

Hon. Sir P. A. Buckley.

INDICTABLE OFFENCES SUMMARY JURISDICTION.

THIS Bill consolidates those provisions of the several Criminal Acts, 1867—viz., the Coinage Offences Act, the Larceny Act, the Offences against the Person Act, and the Malicious Injuries to Property Act—which confer summary jurisdiction upon Justices of the Peace, and which have not been repealed by the Criminal Code.

Also, the provisions of “The Justices of the Peace Act, 1882,” as amended by the Act of 1885, relating to the summary trial, with consent, of adults and juvenile offenders for certain indictable offences, are consolidated.

With regard to offences by children, section 176 of “The Justices of the Peace Act, 1882,” provides for the summary trial of any child, with the consent of the parent or guardian, for *any indictable offence* other than homicide—thus taking away altogether the summary jurisdiction of Justices in respect to children guilty of the most petty offences: as this could not have been intended, the words “not punishable on summary conviction” have been inserted in clause 55 after “indictable offence,” whereby children may be summarily punished for offences within the ordinary jurisdiction of Justices, and the power of summary trial for grave offences against the criminal law is maintained.

This Bill has been framed on the lines of the Criminal Code, and the various definitions in that Code have been incorporated herein, as being necessary in consequence of the abolition of all common-law offences, and the alterations made by the Code in the general criminal law.

The punishments in this Bill are always the maximum punishment, a general power to Justices to modify all punishments being conferred upon them by clause 6.

Clause 41 gives power to Justices to deal summarily with cases of fortune-telling, &c., instead of sending the offenders to trial.

Clause 65 provides that nothing in this Bill is to affect the summary jurisdiction conferred upon Justices by any other Act than the hereinabove-mentioned.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

*Legislative Council.
24th July, 1894.*

Hon. Sir P. A. Buckley.

INDICTABLE OFFENCES SUMMARY JURISDICTION.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Two Justices or Magistrate to adjudicate in indictable offences.</p> <p>4. Powers and authorities of Justices and Magistrate.</p> <p>5. Ownership of property.</p> <p>6. Discretion of Justices as to punishments.</p> <p>7. Parties to offences. Offence committed other than offence intended.</p> <p>8. Evidence of accused. Evidence of accused when undefended. No adverse comment allowed.</p> <p style="text-align: center;">PART I. COINAGE OFFENCES.</p> <p>9. Definitions.</p> <p>10. Penalty for uttering defaced coin.</p> <p>11. Penalty for having in possession more than five pieces of foreign counterfeit coin.</p> <p>12. Coin suspected to be diminished or counterfeit may be cut by any person to whom it is tendered.</p> <p style="text-align: center;">PART II. ASSAULTS AND OTHER OFFENCES AGAINST THE PERSON.</p> <p>13. Definitions.</p> <p>14. (1.) Assaults with intent to obstruct sale of grain or its free passage. (2.) Assaults on seamen.</p> <p>15. Common assault.</p> <p>16. Aggravated assaults upon boys under 14 or women.</p> <p>17. Trivial cases may be dismissed.</p> <p>18. Assaults with attempt to commit crime not triable summarily.</p> <p>19. Justices not to adjudicate upon cases of assault involving questions of title.</p> <p>20. Information to be laid within three months.</p> <p>21. Part of penalty inflicted for assault may be awarded as compensation to party injured.</p> <p>22. Householder permitting defilement of young girl on his premises.</p> <p>23. Abduction of girl under eighteen with intent to have carnal knowledge.</p> <p>24. Unlawful detention with intention to have carnal knowledge.</p> <p>25. Definition of unlawful detention.</p> <p>26. Power of search.</p> <p>27. Apprehension.</p> <p>28. Custody of girls under fifteen.</p> <p>29. Proceedings against brothel-keeper, &c.</p> <p style="text-align: center;">PART III. MISCHIEF.</p> <p>30. Mischief defined.</p> <p>31. Punishment of mischief.</p> <p>32. Attempt to injure telephone or telegraph.</p> <p>33. Damaging property whilst in possession on account of another.</p> <p>34. Arrest without warrant.</p>	<p style="text-align: center;">PART IV. THEFT.</p> <p>35. Things capable of being stolen.</p> <p>36. Animals capable of being stolen.</p> <p>37. Theft defined.</p> <p>38. Theft of animals.</p> <p>39. Theft by person receiving anything on account of another.</p> <p>40. Theft by co-owner.</p> <p>41. Husband and wife.</p> <p>42. Definition of false pretence.</p> <p>43. Property dishonestly obtained.</p> <p style="text-align: center;">(1.) <i>Minor Offences.</i></p> <p>44. Punishment of theft.</p> <p>45. Suspected person in possession of wood, &c.</p> <p>46. Having possession or offering for sale shipwrecked goods.</p> <p>47. Theft by clerks, servants, &c.</p> <p>48. Obtaining property by false pretence.</p> <p>49. Practising witchcraft and fortune-telling may be dealt with summarily.</p> <p>50. Practising palmistry or other subtle craft.</p> <p style="text-align: center;">(2.) <i>Graver Offences by Adults.</i></p> <p>51. Summary trial, with consent, of adult.</p> <p>52. Summary conviction, on plea of guilty, of adult.</p> <p>53. Restriction on summary dealing with adult.</p> <p style="text-align: center;">(3.) <i>Juvenile Offenders.</i></p> <p>54. Summary trial, with consent, of juvenile offenders.</p> <p style="text-align: center;">(4.) <i>Restitution of Property.</i></p> <p>55. Justices may order restitution of stolen property, or payment of its value.</p> <p>56. Justices may order refund of money to <i>bond fide</i> purchaser of stolen property.</p> <p>57. Restitution of stolen property when pawned.</p> <p>58. Advertising reward for stolen property.</p> <p>59. Persons offering stolen property for sale or pawn may be arrested.</p> <p style="text-align: center;">(5.) <i>Miscellaneous.</i></p> <p>60. Thieves may be apprehended.</p> <p>61. Trivial cases may be dismissed.</p> <p>62. Receiving property dishonestly obtained. Rule of evidence.</p> <p>63. When receiving is complete.</p> <p>64. Receiving after restoration to owner.</p> <p style="text-align: center;">PART V. CRIMES BY CHILDREN.</p> <p>65. Summary trial of children for crimes, unless objected to by parent or guardian.</p> <p style="text-align: center;">PART VI. GENERAL.</p> <p>66. First offenders may be discharged.</p> <p>67. Certificate of dismissal to be given to defendant in certain cases.</p>
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68. Certificate to be a bar to further proceedings.	71. Application of forfeitures and penalties.
69. Value of property damaged or stolen to be assessed.	72. Recovery of penalties.
70. Imprisonment in default of payment of penalty.	73. No <i>certiorari</i> .
	74. No limitation of other Acts.
	75. Repeals.

