

Hon. Mr. Tole.

CRIMINAL LAW AND PROCEDURE AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p style="text-align: center;">PART I.</p> <p style="text-align: center;">OFFENCES AGAINST THE PERSON.</p> <p>2. Indecent assault.</p> <p>3. Consent of girl under sixteen, or of male of any age, no defence.</p> <p>4. Personating husband.</p> <p>5. Attempts to commit rape.</p> <p>6. Defiling children under thirteen.</p> <p>7. Attempts to commit indecent assault or to defile children.</p> <p>8. Defiling girls between thirteen and sixteen.</p> <p>9. Defiling idiots or imbecile women.</p> <p>10. Unsworn evidence of children may be taken in certain cases.</p> <p>11. Whipping for offences against women and children.</p> <p>12. Foregoing sections to be read with "Offences against the Person Act, 1867."</p> <p>13. Suppression of brothels.</p> <p>14. Repeal. Saving as to offences previously committed.</p>	<p style="text-align: center;">PART II.</p> <p style="text-align: center;">CRIMINAL EVIDENCE.</p> <p>15. Unsworn testimony of children may be taken in certain cases. Effect of the evidence so given.</p> <p>16. Evidence of the accused may be received.</p> <p>17. Adjourning trial for witnesses.</p> <p>18. Admissions.</p> <p>19. Summing up evidence.</p> <p style="text-align: center;">PART III.</p> <p style="text-align: center;">CHALLENGES.</p> <p>20. Challenging the array.</p> <p>21. Challenges and directions to stand by.</p> <p style="text-align: center;">PART IV.</p> <p style="text-align: center;">CRIMINAL APPEALS.</p> <p>22. Reserving questions of law.</p> <p>23. Appeal when no question reserved.</p> <p>24. Evidence for Court of Appeal.</p> <p>25. Powers of Court of Appeal.</p> <p>26. Application for a new trial.</p> <p>27. New trial by order of Governor in Council.</p> <p>28. Intermediate effects of appeal.</p> <p>29. Repeals.</p> <p style="text-align: center;">Schedule.</p>
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A BILL INTITULED

AN ACT to amend the Criminal Law relating to certain Offences, Title. and the Procedure in Criminal Trials and Criminal Appeals.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Criminal Law and Procedure Amendment Act, 1887." Short Title.

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PART I.

OFFENCES AGAINST THE PERSON.

2. Everyone is liable to two years imprisonment, with or without Indecent assault. hard labour, who—

- (1.) Indecently assaults any female; or
- 10 (2.) Does anything to any female by her consent which but for such consent would be an indecent assault, such consent being obtained by false and fraudulent representations as to the nature and quality of the act.

15 3. (1.) It shall be no defence to an indictment for an indecent assault on a female under the age of sixteen years that she consented to the act of indecency. Consent of girl under sixteen, or of male of any age, no defence.

(2.) It shall be no defence to an indictment for an indecent assault on a male of any age that he consented to the act of indecency.

Personating
husband.

4. Any person who induces a married woman to permit him to have connection with her by personating her husband shall be deemed guilty of rape.

Attempts to commit
rape.

5. Whosoever shall be convicted of an attempt to commit, or of an assault with intent to commit, the crime of rape shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding ten years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour. 5

Defiling children
under thirteen.

6. Whosoever shall unlawfully and carnally know and abuse any girl being above the age of ten years and under the age of thirteen years shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding ten years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour. 10

Attempts to commit
indecent assault or
to defile children.

7. Whosoever shall be convicted of any attempt to have carnal knowledge of any girl under thirteen years of age shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour. 20

Defiling girls
between thirteen
and sixteen.

8. Every one is liable to two years' imprisonment with hard labour who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any girl being of or above the age of thirteen years and under the age of sixteen years. 25

It shall be a sufficient defence to any charge under this section if it shall be made to appear to the Court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of sixteen years. 30

Defiling idiots or
imbecile women.

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

9. Any person who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour. 40

Unsworn evidence
of children may be
taken in certain
cases.

