 226. And if there be more persons than one interested, notice should be given by all ; for a notice by one on behalf of himself and co-tenants is valid only as far as his own share is concerned ; (3 *Taunt.* 120,)

unless he be acting at the time under the authority of of the others named. The notice should invariably be served *on the tenant* of the party serving it. Where the premises are in the possession of *two* or more as joint tenants or tenants in common; a written notice addressed to *all* and served upon *one* only, has been held sufficient (7 *East*. 551); so a *parol* notice given to one as co-tenant will bind the other. 5 *Esp*. 195.

The notice should in all cases, if possible, be delivered to the tenant *personally*; but if personal service cannot be effected, the service will be sufficient if the notice be left with the wife, or the servant of the tenant, at his usual place of residence, and its *nature* and *contents* explained at the time. *Adams Eject*. 132.

OF WAIVER.

Notice to quit is, generally speaking, waived by accepting of rent *due after* the expiration of the notice; though this is not *ipso facto* a waiver but matter to be left to a jury; for if the money be taken *nomine pœna*, as compensation for the trespass; or with an express declaration that the notice is not waived thereby; or if there be fraud in paying it, &c., it is no waiver; it must be paid *as rent*, or the notice is in force. *Id*. 149. So, if the landlord distrained for the *single* rent due after the expiration of the notice (which may be done within six months after the tenant's interest expired, by 8 *Anne*, c. 14,) or recover in an action for use and occupation for it, (1 *H. Bl*. 311); or if he receives money, *as rent*, due after the expiration of the notice. 6 *T. R*. 219.

A *second notice* may or may not be a waiver of the first, under particular circumstances. See 2 *East*, 234. 5 *Taunt*. 54. So a permission to occupy to a certain extent may or may not be a waiver of the notice. See 10 *East*. 13.

FORMS.

(No. 1.)

NOTICE TO QUIT BY LANDLORD TO A TENANT FROM YEAR TO YEAR.

Sir,—I hereby give you notice to quit and deliver up on the _____ day of _____ next, the possession of the messuage or dwelling-house (or rooms and apartments, or farm, lands and premises,) with the appurtenances, which you now hold of me, situate in (describe the situation accurately) in the Colony of New South Wales.

Dated the _____ day of _____, 184 .

Yours, &c. A. B.

To Mr. C. D. (the tenant in possession)
 (or if it be doubtful who is tenant)
 To Mr. C. D., or whom else it may concern. }

(No. 2.)

THE LIKE BY AN AGENT FOR THE LANDLORD.

Sir,—I do hereby, as the Agent for, and on behalf of your landlord A. B., of _____, give you notice to quit, and deliver up on, (&c., as in No. 1,) which you now hold of the said A. B. situate (&c.) Dated (&c.) _____

Yours, &c. E. F.
 Agent for the said A. B.

To Mr. C. D., (&c.)

(No. 3.)

NOTICE BY LANDLORD WHERE THE COMMENCEMENT OF THE TENANCY IS DOUBTFUL.

Sir,—I hereby give you notice, &c., (as in No. 1, to colony of New South Wales) provided your tenancy originally commenced at that time of the year ; or otherwise, that you quit and deliver up the possession of the said messuage (&c.) at the end of the current year of your tenancy, which shall expire next after the end of half a year, from the time of your being served with this notice. Dated (&c.) _____

Yours, &c. A. B.

To Mr. C. D. (&c.)

(No. 4.)

THE LIKE BY A TENANT FROM YEAR TO YEAR OF HIS INTENTION TO QUIT.

Sir,—I hereby give you notice of my intention to quit, and that I shall on the _____ day of _____ next, quit and deliver up the possession of the messuage (&c.) which I now hold of you, situate (&c.) Dated (&c.) _____

Yours, &c. C. D.

To Mr. A. B. (&c.)

LODGINGS IN GENERAL.

The laws of England do not seem to make any dis-

inction between lodgers and other tenants, as to the payment of their rents, or the turning them out of possession ; for lodgers are equally liable to the like regulations, penalties, and forfeitures in case of non-payment of their rents, and not quitting the premises, as other tenants are.

Lodgings may be let in the same manner as lands and tenements ; in general, however, they are let either by agreement *in writing* or by *parol* between the landlord and the tenant ; and in all cases of the latter there ought, for caution, to be a witness present.

With respect to the general rule, that in case of a yearly tenancy, *notice to quit must be given half a year before the expiration of the year* ; the case of lodgings depends upon a particular contract, and is an exception to the general rule. The whole question depends upon the nature of the *first contract* ; so that, if the parties have agreed that the tenant shall hold for a term certain, *notice* of course cannot be necessary ; but, if the tenant hold for no particular period, reasonable notice must be given, which is regulated generally, if not always, by the local custom of the particular place, or district, which for the most part requires the same space of time for notice as the period for which the lodgings are taken ; as, a week's notice when taken for a week, a month's, when taken for a month, and so forth. *Finl. L. and T.*

If the lodgings be let jointly to a man and his wife, it is the taking of the husband only. (*As to larceny committed by lodgers, see Tit. LODGER AND TENANT—Australian Magistrate.*) If an apartment be let, furnished, a distress may be made for the whole rent reserved, because in contemplation of law it issues out of that part of the demised premises which belongs to *the realty*. 2 *N. R.* 224.

DOUBLE RENT.

By the statute 4 G. II. c. 28, it is enacted,—

“That if any tenant for life or years, or other persons who shall come into

possession by, from, or under him, shall wilfully hold over any lands, tenements, or hereditaments, after the determination of such term, and after demand made, and notice in writing given for delivering up possession thereof, he shall for the time he shall so hold over, pay *double the yearly value thereof*; to be recovered by action of debt, in any court of record."

It is also enacted by 2 G. II. c. 19,—

"That in case any tenant shall give notice of his intention to quit the premises holden by him, and shall not deliver up possession according to such notice, then the tenant shall from thenceforward pay to the landlord *double the rent* or sum, which he should otherwise have paid; to be levied, sued for, and recovered in the same manner as *single rent*; and such double rent shall be paid all the time the tenant continues in possession."

If, after the notice of *double rent* be expired, a single rent is accepted, such acceptance will prevent the penalty until notice is again given, and the time expired.

The notice to be given by the tenant under the latter Statute (2 G. II. c. 19) may be either by *parol*, or *in writing*; but that to be given by the landlord under the 4 G. II. c. 28, is expressly required to be *in writing*: that act gives *double value*, no matter what the rent may be, and can only be recovered by *action of debt*; but, 2 G. II. c. 19, gives *double rent*, and is recoverable by *distress*, or otherwise like single rent. 3 *Bur.* 1602, 1 *Bl. Rep.* 535.

FORM OF A NOTICE TO QUIT OR PAY DOUBLE RENT ACCORDING
TO 4 GEO. II. c. 28.

Sir,—I hereby give you notice to quit and yield up on the _____ day of _____ next, possession of the lands, tenements, and hereditaments, which you now hold of me, situate at (describe the premises here) in failure whereof, I shall require and insist upon double the yearly value of the said premises, according to the statute in such case made and provided. Dated this _____ day of _____, 184 .

To Mr. C. D.

Tenant, &c.

A. B.

Landlord.

No length of time is necessary to the validity of this notice, to entitle the landlord to double value. 2 *Bl. Rep.* 1075.

A TENANT'S NOTICE TO HIS LANDLORD.

Sir,—I hereby give you warning of quitting the lands, &c., (as the case may be) I now hold of you, situate at (describe the premises) on or before the day of _____ next ensuing. Dated the _____ day of _____, in the year 184 .

To Mr. A. B., landlord.

Yours, &c.,

C. D., tenant, &c.

OF EJECTMENT.

Ejectment is an action, by which lands or tenements may be recovered from persons holding unlawful possession.

If the tenant does not quit after a proper notice being regularly served, as aforesaid, this action must be brought to recover the possession.*

In all cases between landlord and tenant, *when half a year's rent is due*, such landlord may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of *leased* premises, *provided there be not sufficient distress on the premises.* 4 G. II. c. 28, s. 2. See 7 T. R. 117, 2 M. and S. 525. This, however, does not do away with the necessity of a previous demand of the rent, if the provisions of the lease require it; only that the demand need not be made with the exactness required by *common law.* Doug. 486. If there be a sufficient distress, the proceeding must be at *common law.*

OF THE PROCEEDING AT COMMON LAW.

Before the action can be commenced, and indeed before the forfeiture can be *incurred*, a *demand* must be made of the rent, in *fact*, although no person be present on the part of the tenant to answer it. *Plowd.* 70, *ab.* Great strictness is required in this respect, for the *common law* does not favour forfeitures. If the lease do not specify when the rent is to be paid, *the demand* must be made upon the land, at the most conspicuous place; if there be a dwelling-house on it, the demand should be made at the front door; yet, if the tenant were to meet the lessor on or off the land at any time on the last day given him to pay the rent, and then tender him the rent, it would be sufficient to save the forfeiture. *Co. Litt.* 201, b. 202, a.

* But see "Tenements Act," post.

If a particular place be named in the lease for payment of rent, *the demand* must be made *there* and nowhere else. *Co. Litt.* 202, *a.* Also, the demand must be made precisely on the last day, on which it can be paid to save the forfeiture; as where the proviso in the lease is, "that if the rent be behind and unpaid for the space of twenty-one days, the lessor may re-enter; the demand must be made on the twentieth day, at some convenient time before sunset. *Co. Litt.* 202, *a.*, 1 *Saund.* 287. And lastly, the demand must be made of the *precise sum* due, and not a penny more or less. *Cro. El.* 209. If the rent be not paid when thus demanded, the tenant forfeits his term, and the landlord may re-enter for the forfeiture; that is, he may bring an ejectment to recover the possession; for an actual entry is not necessary in this case. 3 *Bur.* 1896, 7. This mode of proceeding upon a forfeiture for non-payment of rent, *when there is a sufficient distress* on the premises, is seldom adopted in practice. First—Because the landlord can compel the payment of the rent by *distress*. Secondly—On account of the great nicety to be observed in the *previous demand* of the rent. And thirdly—Because the tenant, by filing a bill in equity, may obtain an injunction and stay the proceedings, upon payment of the rent in arrear.

PROCEEDINGS IN EJECTMENT ON A VACANT POSSESSION.

In case of a vacant possession, where the premises are *wholly* deserted by the tenant, and his place of residence unknown, and the case is not provided for by statute 4 Geo. II. c. 28, the claimant, to proceed by ejectment, must make an actual entry on the premises, and seal and deliver a lease *there* in person or by attorney. After which the ejectment is brought by lessee against the person who ejects him. *Wood, L. and T.* 639. This ejectment cannot be supported when there is any thing left by the

tenant on the premises, however trifling, as beer in a cellar, hay in a barn, &c. *Id.*

As a professional gentleman must be necessarily employed in those proceedings, it is unnecessary to enlarge further upon them. It may, however, be right to mention that the attorney cannot be the lessee in such case. *Doug.* 466.

OF THE REMEDY FOR THE LANDLORD, UNDER 4 GEO. II. c. 19,
WHERE THE PREMISES ARE VACANT.

Section 16, enacts—

“Whereas, landlords are great sufferers by tenants running away in arrear, and not only suffering the demised premises to be uncultivated, without any distress thereon, but also refusing to deliver up possession of the premises, whereby the landlords are put to the expense and delay of recovering in ejectments.

“That if any tenant holding any lands, tenements, or hereditaments, at a rack rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year’s rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no such distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more Justices of the Peace, for the county, riding, division, or place (having no interest in the demised premises), at the request of the lessor or landlord, or his bailiff or receiver, to go upon, and view the same, and to affix or cause to be affixed on the most notorious part of the premises, notice in writing, what day (at the distance of fourteen days at least) they will return to take a second view thereof; and if upon such second view, the tenant, or some person upon his behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises; then the said Justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.”