A BILL INTITULED

Title. AN ACT to define the Summary Jurisdiction of Justices of the Peace with respect to Indictable Offences.

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

Short Title.

1. The Short Title of this Act is "The Indictable Offences Summary Jurisdiction Act, 1894." It shall be deemed to be incorporated with "The Justices of the Peace Act, 1882."

Interpretation.

2. In this Act, if not inconsistent with the context,—

"Adult" means a person who, in the opinion of the Justices, is of the age of sixteen and upwards: 10

"Child" means a person who, in the opinion of the Justices, is under the age of twelve years:

"Crime" means any indictable offence which is not punishable on summary conviction: 15

"Having in possession," when used in reference to any person, includes not only having in his personal possession but also —

(a.) Having in the actual possession or custody of any other person; and 20

(b.) Having in any place (whether occupied by himself or not) for the use or benefit of himself or of any other person:

"Is liable" means is liable on summary conviction:

"Justice" or "Justices" mean a Justice or Justices of the Peace": 25

"Justices" includes a Magistrate:

"Magistrate" means a Stipendiary Magistrate appointed under "The Magistrates' Courts Act, 1893":

"Peace officer" includes all constables: 30

"Person," "owner," and other words and expressions of the kind, include Her Majesty, and all public bodies, bodies corporate, boards, societies, companies, and inhabitants of counties or other districts, in relation to such acts and things as they are capable of doing and owning respectively: 35

"Principal Act" means "The Justices of the Peace Act, 1882":

"Valuable security" includes every document forming the title or evidence of the title to any property of any kind whatever: 40

"Young person" means a person who, in the opinion of the Justices, is of the age of twelve years and under the age of sixteen.

3. Subsection two of section one hundred and eighteen of the principal Act is hereby repealed, and the following substituted in lieu thereof:— 45

Two Justices or Magistrate to adjudicate in indictable offences.

1885, No. 44, s. 2.
Amended.

Every charge of an indictable offence may be heard and all proceedings consequent thereon or in relation thereto may be had and taken before two Justices or a Magistrate.

5 4. Any two or more Justices, or a Magistrate, shall have the jurisdiction and authority declared by this Act in respect of the indictable offences in this Act mentioned, which may be prosecuted in manner provided by the principal Act; and, except where in this Act otherwise specially provided, every such prosecution shall be commenced within six months after the commission of the offence.

Powers and authorities of Justices and Magistrate.

Every Magistrate shall have full power to do alone whatever is authorised to be done by two Justices under the principal Act, or any Act amending such Act, or this Act.

15 5. Whenever, in any proceedings under this Act,—

Ownership of property.
1882, No. 15, s. 48.

(1.) It is necessary to state the ownership of property of any kind whatever, if such property belongs to or is in the possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another, or others, as the case may be;

20 (2.) It is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in manner aforesaid.

25 6. (1.) Every one liable to imprisonment with hard labour for any term may be sentenced to any shorter term of imprisonment with hard labour.

Discretion of Justices as to punishments.
1893, No. 56, s. 16.

(2.) Every one liable to imprisonment for any term may be sentenced to imprisonment for any shorter term.

30 (3.) Every one liable to imprisonment with hard labour may be sentenced to imprisonment without hard labour.

(4.) Every one liable to imprisonment, with or without hard labour, may be sentenced to pay a fine in addition to or instead of such imprisonment.

35 7. (1.) Every one is a party to and guilty of an offence who—

Parties to offences.
Ib., s. 73.

(a.) Actually commits it;

(b.) Does or omits to do an act for the purpose of aiding any person to commit the offence;

(c.) Abets any person in the commission of the offence;

(d.) Counsels or procures any person to commit the offence.

40 (2.) If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was or ought to have been known to be a probable consequence of the prosecution of such common purpose.

Offence committed other than offence intended.

45 (3.) Every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

Ib., s. 74.

50 (4.) Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in

consequence of such counselling or procuring, and which the person counselling or procuring knew or ought to have known to be likely to be committed in consequence of such counselling or procuring.

Evidence of accused.
1889, No. 16.
1893, No. 56, s. 398.

8. (1.) Every one charged before Justices with any crime punishable on indictment, and every one proceeded against summarily for any offence, either solely or with others, shall be a competent but not compellable witness for himself or herself 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: Provided,— 5

(2.) The wife or husband of an accused person shall not be called as a witness without the consent of such accused person, except in any case in which such wife or husband is compellable to give evidence, or the charge be one in which either husband or wife is charged with being a party to an offence against the other: 10

(3.) 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: 15

(4.) So far as the cross-examination relates to any previous conviction of the accused, or to the credit of the accused, the Justices may limit such cross-examination to such extent as they think proper, although the proposed cross-examination might be permissible in the case of any other witness. 20

Evidence of accused when undefended.

If an accused person, or any one of several accused persons being tried together, is not defended by counsel, then, on the completion of the examination of the witnesses on the part of the prosecution, the following caution, or words to the like effect, shall be addressed to him by or under the direction of the Justices: that is to say, "Having heard the evidence against you, do you wish to be called as a witness and give evidence in answer to the charge? You are not obliged to give evidence, and if you decide not to be examined the fact will not be allowed to be subject of comment; but, if you are called, the evidence you give may be used against you." 25 30

No adverse comment allowed.

If a person charged with an offence shall refrain from giving evidence, or from calling his wife or her husband, as the case may be, as a witness, no comment adverse to the person charged shall be allowed to be made thereon. 35

PART I.

COINAGE OFFENCES.

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Definitions.
1893, No. 56, s. 292.

9. In the next *three* following sections,—

"Current," applied to coin, means coin coined in any of Her Majesty's mints, or lawfully current by virtue of any Proclamation or otherwise, in any part of Her Majesty's dominions, whether within the United Kingdom or without: 45

"Copper," applied to coin, includes every kind of coin inferior in value to silver:

"Counterfeit coin" includes genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination, and genuine coin clipped, filed, or otherwise diminished in 50

size or weight, and altered or prepared so as to conceal such clipping, filing, or diminution, and counterfeit coin in an unfinished state.

10. No tender of payment in money made in any current gold, silver, or copper coin defaced by having any name or word stamped thereon, whether such coin is or is not thereby diminished or lightened, shall be allowed to be a legal tender, and every one who knowingly tenders, utters, or puts off any coin so defaced is liable to a penalty not exceeding *forty* shillings; but no person shall proceed for any such last-mentioned penalty without the leave of Her Majesty's Attorney-General.