10. Where, upon the hearing of a charge for unlawfully and carnally knowing any girl under the age of thirteen years, or for attempting to have unlawful carnal knowledge of any girl under the age of thirteen years, the girl in respect of whom the offence is alleged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the Court or Justices, understand the nature of an oath, the evidence of such girl or other child of tender years may be received though not given upon oath, if, in the opinion of the Court or Justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence. 45

But no person shall be liable to be convicted of the offence unless 50

the testimony admitted by virtue of this section, and given on behalf of the prosecution, shall be corroborated by some other material evidence in support thereof implicating the accused.

Any witness whose evidence has been admitted under this section shall be liable to indictment and punishment for perjury in all respects as if he or she had been sworn.

11. Where any person is convicted of a crime under sections *five, six, or seven* of this Act, or under sections forty-five or forty-six of "The Offences against the Person Act, 1867," the Court before whom he is convicted may, in addition to the punishment awarded, direct that the offender be once, twice, or thrice privately whipped.

Whipping for offences against women and children.

(1.) At each such whipping the number of strokes shall not exceed fifty, and the Court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used, and in no case shall such whipping take place after the expiration of six months from the passing of the sentence.

(2.) In all cases where the punishment of whipping shall be inflicted under the authority of this Act, the surgeon or medical officer of the prison in which the offender is confined shall be present when the said punishment is inflicted; and such surgeon or medical officer, if he be of opinion that the prisoner is not at any time able to bear the whole or any part of the said punishment so awarded, may from time to time order the infliction of the whole or any part of the said punishment to be postponed, and shall, within seven days after the making of any such order, send a report in writing, stating his reasons for making such order, to the Minister of Justice.

12. The foregoing sections of this Act shall be read and construed as part of "The Offences against the Person Act, 1867."

Foregoing sections to be read with "Offences against the Person Act, 1867." Suppression of brothels.

13. Any person who—

(1.) Keeps or manages, or acts or assists in the management of, a brothel; or

(2.) Being the tenant, lessee, or occupier of any premises, knowingly permits such premises, or any part thereof, to be used as a brothel or for the purposes of habitual prostitution; or

(3.) Being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel,

shall, on summary conviction in manner provided by "The Justices of the Peace Act, 1882," before a Resident Magistrate or any two or more Justices of the Peace, be liable—

(1.) To a penalty not exceeding *twenty pounds*, or, in the discretion of the Court, to imprisonment for any term not exceeding three months, with or without hard labour; and

(2.) On a second or subsequent conviction, to a penalty not exceeding *forty pounds*, or, in the discretion of the Court, to imprisonment for any term not exceeding four months, with or without hard labour;

and in case of a third or subsequent conviction, such person may, in addition to such penalty or imprisonment as last aforesaid, be required by the Court to enter into a recognizance, with or without sureties, as to the Court seems meet, to be of good behaviour for any period not exceeding twelve months; and in default of entering into such recognizance, with or without sureties (as the case may be), such person may be imprisoned for any period not exceeding three months, in addition to any such term of imprisonment as aforesaid. 5

Repeal.

14. Section forty-eight of "The Offences against the Person Act, 1867," and "The Offences against the Person Act Amendment Act, 1874," are hereby repealed. 10

Saving as to offences previously committed.

Provided, however, that every offence committed before the commencement of this Part of this Act against the provisions of the enactments hereby repealed shall be dealt with and punished as if the said enactments had not been repealed; and every act duly done before the commencement of this Act shall continue and be of the same force as if the said enactments hereby repealed had not been repealed. 15

PART II.

CRIMINAL EVIDENCE.

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Unsworn testimony of children may be taken in certain cases.

15. In every prosecution for any offence where the testimony of a child under the age of ten years may be required, the Judge, Coroner, Justice or Justices of the Peace, having jurisdiction in the matter to which the testimony relates, shall receive such testimony without administering any form of oath, and without any formality, except that such Judge, Coroner, Justice or Justices, as the case may be, shall, before receiving such testimony, explain to such child that he or she is required to truthfully tell what he or she knows about the matter to which his or her testimony relates; and the testimony so taken shall be available as evidence for all purposes whatsoever: Provided that such testimony, if taken by a Coroner, Justice or Justices of the Peace, shall be reduced to writing and be certified under the hand of such Coroner, Justice or Justices, as aforesaid. 25 30

Effect of the evidence so given.