Section 17—

“Provides that such proceedings of said Justices shall be examinable in a summary way by the Judges of Assize,* of the respective counties in which such premises lie, who are empowered to order restitution to such tenant, with costs, &c. If they see cause, if they affirm the act of the Justices, to award costs, not exceeding five pounds, for the frivolous appeal.”

By stat. 57 Geo. III. c. 52, the provisions of this statute are extended to tenants, who shall be in arrear *one half year’s rent*, instead of one year, and who shall hold the lands, under any demise or agreement, whether

* Or Supreme Court, if no Assizes.

written or verbal, and although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent.

Where a tenant ceased to reside on the premises for several months, and left them without any furniture or sufficient other property to answer the year's rent, it was held that the landlord might properly, under 11 Geo. II. c. 19, proceed to recover the premises, although he knew where the tenant then was, and although the Justices found a servant of the tenant upon the premises when they first went to view the same. 1 *Bar. and Ald.* 369.

In those cases Justices ought to make a *record* of the whole proceedings.

PROCEEDINGS IN EJECTMENT UNDER STAT. 1 GEO. IV. c. 87.

The stat. 1 Geo. IV. c. 87, s. 1, having recited "that the laws heretofore made for preventing the losses to which landlords are exposed by the unlawful holding over, of lands and tenements, by the tenants or persons claiming under them after the expiration or legal determination of their terms or interests have been found by experience insufficient, and that it is therefore expedient to provide in certain cases a more expeditious mode of recovering possession of lands," proceeds to describe a remedy, by enacting—

"That where the term or interest of any tenant, now, or hereafter, holding under a lease or agreement in writing, any lands, tenements, or hereditaments, for any term or number of years certain, or from year to year, shall have expired or been determined either by the landlord or tenant, by regular notice to quit, and any such tenant, or any one claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing, made and signed by the landlord or his agent, and served personally upon, or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for the recovery of possession; it shall and may be lawful for him at the foot of the declaration, to address a notice to such tenant or person requiring him to appear in the court in which the action shall have been commenced on the first day of the term then next following, there to be made defendant, and to find such bail, (if ordered by the court) and for such purposes as thereafter specified."

A holding for three months certain is a tenancy for a

term within the meaning of the Act, 5 *B. and Ald.* 766. But the holding must be under a lease or agreement in writing. *Id.* 770. Where a tenant held from year to year, under a letting *by parol*, it was held not to be within the Act. *Id.*

DEMAND OF POSSESSION.—This demand must be in writing, and “made and signed by the landlord or his agent, and served personally upon, or left at the dwelling house or usual place of abode of such tenant, or person holding or claiming by or under him.

NOTICE OF DEMAND.

Sir,—I require you to surrender up to me, or to A. B., my authorized agent for my use, on the day of , the quiet and peaceable possession of all that and those (describing demised premises) with the appurtenances, held, and enjoyed by you as my tenant, under and by virtue of an indenture of lease (or agreement for a lease) bearing date the day of , 184 , made between and , which term and your interest therein will expire on day of , or thereabouts.

Given under my hand this day of , 184 .

D. C.

To Mr. F. G., his assignees, under tenants, and all other persons concerned.

If the tenant or other person thereupon refuse to deliver up possession, the landlord may commence his ejection.

The after proceedings are rather complicated, but as they must be done through a professional gentleman, they shall be omitted, as not essential here.

FIXTURES.

Fixtures may be defined to be, whatever constitutes such an essential inherent part of the freehold as not to be separated from it without injury to the inheritance, as wainscoats, doors, windows, &c. They are considered so much an integral part of a house, that upon an agreement for a lease, &c., if nothing is said as to the fixed articles in the house, it seems they would be considered as thrown into the bargain, and a compensation for their

use included in the rent of the premises. 2. *B. and Cr.* 76, 608. It is therefore a necessary caution in leases, assignments, and other conveyances, when it is intended that the fixtures should be valued and paid for separately from the premises, that reference should be expressly made to them in the instrument of conveyance, by schedule or otherwise.

It is a maxim of law, that whatever is fixed to the *realty* is made a part of it, and adheres and partakes of all its incidents. By the mere act of annexation a personal chattel immediately becomes parcel of the freehold itself. *Quicquid plantatur solo, solo cedit.* Every case in which there is a right of severing a thing from the freehold, may be considered as an exception to this general rule.

A tenant may remove erections and utensils *for trade*; as brewing utensils, furnaces, coppers, fire-engines, vats for brewing, pans fixed up in salt works, cider mills, &c. The usage of the country will always have weight in cases concerning the removal of fixtures by the tenant.

From a review of the authorities it is difficult to lay down any precise rule to serve as a guide in practice, in respect of the removal of *trade erections*. The following may, perhaps, be found most consistent with adjudged cases, viz. :—That things which a tenant has fixed to the freehold for the purposes of trade or manufacture may be taken away by him, whenever the removal is not contrary to any prevailing practice; where the articles can be removed without causing material injury to the estate; and where, in themselves, they were of a perfect chattel nature before they were put up, at least have in substance that character, independently of their union with the soil; or, in other words, where they may be removed without being entirely demolished, or losing their essential character or value. *A. and Fer.* 44.

Agricultural tenants are excluded from the advantages possessed by *tenants in trade*, for they cannot take away erections put up by them *for agricultural purposes.* 3

East. 38. *Gardeners and nurserymen* are entitled to sell, and remove trees, shrubs, &c., and other produce of their grounds, planted with an express view to sale, 7 *Taunt.* 191, 4 *Taunt.* 316, but none but gardeners or nurserymen have this privilege. 4 *Taunt.* 316.

Fixtures for ornament or convenience may be removed, as pier glasses, hangings, tapestry, marble chimney pieces, and the like, 1 *H. Bl.* 260, *in notes*, also certain grates. 7 *Taunt.* 191. Verandahs erected by the tenant cannot be removed. 2 *Stark, N. P. C.* 433. It seems that any thing that can be deemed a *permanent improvement* is not removable by the tenant.

AT WHAT TIME THE TENANT MAY REMOVE FIXTURES.

A tenant for a time certain, that is, when he knows at what period his interest will expire must remove them *during the continuance of his term*. There is, however, a modern decision which establishes an exception to this rule, viz. :—"That where a tenant *continues to keep possession of the demised premises*, after the expiration of his term, he may still remove his fixtures so long as he retains possession, although his legal interest in the land has terminated. 2 *Eqst.* 88.

Although no decision has established that tenancies which are of *an uncertain nature and duration* are excepted out of the general rule, yet it appears consistent, that tenants *for life or at will, &c.*, should be allowed to remove their fixtures *within a reasonable time* after the expiration of their estates. For no *latches* can be imputed to them in not availing themselves of their privilege during the term ; on the same principle which governs the case of *Emblements*, where a similar indulgence is allowed to tenants for life, &c., as we shall see presently, on the ground that a party shall never be prejudiced by the sudden determination of his term. But, it is conceived, that if the tenant determines his interest by his own act, as by forfeiture, or condition broken, &c., that

he would not be entitled to remove his fixtures, at least after the entry of his landlord. *Am. and Fer.* 96.

OF EMBLEMENTS.

A tenant for life, or his representatives, shall not be prejudiced by any sudden determination of his estate, because such a determination is *contingent and uncertain*. Therefore, if a tenant for his own life sows the lands and dies before harvest, his executors shall have the *emblements*, or profits of the crop; for the estate was determined by the *act of God*. And it is a maxim in law, that "*Actus Dei nemini facit injuriam.*" 2 *Bl. Com.* 122. And they shall have free entry, *egress and regress*, to cut and carry away the emblements. *Litt.* 68.

The doctrine is different in respect to *tenant for years*, or where the tenant holds for *a time certain*; as, if he holds from midsummer for ten years, and in the last year he sows a crop of corn, and it is not ripe and cut before *midsummer*, the end of his term; the landlord shall have it; for the tenant knew the expiration of his term, and therefore it was his own folly to sow what he never could reap the profits of. 2 *Bl. Com.* 145.

The doctrine of emblements extends not only to corn sown, but to roots planted, or other *annual* artificial profit; but it is otherwise of fruit trees, grass, and the like, which are not planted *annually* at the expense and labour of the tenant, but are either a permanent or natural profit of the earth. For when a man plants a tree, he cannot be presumed to plant it in contemplation of any present profit; but merely with a prospect of its being useful to himself in future, and to future successions of tenants. 2 *Bl. Com.* 123. This law of emblements extends to the *under-tenants* also. *Id.*

OF REPAIRS.

In case of a house or other tenement, a covenant will

be *implied* to keep it in repair, and leave it in as good plight as it was at the time of making the lease, but the ordinary and natural decay is no breach of the covenant, but the lessor is bound to do his best to keep it up. 2 *Esp. R.* 590. Under a covenant that the tenant would *substantially* repair, uphold, and maintain a house, he is bound to keep up the inside painting. 1 *Car. and P.* 265. A general covenant to repair and to deliver up in repair extends, it seems to all buildings erected during the term. 1 *Esp. R.* 277. The breaking of a doorway through the wall of a demised house into an adjoining house, and keeping it open for a long space of time, amounts to a breach of covenant to repair. 2 *Stark.* 293.

A tenant from year to year is only bound to fair and tenantable repairs, so far as to prevent waste or decay of the premises, and not to substantial and lasting repairs, such as *new roofing*, &c. 2 *Esp.* 590.

RECOVERY OF RENT BY DISTRESS.

Rent is recoverable by action of debt at common law ; but the general remedy is *distress*. This remedy is given by various Statutes, and is an effectual, speedy, and universal method of recovering rent in arrear.

WHO MAY DISTRAIN.—A landlord cannot distrain unless there be an actual demise to the tenant at a specific rent. 5 *B. and Ald.* 322. The remedy in such case is an action for use and occupation. So, in another case, where under an agreement for a lease at a certain rent, the tenant was let into possession before the lease was executed ; it was held, that during the first year, the lessor could not distrain for rent ; for there was no demise express or implied. 2 *Taunt.* 148. But if there is a *specific* rent under an actual *demise*, that demise need not be *in writing* to entitle the landlord to distrain.

Another requisite to maintain distress, generally speaking, is a right to re-enter ; where, therefore, A, by agreement, granted *the whole* of the interest which he

had in the remainder of two terms, reserving a rent, it was held that he could not distrain for such rent, although it appeared he had been paid one year's rent under the agreement, and it was expressed that the assignee should remain tenant to him during the lease. *2 B. Moore*, 656.

Although, in general, a person who has not *the reversion*, cannot distrain of common right, nevertheless, he may reserve to himself the power of *distraining*, or the reversion may be good to bind the lessee by way of contract, for the performance whereof the lessee shall have an action of debt. *2 Bac. Ab.* 106, *Litt.* 214. A lessor for years, who assigns his term, cannot distrain for rent, but must bring his action on the contract. *2 Wils.* 375.

A landlord may distrain for the rent of ready furnished lodgings. *2 N. R.* 224.

MANNER OF DISTRAINING.—The landlord himself may make the distress, but it is in general made by some other person employed by him for that purpose, who is denominated a bailiff, in which case the landlord should give to such person a warrant or authority in writing, which is technically called a “Warrant of Distress.” *Gilb. Dis.* 229. Should the distress be made by the landlord himself, he must go on the premises demised, and take hold of some piece of furniture or other personal chattel found thereon, and say—“I take this table (or whatever else it may be) in the name of all the other goods on these premises, for the sum of £ rent due to me at day last.” See *Inventory*.

This warrant must be signed by the person entitled to the rent; and in case of a joint distress, as *co-partners*, the warrant must be signed by all the persons entitled to distrain. *Gilb. Dis.* 229. It is, however, conceived that a *written warrant* is not absolutely necessary. Yet, it is highly advisable, (unless, perhaps, where the known bailiff of the landlord makes the distress), because, by shewing the bailiff's authority to seize, a breach of the

peace may be prevented; for if an utter stranger were to enter a tenant's house without any thing to manifest his authority, *resistance* might be the natural result.