Penalty for uttering defaced coin.
1867, No. 2, s. 17.

11. Every one who, without lawful authority or excuse, the proof whereof shall lie on him, has in his possession any greater number of pieces than five pieces of any counterfeit coin of any foreign Prince, State, or country, is liable to a penalty not exceeding *forty* shillings and not less than *ten* shillings in respect of every such piece of counterfeit coin found in his possession; and every such piece of counterfeit coin shall be cut in pieces and destroyed by order of the convicting Justices.

Penalty for having in possession more than five pieces of foreign counterfeit coin.
Ib., s. 23.

12. If any coin is tendered as current gold or silver coin to any person who suspects the same to be diminished otherwise than by reasonable wear, or to be counterfeit, such person may cut, break, bend, or deface such coin, and if any coin so cut, broken, bent, or defaced shall appear to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same be of due weight and appears to be lawful coin, the person cutting, breaking, bending, or defacing the same shall be bound to receive the same at the rate at which it was coined.

Coin suspected to be diminished or counterfeit may be cut by any person to whom it is tendered.
Ib., s. 26.

- If any dispute arises whether the coin so cut, broken, bent, or defaced is diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in a summary manner by any Justice of the Peace, who may examine upon oath the parties, as well as any other person, for the purpose of deciding such dispute.

- Every officer employed in the collection of Her Majesty's revenue in New Zealand shall cut, break, or deface, or cause to be cut, broken, or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which is tendered to him in payment of any part of such revenue in New Zealand.

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PART II.

ASSAULTS AND OTHER OFFENCES AGAINST THE PERSON.

13. An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe upon reasonable grounds that he has, present ability to effect his purpose.

Definitions.
1893, No. 56, s. 187

“Brothel” means any house, room, set of rooms, or place of any kind whatever kept for purposes of prostitution.

Assaults with intent to obstruct sale of grain or its free passage.
1867, No. 5, s. 36.

14. Every one is liable to three months' imprisonment with hard labour, who—

(1.) Assaults any person with intent to deter or hinder him from buying, selling, or otherwise disposing of, or to compel him to buy, sell, or otherwise dispose of, any wheat or other grain, flour, meal, malt, or potatoes, in any market or other place, or assaults any person having the care or charge of any wheat or other grain, flour, meal, malt, or potatoes, whilst on the way to or from any city, town, or other place, with intent to stop the conveyance of the same; or

Assaults on seamen.
1867, No. 5, s. 37.

(2.) Forcibly hinders or prevents any seaman, boatman, or carter, or any other workman, from working at or exercising his lawful trade, business, or occupation, or assaults any such person with intent to hinder or prevent him from exercising the same.

Common assault.
Ib., s. 39.

15. Every one who commits an assault is liable to two months' imprisonment, with or without hard labour, or, in the discretion of the convicting Justices, to a penalty not exceeding, together with costs, the sum of *ten* pounds.

Aggravated assaults upon boys under 14 or women.
Ib., s. 40.

16. Every one who commits an assault upon any male child whose age, in the opinion of the Justices, shall not exceed fourteen years, or upon any female, of such an aggravated nature as in the opinion of the Justices cannot be sufficiently punished under the *last preceding* section, is liable to *six* months' imprisonment, with or without hard labour, or in the discretion of the Justices to a penalty not exceeding, together with costs, the sum of *twenty* pounds.

Trivial cases may be dismissed.
1882, No. 15, s. 183.

17. If the Justices, upon the hearing of any case of assault, shall deem the offence not to be proved, or shall find the assault to have been justified or so trifling as not to merit any punishment, they shall dismiss the case.

Assaults with attempt to commit crime not triable summarily.
Ib., s. 184.

18. In case the Justices shall find the assault complained of to have been accompanied by any attempt to commit a crime, or shall be of opinion that the same is, from the aggravated nature thereof, or from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the matter as an indictable crime.

Justices not to adjudicate upon cases of assault involving questions of title.
Ib., s. 185.

19. Nothing in this Part of this Act contained shall authorise any Justices to hear and determine any case of assault in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any Court of justice.

Information to be laid within three months.
Ib., s. 188.

20. The prosecution for every assault punishable on summary conviction under this Act shall be commenced within three months after the commission of the offence.

Part of penalty inflicted for assault may be awarded as compensation to party injured.
Ib., s. 189.

21. (1.) When any person shall be convicted before two or more Justices of an assault, and it shall appear upon the evidence of a credible witness, other than the party assaulted, that such assault was wanton and unprovoked, and attended with bodily injury to the party assaulted, or with injury to his clothes, or with injury to any property then in his immediate personal custody, and where in any such case a

fine has been imposed upon the offender, the Justices may, when it shall appear to them proper that compensation be made for the injury inflicted, award to the party injured such portion of the fine so levied as to them shall seem meet: Provided always that the sum
 5 so to be awarded shall not in any case exceed one-half of the fine levied.

(2.) The order of such Justices shall be a sufficient authority to the Clerk receiving such fine for the payment of the portion so awarded to the party injured.

1882, No. 15, s. 189.

10 22. Any person who, being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of such age as is in this section mentioned to resort to, or be in or upon, such premises for the purpose of being unlawfully and carnally known by any man,
 15 whether such carnal knowledge is intended to be with any particular man, or generally,—

Householder permitting defilement of young girl on his premises.

(1.) Shall, if such girl is under the age of thirteen years, be liable, on summary conviction, to be imprisoned for any term not exceeding two years, with hard labour; and

20 (2.) Shall, if such girl is of or above the age of thirteen, and under the age of fifteen years, be liable, on summary conviction, to be imprisoned for any term not exceeding one year, with or without hard labour:

25 Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the Magistrate or Justice 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 fifteen years.

30 23. Any person who, with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, takes or causes to be taken such girl out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her, shall be
 35 liable, on summary conviction, to be imprisoned for any term not exceeding one year, with hard labour:

Abduction of girl under eighteen with intent to have carnal knowledge.

40 Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the Magistrate or Justices that the person so charged had reasonable cause to believe that the girl was of or above the age of eighteen years.

24. Any person who detains any woman or girl against her will,—

Unlawful detention with intention to have carnal knowledge.

(1.) In or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any
 45 particular man or generally; or

(2.) In any brothel,— shall be liable, on summary conviction, to be imprisoned for any term not exceeding one year, with hard labour.

50 25. Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or in any brothel, a person shall be deemed to detain such woman or girl in or upon

Definition of unlawful detention.

such premises, or in such brothel, if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such person or girl any wearing apparel or other property belonging to her; or, where wearing apparel has been lent or otherwise supplied to such woman or girl, by or by the direction of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied. 5

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel. 10

Power of search.