The effect of such unsworn testimony shall be according to the weight and credibility which, in the opinion of the Judge, Coroner, Justice or Justices, or of the jury, as the case may be, ought to be attached thereto as evidence given without the sanction of an oath. 35

Evidence of the accused may be received.

16. (1.) Every one proceeded against by indictment for any offence shall be a competent witness for himself or herself upon his or her trial for such offence, and the wife or husband, as the case may be, of every such accused person shall be a competent witness for him or her upon such trial: 40

(2.) Provided that no such person shall be liable to be called as a witness by the prosecutor, but every such witness called and giving evidence on behalf of the accused shall be liable to be cross-examined like any other witness on any matter though not arising out of his examination in chief: 45

(3.) Provided that, so far as the cross-examination relates to the credit of the accused, the Court may limit such cross-examination to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness.

5 **17.** (1.) If the Court is of opinion that the accused is taken by surprise in a manner likely to be prejudicial to his defence by the production on behalf of the prosecutor of a witness who has not made any deposition, and of the intention to produce whom the accused has not had sufficient notice, the Court may, on the application of the
10 accused, adjourn the further hearing of the case, or discharge the jury from giving a verdict, and postpone the trial.

Adjourning trial for witnesses.

(2.) If the Court is of opinion that any witness who is not called for the prosecution ought to be so called, it may require the prosecutor to call him, and, if the witness is not in attendance, make an order
15 that his attendance shall be procured, and the Court may, if it thinks proper, adjourn the further hearing of the case to some other time during the sittings until such witness attends.

(3.) If in such a case the Court is of opinion that it would be conducive to the ends of justice to do so, it may, upon the application
20 of the accused, discharge the jury and postpone the trial.

18. Any accused person on his trial for any offence, or his counsel or solicitor, may admit any fact alleged against the accused so as to dispense with proof thereof.

Admissions.

19. (1.) If an accused person, or any one of several accused persons
25 being tried together, is defended by counsel, such counsel shall at the end of the case for the prosecution declare whether he intends to adduce evidence or not on behalf of the accused person for whom he appears, and, if no counsel for any such accused person thereupon announces his intention to adduce evidence, the counsel for the prose-
30 cution may address the jury by way of summing up.

Summing up evidence.

(2.) Upon every trial of any person for any offence, whether the accused person is defended by counsel or not, he shall be allowed, if he thinks fit, to open his case, and after the conclusion of such opening the accused person or his counsel shall be entitled to examine
35 such witnesses as he thinks fit, and, when all the evidence is concluded, to sum up the evidence. In case evidence for the defence is adduced, the counsel for the prosecution shall have the right to reply :

Provided always that the right of reply shall in all cases be allowed to the Attorney-General or Solicitor-General, or to any
40 counsel acting on behalf of the Queen.

(3.) If a person accused who is defended by counsel desires himself to make a statement to the jury without being sworn as a witness, he may do so ; but in such case counsel shall not be entitled also to address the jury, though he may address the Court upon any question
45 of law which may arise.

PART III.

CHALLENGES.

20. (1.) Either the accused or the prosecutor may challenge the array on the ground of partiality, fraud, or wilful misconduct on the

Challenging the array.

part of the Sheriff or his deputies by whom the panel was returned, but on no other ground. The objection shall be made in writing, and shall state that the person returning the panel was partial, or was fraudulent, or wilfully misconducted himself, as the case may be. Such objection may be in the Form A. in the Schedule hereto, or to the like effect. 5

(2.) If partiality, fraud, or wilful misconduct, as the case may be, is denied, the Court shall appoint any two indifferent persons to try whether the alleged ground of challenge is true or not. If the triers find that the alleged ground of challenge is true in fact, or if the party who has not challenged the array admits that the ground of challenge is true in fact, the Court shall direct a new panel to be returned. 10

Challenges and directions to stand by.

21. (1.) Besides the peremptory challenges provided for by "The Juries Act, 1880," every prosecutor and every accused person shall be entitled to any number of challenges for cause on any of the following grounds, that is to say,— 15

(a.) That any juror's name does not appear in the Jury Book : Provided that no misnomer or misdescription in the Jury Book shall be a ground of challenge if it appears to the Court that the description given in the Jury Book sufficiently designates the persons referred to ; or 20

(b.) That any juror is not indifferent between the Queen and the accused ; or

(c.) That any juror is disqualified under the law in force for the time being.