The bailiff being thus legally authorised to distress, enters on the premises and makes a seizure of the distress. If a distress be made in a house, he seizes a chair or other piece of furniture, and says, "I seize this chair (or whatever else it may be) in the name of all the goods in the house (or on the premises) for the sum of £ being years' rent due to C. D. the landlord, on day last, by virtue of an authority for that purpose."

An *inventory* should then be made of the goods, and a written notice at foot of it given to the tenant, acquainting him of the distress having been made, and the time when the rent and charges must be paid, or the goods replevied.

FORM OF INVENTORY.

An inventory of the several goods and chattels distrained by me C. D. (or E. F., the bailiff,) the day of , 184 , in the dwelling house, &c., (describing the premises) of A. B., situate at , in the colony of New South Wales (if the distress be made by a bailiff, say, by authority and on the behalf of C. D.) for the sum of £ , being years' rent due to me (or to the said C. D.) at last.

IN THE DWELLING HOUSE.

In the parlour..... 1 table, &c.
 In the drawing room..... 1 sofa, &c.
 (Setting forth the goods.)

NOTICE OF THE DISTRESS TO BE WRITTEN AT THE BOTTOM OF THE INVENTORY.

To Mr. A. B.

Take notice, that I have this day distrained (or that as bailiff to C. D., your landlord, I have this day distrained) on the premises above-mentioned, the several goods and chattels specified in the above inventory, for the sum of £ , being years' rent due to me (or to the said C. D.) at last for the said premises,* and that unless you pay the said rent with the charges

* If the goods are secured on the premises, under the authority of 11 Geo. II. c. 19, s. 10, insert here the following clause. "And have secured the said goods and chattels in the stable, &c., on said premises." The notice need not express when the rent became due. Dougl. 279; Gilb. Dis.

of distraining for the same, within five days from the date hereof, the said goods and chattels will be appraised and sold, according to law. Given under my hand the day of , 184 .

Witness, R. T.

C. D.

A true copy of the above inventory and notice must be given either to the tenant himself, or to the owner of the goods, or left at the tenant's house, or if there be no house, on the most notorious place on the premises; and, it is proper to have a person with you when you make the distress, and also when you leave the inventory, and to attest, if there be occasion, the regularity of the proceedings.

The safest way is to remove the goods immediately, and in the notice to acquaint the tenant where they are removed to; but, it is now usual for the tenant to sign an agreement, or consent to their remaining a longer time than the *five days* allowed by the statute 11 G. II. c. 19, s. 10, on the premises, in the custody of the distrainer, or a person appointed by him for that purpose, which may be made in writing in the form following:—

MEMORANDUM.—That I, A. B., do hereby consent and agree that C. D., my landlord, who hath distrained my goods and chattels for the rent of a dwelling-house, &c., (describing the premises), situate at , in the colony of New South Wales, shall continue in the possession of my said goods and chattels in the said dwelling-house, &c., for the space of days from the date hereof, the said C. D. having agreed to forbear the sale of the said goods and chattels for the said space of time, to enable me to discharge the said rent; and I, the said A. B., do hereby agree to pay the expenses of keeping the said possession. As witness my hand, the day of , 184 .

Witness, R. F.

A. B.

If this consent be given on the part of the tenant, then the goods should not be sold until the expiration of the time agreed upon; but if it be not given, the statute 2 W. and M. c. 5, directs them to be sold at the expiration of *five days* after the distress. It has been decided, that the *five days* are *inclusive* of the day of sale, but must be *exclusive* of the time of it. 1 *H. Bl.* 13.

The distress must be made in the *day time*. It may be made at any time during the term for which the pre-

mises are demised, or within six months after the determination thereof, provided the landlord's title and the tenant's possession continue at the time of the distress. 8 Anne, c. 14. s. 6, 7. The landlord cannot break open the *outer* door of a house to make a distress; nor can he break open or throw down gates or inclosures for that purpose; but, if he have entered the house, he may break open an inner door, &c. *Co. Litt.* 161, *B. N. P.* 81. The distress must be made on the premises; but if the landlord comes to distrain, and sees the cattle driven off the land, he may then follow them. But if the beasts go off the land of themselves before the landlord sees them, he cannot distrain them. *Gilb. Dis.* 52. By stat. 11 G. II. c. 19, the landlord may distrain and sell goods fraudulently carried off the premises, within thirty days after the *conveying off*, wherever they are found.*

If the goods exceed not the value of fifty pounds, any two Justices of the Peace may convict offenders in

* CHARGES OF DISTRESS.—By the 57th G. III. c. 93, it is enacted—
 “That no person making any distress for rent, where the sum due shall not exceed £20, shall take other charges than such as are mentioned in the schedule annexed; nor shall charge for any act not really done.” s. 1.

	s.	d.
Levyng Distress.....	3	0
Man in possession, per day.....	2	6
Appraisement, whether by one broker or more, 6d. in the pound on the value of the goods.....	0	0
All expenses of advertisements, if any such.....	10	0
Catalogues, sale and commission, and delivery of goods, 1s. in the pound on the net produce of the sale.....	0	0

“The party aggrieved by any overcharge may apply to a Justice of the Peace, who may adjudge treble the amount of monies unlawfully taken, to be paid with costs, which may be levied by distress.” s. 2.

“Justices may summon witnesses, who are liable to be fined, not exceeding 40s. for not attending (without a reasonable or lawful excuse), or refusing to give evidence.” s. 3.

“If the complaint is unfounded, the Justice may give costs, not exceeding 20s. to the party complained against; but no judgment to be given against any landlord, unless he personally levies the distress. Provided, that the parties shall not be barred of other legal remedies which they might have, before the passing of this Act, except so far as any complaint to be preferred by virtue of this Act, shall have been determined by order and judgment of the Justice before whom it shall have been heard and determined.” s. 4.

“The signature of the Justice shall be proof of judgment.” s. 5.

“Brokers shall give copies of their charges to the persons whose goods are distrained.” s. 6.

double the value of the goods, to be paid to the landlord or his bailiff, &c. If the value exceed fifty pounds, the landlord may recover double value by action.

As to what things can or cannot be distrained or taken in distress, it may be laid down as a general rule, that all chattels, personal, found on the premises, are liable to be distrained, unless particularly protected or exempted. 3 *Bl. Com.*

By stat. 2 Wm. III. c. 5, sheaves or cocks of corn, or corn loose or in straw, or hay in a barn or granary, or on a stack or rick, or otherwise upon any part of the land charged with the rent, may be distrained, locked up, and detained where the same shall be found, until replevied or sold.

By stat. 11 Geo. II. c. 19, s. 8, the landlord may seize growing crops for arrears of rent, and may cut, &c., and lay them up, when ripe, in barns, &c., on the premises; if no barn on the premises, in some proper place as near as may be to the premises, the same to be appraised and sold in convenient time.

Notice to be given to the tenant of the place where such distress shall be lodged, within one week after the lodging thereof. If the tenant pay or tender the arrears of rent and costs of distress before the crops be cut, the distress shall cease; but, if growing corn be sold under a *feri facias*, it cannot afterwards be distrained for rent, unless the purchaser allow it to remain on the ground an unreasonable time after it is ripe. 2 *Br. and B.* 362. Trees, shrubs, &c., are not liable to distress. 2 *Moo.* 491.

The tools and utensils of a man's trade cannot be distrained, while there is any other distress on the premises, or even while they are in actual use. *Willes*, 512. Therefore, the axe of a carpenter, the books of a scholar, and the like, are not distrainable, while any other distress can be had, or while they are in actual use. *Co. Litt.* 47. But lest this rule should be carried so far as to privilege the sheep of the tenant, and his beasts of the plough (*they* being materials of husbandry to plough

and manure the land,) and by that means the landlord be totally disappointed of his rents ; this matter hath been settled by the stat. 51 Hen. III. s. 4, which enacts —“ That no man shall be distrained by the beasts of his plough or his sheep, either by the King or any other *while there is another* sufficient distress.” *Gilb. Dis.* 33. Valuable things in the way of trade shall not be liable to a distress, as a horse standing in a smith’s shop to be shod, or in a common inn, or cloth at a tailor’s house, or corn sent to a mill or a market ; for all these are protected and privileged for the benefit of trade, and are supposed, in common presumption, not to belong to the owner of the house but to his customers. 3 *Bl. Com.* The cattle and goods of a guest are privileged, because an inn is *publici juris* ; and every man has a right to put up at it. *Gilb. Dis.* 35. This privilege, it seems, extends only to *temporary guests* ; as a person who hires an unfurnished room in an inn, by such hiring becomes an *under tenant*, and any furniture he may have brought into such room must be liable to the landlord’s distress, he not being within the spirit of the privilege, which is allowed merely for public convenience. 1 *Bl. Rep.* 484. This exception only extends to *common inns* ; therefore it was held not to extend to the case of a chariot standing in a coach-house of a livery-stable-keeper, for that is not a common inn, and the hiring of its standing may be considered as part of the profits of the premises. *Id.* 3, *Bur.* 1498. A horse that brings corn to market, and is put into a private yard while the corn is selling, cannot be distrained ; because the bringing of the horse there is in the way of trade, and consequently for the public benefit. *Gilb. Dis.* 36. Goods in the possession of a common carrier are privileged. *Id.* If beasts are turned in upon land, by consent of the owner, they are immediately distrainable for the landlord’s rent. *Id.* Goods of the principal in the hands of the factor cannot be distrained. *Id.*

The horse on which a man is riding cannot be dis-

trained: for it is in use. But if a man be riding one horse and leading another, the led horse is not privileged. *Moo.* 214. A ferry boat may be distrained for the rent of a ferry, and a ship for the rent of a dock.

Wearing apparel, if in use, cannot be distrained, but if *not* in use it may. 1 *Esp.* 206. Whatever is part of the *freehold* is exempted from distress, for that which is part of the freehold cannot be severed from it without detriment to the thing itself in the removal. Thus, a smith's anvil on which he works is not distrainable; for it is accounted part of the forge, though not actually fixed with nails. *Gilb. Dis.*

GOODS REPLEVIED.

In order to replevin, or to release goods distrained, the tenant or person from whom they are taken, is required to take with him two responsible housekeepers to the Sheriff's office; who, after being satisfied of their sufficiency, will take a bond executed by them and the tenant, &c., conditioned that the tenant will try his right with the distrainer in the Supreme Court; and that the goods shall be returned, or double their value paid, if their return is awarded. Although the statute directs the bond to be taken with *two* sureties, yet a bond by one surety only has been holden good. 7 *Taunt.* 28. A precept or warrant is then made out, commanding one of the sheriff's officers to replevy the goods, and deliver them to the plaintiff until the suit shall be decided.

TENEMENTS ACT.

11 Vict. No. 2, "An Act to facilitate the recovery of possession of Tenements after due determination of the Tenancy." Assented to, 24th July, 1847.

[Preamble.—When over holding tenant or occupier of premises refuses to give up possession landlord may give notice of his intention to proceed to recover possession.—If tenant does not appear, or fails to shew cause why he does not give possession, the Justices may issue their warrant directing the constables to give the landlord possession.]