26. If it appears to any Justice of the Peace, on information made before him on oath by any parent, relative, or guardian of any such woman or girl, or any other person who, in the opinion of the Justice, is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person, in any place within the jurisdiction of such Justice, such Justice may issue a warrant authorising any person named therein to search for, and, when found, to take to and detain in a place of safety, such woman or girl until she can be brought before a Justice of the Peace; and the Justices of the Peace before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require. 15
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Apprehension.

27. The Justice of the Peace issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a Justice, and proceedings to be taken for punishing such person according to law. 30

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally, and,—

- (a.) Either is under the age of fifteen years; or 35
- (b.) If of or over the age of fifteen years, and under the age of eighteen years, is so detained against her will, or against the will of her father or mother, or of any other person having the lawful care or charge of her; or
- (c.) If of or above the age of eighteen years, is so detained against her will. 40

Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom: 45

Provided always that every warrant issued under this section shall be addressed to and executed by some Inspector, or other officer of police, who shall be accompanied by the parent, relative, or guardian, or other person making the information, if such person so desire, unless the Justice shall otherwise direct.

Custody of girls under fifteen.

28. Where, on the trial of any offence under the next-preceding six sections of this Act, it is proved to the satisfaction of the Magistrate or Justices that the seduction or prostitution of a girl 50

under the age of fifteen has been caused, encouraged, or favoured by her father, mother, guardian, master or mistress, it shall be in the power of the Magistrate or Justices to divest such father, mother, guardian, master or mistress of all authority over her, and to appoint
 5 any person or persons willing to take charge of such girl to be her guardian until she has attained the age of twenty-one, or any age below this as the Magistrate or Justices may direct; and the Supreme Court shall have the power from time to time to rescind or vary such order, by the appointment of any other person or persons
 10 as such guardian, or in any other respect.

29. Any person who,—

Proceedings against
brothel-keeper, &c.

- (1.) Keeps or manages or acts or assists in the management of a
brothel; or
- 15 (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
- 20 (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, be liable—

- 25 (a.) To a penalty not exceeding *twenty* pounds, or, in the discretion of the Magistrate or Justices to imprisonment for any term not exceeding *three* months with or without hard labour; and
- 30 (b.) 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 *six* 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
 35 by the Magistrate or Justices to enter into a recognisance, with or without sureties, as to him or them seems meet, to be of good behaviour for any period not exceeding twelve months; and in default of entering into such recognisances with or without sureties
 40 (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.

Any person on being summarily convicted in pursuance of this section may appeal to the Supreme Court against such conviction.

PART III.

MISCHIEF.

Mischief defined,
1893, No. 56, s. 307.

30. (1.) Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, shall be deemed to have caused it wilfully for the purposes of this Part of this Act. 5

(2.) Nothing shall be an offence under any provision contained in this Part unless it is done without legal justification or excuse, and without colour of right.

(3.) Where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, and, if total, shall not prevent his act being an offence if done with intent to defraud. 10

Punishment of
mischief.

31. Every one who wilfully destroys or damages any of the property hereinafter mentioned is guilty of the offence of mischief, and is liable to the punishments hereinafter specified:— 15

(1.) To *six* months' imprisonment with hard labour, or to a penalty not exceeding *twenty* pounds, over and above the amount of the injury done, if the object damaged be—

1867, No. 6, s. 23.

(a.) Any vegetable production growing in a garden, orchard, or greenhouse; and any second or subsequent offence shall be deemed to be a crime not punishable on summary conviction: 20

Ib., s. 41.

(b.) Any dog, bird, beast, or other animal, not being a horse, mare, or gelding, ass, mule, bull, cow, ox, or heifer, ram, ewe, or other sheep, boar, sow, or other pig, or goat, or the young of any such animal, but being ordinarily kept in a state of confinement or for any domestic purpose, and the damage be caused by killing, maiming, or wounding; and to *twelve* months' imprisonment with hard labour for any subsequent offence: 25 30

(2.) To *three* months' imprisonment with hard labour, or to a penalty not exceeding *ten* pounds, over and above the amount of the injury done, if the object damaged be—

Ib., s. 37.

(c.) Anything which forms part of or is about an electric or magnetic telegraph or telephone, with intent to obstruct the transmission or delivery of any message; and the Justices shall be of opinion that it is not to the ends of justice that the offence should be prosecuted by indictment: 35 40

(3.) To *three* months' imprisonment with hard labour, or to a penalty not exceeding *five* pounds, over and above the amount of the injury done, if the object damaged be—

Ib., s. 22.

(d.) Any tree, shrub, or underwood injured to the value of *one* shilling; and to *one* year's imprisonment with hard labour for any second offence of a like nature; and any third or subsequent like offence shall be deemed a crime not punishable on summary conviction: 45

- (4.) To *two* months' imprisonment, with or without hard labour, or to a penalty not exceeding *five* pounds, over and above the amount of the injury done, if the object damaged be—
- 5 (e.) Any tree, shrub, or underwood, for damage to which no special punishment is by law prescribed; Ib., s. 52.
- (f.) Any property, real or personal, for damage to which no special punishment is by law prescribed, damaged to the value of less than *five* pounds.
- 10 (5.) To *one* month's imprisonment with hard labour, or to a penalty not exceeding *twenty* shillings, over and above the amount of the injury done, if the object damaged be—
- (g.) Any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard, or nursery ground; and to *six* months' imprisonment with hard labour for any subsequent offence of a like nature. Ib., s. 24.
- 15 (6.) To a penalty not exceeding *five* pounds, over and above the amount of the injury done, if the object damaged be—
- (h.) Any fence, of any description whatsoever, or any wall, stile, or gate; and to *one* year's imprisonment with hard labour for any subsequent offence of a like nature. Ib., s. 25.
- 20 32. Every one is liable to *three* months' imprisonment with hard labour, or to a penalty not exceeding *ten* pounds, who by any overt act attempts to destroy or damage anything which forms part of or is about an electric or magnetic telegraph or telephone, with intent to obstruct the transmission or delivery of any message. Attempt to injure telephone or telegraph. Ib., s. 38.
- 25 33. Every one who, while in possession of any property belonging to another person, wilfully destroys or damages the same, with intent to injure or defraud the owner thereof, is guilty of the offence of mischief, and liable to the same punishment as he would be if he had wilfully destroyed or damaged the said property while in the possession of the owner thereof. Damaging property whilst in possession on account of another. Ib., s. 59.
- 30 34. Any peace officer, or the owner of the property injured, or his servant, or any person authorised by him, may forthwith arrest without a warrant any person found committing any offence of mischief which is punishable on summary conviction, and take him before a Justice to be dealt with according to law, or may deliver him to any
- 35 40 constable to be so taken and dealt with. Arrest without warrant. Ib., s. 61.