(2.) No other ground of challenge for cause than those above mentioned shall be allowed. 25

(3.) If any such challenge is made, the Court may, in its discretion, require any party challenging to put his challenge in writing. The challenge may be in the Form B. in the Schedule hereto, or to the like effect. The other party may deny that the ground of challenge is true. 30

(4.) If the ground of challenge is that the juror's name does not appear in the Jury Book, the issue shall be tried by the Court on the *voir dire* by the inspection of the Jury Book, and such other evidence as the Court thinks fit to receive. 35

(5.) If the ground of challenge be another than as aforesaid, the two jurors last sworn, or, if no jurors have then been sworn, then two persons present whom the Court may appoint for that purpose, shall be sworn to try whether the juror objected to stands indifferent between the Queen and the accused, or is disqualified as aforesaid, as the case may be. If the Court or the triers find against the challenge the juror shall be sworn. If they find for the challenge he shall not be sworn. If after what the Court considers a reasonable time the triers are unable to agree, the Court may discharge them from giving a verdict, and may direct other persons to be sworn in their place. 40 45

(6.) The prosecutor shall have no power to challenge any juror peremptorily, but he may direct any number of jurors not peremptorily challenged by the accused to stand by until all the jurors have been called who are available for the purpose of trying that indictment. 50

(7.) The accused may be called upon to declare whether he challenges any juror peremptorily or otherwise, before the prosecutor is called upon to declare whether he requires such juror to stand by, or challenges him either for cause or peremptorily.

PART IV.

CRIMINAL APPEALS.

22. (1.) No proceeding in error shall be taken in any criminal case begun after the commencement of this Part of this Act. Reserving questions of law.

5 (2.) The Court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the Judge, for the opinion of the Court of Appeal in manner hereinafter
10 provided.

(3.) If the decision of the question may in the opinion of the Court depend on any question of fact or facts, the Court may in its discretion ask the jury questions as to such facts separately, and the Court shall make a note of such questions and the findings thereon.

15 (4.) Either the prosecutor or the accused may during the trial apply to the Court to reserve any such question as aforesaid, and the Court, if it refuses so to reserve it, shall nevertheless take a note of such objection, unless it considers the application frivolous.

(5.) After a question is reserved the trial shall proceed as in other
20 cases.

(6.) If the result is acquittal, the accused shall be discharged, subject to being arrested again if the Court of Appeal orders a new trial.

(7.) If the result is a conviction, the Court may in its discretion
25 respite the execution of the sentence or postpone sentence till the question reserved has been decided, and in either case shall in its discretion commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the Court thinks fit, to surrender at such time as the Court directs.

30 (8.) If the question is reserved, a case shall be stated for the opinion of the Court of Appeal, to be approved and signed by the Judge who presided at the trial.

23. (1.) If the Court refuses to reserve the question, the party applying may, with the leave in writing of the Attorney-General, Appeal when no question reserved.
35 move the Court of Appeal as hereinafter provided. The Attorney-General may in his discretion give or refuse such leave.

(2.) The Attorney-General, or any person to whom such leave as aforesaid is given, may, on notice of motion to be given to the accused or prosecutor, as the case may be, move the Court of Appeal for leave
40 to appeal. The Court of Appeal may, upon the motion, and upon considering such evidence (if any) as they think fit to require, grant or refuse such leave.

(3.) If leave to appeal is granted, a case shall be stated for the opinion of the Court of Appeal as if the question had been reserved.

45 (4.) If the sentence is alleged to be one which could not by law be passed, either party may without leave, upon giving notice of motion to the other side, move the Court of Appeal to pass a proper sentence.

(5.) If the Court has arrested judgment, and refused to pass any
50 sentence, the prosecutor may without leave make such a motion.

24. (1.) On any appeal or application for a new trial, the Court Evidence for Court of Appeal.

before which the trial was had shall, if it thinks necessary, or if the Court of Appeal so desires, send to the Court of Appeal a copy of the whole or of such part as may be material of the notes taken by the Judge or presiding Justice at the trial.

(2.) The Court of Appeal may, if it considers such notes defective, refer to such other evidence of what took place at the trial as it may think fit. The Court of Appeal may in its discretion send back any case to the Court by which it was stated, to be amended or re-stated.