WHEREAS it is expedient to provide for the more speedy and effectual recovery of the possession of premises unlawfully held over after the determination of the

tenancy: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof; that from and after the passing of this Act, when and so soon as the term or interest of the tenant of any house, land, or other corporeal hereditaments held by him shall have ended, or shall have been duly determined by a legal notice to quit, or otherwise, and such tenant or (if such tenant do not actually occupy the premises, or only occupy a part thereof) any person by whom the same, or any part thereof, shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord of the said premises, or his agent, to cause the person so neglecting or refusing to quit and deliver up possession, to be served (in the manner hereinafter mentioned) with a written notice, in the form set forth in the schedule to this Act, signed by the said landlord or his agent, of his intention to proceed to recover possession under the authority and according to the mode prescribed in this Act; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and shew to the satisfaction of the Justices hereinafter mentioned, reasonable cause why possession should not be given under the provisions of this Act, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to such Justices proof of the holding and of the end or other determination of the tenancy, with the time or manner thereof, and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession, and upon proof of service of the notice, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the Justices in Petty Sessions assembled, or any two of them, to issue a warrant, under their hands and seals, to the constables and peace officers of the city, town, district, or place, within which the said premises, or any part thereof, shall be situate, commanding them, within a period to be therein named, not more than thirty clear days from the date of such warrant, to enter (by force if needful) into the premises, and give possession of the same to such landlord or agent: Provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas Day, or at any time, except between the hours of nine in the morning and four in the afternoon: Provided also, that nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant shall be granted, from any action which may be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, where such person had not, at the time of granting the same, lawful right to the possession of the same premises: Provided also, that nothing herein contained shall affect any rights to which any person may be entitled, as outgoing tenant, by the custom of the country or otherwise.

[The manner in which such summons shall be served.]

II. And be it enacted, that such notice of application, intended to be made under this Act, may be served either personally or by leaving the same with some person, being in, and apparently residing at, the place of abode of the person so holding over as aforesaid; and that the person serving the same shall read over the same to the person served, or with whom the same shall be left as aforesaid, and explain the purport and intent thereof: Provided, that if the person so holding over cannot be found, and the place of abode of such person shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting up of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person.

[How execution of warrants of possession may be stayed.]

III. And be it enacted, that in every case in which the person to whom any such warrant shall be granted had not, at the time of granting the same, lawful

right to the possession of the premises, the obtaining of any such warrant as aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound with two sureties as hereinafter provided, to be approved of by the said Justices, in such sum as to them shall seem reasonable, regard being had to the value of the premises, and to the probable cost of an action, to sue the person to whom such warrant was granted, with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein, execution of the warrant shall be delayed until judgment shall have been given in such action of trespass; and if, upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the warrant so granted, and the plaintiff shall be entitled to double costs in the said action of trespass.

[Proceedings on the bond in actions of trespass.]

IV. And be it enacted, that every such bond, as hereinbefore mentioned, shall be made to the said landlord or his agent, at the costs of such landlord or agent, and shall be approved of and signed by the said Justices; and if the bond so taken be forfeited, or if upon the trial of the action for securing the trial of which such bond was given, the Judge by whom it shall be tried shall not endorse upon the record in Court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action, and recover thereon: Provided always, that the Court, where such action as last aforesaid shall be brought, may, by a rule of Court, give such relief to the parties upon such bond, as may be agreeable to justice, and such rule shall have the nature and effect of a defeasance to such bond.

[Protection of Justices, constables, &c.]

V. And be it enacted, that it shall not be lawful to bring any action or prosecution against the said Justices, by whom such warrant as aforesaid shall have been issued, or against any constable or peace officer, by whom such warrant may be executed, for issuing such warrant or executing the same respectively, by reason that the person on whose application the same shall be granted had not lawful right to the possession of the premises.

[Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity, but be liable in an action on the case for special damage proceeding from irregularity.]

VI. And be it enacted, that where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord, nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the party aggrieved may, if he think fit, bring an action on the case for such irregularity, or informality in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit: Provided, that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed by the jury at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the Judge before whom the trial shall have been held shall certify upon the back of the record that in his opinion full costs ought to be allowed.

[Interpretation clause.]

VII. And be it enacted, That in construing this Act the word "premises" shall be taken to signify lands, houses, or other corporeal hereditaments; and

that the word "person" shall be taken to comprehend a body politic, corporate, or collegiate, as well as an individual; and that every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be deemed to extend and be applied to several persons or things as well as one person or thing; and that every word importing the masculine gender shall, where necessary, extend and be applied to a female as well as a male; and that the term "landlord" shall be understood as signifying the person entitled to the immediate reversion of the premises, or, if the property be held in joint-tenancy, coparcenary, or tenancy in common, shall be understood as signifying any one of the persons entitled to such reversion: and that the word "agent" shall be taken to signify any person usually employed by the landlord in the letting of the premises, or in the collection of the rents thereof, or specially authorized to act in the particular matter by writing under the hand of such landlord.

SCHEDULE REFERRED TO.

FORMS.

No. 1.

NOTICE OF OWNER'S INTENTION TO APPLY TO JUSTICES TO RECOVER POSSESSION.

I (owner, or agent to the owner, as the case may be,) do hereby give you notice that unless peaceable possession of the tenement, (shortly describing it,) situate which was held of me, or of the said (as the case may be) under a tenancy from year to year, or (as the case may be) which expired (or was determined) by notice to quit from the said or otherwise, (as the case may be) on the day of , and which tenement is now held over and detained from the said , be given to (the owner or agent) on or before the expiration of seven clear days from the service of this notice, I shall on next, the day of , at of the clock of the same day, at , apply to Her Majesty's Justices of the Peace at , (being the city, town, district, or place, in which the said tenement, or any part thereof, is situate,) in Petty Sessions assembled, to issue their warrant directing the constables of the said district to enter and take possession of the said tenement, and to eject any person therefrom.

(Signed)

(Owner or Agent.)

Dated this

To Mr.

No. 2.

COMPLAINT BEFORE TWO JUSTICES.

The complaint of (owner or agent, &c., as the case may be,) made before us two of Her Majesty's Justices of the Peace at , in Petty Sessions assembled, who saith that the said did let to a tenement consisting of , for under the rent of , and that the said tenancy expired (or was determined by notice to quit, given by the said , or as the case may be,) on the day of , and that on the day of , the said did serve on (the tenant overholding) a notice in writing of his intention to apply to recover possession of the said tenement, (a duplicate of which notice is hereto annexed) by giving, &c., (describing the mode in which the service was effected),

and that notwithstanding the said notice, the said _____ refused (or (neglected) to deliver up possession of the said tenement, and still detains the same.

(Signed)
 Taken the _____ day of _____, before us. _____ (Signed)

A duplicate of the notice of intention to apply is to be annexed to this complaint.

No. 3.

WARRANT TO PEACE OFFICERS TO TAKE AND GIVE POSSESSION.

Whereas (set forth the complaint), we, two of Her Majesty's Justices of the Peace, in Petty Sessions, assembled at _____, do authorize and command you, on any day within _____ days from the date hereof, (except on Sunday, Christmas Day, and Good Friday, to be added if necessary,) between the hours of nine in the forenoon and four in the afternoon, to enter (by force, if needful,) and with or without the aid of _____ the owner or agent, (as the case may be,) or any other person or persons whom you may think requisite to call to your assistance, into and upon the said tenement, and to eject thereout any person, and of the said tenement full and peaceable possession to deliver to the said _____ (the owner or agent.)

Given under our Hands and Seals,
 this _____ day of _____,
 18 _____

To _____, and all other constables and peace officers acting for the town of _____; or district of _____

LEASES ACT.

11 Victoria, No. 28. "An Act to facilitate the granting of Leases." Assented to, 1st October, 1847.

[Where the words of column I., of the second schedule employed, the deed to have the same effect as if the words of column II. were inserted.]

WHEREAS it is expedient to facilitate the leasing of lands and tenements: Be it enacted by his Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, that whenever any party to any deed made according to the tenor and effect of the form set forth in the first schedule to this Act, or whenever any party to any other deed which shall be expressed to be made in pursuance of this Act, shall employ in such deed respectively any of the forms of words contained in column I. of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed as if such party had inserted in such deed the form of words contained in column II. of the same schedule, and distinguished by the same number as is annexed to the form of words employed by such party, but it shall not be necessary in any such deed to insert any such number.

[Deed to include all houses, &c.]

II. That every such deed, unless any exception be specially made therein, shall be held and construed to include all out-houses, buildings, barns, stables,

yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining.

[Remuneration for deed under the Act not to be by length only.]

III. That in taxing any bill for preparing and executing any deed under this Act, or which might be prepared under this Act, it shall be lawful for the proper taxing officer of the Supreme Court, and he is hereby required in estimating the proper sum to be charged for such transaction, to consider, not the length of such deed, but only the skill and labour employed, and responsibility incurred in the preparation thereof.

[Deed not taking effect by this Act to be valid.]

IV. That any deed, or part of a deed, which shall fail to take effect by virtue of this Act, shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this Act had not been made.

[Construction clause.]

V. That in the construction, and for the purposes of this Act and the schedules hereto annexed, unless there be something in the subject or context repugnant to such construction, the word "lands" shall extend to all tenements and hereditaments, or any undivided part or share therein respectively; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and the converse; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "party" shall mean and include any body, politic or corporate, or collegiate, as well as an individual.

[Schedules, &c., part of Act.]

VI. That the schedules, and the directions and forms therein contained, shall be deemed and taken to be parts of this Act.

SCHEDULES REFERRED TO.

THE FIRST SCHEDULE.

This Indenture made the _____ day of _____, one thousand eight hundred and forty-_____, (or other year) in pursuance of an Act to facilitate the granting of leases between (here insert the names of the parties, and recitals, if any,) witnesseth, that the said (lessor) or (lessors) doth or do demise unto the said (lessee) or (lessees) his (or their) heirs or executors, administrators, and assigns, as the case may be, all, &c., (parcels) from the _____ day of _____ for the term of _____ thence ensuing, yielding and paying therefor during the said term the rent of (state the rent and mode of payment.)

In witness whereof the said parties hereto have hereunto set their hands and seals.

THE SECOND SCHEDULE.

DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

1.—Parties who use any of the forms in the first column in this schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2.—Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the forms in the first column of this schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3.—Such parties may fill up the blank spaces left in the forms 4 and 5, in the first column of this schedule so employed by them, with any words or figures, and the words and figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.

4.—Such parties may introduce into, or annex to, any of the forms in the first column, any express addition to, exceptions from, or express qualifications thereof respectively, and the like additions, exceptions, or qualifications, shall be taken to be made from, or in the corresponding forms in the second column.

5.—Where the premises demised shall be of freehold tenure, the covenants 1 to 10 shall be taken to be made with, and the proviso 11 to apply to, the heirs and assigns of the lessor; and where the premises demised shall be of leasehold tenure, the covenants and proviso shall be taken to be made with, and apply to, the lessor, his executors, administrators, and assigns, unless otherwise stated.

COLUMN 1.

1. That the said (*lessee*) covenants with the said (*lessor*) to pay rent;

2. And to pay taxes;

3. And to repair;

4. And to paint outside every year;

5. And to paint and paper inside every year;

COLUMN 2.

1. And the said lessee doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators, and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

2. And also will pay all taxes, rates, duties, and assessments whatsoever, now charged, or hereafter to be charged, upon the said demised premises, or upon the said lessor, on account thereof.

3. And also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep, the said demised premises, with the appurtenances, in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks, and keys, and all other fixtures and things which at any time during the said term shall be erected and made when, where, and so often as need shall be.

4. And also that the said lessee, his executors, administrators, and assigns, will in every year, in the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colors, in a workmanlike manner.

5. And also that the said (*lessee*), his executors, administrators, and assigns, will in every year, paint the inside wood, iron, and other works,

COLUMN 1—continued.

6. And to insure from fire in the joint names of the said (*lessor*) and the said (*lessee*).

7. And that the said (*lessor*) may enter and view state of repair; and that the said (*lessee*) will repair according to notice.

8. That the said (*lessee*) will not use premises as a shop.

COLUMN 2—continued.

now or usually painted, with two coats of proper oil colors, in a workmanlike manner; and also to re-paper, with paper of a quality as at present, such parts of the premises as are now papered; and also wash, stop, whiten, or color, such parts of the said premises as are now plastered.