PART IV.

THEFT.

35. Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, shall henceforth be capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it: Things capable of being stolen. 1893, No. 56, s. 216.
- 45 Provided that nothing growing out of the earth of a value not exceeding one shilling shall (except in the cases hereinafter provided) be deemed capable of being stolen.
- 50 36. (1.) All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen; but tame Animals capable of being stolen. Ib., s. 217.

pigeons shall be capable of being stolen so long only as they are in a dovecote or on their owner's land.

1893, No. 56, s. 217.

(2.) All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in the colony, shall, if kept in a state of confinement, be capable of being stolen, not only whilst they are so confined, but after they have escaped from confinement. 5

(3.) All other living creatures wild by nature shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement, or are being actually pursued after escaping therefrom, but no longer. 10

(4.) A wild living creature shall be deemed to be in a state of confinement so long as it is in a den, cage, or small enclosure, sty, or tank, or is otherwise so situated that it cannot escape, and that its owner can take possession of it at pleasure.

(5.) Oysters and oyster-brood shall be capable of being stolen when in oyster-beds, layings, and fisheries which are the property of any person, and sufficiently marked out or known as such property. 15

(6.) Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen, nor shall the taking of their dead bodies by or by the orders of the person who killed them, before they are reduced into actual possession by the owner of the land on which they died, be deemed to be theft. 20

(7.) Everything produced by or forming part of any living creature capable of being stolen shall be capable of being stolen.

Theft defined.
Ib., s. 218.

37. (1.) Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent— 25

(a.) To deprive the owner, or any person having any special property or interest therein, permanently of such thing or of such property or interest; or 30

(b.) To pledge the same or deposit it as security; or

(c.) To part with it under a condition as to its return which the person parting with it may be unable to perform; or

(d.) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion. 35

(2.) The taking or conversion may be fraudulent although effected without secrecy or attempt at concealment.

(3.) It is immaterial whether the thing converted was taken for the purpose of conversion or whether it was at the time of the conversion in the lawful possession of the person converting. 40

(4.) Theft is committed when the offender moves the thing, or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it: 45

(5.) Provided that no factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal: 50

(6.) Provided that if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not by reason thereof be guilty of theft.

38. Every one commits theft and steals the creature killed who kills any living creature capable of being stolen with intent to steal the carcase, skin, plumage, or any part of such creature.

Theft of animals.
Ib., s. 219.

39. (1.) Every one commits theft who, having received any money or valuable security or other thing whatsoever on terms requiring him to account for or pay the same, or the proceeds thereof, or any part of such proceeds, to any other person, though not requiring him to deliver over in specie the identical money, valuable security, or other thing received, fraudulently converts to his own use, or fraudulently omits to account for or pay the same, or any part thereof, or to account for or pay such proceeds, or any part thereof, which he was required to account for or pay as aforesaid :

Theft by person receiving anything on account of another.
Ib., s. 220.

(2.) Provided that if it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of such money or proceeds, or any part thereof, in such account shall be a sufficient accounting for the money or proceeds or part thereof so entered, and in such case no fraudulent conversion of the amount accounted for shall be deemed to have taken place.

40. Theft may be committed by the owner of anything capable of being stolen against a person having a special property or interest therein, or by a person having a special property or interest therein against the owner thereof, or by a lessee against his reversioner, or by one of several joint-owners, tenants in common, or partners of or in any such thing against the other persons interested therein, or by the directors, public officers, or members of a public company or body corporate against such public company or body corporate.

Theft by co-owner.
Ib., s. 223.

41. (1.) No husband shall be convicted of stealing during cohabitation the property of his wife, and no wife shall be convicted of stealing during cohabitation the property of her husband; but whilst they are living apart from each other either shall be guilty of theft if he or she fraudulently takes or converts anything which is by law the property of the other in a manner which in any other person would amount to theft.

Husband and wife.
Ib., s. 224.

(2.) Every one commits theft who, whilst a husband and wife are living together, knowingly—

(a.) Assists either of them in dealing with anything which is the property of the other in a manner which would amount to theft if they were not married; or

(b.) Receives from either of them anything the property of the other obtained from that other by such dealing as aforesaid.

42. (1.) A false pretence is a representation either by words or otherwise of a matter of fact either present or past, which repre-

Definition of false pretence.
Ib., s. 223.

sensation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon it.

(2.) Exaggerated commendation or depreciation of the quality of anything is not a false pretence unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact. 5

(3.) It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact.

Property dishonestly obtained.

43. Any property shall be deemed to be dishonestly obtained if obtained by means of any false pretence or other fraud. 10

(1.) *Minor Offences.*

Punishment of theft.

44. Every one is liable to the following punishment for theft:—

(1.) To *six* months' imprisonment, or to a penalty not exceeding *twenty* pounds, over and above the value of the object stolen, if such object be— 15

1867, No. 3, s. 18.

(a.) Any dog; and to eighteen months' imprisonment for any second or subsequent like offence; and

Ib., s. 18.

Every one who has in his possession any stolen dog, or the skin of any stolen dog, knowing it to have been stolen, or such skin to be the skin of a stolen dog, is liable to a penalty not exceeding *twenty* pounds; and to *eighteen* months' imprisonment for any second or subsequent like offence.

Ib., s. 21.

(b.) Any bird, beast, or other animal ordinarily kept in a state of confinement, or for any domestic purpose; and to *one* year's imprisonment for any second or subsequent like offence; and 25

Ib., s. 22.

Every one who has in his possession any bird, or the plumage thereof, or any such beast, or the skin thereof, or any such animal, or any part thereof, is liable for a first or any subsequent offence to the same punishments respectively as if had stolen such bird, beast, or other animal; and any Justice of the Peace may restore the object stolen or had in possession, as aforesaid, to the owner thereof. 30 35

Ib., s. 36.

(c.) Any vegetable production growing in a garden, orchard, or greenhouse; and any second or subsequent offence of a like nature shall be deemed a crime not punishable on summary conviction. 40

(2.) To *one* month's imprisonment, or to a penalty not exceeding *twenty* shillings, over and above the value of the object stolen, if such object be—

Ib., s. 37.

(d.) Anything growing out of the earth, elsewhere than in a garden, orchard, or greenhouse; and to *six* months' imprisonment with hard labour for any second like offence; and any third or subsequent like offence shall be deemed a crime not punishable on summary conviction. 45

(3.) To a penalty not exceeding *twenty* pounds, if the object stolen be— 50

Ib., ss. 12, 14.