Powers of Court of Appeal.

25. (1.) Upon the hearing of any appeal under the powers hereinbefore contained, the Court of Appeal in criminal cases may—

- (a.) Confirm the ruling appealed from; or,
- (b.) If of opinion that the ruling was erroneous, and that there has been a mistrial in consequence, direct a new trial; or,
- (c.) If it considers the sentence erroneous or the arrest of judgment erroneous, pass such a sentence as ought to have been passed, or set aside any sentence passed by the Court below, and remit the case to the Court below with a direction to pass the proper sentence; or,
- (d.) If of opinion, in a case in which the accused has been convicted, that the ruling was erroneous, and that the accused ought to have been acquitted, direct that the accused shall be discharged, which order shall have all the effects of an acquittal; or,
- (e.) In any case, whether the appeal is on behalf of the prosecutor or of the accused, direct a new trial; or,
- (f.) Make such other order as justice requires:

Provided that no conviction or acquittal shall be set aside, nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial, or some misdirection given, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage was thereby occasioned on the trial:

Provided that if the Court of Appeal is of opinion that any challenge was improperly disallowed a new trial shall be granted.

(2.) If it appears to the Court of Appeal that such wrong or miscarriage affected some count only of the information, the Court may give separate directions as to each count, and may pass sentence on any count unaffected by such wrong or miscarriage which stands good, or remit the case to the Court below with directions to pass such sentence as justice may require.

(3.) The order or direction of the Court of Appeal shall be certified under the hand of the presiding Judge to the proper officer of the Court before which the case was tried, and such order or direction shall be carried into effect.

Application for a new trial.

26. (1.) After the conviction of any person for any offence, the Court before which the trial takes place may, either during the sittings or afterwards, give leave to the person convicted to apply to the Court of Appeal for a new trial on the ground that the verdict was against the weight of evidence. The Court of Appeal may, upon hearing such motion, direct a new trial if it thinks fit.

(2.) In the case of a trial before a District Court such leave may

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be given, during or at the end of the sitting, by the Judge who presided at the trial.

27. If, upon any application for the mercy of the Crown on behalf of any person convicted of any offence, the Governor in Council
5 entertains a doubt whether such person ought to have been convicted, he may, instead of remitting or commuting the sentence, after such inquiry as he thinks proper, by an order in writing direct a new trial at such time and before such Court as he may think proper.

New trial by order of Governor in Council.

28. (1.) The sentence of the Court shall not be suspended by
10 reason of any appeal, unless the Court expressly so directs, except where the sentence is that the accused suffer death, flogging, or whipping.

Intermediate effects of appeal.

(2.) The production of a certificate from the officer of the Court that a question has been reserved or that leave has been given to
15 apply for a new trial, or of a certificate from the Attorney-General that he has given leave to move the Court of Appeal, or of a certificate from the Governor in Council that he has directed a new trial, shall be a sufficient warrant to suspend the execution of any sentence of death, flogging, or whipping.

(3.) In all cases it shall be in the discretion of the Court of
20 Appeal or the Governor in Council, in directing a new trial, to order the accused to be admitted to bail or kept in custody as it or he may think fit.

29. Sections nineteen to twenty-two, both inclusive, of "The
25 Court of Appeal Act, 1882," are hereby repealed.

Repeals.

SCHEDULE.

Schedule.

CHALLENGES.

FORM A.—*Challenge to Array.*

The Queen } C.D., who prosecutes for our Lady the Queen [or The said A.B.,
v. } as the case may be], challenges the array of the panel on the ground
A.B. } that it was returned by X.Y., Sheriff of the Supreme Court District of
[or E.F., deputy of X.Y., Sheriff of the Supreme Court District of
as the case may be], and that the said X.Y. [or E.F., as the case may be] was guilty
of partiality [or fraud, or wilful misconduct] on returning said panel.

FORM B.—*Challenge to Poll.*

The Queen } C.D., who prosecutes, &c. [or The said A.B., as the case may
v. } be], challenges G.H., on the ground that his name does not appear in
A.B. } the Jury Book [or that he is not indifferent between the Queen and
the said A.B., or that he is disqualified under the law for the time being in force].