6. And also that the said lessee, his executors, administrators, and assigns, will forthwith insure the said premises hereby demised to the full value thereof, in some respectable Insurance Office, in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, and assigns, and keep the same so insured during the said term, and will, upon the request of the said lessor, or his agent, shew the receipt for the last premium paid for such insurance for every current year; and as often as the said premises hereby demised shall be burnt down, or damaged by fire, all and every the sum or sums of money which shall be recovered or received by the said (*lessee*), his executors, administrators, or assigns, for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises, or such parts thereof as shall be burnt down, or damaged by fire as aforesaid.

7. And it is hereby agreed that it shall be lawful for the said lessor and his agents, at all seasonable times during the said term, to enter the said demised premises, to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.

8. And also that the said lessee, his executors, administrators, and assigns, will not convert, use, or occupy, the said premises, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business

COLUMN 1—continued.

9. And will not assign without leave;
10. And that he will leave premises in good repair.
11. Proviso for re-entry by the said lessee on non-payment of rent, or non-performance of covenants.
12. The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.

COLUMN 2—continued.

whatsoever, or suffer the said premises to be used for any such purpose, or otherwise than as a private dwelling-house, without the consent, in writing, of the said lessor.

9. And also that the said (*lessee*) shall not, nor will, during the said term, assign, transfer, or set over, or otherwise by any act or deed, procure the said premises, or any of them, to be assigned, transferred, or set over, unto any person or persons whomsoever, without the consent, in writing, of the said (*lessor*) his executors, administrators, or assigns, first had and obtained.

10. And further that the said (*lessee*) will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.

11. Provided always, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof) or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases, it shall be lawful for the said lessor, at any time thereafter, into, and upon the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess, and enjoy, as of his or their former estate, anything hereafter contained to the contrary notwithstanding.

12. And the lessor doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall

COLUMN 1—continued.

COLUMN 2—continued.

and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

RECOVERY OF SMALL DEBTS.

10 Vict. No. 10. "An Act to amend the Law respecting the recovery of Small Debts in all parts of the Colony." Assented to, 30th October, 1846.

Repealing 3 Wil. IV. No. 2; 3 Vic. No. 6; 4 Vic. No. 25; 6 Vic. No. 25;—except as to the Courts of Requests in the county of Cumberland.

[Preamble.]

WHEREAS it is expedient to consolidate and amend the Laws now in force in New South Wales relating to the recovery of small debts and causes of action, in the manner hereinafter contained: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That from and after the passing of this Act, an Act passed in the third year of the reign of King William the Fourth, (3 Wil. IV. No. 2,) intituled, "An Act for better regulating Courts of Requests in the colony of New South Wales;" and also an Act passed in the third year of the reign of Her Majesty Queen Victoria, (3 Vic. No. 6,) intituled, "An Act to establish Courts of Requests at the towns of Melbourne and Port Macquarie, in the colony of New South Wales;" and also an Act passed in the fourth year of the reign of Her Majesty Queen Victoria, (4 Vic. No. 25,) intituled, "An Act to amend an Act, intituled, 'An Act for better regulating Courts of Requests in New South Wales;'" and also an Act passed in the sixth year of the reign of Her Majesty Queen Victoria, (6 Vic. No. 25,) intituled, "An Act to consolidate and amend the Law relating to Courts of Requests, and to extend the jurisdiction of such Courts in the county of Cumberland," shall be and the same are hereby repealed, save and except so much of the said last recited Act as relates to Courts of Requests established and hereafter to be established in the county of Cumberland aforesaid, and all actions, plaints, and suits, which shall have been commenced, and shall be still pending in any Courts of Requests established by virtue of the said last recited Act, shall from and after the passing of this Act be continued, heard, and determined, under the provisions hereinafter continued.

[Extending to Courts of Requests in the town of Melbourne, and county of Bourke, the same jurisdiction as exercised by those in the county of Cumberland.]

II. Provided always, and be it enacted, That nothing herein contained shall be deemed to apply to any Court of Requests for the town of Melbourne, and county of Bourke, in the district of Port Phillip; and that from and after the first day of January, which will be in the year of our Lord one thousand eight hundred and forty-seven, the Courts of Requests to be holden in and for the town of Melbourne, and county of Bourke, in the said district of Port Phillip, shall exercise such and the same jurisdiction, in all respects, as the Courts of

Requests in the said county of Cumberland; and that the said last recited Act shall from the said first day of January be in force and apply to the said town of Melbourne, and county of Bourke, and to the Courts of Requests to be held therein.

[Thirty pounds jurisdiction, under limitation, extended to counties of Cumberland and Bourke.]

III. Provided always, and be it enacted, That any Court of Requests now or hereafter established in the counties of Cumberland or Bourke shall have jurisdiction for the recovery of any debt, demand, or damage, whether liquidated or unliquidated, to an amount in any case not exceeding thirty pounds, subject nevertheless to the proviso in the fourth clause of this Act contained, for the limitation of the jurisdiction of the Courts of Petty Sessions hereby created; and that all actions tried in any such Court of Requests for the recovery of any sum between ten pounds and thirty pounds shall be heard and determined in a summary way, and according to equity and good conscience, in like manner as any sum under ten pounds is now recoverable in any such Court: Provided, however, that the summary jurisdiction hereby created shall not interfere with so much of the said last recited Act, as establishes trial by a Commissioner assisted by Assessors.

[Courts of Petty Sessions to be Courts of Requests.—Jurisdiction of such Courts.]

IV. And be it enacted, That all Courts of Petty Sessions now established, or that may hereafter be established in the said territory, shall, within their respective districts, have power and authority to hear and determine in a summary way, and according to equity and good conscience, all actions whatsoever (against persons liable as hereinafter mentioned to be summoned to such Court, and every defendant sued jointly with such person) for the recovery of any debt, demand, or damage, whether liquidated or unliquidated to an amount in any case not exceeding ten pounds, or (where the party intended to be sued shall, by writing under his hand, have consented thereto) to an amount not exceeding thirty pounds: Provided that such Courts shall not have jurisdiction in any case where the matter in question relates to the taking of any duty to Her Majesty, or any fee of office, or to any annual rent or other matter in which rights in future may be bound, or to any general right or duty, nor where the debt sought to be recovered is for any money or thing won at or by means of any race, match, wager, raffle, or any kind of play or game, nor in any case where the debt or claim shall have arisen more than three years before the issuing of the summons, unless there hath been in writing an acknowledgment of, or promise to pay the same within that period; nor in respect of any contract for the sale of goods unless the buyer shall have actually received the same or part thereof, or have given something in earnest to bind the bargain, or in part payment, or some note or memorandum in writing of the bargain, shall have been signed by the party sought to be charged by such contract, or his agent thereunto lawfully authorized: Provided also, that in every case of trespass to land, if the title to the freehold therein shall *bona fide* be in dispute between the parties, the Court of Petty Sessions shall have no power to adjudicate therein.

[One Magistrate to have jurisdiction in certain cases.]

V. And be it enacted, That in every case in which the plaintiff shall seek to recover no more than the sum of five pounds, or in case the sum in dispute exceeds the sum of five pounds and does not exceed thirty pounds, but both parties consent thereto, (which consent shall be specially entered in the record book at the commencement of the hearing) it shall be lawful for one Justice of the Peace, sitting at the usual place and time of meeting of any Court of Petty Sessions, to hear and determine such cases, which shall thereupon be proceeded with in every respect as if the same were heard and determined by two or more Justices, and in every case the decision of such Justice or Justices shall be final and conclusive.

[Officers of such Courts.]

VI. And be it enacted, That the Clerk of the Bench, or other Clerk of the said Courts of Petty Sessions as may from time to time be directed by such Courts respectively, shall discharge the duties of Registrar of the said Courts, and shall, in addition to any other authorized emoluments, receive to his own use the fees mentioned in the schedule here unto annexed, marked A, as payable on the entry of every plaint; and the said Courts of Petty Sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the processes, orders, and judgments authorized by this Act, which bailiff or bailiffs shall receive to their own use the fees mentioned in the schedule hereunto annexed, marked A, as payable to such bailiff or bailiffs.

[Proceeding when plaintiff does not appear.]

VII. And be it enacted, That if upon the day of the return of any summons, or at any adjournment of the said Court of Petty Sessions, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear either in person or by some person authorized on his behalf, or appearing shall not make proof of his claim or demand to the satisfaction of the said Court, it shall be lawful for the said Court, if it shall think fit, (when the defendant personally, or by some one duly authorized on his behalf, shall appear and shall not admit the claim or demand) to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Court in its discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage can be recovered: Provided always, that if the plaintiff shall not appear when called upon, and the defendant or some one duly authorized on his behalf shall appear and admit the cause of action to the full amount claimed, or a part thereof, the Court may, if it shall think fit, proceed to give judgment according to such admission.

[Proceeding if defendant does not appear.]

VIII. And be enacted, That if on the day so named in the summons, or at any adjournment of the Court, or cause in which the summons was issued, the defendant shall not appear either personally, or by some one on his behalf, sufficiently to excuse his absence, or, shall neglect to answer the claim or demand, the Court, upon due proof of service of the summons, may proceed to the trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended; Provided always, that the Court may in such case, at the next sitting of the Court, or otherwise, set aside any judgment given in the absence of the defendant and the execution thereupon, upon such terms as the said Court may think fit, on sufficient cause shewn for that purpose, and grant a new trial of the cause upon the defendant paying the costs of the first trial, and giving such security as such Court shall think fit to require for the costs of the new trial.

[Actions not to be split.]

IX. And be it enacted, that it shall not be lawful to split or divide any cause of action, for the purpose of bringing the same within the jurisdiction of any Court of Petty Sessions; and in case it shall appear to the said Court in any stage of the proceedings, that any cause of action has been so split or divided, such Court shall dismiss the action brought thereupon, with costs.

[Notes or bills for sums not exceeding £10.]

X. Provided always, and be it enacted, that in case the defendant in any action shall appear to have given bills of exchange, or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act, but which bills or notes are, separately, security for a sum not exceeding ten pounds, each bill or note shall be regarded as forming a distinct and separate contract, and may be sued upon and recovered in the same way as any other debt recoverable under this Act.

[Courts to be Courts of Record.]

XI. And be it enacted, that the said Courts of Petty Sessions shall be Courts of Record, and that the judgments of any of the said Courts may be set up as a defence in any action brought either in any of the said Courts or in the Supreme Court: Provided that the entry of the judgment on the cause list of the Court of Petty Sessions shall be deemed and held to be a record of such judgment, and that the same, or a certified copy thereof under the hand of the Clerk of such Petty Sessions, shall (on proof of such signature and of the identity of the claim and parties) be received as evidence of such judgment: Provided also, that in respect of any action for trespass to land tried in any Court of Petty Sessions where the right to the possession shall be shewn to have been in dispute, and any action for rent not being between the original parties to the letting where the right to receive or the liability to pay such rent shall have been in dispute; and any action for contribution to the erection or repair of any dividing fence where the defendant's liability to contribute shall have been in dispute, the judgment of the Court of Petty Sessions, as to such right or liability, shall be conclusive only as to the particular act or acts of trespass, or amount of rent or contribution then in question, and shall not be taken to have determined any of those questions generally between the parties.

[Costs when party sues in Supreme Court.]

XII. And be it enacted, that in every action which shall after the commencement of this Act, be brought in the Supreme Court, where the plaintiff shall recover no more than ten pounds debt or damages, he shall have judgment only for the sum recovered without any costs whatsoever; unless the Judge before whom the cause was tried, shall certify, either that the same was not within the jurisdiction of any Court of Petty Sessions, or that the action was in his opinion not vexatiously brought in the superior Court, but was one proper to be tried therein; and no costs shall be allowed in any such action (where the sum recovered shall be no more than ten pounds), if the cause of action shall have arisen more than three years before the commencement of the same action, unless there shall have been within three years a promise in writing to pay the amount, or an acknowledgment in writing of the same being due; and the defendant may by leave of the Judge who tried the cause, enter a suggestion on the record to deprive the plaintiff of his costs, in every such case.