(e.) Any deer, kept or being in any unenclosed land, and being the private property of any person, or the property of or under the control of any society of persons; or

- who has in his possession any deer, or the head, skin, or any part thereof, and does not satisfy the Justices that he came lawfully by the same; and any second or subsequent like offence shall be deemed a crime not punishable on summary conviction.
- 5 (4.) To a penalty not exceeding *five* pounds, over and above the value of the object stolen, if such object be— 1867, No. 3, s. 24.
- (*f.*) Any fish, being in a private fishery; and
 10 Every one is liable to a penalty not exceeding *twenty* pounds who, being found fishing in a private fishery, refuses on demand to deliver to the owner of the said fishery, or his servant, or any person authorised by him, any rod, line, hook, or other implement used in fishing, then in his possession. Ib., s. 25.
- (*g.*) Any tree, shrub, or underwood, of the value of one shilling at the least, wheresoever growing; and to *one* year's imprisonment with hard labour for any second or subsequent offence. Ib., s. 33.
- (*h.*) Any fence, of any description whatsoever, or any stile or gate, or any part thereof respectively; and to *one* year's imprisonment with hard labour for any second or subsequent like offence. Ib., s. 34.
- 20 (5.) To a penalty not exceeding *forty* shillings, over and above the value of the object stolen, if such object be any house-dove or pigeon; but no one shall be so liable who destroys any house-dove or pigeon which may be trespassing on land owned or occupied by him. Ib., s. 23.
- 25 45. Every one who has in his possession the whole or any part of any tree, shrub, or underwood, or any part of any fence, stile, or gate of any description whatsoever, and does not satisfy the Justices that he came lawfully by the same, is liable to a penalty not exceeding *forty* shillings, over and above the value of the said articles. Suspected person in possession of wood, &c. Ib., s. 35.
- 30 46. Every one who has in his possession, or offers or exposes for sale, any part of the cargo of any ship in distress, or wrecked, or any-
 35 thing belonging to such ship, and does not satisfy the Justices that he came lawfully by the same, is liable to *six* months' imprisonment, with or without hard labour, or to a penalty not exceeding *twenty* pounds, over and above the value of such goods, merchandise, or articles; which shall, by order of the Justices, be delivered over to the
 40 rightful owner thereof. Having possession or offering for sale shipwrecked goods. Ib., ss. 65, 66.
47. Every one is liable to *three* months' imprisonment, with or without hard labour, or to a penalty not exceeding *twenty* pounds, over and above the value of the object stolen, if such object does not exceed *forty* shillings in value, and be— Theft by clerks, servants, &c.
- 45 (a.) Any woven goods, or materials for making such goods, exposed during any process of manufacture; Ib., s. 62.
- (b.) Anything stolen by a clerk or servant which belongs to or is in the possession of his employer; Ib., s. 67.
- (c.) Anything in the possession of the offender in his capacity as a clerk or servant, or as an officer of the Government, or of
 50 any local authority, or public body, or as a police officer; Ib., s. 68.

1885, No. 44, s. 5.

(d.) Anything, not exceeding forty shillings in value, stolen in contravention of section *thirty-one*; and

(e.) Anything, not exceeding forty shillings in value, for stealing which no punishment is previously provided.

Obtaining property by false pretence. *Ib.*, ss. 87, 88.

48. Every one is liable to *three* months' imprisonment, with or without hard labour, or to a penalty not exceeding *twenty* pounds, who, with intent to defraud by any false pretence, either directly or through the medium of any contract obtained by such false pretence, obtains anything capable of being stolen and not exceeding forty shillings in value, or procures anything capable of being stolen and not exceeding forty shillings in value to be delivered to any other person than himself.

Practising witchcraft and fortune-telling may be dealt with summarily.

49. Where any person is charged before Justices with pretending to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertaking to tell fortunes, or pretending from his skill or knowledge in any occult or crafty science to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found, and the Justices shall think the offence may be sufficiently punished in a summary manner, instead of committing the accused for trial they may deal with the said offender summarily, and on conviction may order him to be imprisoned, with or without hard labour, for any term not exceeding *one* month, or may impose a penalty not exceeding *five* pounds.

Practising palmistry or other subtle craft.

50. Where any person is charged before Justices with using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of Her Majesty's subjects, the Justices may, on conviction, order such person to be imprisoned, with or without hard labour, for any term not exceeding *one* month, or may impose a penalty not exceeding *five* pounds.

(2.) *Graver Offences by Adults.*

Summary trial, with consent, of adult. 1882, No. 15, s. 178.

51. (1.) Where an adult person is charged before Justices with stealing, taking, or dishonestly obtaining anything capable of being stolen, and of a value exceeding forty shillings but not exceeding five pounds, or of attempting to commit or of being a party to any such offence, or of receiving anything stolen, taken, or dishonestly obtained of the value aforesaid, the Justices, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the person charged with the offence, when informed by the Court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned with or without hard labour for any term not exceeding *six* months, or to pay a fine not exceeding *twenty* pounds.

(2.) For the purpose of a proceeding under this section, the Justices, at any time during the hearing of the case at which they become satisfied that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the person charged, and then shall address a question to him to the following effect :—

“Do you desire to be tried by a jury, or do you consent to be dealt with summarily?”

with a statement, if they shall think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the criminal sittings at which he will be tried if tried by a jury.

55

52. (1.) Where an adult person is charged before Justices with stealing, taking, or dishonestly obtaining anything capable of being stolen and of a value exceeding forty shillings but not exceeding five pounds in value, or of attempting to commit or of being a party to any such offence, or of receiving anything stolen, taken, or dishonestly obtained of the value aforesaid, and the Justices at any time during the hearing of the case become satisfied that the evidence is sufficient to put the person charged on his trial for the said offence, and, further, are satisfied (either after such a remand as is provided by the principal Act or otherwise) that the case is one which, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, may properly be dealt with summarily, and may be adequately punished by virtue of the powers of the principal Act and this Act, then the Justices shall cause the charge to be reduced into writing and read to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the Court shall thereupon cause a plea of guilty to be entered, and adjudge him to be imprisoned, with or without hard labour, for any term not exceeding *six* months.

Summary conviction, on plea of guilty, of adult. 1882, No. 15, s. 179.

(2.) The Justices, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be dealt with in the usual course; and shall state, if they think such statement desirable for the information of the person to whom the question is addressed, the meaning of the case being dealt with summarily or in the usual course, and the criminal sittings, as the case may be, at which such person will be tried if tried by a jury.