[Reduced scale of costs.]

XIII. And be it enacted, that in every case where any such certificate shall be given, the plaintiff shall nevertheless recover costs only according to the scale of costs set forth in schedule D, hereunto annexed.

[In actions for sums not exceeding £30, no Court fees to be demanded.]

XIV. And be it enacted, that in all actions hereafter to be brought in the Supreme Court, where the sum demanded shall not exceed thirty pounds, no Court fees whatever shall be demanded or paid at any stage of the proceedings.

[Writs of inquiry and trial 4 Vic. No. 22, s. 26, and 5 Vic. No. 9, s. 20.]

XV. And whereas by the Act of Council passed in the fourth year of Her Majesty's reign, to provide for the administration of justice, as amended in that behalf by an Act passed in the fifth year of Her Majesty's reign, writs of inquiry, and writs of trial, may in certain cases be issued, directed to any Commissioner of the Supreme Court, where the damages sought to be recovered shall not exceed fifty pounds; which inquiry or trial shall be by such Commissioner, and two Assessors to be named and summoned by him: Be it enacted and declared, that any such writ may be issued (notwithstanding any higher amount or sum inserted in the declaration) where the debts, damages, or sums sought to be recovered shall be, in fact, not more than fifty pounds; and may be so issued at the instance of either party, plaintiff or defendant; and that every Commissioner,

to whom any such writ shall be directed, shall, for the purposes thereof, have the same powers as a Sheriff in England hath or may exercise, to whom a writ of trial shall have been directed, by one of Her Majesty's Courts or Judges at Westminster.

XVI. And be it enacted, That in every such action as aforesaid the Commissioner's fee for executing a writ of trial shall be two guineas, which shall include the charge for summoning Assessors and returning the writ duly indorsed.

[Commissioner's notes of evidence, &c.]

XVII. And be it enacted, That every such Commissioner shall, together with the writ, and the indorsement of the verdict thereon, return to the Supreme Court his notes of the evidence on such enquiry or trial; and it shall be lawful for the said Court, or any Judge thereof, to permit any amendment of the said indorsement, in accordance with such notes, and not being repugnant to the verdict, but so as to give effect to the same: Provided that where justice shall appear to have been done by such verdict, on the merits, the same shall not in any case be set aside or impeached, for any mere omission to find any issue, or for any technical defect or error whatsoever: Provided also, that where any application shall be made to the Court, or a Judge, either to set aside such verdict, or to amend the indorsement thereof on the writ, such reasonable terms may be imposed on the parties, and such order made respecting the costs, as to such Court or Judge shall seem meet.

[Servants, &c., under age, may sue for wages.]

XVIII. And be it enacted, that in every case where any wages, or any other sum whatsoever, not exceeding the sum of ten pounds, shall be due to any person under the age of twenty-one years, it shall be lawful for such person to sue for and recover such debt in any of the said Courts of Petty Sessions, in the same manner as if he were of full age.

[Officers of Supreme Court not exempt.]

XIX. And be it enacted, that no person shall be exempt from the jurisdiction of the said Courts of Petty Sessions by reason of his being an attorney, solicitor, or other officer of the Supreme Court, but that all such attorneys, solicitors, and officers, shall be subject to the several processes, orders, judgments, and executions, of the said Courts of Petty Sessions, in the same manner as other persons are subject to the same.

[Actions in Courts of Petty Sessions how commenced.]

XX. And be it enacted, that every action in any Court of Petty Sessions, shall be commenced by a demand or plaint in writing, in which demand the plaintiff shall, shortly and in substance, set forth his cause of action, and shall also state the place of his abode, or the place of abode of his attorney, if he sue by an attorney, and the place of abode of the defendant, and shall cause such demand or plaint to be filed with the Registrar of the said Court, at such times before the sitting of the Court at which the cause is to be tried, as shall be prescribed by Rules to be from time to time made by the said Court, and approved of by Her Majesty's Attorney-General for the time being; and such Registrar shall annex the same, or a copy thereof, to a copy of the summons, to be retained in Court, the original or duplicate of which shall be served on the defendant, and which summons shall be in the form set forth in the schedule hereunto annexed, or as near thereto as the nature of the case will admit, always preserving the substance of the same.

[How summons to be served.]

XXI. And be it enacted, that the summons hereinbefore directed to be served on the defendant, may be served by delivering such summons to the wife or servant of the defendant, at the defendant's usual place of abode; and in case the

messenger or bailiff who shall be employed to serve the summons, shall demand admittance into the house where the defendant usually resides, and such admittance shall be refused, it shall be lawful for him to put such copy into the house, or to fix such copy upon the door of the house, and the same shall, in such case, be deemed to be good service upon the defendant.

[Affidavit of service to be made.]

XXII. And be it enacted, that no judgment shall be recorded by any Court of Petty Sessions in any case, unless the process in such cause shall, by the affidavit of at least one credible witness, before the said Court, or the Registrar, or a Commissioner of the Supreme Court, or before a Justice of the Peace, be deposited to have been duly served upon the defendant in manner hereinbefore directed.

[Actions to be brought in Court of Petty Sessions for the district where the defendant resides.]

XXIII. And be it enacted, That every action which shall be brought in any Court of Petty Sessions, shall be brought in the Court which shall be holden in and for the district where the defendant in such action shall usually reside, unless there be two or more joint defendants, in which case the plaintiff may proceed as is hereinbefore directed : Provided always, that in case the defendant in any action shall have given an engagement or promise in writing to pay any debt or sum in a particular place specified, the plaintiff may cause such defendant to be summoned to attend the Court which shall be holden in and for the district within which the place so specified is situated : Provided also, that if any party after having in one district contracted a debt, or become liable for any damage recoverable in the Courts of Petty Sessions, shall become resident in another district previously to the issuing of a summons for the recovery of such debt or damage, it shall be lawful for the plaintiff to summon the defendant to the Court of Petty Sessions holden for the district in which such debt was contracted, or liability for damage incurred, originally, in the same manner as if he had continued a resident of such district.

[Proceeding in case of joint defendants residing in different districts.]

XXIV. And be it enacted, that where, in case of persons jointly liable, all the persons so liable shall not reside within the jurisdiction of the same Court of Petty Sessions, it shall be lawful for the plaintiff to bring his action before any Court of Petty Sessions, within the jurisdiction of which any of the persons jointly liable shall reside, by serving any of such persons with a summons, in the manner hereinbefore directed ; and such person may serve the other persons, so jointly liable, with a notice of such summons, in order that they may appear and join in defending such action ; and in case such other persons shall not so appear and join, the action may proceed, and judgment be obtained, and execution issued, against the person who shall have been served with the plaintiff's summons, notwithstanding the others jointly liable may not have been served with any summons, or joined in such action ; and no plea in abatement shall be allowed for, or advantage be taken of, the non-joinder of the person or persons so jointly liable : Provided always, that the person against whom execution may have been issued shall retain any right which he may have to demand contribution from the other persons jointly liable with him ; and in case he shall have caused such other persons to be personally served with a copy of the plaintiff's summons upon him in such action, three days before the day appointed for appearing and answering to the same, the judgment, or a copy thereof, certified by the Registrar, recovered against him in such action, shall be admissible in evidence in any action for contribution, afterwards brought by him against the persons so personally served by him as aforesaid, for the purpose of proving their liability to such contribution ; but in case he shall not have caused such other persons to be personally served as aforesaid, then the liability of such persons to contribution shall be proved in the ordinary manner : Provided also, that as often

as any question shall arise as to the district in which the defendant shall be deemed to be a resident, the same shall be determined by the Court of Petty Sessions as incident to the cause.

[Plaintiffs and defendants may be examined on oath, &c.]

XXV. And, for the better discovery of the truth, and more satisfactorily obtaining the ends of justice, be it enacted, that it shall be lawful for any Court of Petty Sessions, if the presiding Justices or Justice shall, in their or his discretion, think it proper so to do, to examine the plaintiff or defendant, *vis voce*, on their several corporal oaths; and in case any person who shall be examined on oath, or if a Quaker or other person allowed by law to give evidence on affirmation, by any such Court by virtue of this Act, shall commit wilful and corrupt perjury or falsely affirm, and shall thereof be duly convicted according to law, or shall commit wilful and corrupt perjury in false swearing or affirming in any affidavit or affirmation by this Act required or allowed to be made before any such Court, or any Justice of the Peace, and be thereof convicted according to law, such person shall incur, and suffer the like pains and penalties as any person convicted of wilful and corrupt perjury; and in every such case it shall be lawful for the said Court of Petty Sessions to commit the party, and to direct a prosecution for perjury to be forthwith instituted against him, in order that he may be prosecuted for the same according to law.

[Witnesses not attending, and persons guilty of contempt.]

XXVI. And be it enacted, that every person summoned as a witness to attend any of the said Courts of Petty Sessions, shall attend pursuant to such summons, and shall be subject to the like actions, (to be brought in one of the said Courts), for disobeying such summons, as he would be subject to for disobedience to a subpoena issuing out of the supreme Court; and that it shall be lawful for every such Court of Petty Sessions to punish, as for contempt, in a summary way, by fine not exceeding forty shillings, to be levied upon the goods and chattels of the offender, or by imprisonment for any time not exceeding fourteen days, any plaintiff, defendant, or witness refusing to be sworn, or to answer any lawful question, or any person guilty of contempt before any such Court: Provided always, that nothing in this Act contained shall be construed to compel the attendance at any Court of Petty Sessions, of any witness who may not be resident in the district where the cause in which he is summoned to give evidence is to be tried, nor to compel any witness to go more than three miles from his home, without tender of his reasonable expenses.

[Execution of process.]

XXVII. And be it enacted, that in any case where any Court of Petty Sessions shall make any order or decision for the payment of money, it shall be lawful for the Registrar of the said Court, on the application of the party in whose favour such order or decision has been made, to issue a precept in the nature of a writ of *feri facias*, which precept shall be directed to any bailiff of any of the said Courts, or his deputies, who are hereby empowered to execute the same in any part of the said Territory, in the same manner in all respects as process of a similar nature issuing out of the Supreme Court may be executed by the Sheriff or Deputy Sheriff: Provided always, that no real or leasehold property be liable to be levied upon under writs of execution out of the said Courts.

[Form of writs of execution.]

XXVIII. And be it enacted, that writs of execution shall be in the form set forth in the schedule hereunto annexed, or as near thereto as the nature of the case will permit, always preserving the substance of the same.

[Defendant, when entitled to a writ.]

XXIX. And be it enacted, that if any person summoned to appear, shall

appear according to the summons, and the party complaining shall make default, the Court shall adjudge the plaint to be disproved, or if he shall appear, and the judgment of the Court be for the defendant, the said Court shall at its discretion, in either case, adjudge to the said defendant his reasonable costs in like manner as for the party complaining; and the said defendant shall be entitled to the like process of execution for the same, as the plaintiff would be entitled to if he had established his claim against the defendant.

[Special writ at peril of party applying.]

XXX. And be it enacted, that the Registrar of any of the said Courts shall grant a special writ of execution when demanded by the plaintiff or defendant, as the case may be, in any suit wherein such writ may be issued, and such Registrar shall appoint one or more special bailiffs to be named by the party applying for it, to execute such writ: Provided that every person appointing a bailiff to act under any special writ shall, together with two sufficient sureties, execute to the Registrar of the Court from which the writ issues, a bond in the penalty of fifty pounds, or for a larger sum, not exceeding one hundred pounds, if the said Court shall so direct, conditioned for the proper performance of the duties of his office, and such bond shall vest in the Registrar of the Court for the time being, and may from time to time be sued in his own name or in the name of any person to whom it may be assigned, under any order of the Court, which assignment shall be made by an indorsement by the Registrar for the time being, and any person who shall sustain any damage by the neglect or misconduct of any such bailiff, may proceed before any Court of competent jurisdiction, (the amount of such damage not exceeding fifty pounds, or the sum specially directed by the Court as aforesaid,) and the bond so given shall stand and be an additional security for such damages, and shall, if necessary, be put in suit to recover the sum and costs from the parties thereto, or any of them.

[Defendant contracting debts in one district and removing into another.]

XXXI. And whereas persons residing in and contracting debts within the limits of one of the said Courts of Petty Sessions to avoid execution upon judgments recovered against them, may occasionally remove into the limits of another of the said Courts, whereby plaintiffs will be prevented from recovering their debts by reason of the defendants not being resident within the jurisdiction in which such judgments have been obtained; Be it therefore enacted, that the removal by any defendant from one of the said jurisdictions into another shall not prevent any plaintiff proceeding against such defendant in the jurisdiction where such defendant may happen to be resident at the time of issuing execution; and it shall be lawful for the bailiff, or his deputy, of any Court of Petty Sessions, to take such defendant into custody, or to dispose of his goods in like manner as if he had been a resident of the district in which judgment was recovered against him.

[Proceeding as to disputed property levied upon.]

XXXII. And be it enacted, that if previously to the sale of any property levied upon, such property being in the actual or ostensible possession of the party against whom the writ is directed, a claim shall be made to it by any third person, and such claim shall be deposed to before a Justice of the Peace, and in such deposition it shall be averred, that the party in whose actual or ostensible possession such property so levied upon be found, is not the true owner, but the baillee thereof, such property shall be released from execution, and the cost of the levy, if any, shall be either added to the amount of the costs charged in the execution, or defrayed by the party claiming such property, as the Court of Petty Sessions shall in its discretion direct: Provided always, that no absolute or conditional bill of sale, or mortgage of chattel property whatever, shall protect such property so levied upon from sale, unless such bill of sale or mortgage be produced to the bailiff: And provided also, that such bill of sale or mortgage

shall have been executed at least fourteen days before the summons shall have been served upon the defendant in the case in which the writ of execution issued, and unless there be expressed in such mortgage a certain time for the payment of the principal sum for which such instrument was given as security, and such time does not exceed one year from the date of the instrument, and at the expiration of that time the holder of such bill of sale or mortgage shall not renew it, but either assume possession, or proceed to the sale of the property so secured, or relinquish all claim to the protection of it from the debts of other creditors: And provided likewise, that such bill of sale or mortgage shall have been registered by the Registrar at the nearest Court of Petty Sessions within one week of the date of the execution of such bill of sale or deed of mortgage: Provided further, that protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to such bill of sale or mortgage, as the case may be; and Provided also, that the party entitled thereto may nevertheless proceed to enforce the levy and sale by taking out a special writ of execution in manner hereinbefore directed, and that in every case in which a special writ of execution is taken out, neither the Registrar nor Bailiffs of the Courts of Petty Sessions shall be responsible for any Act done under or in respect of such process by color thereof, but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.

[Executors and Administrators.]

XXXIII. And be it enacted, that all executors and administrators shall have power to sue, and be liable to be sued in the said Courts of Petty Sessions; and that judgments which have been obtained by plaintiffs, but not satisfied previous to their decease, as well as all causes of action, shall survive to their proper personal representative, who may sue out execution in his own name, in the same way that the plaintiffs themselves, if living, might have done.

[Relief of bailiffs in charge of goods under execution.]

XXXIV. And whereas difficulties may sometimes arise in the execution of process against goods and chattels, issued under the authority of the Courts of Petty Sessions, by reason of claims made to such goods and chattels by persons not being the parties against whom such process has issued, whereby bailiffs and other officers may be exposed to the hazard and expense of actions, and it is reasonable to afford relief and protection in such cases to such bailiffs and other officers: Be it therefore enacted, that when any such claims shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall be lawful for the Court from which such process issued, upon application of such bailiff or officer, made before or after the return of such process, and as well before as after any action brought against such bailiff or other officer, to call before it by an order for that purpose made, as well the party issuing such process as the party making such claim, and thereupon to pronounce its decision in a summary manner for the adjustment of such claim, and the relief and protection of the bailiff or other officer, which decision shall be final and conclusive against the said parties, and all persons claiming by, from, or under them, and to make such order as shall appear to be just according to the circumstances of the case, and the cost of all such proceedings shall be in the discretion of the said Court of Petty Sessions.

[Levy on goods when made.]

XXXV. And be it enacted, that no judgment of any of the said Courts of Petty Sessions, against the goods and chattels of the defendant in any suit of action brought therein shall be executed at any time after sunset and before sunrise; and if any person shall execute any such judgment after sunset and before sunrise, such person shall be liable to a fine of ten pounds, which shall be

imposed, and, if necessary, enforced, by an order of the Court of Petty Sessions, for the distress and sale of the offender's goods.

[Rights of landlords.]

XXXVI. And be it enacted, that no execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord, by an Act passed in the eighth year of the reign of Her late Majesty Queen Anne, intituled, "An Act for the better security of rents, and to prevent frauds committed by Tenants," of recovering one year's rent, in pursuance of the said Act.

[No complaints to be removed.]

XXXVII. And be it enacted, that no complaint entered in the said Courts of Petty Sessions, nor any order or proceeding had thereon, by virtue of this Act, shall be removed out of the said Courts, by writ of *recordari facias loquelam*, or by writ of *certiorari*, or otherwise however; but all orders made by the said Courts of Petty Sessions shall be final and conclusive to all intents and purposes whatsoever.

[Sheriff and other persons indemnified.]

XXXVIII. And be it enacted, that all Sheriffs and Deputy Sheriffs, Keepers of prisons, or other persons whosoever who shall do anything under this Act in obedience to any legal order of any such Court of Petty Sessions shall be, and they are hereby indemnified for whatsoever shall be done by them respectively, in obedience thereto; and if any action whatsoever shall be brought against any such Sheriff, Keeper, or person, or against any Justice of the Peace, or Officer of any such Court of Petty Sessions, for performing any duty of his office in pursuance of this Act, such Sheriff, Justice, Keeper, Officer, or other person may plead the general issue and give the special matter in evidence thereupon; and if the plaintiff be nonsuited, or shall discontinue his action, or a verdict shall pass against him, or judgment be had for the defendant, upon demurrer, such defendant shall have double costs.

[Limitation of actions against officers.]

XXXIX. And for the protection of persons acting in the execution of this Act, be it enacted, that all actions for anything done under the provisions thereof shall be commenced within six months after the fact was committed, and that no writ shall be sued against, nor process served upon any Justice of the Peace, Registrar, bailiff, or other officer of any Court of Petty Sessions, for anything done in the execution of or by reason of his office, until one calendar month next after notice in writing shall have been delivered to him, or left at his usual place of abode by the attorney or agent for the party who attends to sue out such writ as aforesaid, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent; and that a fee of twenty shillings shall be paid for preparing or serving every such notice, and no more.

[Fees to be taken.]

XL. And be it enacted, that the several fees and sums of money expressed in the schedule hereunto annexed, and no other, shall be taken by the several officers of the said Courts therein mentioned, for their respective services in the execution of this Act.

[Penalty on officer neglecting duty.]

XLI. And be it enacted, that if any bailiff, deputy bailiff, or other officer of any Court of Petty Sessions employed to execute any process of execution, shall by connivance, wilful neglect, or omission, cause or suffer the goods of the party against whom such execution shall be awarded to be rescued or carried away, so that such execution shall not have its due effect, it shall be lawful for any Justice of the Court of Petty Sessions out of which such process shall have

issued, upon complaint and due proof thereof, made upon the oath of one credible witness, to order such bailiff, deputy, or officer to pay the sum of money for which such execution was awarded, or such part thereof as the said Justice may think proper, to the party complaining, and to enforce the payment thereof by the same means as are herein provided for the recovery of debts.

[Process not to be set aside for technical errors only.]

XLII. And be it enacted, that no process or proceeding of any of the said Courts of Petty Sessions, shall be set aside on account of any technical error or mistake only; and it shall be competent to every Court of Petty Sessions to decide what is a verbal or technical error or mistake in any action or proceeding; and all errors or mistakes which have not a tendency to misinform or mislead the opposite party, shall, in all cases, be deemed merely verbal or technical.

[By consent of parties causes may be tried by arbitration.]

XLIII. And be it enacted, that if both parties in any cause shall agree between themselves not to try their cause before the Court of Petty Sessions, but by means of arbitration, and shall notify such agreement by a memorandum in writing, signed by themselves, or their agents, the award made on such arbitration shall be binding on both parties, and judgment in accordance therewith may be entered in the cause list of the said Court of Petty Sessions for the plaintiff or defendant, as the case may be.

[Parties may conduct case by attorney.]

XLIV. And whereas it is expedient that suitors should be entitled to the aid of the legal profession: Be it enacted, that in all actions the plaintiff and defendant may appear and each conduct his case by himself, his clerk, or servant; or employ any person admitted an attorney of the Supreme Court, or, in the district of Port Phillip, to practice as an Advocate and Attorney before the Court of Petty Sessions: Provided always, that no Attorney so practising, shall demand or take more by way of fees for work by him done, than the sums allowed by the schedule C, hereunto annexed: And provided also, that the costs of such professional assistance shall be paid by the party requiring such professional assistance.

[Any Court of Petty Sessions may suspend any attorney or agent, &c.]

XLV. And be it enacted, that it shall be lawful for any Court of Petty Sessions, if it shall appear to such Court that any Attorney or other Agent has in any cause in such Court practised corruptly, contemptuously, or in any respect knowingly and wilfully against his duty as an Attorney or Agent, to make an order (to remain with the Registrar of the said Court,) either to suspend such Attorney or Agent from practising for a specified time, or to prohibit such Attorney or Agent from practising for ever in such Court.

[Interpretation.]

XLVI. And be it enacted and declared, that throughout this Act the singular number shall be taken, and is intended, to include equally the plural; both with respect to things and persons; and every clause and provision in terms affecting males, to include equally, females; unless there be something in the context, in either case, repugnant to that construction; and that the term Court of Petty Sessions, (or the word *Court*, indicating a Court of Petty Sessions,) shall be taken and is intended to mean any two or more Justices of the Peace, or (in cases where one is under this Act authorised to adjudicate,) any one Justice of the Peace, sitting for the purposes of this Act at the usual place of meeting of Justices in Petty Sessions.

SCHEDULES REFERRED TO.

A.

FEEES TO BE PAID TO THE SEVERAL OFFICERS UNDERMENTIONED, ON THE SEVERAL OCCASIONS SET AGAINST THE SAME.

	£	s.	d.
To the Registrar on entering every plaint and cause for trial	0	1	0
To the Registrar for drawing plaint and particulars, if requested by plaintiff	0	1	0
To the Registrar for copy of summons to be served on defendant	0	1	0
To the Registrar for every inspection of the record	0	0	6
To the Registrar for drawing and issuing every writ of execution or attachment	0	1	0
To the Registrar for every subpoena	0	0	6
To the Registrar for filing every defence or plea	0	1	0
To the Registrar for drawing same, if requested by defendant	0	1	0
To the Bailiff for serving summons or subpoena at request of plaintiff or defendant, and making affidavit of service if service be made	0	2	0
To the Bailiff for every levy or caption	0	1	0
To the Bailiff for every mile or fraction of a mile over two miles from the Court, which he may have to travel to serve summons or execute other process of the Court, but not counting the return journey	0	0	6
To the Bailiff for possession money, by the day	0	3	6

B.

EXECUTORS, ETC., MAY SUE OR BE SUED.

If the plaintiff sues as executor or trustee of an insolvent or other estate, he shall so describe himself in the plaint filed, as A. B., executor of C. D. ; or A. B. and C. D., trustees to the insolvent estate of E. F., as the case may be.