(3.) The Justices shall further state to such person to the effect that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence against him upon his trial; and they shall give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

(4.) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and read over to him, and signed by a Justice, and kept with the depositions of the witnesses and transmitted with them in manner required by law, and afterwards upon the trial of the prisoner may, if necessary, be given in evidence against him without further proof thereof, unless it is proved that the Justice purporting to have signed the same did not in fact sign the same.

53. Where an adult person is charged before Justices with any offence specified in the last *two preceding* sections, and it appears to the Justices that the offence is one which, owing to a previous conviction on indictment of the person so charged, is punishable by law with imprisonment with hard labour for three years or upwards,

Restriction on summary dealing with adult. *Ib.*, s. 180.

the Justices shall not deal with the case summarily in pursuance of this Act.

(3.) *Juvenile Offenders.*

Summary trial,
with consent, of
juvenile offenders.
1882, No. 15, s. 177.

54. (1.) Where a young person is charged before Justices with any of the following indictable offences,— 5

- (a.) Offences in relation to railways or tramways mentioned in section one hundred and eighty of "The Criminal Code Act, 1893"; or
- (b.) Offences in relation to railways or tramways mentioned in section three hundred and thirteen of "The Criminal Code Act, 1893"; or 10
- (c.) Indictable offences under "The Post Office Act, 1881," or any Act passed or to be passed in amendment or substitution thereof; or
- (d.) Stealing, taking, or dishonestly obtaining anything capable 15
of being stolen and of any value exceeding forty shillings, or of attempting to commit or of being a party to any such offence, or of receiving anything stolen, taken, or dishonestly obtained exceeding in value as aforesaid,—

the Justices, if they think it expedient so to do, having regard to the 20
character and antecedents of the person charged and the nature of the offence, and all the circumstances of the case, and if the young person charged with the offence, when informed by the Court of his right to be tried by a jury, consents to be dealt with summarily, may 25
deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to be imprisoned, with or without hard labour, for any term not exceeding *three* months, or to a penalty not exceeding *ten* pounds.

(2.) If a male young person is convicted of an offence under this section, either upon his own confession or upon proof, the con- 30
victing Justices, if they think it expedient so to do, may, either in substitution for or in addition to any other punishment under this Act, adjudge such young person to be, as soon as practicable, pri-
vately whipped with not more than twelve strokes of a birch rod by a 35
constable, in the presence of an officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of such young person.

(3.) For the purpose of a proceeding under this section, the Justices, at any time during the hearing of the case at which they 40
become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the young person charged, and then shall address a question to him to the following effect:—

"Do you desire to be tried by a jury, or do you consent to the 45
case being tried summarily?"

with a statement, if the Court think such a statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the criminal sittings at which he will be tried if tried by a jury.

(4.) This section shall not prejudice the right of Justices to send 50
a young person to a reformatory or an industrial school.

(4.) *Restitution of Property.*

55. (1.) When any person is summarily convicted of having stolen or dishonestly obtained any property, or when any person is charged with any such offence before Justices, and they shall dismiss the case as of so trivial a nature as to be unfit for prosecution, but shall be of opinion that the person charged has been proved to have been guilty of the offence, the Justices adjudicating upon the case may order restitution of such property to the owner thereof or his representatives.

Justices may order restitution of stolen property, or payment of its value. 1832, No. 15, s. 194.

(2.) If such property shall not then be forthcoming, such Justices may inquire into and ascertain the value thereof in money, and, if they think fit, may order payment of such sum of money to the true owner by the person so convicted or proved guilty, either at one time or by instalments at such periods as the said Justices may deem reasonable.

Such order may be enforced in like manner as an order for the payment of money upon a complaint may be enforced under the provisions of the principal Act.

56. If a person is summarily convicted of an offence which includes the stealing of any property, and it appears to the Justices by evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, then, in case any moneys have been taken from the prisoner on his apprehension, the Justices, upon the application of the purchaser, and on the restitution of the stolen property to the prosecutor, may order that, out of such moneys, a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser.

Justices may order refund of money to bona fide purchaser of stolen property. Ibid.

57. (1.) When any one is convicted of having stolen or dishonestly obtained any property, and it appears to the Justices that the property has been pawned to a pawnbroker, they may order the delivery thereof to the person appearing to them to be the owner, either on payment or without payment to the pawnbroker of the amount of the loan or any part thereof, as to the Justices under all the circumstances of the case may seem just.

Restitution of stolen property when pawned. 1893, No. 56, s. 421.

(2.) If the person in whose favour any such order is made pays the money to the pawnbroker under such order and obtains the property he shall not afterwards question the validity of the pawn, but save to that extent no order made under this section shall have any further effect than to change the possession, and no such order shall prejudice any right of property or right of action in respect to property existing or acquired in the goods either before or after the offence was committed.

58. Every one—

Who publicly advertises a reward for the return of any property whatsoever which has been stolen, or lost, and in such advertisement uses any words purporting that no questions will be asked; or

Who makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property; or

Advertising reward for stolen property. 1867, No. 3, s. 101.

Who promises or offers, in any such public advertisement, to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any 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 prints or publishes any such advertisement—
is liable to forfeit the sum of *fifty* pounds for every such offence to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

Persons offering stolen property for sale or pawn may be arrested.
1867, No. 3, s. 102.

59. Any person to whom any property is offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that such property was stolen or dishonestly obtained, may forthwith arrest the party offering the same, and take him, together with such property, before a Justice to be dealt with according to law, or may deliver him over to a constable to be so taken and dealt with.

(5.) *Miscellaneous.*

Thieves may be apprehended.
1867, No. 3, s. 102.

60. Any person found committing a theft which is punishable by summary conviction, except only the offence of angling in the daytime in a private fishery, may be immediately apprehended without a warrant by any person and forthwith taken, together with the property stolen, if any, before some Justice to be dealt with according to law, or be handed over to any constable to be so taken and dealt with.

Trivial cases may be dismissed.
1882, No. 15, s. 190.

61. When any person shall be charged before Justices with having stolen or dishonestly obtained any property, and where the value of such property does not exceed *forty* shillings, and where the circumstances of the case shall appear to such Justices to be of so trivial a nature as to be unfit for prosecution, they may dismiss the case, although a crime may have been proved.

Receiving property dishonestly obtained.
1893, No. 56, s. 262.

62. (1.) Every one who receives anything obtained by any theft punishable on summary conviction, or by any acts wheresoever committed which if committed in the colony would have constituted a theft as aforesaid, knowing such thing to have been dishonestly obtained, is liable to the same punishments respectively in respect of the first, second, or any subsequent such offence as if he had stolen such thing, and as if such theft had been his first, second, or any subsequent like offence.

Rule of evidence.