PARTICULARS.

In all cases the items constituting the particulars of claim should be stated and filed with the plaint or declaration, or appended thereto.

FORMS OF PLAINT.

The following shall be the Forms of such plaints, in all cases to which they can be applied:—

IN THE CASE OF GOODS SOLD.

“A. B., of (Sydney, in this District,) complains of C. D., of the same place, baker, that the said C. D. is indebted to him in the sum of five pounds sterling, for corn (or hay, or other things, briefly describing them) sold and delivered by the said A. B. to the said C. D., in or about the month of February last, which sum the said C. D. refuses to pay, and the said A. B. prays that he may be adjudged to pay the same.”

IN THE CASE OF DEMAND FOR RENT.

“For three months rent, due from the said C. D. to the said A. B., on or about the 1st February last, in respect of the occupation by the said C. D., of a house and garden of the said A. B., (as the case may be) situate at Sydney, which sum, &c.”

FOR LODGING.

“For meat, drink, washing, lodging, and other things found and provided by the said A. B., for the said C. D., between the months of December and February last, which sum,” &c.

FOR HIRE OF HORSES.

“For the hire of a horse (or as the case may be) and cart of the said A. B., hired and used by the said C. D., for three weeks, in or about the month of February last, which sum,” &c.

FOR AGISTMENT.

“For the agistment, depasturing, and keeping, of fifty oxen and one hundred sheep, by the said A. B., for the said C. D., between the months of December and February last.”

FOR WORK AND LABOUR.

“For the work and labour of the said A. B., performed for the said C. D., on or about, &c.

FOR WORK AND LABOUR OF SERVANTS.

“For the work and labour of the servants of and belonging to the said A. B., performed for the said C. D.

FOR WORK AND LABOUR OF SERVANTS, HORSES AND CARRIAGES.

“For the work and labour of the said A. B., by himself (or his servants or horses, carts and carriages, as the case may be) performed by the said A. B. (or his servants, &c.) for the said C. D., and for timber, nails, &c. (as the case may be), provided by the said A. B. for the said C. D., and used in such work and labour.

FOR WAGES.

“For wages due and payable from the said C. D. to the said A. B., for his service, performed as the servant of the said C. D., between the months of December and February last.”

FOR MONEY LENT.

“For money lent by the said A. B. to the said C. D., in or about the month of February last.”

ON A PROMISSORY NOTE OR BILL OF EXCHANGE.

“For principal and interest due to the said A. B., on a promissory note drawn by the said C. D., payable to one E. F., or order, and by him endorsed to the said A. B. (or on a bill of exchange drawn by one E. F., and accepted by the said C. D., payable to the said A. B.)”

ON A BOND.

“For principal and interest due on a bond, bearing date the _____ day of _____, made and entered into by the said C. D., for the payment of £ _____, and interest, on the _____ day of _____ last.”

FOR MONEY DUE ON AN AGREEMENT.

“For principal and interest, upon and by virtue of a certain agreement, bearing date, &c. (date of agreement), and made between, &c., whereby the said C. D., agreed, for the considerations therein mentioned, to pay to the said A. B. the sum of £ _____, together with lawful interest on the same, on the day of _____, now past.”

ON AN AWARD.

“For money due to the said A. B., upon and by virtue of a certain award made by E. F., upon a submission, by the said A. B., and the said C. D., to the arbitration of the said E. F., concerning certain matters in difference between them, and upon which reference the said E. F., awarded and ordered that the said C. D., should pay the sum of £ to the said A. B., on a certain day now past.”

FOR UNLAWFUL DETENTION OF PROPERTY.

“A. B. of , complains that C. D., of the same place, hath possessed himself of a cow (or waggon, or horse, or other thing detained), of the value of £ , or thereabouts, which he unjustly detains from the said A. B.; and the said A. B. prays he may be adjudged to restore to him the said cow, &c., or pay him the value of the same.”

FOR UNLAWFUL DETENTION OF PROPERTY DEPOSITED.

“That the said A. B., on or about the month of last, deposited and left several articles of household furniture and wearing apparel, the property of the said A. B., of the value of , or thereabouts, with the said C. D., to be safely kept by the said A. B. until he should have occasion for them; and the said A. B., saith that he has demanded the said household furniture, &c. (or caused the same to be demanded for him) but the said C. D. refuses to deliver up, and unjustly detains the same: and the said A. B. prays the said C. D. may be adjudged to restore to him the said household furniture, &c., or pay him the value of the same.”

FOR DAMAGE SUSTAINED BY IMPROPER DRIVING.

“That on or about the day of last, the said A. B. (or the servant of the said A. B.) was driving his cart, &c., on the public road between and , and the said C. D. (or the servant of the said C. D.) was also on the said road with a certain carriage, &c., under his care and direction; and the said C. D. (or the servant of the said C. D.) so improperly drove and directed his carriage and horses, that thereby his carriage was forced and driven, with great violence, against the cart of the said A. B., and broke to pieces one of the wheels thereof, and the said A. B. was thereby damaged to the amount of £ , and the said C. D. refuses to make amends for the same, and the said A. B. prays he may be adjudged to pay the amount of the said damage.”

FOR AN ASSAULT OR INJURY TO THE PERSON, WIFE, &c.

“That the said C. D., on &c., assaulted, beat, and illtreated the said A. B., (or “the wife,” or “child,” or “servant,” of the said A. B.) to the damage of the said A. B. of £ , and the said A. B. prays, &c.”

FOR BREAKING AND DESTROYING FENCES, &c., AND OF INJURIES TO LAND OR CATTLE.

“That the said C. D., on or about the day of , broke down and destroyed a fence of the said A. B., at Sydney, in the District of Sydney, whereby the said A. B. hath sustained damage to the amount of £ , &c. (or ‘broke down the door of the house of the said C. D., and disturbed him in the peaceable possession thereof:’ or ‘cut down the trees of the said A. B., of the value of £ ;’ or ‘wrongfully trampled down, destroyed, and ate, the corn or grass of the said A. B.’; or ‘drove about and injured the sheep or cattle; or killed or wounded a dog, horse, &c., of the said A. B., of the value of £ ’); and the said A. B. prays, &c.”

FORM OF DEFENCE.

NEW SOUTH WALES.

Court of Petty Sessions for the } day of
 District of } 184 .

Between { and Plaintiff,
 Defendant.

TAKE notice, that I intend to defend this Action, for the following reason (or reasons, as the case may be) :—

1st. { (State each ground as shortly as possible but with sufficient
 2nd. { clearness, particularly as to times, places, persons, sum, securities,
 3rd. { or written instruments, &c.)
 To A. B.

The above-named Plaintiff.

SUMMONS IN ANY ACTION FOR ANY DEBT OR DEMAND.

NEW SOUTH WALES.

In the Court of Petty Sessions for }
 the District of . }

To , of
 You are hereby summoned to appear in this Court, at , on
 , the day of next, at ten of the clock in the
 forenoon of the same day precisely, to answer the following plaint, (insert copy
 of plaint and particulars as filed with the Registrar, that if you intend to defend
 upon any matter of set off or excuse you must file particulars of the same,)
 otherwise, upon proof of the due service of a copy of this summons, the cause,
 when called on for hearing, will be tried, and judgment be given against you for
 whatever may appear to be due, together with such costs as the Court may
 think fit to award. And take notice that if you intend to defend upon any
 matter of set-off or excuse, you must file particulars of the same in the office of
 the Registrar, clear days at the least before the day herein named for
 the hearing of the cause, otherwise the evidence you may bring forward to
 support such set-off cannot be admitted.

Dated this day
 of , one thousand
 eight hundred and forty-
 By the Court,
 A. B., Registrar.

C.

PRECEPT IN THE NATURE OF A FIERI FACIAS.

EXECUTION AGAINST GOODS.

Court of Petty Sessions for the }
 District of . }

To , of , Bailiffs of the Court of Petty Sessions
 for the District of , and to the Deputy Bailiffs, duly authorized and

appointed to execute the processes of this Court, and to each and every of them.

In pursuance and by virtue of a decision of the Court of Petty Sessions for the District of _____, made on the _____ day of _____, 184____, you are hereby required to levy, of the goods and chattels of _____, to satisfy _____ for the amount of _____ pounds, _____ shillings, and _____ pence, being the amount of judgment and costs, which, in the said Court, he was adjudged to pay to the said _____, and after levy duly made thereof, forthwith to pay the same into this office. And what you shall do herein, certify and return to this Court at the expiration or one calendar month from the date hereof, or within three days after this warrant shall be executed, if that shall sooner happen.

Dated this _____ day of _____, 184____.

By the Court,
A. B., Registrar.

£ s. d.
Judgment.....
Costs.....
Execution....
Alias.....

N.B.—The bailiff shall certify to the Court, under his hand, (and, on the back of the precept where it remains in his possession,) the date of execution, and what in particular he shall have done; and if unexecuted, why it is so.

SUBPŒNA FOR WITNESS.

NEW SOUTH WALES.

Court of Petty Sessions, for the }
District of _____ . }

To A. B., of
C. D., of
E. F., of

You are hereby severally commanded, setting all excuses aside, to appear in this Court, at _____, on _____, the _____ day _____ next, at _____ of the clock in the forenoon precisely, to testify the truth in a cause therein depending between A. B., of _____, plaintiff, and C. D., of _____, defendant, on the part of the said A. B., (or C. D., as the case may be) (adding, if necessary) and to bring with you a certain agreement or note, &c., (sufficiently describing it as to date and otherwise,) and herein fail not at your peril.

By the Court,
Registrar or Clerk of the Court.

ATTACHMENT FOR NON-APPEARANCE TO A SUBPŒNA.

A. B., Plaintiff. }
C. D., Defendant. } Victoria I. Regina.
Court of Petty Sessions for }
District of _____ }

To _____, bailiffs, and their deputies, and to each and every of them.

At a Court of Petty Sessions for the District of _____, held on the _____ day _____, 184____, it appearing to this Court that _____ has been duly served with a copy of a Subpœna to attend this Court in

the above case, and though duly called, came not. You and each of you, are hereby commanded to attach the said _____, wherever you may find him, for a disobedience to the said Subpœna, and him safely and securely keep, so that you may have him before a Justice of the Peace of the said Court, on _____, the _____ day of _____, to hear and abide such order as shall then be made touching the contempt of the said _____, in disobedience of such Subpœna.

ATTORNEYS' COSTS.

	£	s.	d.
For drawing and copying Plaintiff with the particulars	0	2	6
For Summons, with the particulars	0	1	0
For defence or set-off with the particulars	0	2	6
For an Advocate's fee in a case not exceeding £10, not more than	1	1	0
For an Advocate's fee in a case not less than £10, nor exceeding £30, not more than	3	3	0

D.

	£	s.	d.
Letter before action	0	5	0
Instructions for declaration or other pleadings	0	5	0
Drawing all pleadings, per fo. 72 words	0	0	8
Copies, or engrossing ditto	0	0	4
Entries on the roll ditto	0	0	4
Every common attendance	0	2	6
Drawing and engrossing any short affidavit	0	4	0
Drawing special affidavits, per fo.	0	0	8
Copies, or engrossing ditto	0	0	4
Instructions for special affidavit	0	5	0
Ditto for briefs	0	6	8
Drawing briefs per sheet	0	5	0
Copy ditto	0	2	6
Drawing any common notice, including copy and service	0	3	0
Copy and service of any summons, order, or common rule	0	4	0
Drawing subpœna	0	7	6
Copy and service: each witness	0	4	0
Counsel settling pleadings (when necessary)	0	10	6
Drawing particulars	0	3	0
Copy thereof	0	2	0
Attending Court, cause in paper; not tried	0	5	0
Ditto on trial	0	13	4
Fee to counsel (one allowed only)	} not exceeding		
Term fee (one term only)	} 3 guineas.		
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