(2.) Whenever any person is being proceeded against for an offence under this section the fact that other property obtained by means of any such offence or acts as aforesaid was found in the defendant's possession within twelve months of the time when the alleged offender was first charged with the offence for which he is being tried may be given in evidence to prove guilty knowledge.

When receiving is complete.
Ib., s. 263.

63. The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it.

Receiving after restoration to owner.
Ib., s. 264.

64. When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence, although the receiver may know that the thing had previously been dishonestly obtained.

PART V.

CRIMES BY CHILDREN.

65. (1.) Where a child is charged before Justices with any indictable offence not punishable on summary conviction, other than homicide, they may, if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the Justices of his right to have the child tried by a jury, does not object to the child being dealt with summarily, deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment: Provided that—
- (a.) Where imprisonment is awarded, the term shall not in any case exceed *one* month; and
- (b.) Where a penalty is awarded, the amount shall not in any case exceed *forty* shillings; and
- (c.) Where the child is a male, the Court may, either in addition to or instead of any other punishment, adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of a peace officer of higher rank than a constable, and also in the presence, if he desires to be present, of the parent of the child or his guardian, that is to say, the person then having the charge of or control over the child.
- (2.) For the purpose of a proceeding under this section, the Justices, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then shall address a question to such parent or guardian to the following effect:—
- “Do you desire the child to be tried by a jury, and object to the case being dealt with summarily?”
- with a statement, if the Justices think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the criminal sittings (as the case may be) at which the child will be tried if tried by a jury.
- (3.) Where the parent or guardian of a child is not present when a child is charged with a crime before Justices, they may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view, so far as is practicable, of securing his attendance at the hearing of the charge; or they may, if they think it expedient so to do, deal with the case summarily.
- (4.) This section shall not prejudice the right of the Justices to send a child to a reformatory or industrial school.
- (5.) This section shall not render punishable for an offence any child who is not, in the opinion of the Court before whom he is charged, above the age of seven years, and of sufficient capacity to commit crime.

Summary trial of children for crimes, unless objected to by parent or guardian.
1882, No. 15, s. 176.

PART VI.

GENERAL.

First offenders may be discharged.
1867, No. 3, s. 107.
1867, No. 6, s. 66.

Certificate of dismissal to be given to defendant in certain cases.
1882, No. 15, s. 186.

Certificate to be a bar to further proceedings.
1882, No. 15, s. 187.

Value of property damaged or stolen to be assessed.
1867, No. 3, s. 105.
1867, No. 6, s. 64.

Imprisonment in default of payment of penalty.
1867, No. 3, s. 106.
1867, No. 6, s. 65.

66. Upon a first conviction under Parts III. or IV. of this Act, the convicting Justices may, if they think fit, discharge the offender upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the Justices.

67. If the Justices, upon the hearing of any charge for an offence punishable on summary conviction upon the merits, where the information was preferred by or on the behalf of the party aggrieved, shall deem the offence not to be proved, or shall deem the case to be of so trivial a nature as to be unfit for prosecution, and shall accordingly dismiss the case, they shall, if required so to do, forthwith make out a certificate under their hands stating the fact of such dismissal, and shall deliver such certificate to the party against whom the information was preferred.

Such certificate may be required and given at any time thereafter, provided a minute of such dismissal was made by the Justices or their Clerk at the time thereof.

A certificate of dismissal, when offered in evidence, shall not be questioned for want of form.

68. If any person against whom any such charge as in the *last foregoing* section mentioned has obtained such certificate, or, having been convicted, has paid the whole amount adjudged to be paid, or suffered the imprisonment with or without hard labour awarded, he shall be released from all further or other proceedings, civil or criminal, for the same cause, except proceedings under an order for restitution of property or its value, as hereinbefore provided.

69. Every sum of money which shall be forfeited for the amount of any injury done to property, or for the value of any property stolen or taken, or for the amount of any injury done, shall be assessed in each case by the convicting Justices, and shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty;

But where several persons join in the commission of the same offence, and, upon conviction thereof, each is adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury, then and in every such case no further sum shall be paid to the party aggrieved than such value or amount, and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by Justices is hereinbefore directed to be applied.

70. In default of payment of any fine, forfeiture, or penalty under this Act, either immediately after the conviction or within such period as the Justices shall at the time of the conviction appoint, they shall forthwith commit the offender to imprisonment, with or without hard labour, in addition to any other imprisonment to which he may be sentenced, for any period not exceeding *two* months if the amount together with costs remaining unpaid does not exceed *five* pounds; *four* months, when the amount and costs does not exceed *ten* pounds; and not exceeding *six* months in any other case, unless the said amount and costs are sooner paid.

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71. Every sum which shall be imposed as a penalty by any Justices, whether in addition to any forfeiture or otherwise, shall be paid and applied in the same manner as other penalties recoverable before Justices are to be paid and applied in cases where the statute imposing the same contains no direction for the payment thereof to any person.

Application of forfeitures and penalties.

72. The provisions of the principal Act with respect to the recovery of a pecuniary penalty adjudged to be paid upon a summary conviction, shall apply to penalties imposed in lieu of imprisonment under this Act.

Recovery of penalties.

73. No summary conviction under this Act, or adjudication made on appeal therefrom, shall be quashed for want of form, or removed by *certiorari* into the Supreme Court, and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

No *certiorari*.
1867, No. 3, s. 109.
1867, No. 6, s. 68.

74. Nothing in this Act contained shall be construed in any way to limit or annul the provisions of any other Act conferring upon Justices summary jurisdiction in indictable offences, so that no person shall be tried or punished twice in respect of the same offence.

No limitation of other Acts.

75. The several Acts and parts of Acts hereunder enumerated are hereby repealed to the extent hereunder expressed; but every conviction purporting to have been made under the said repealed enactments, or either of them, and subsisting at the time of the commencement of this Act, shall be deemed valid and effectual for all purposes whatsoever:—

Repeals.

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| 1867, No. 2.—The Coinage Offences Act, 1867 ... | ... | } In so far as the same are not already respectively repealed. |
| 1867, No. 3.—The Larceny Act, 1867 ... | ... | |
| 1867, No. 5.—The Offences against the Person Act, 1867 ... | ... | |
| 1867, No. 6.—The Malicious Injuries to Property Act, 1867 ... | ... | |
| 1889, No. 16.—The Criminal Evidence Act, 1889 ... | ... | |
| 1882, No. 15.—The Justices of the Peace Act, 1882. <i>In part</i> —namely, section eighty, sections one hundred and seventy-six to one hundred and ninety-four inclusive, and the Second Schedule. | | |
| 1885, No. 44.—The Justices of the Peace Act 1882 Amendment Act, 1885. <i>In part</i> —namely, sections two to seven inclusive. | | |