

Offences against the Persons Bill.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and having this day passed is now ready for presentation to the HOUSE OF REPRESENTATIVES for their concurrence.

L. STOWE,

Clerk of the Council.

*Legislative Council Chamber,
New Zealand, 23rd July, 1867.*

At the end of clause 50 read "Provided that nothing herein contained shall be deemed to repeal alter or affect the provisions contained in the sections numbered thirty-one to thirty-four inclusive of 'The Marriage Act 1854' and in section nine of 'The Marriage Act Amendment Act 1858'."

Clause 75 line 2 insert the word "November" at the beginning and the word "seven" at the end.

A BILL INTITULED

AN ACT to consolidate and amend the Statute Law relating to Offences against the Person. Title.

WHEREAS it is expedient to consolidate and amend the statute law relating to offences against the person Preamble.

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

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HOMICIDE.

1. Whosoever shall be convicted of murder shall suffer death as a felon. Murder. 24 and 25 Vic. c. 100 s. 1.

2. Upon every conviction for murder the Court shall pronounce sentence of death and the same may be carried into execution and all other proceedings upon such sentence and in respect thereof may be had and taken in the same manner in all respects as sentence of death might have been pronounced and carried into execution and all other proceedings thereupon and in respect thereof might have been had and taken before the passing of this Act upon a conviction for any other felony for which the prisoner might have been sentenced to suffer death as a felon. Sentence for murder. Ib. s. 2.

3. All persons who shall conspire confederate and agree to murder any person whether he be a subject of Her Majesty or not and whether he be within the Queen's dominions or not and whosoever shall solicit encourage persuade or endeavour to persuade or shall propose to any person to murder any other person whether he be a subject of Her Majesty or not and whether he be within the Queen's dominions or not shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to be kept in penal Conspiring or soliciting to commit murder. Ib. s. 4.

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servitude for any term not more than ten and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour.

Manslaughter.
24 and 25 Vic. c. 100
s. 5.

4. Whosoever shall be convicted of manslaughter shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour or to pay such fine as the Court shall award in addition to or without any such other discretionary punishment as aforesaid. 5

Indictment for murder or manslaughter.
Ib. s. 6.

5. In any indictment for murder or manslaughter or for being an accessory to any murder or manslaughter it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused but it shall be sufficient in any indictment for murder to charge that the defendant did feloniously wilfully and of his malice aforethought kill and murder the deceased and it shall be sufficient in any indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased and it shall be sufficient in any indictment against any accessory to any murder or manslaughter to charge the principal with the murder or manslaughter (as the case may be) in the manner hereinbefore specified and then to charge the defendant as an accessory in the manner heretofore used and accustomed. 10 15 20

Excusable homicide.
Ib. s. 7.

6. No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence or in any other manner without felony. 25

Petit treason.
Ib. s. 8.

7. Every offence which would if committed in England before the commencement of the Act of the Imperial Parliament of the ninth year of King George the Fourth chapter thirty-one have amounted by the law of England to petit treason shall be deemed to be murder only and no greater offence and all persons guilty in respect thereof whether as principals or as accessories shall be dealt with indicted tried and punished as principals and accessories in murder. 30

ATTEMPTS TO MURDER.

Administering poison or wounding with intent to murder.
Ib. s. 11.

8. Whosoever shall administer to or cause to be administered to or to be taken by any person any poison or other destructive thing or shall by any means whatsoever wound or cause any grievous bodily harm to any person with intent in any of the cases aforesaid to commit murder shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement. 40

Destroying or damaging a building with gunpowder with intent to murder.
Ib. s. 12.

9. Whosoever by the explosion of gunpowder or other explosive substance shall destroy or damage any building with intent to commit murder shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement. 45

Setting fire to or casting away a ship with intent to murder.
Ib. s. 13.

10. Whosoever shall set fire to any ship or vessel or any part thereof or any part of the tackle apparel or furniture thereof or any goods or chattels being therein or shall cast away or destroy any ship or vessel with intent in any of such cases to commit murder shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two 50 55

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years with or without hard labour and without or without solitary confinement.

11. Whosoever shall attempt to administer to or shall attempt to cause to be administered to or to be taken by any person any poison or other destructive thing or shall shoot at any person or shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person or shall attempt to drown suffocate or strangle any person with intent in any of the cases aforesaid to commit murder shall whether any bodily injury be effected or not be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.
12. Whosoever shall by means other than those specified in any of the preceding sections of this Act attempt to commit murder shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Attempting to administer poison or shooting or attempting to shoot or attempting to drown &c. with intent to murder
24 and 25 Vic. c. 100 s. 14.

By any other means attempting to commit murder.

Ib. s. 15.

LETTERS THREATENING TO MURDER.

13. Whosoever shall maliciously send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing threatening to kill or murder any person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be 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 and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

Sending letters threatening to murder.

Ib. s. 16.

ACTS CAUSING OR TENDING TO CAUSE DANGER TO LIFE OR BODILY HARM.

14. Whosoever shall unlawfully and maliciously prevent or impede any person being on board of or having quitted any ship or vessel which shall be in distress or wrecked stranded or cast on shore in his endeavour to save his life or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such person as in this section first aforesaid shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Impeding a person endeavouring to save himself from shipwreck.

Ib. s. 17.

15. Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person or shoot at any person or by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person with intent in any of the cases aforesaid to maim disfigure or disable any person or to do some other grievous bodily harm to any person or with intent to resist or prevent the lawful apprehension or detainer of any person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Shooting or attempting to shoot or wounding with intent to do grievous bodily harm.

Ib. s. 18.

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What shall constitute loaded arms.

24 and 25 Vic. c. 100 s. 19.

Inflicting bodily injury with or without weapon.

Ib. s. 20.

Attempting to choke &c. in order to commit any indictable offence.

Ib. s. 21.

Using chloroform &c. to commit any indictable offence.

Ib. s. 22.

Maliciously administering poison &c. so as to endanger life or inflict grievous bodily harm.

Ib. s. 23.

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

Ib. s. 24.

If the jury be not satisfied that any person charged is guilty of felony but guilty of misdemeanour they may find him guilty accordingly.

Ib. s. 25.

Not providing apprentices or servants

16. Any gun pistol or other arms which shall be loaded in the barrel with gunpowder or any other explosive substance and ball shot slug or other destructive material shall be deemed to be loaded arms within the meaning of this Act although the attempt to discharge the same may fail from want of proper priming or from any other cause. 5

17. Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person either with or without any weapon or instrument shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned 10 for any term not exceeding two years with or without hard labour.

18. Whosoever shall by any means whatsoever attempt to choke suffocate or strangle any other person or shall by any means calculated to choke suffocate or strangle attempt to render any other person insensible unconscious or incapable of resistance with intent in any 15 of such cases thereby to enable himself or any other person to commit or with intent in any of such cases thereby to assist any other person in committing any indictable offence shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three 20 years or to be imprisoned for any term not exceeding two years with or without hard labour.

19. Whosoever shall unlawfully apply or administer to or cause to be taken by or attempt to apply or administer to or attempt to cause to be administered to or taken by any person any chloroform laudanum 25 or other stupefying or overpowering drug matter or thing with intent in any of such cases thereby to enable himself or any other person to commit or with intent in any of such cases thereby to assist any other person in committing any indictable offence shall be guilty of felony 30 and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any other term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour.

20. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison 35 or other destructive or noxious thing so as thereby to endanger the life of such person or so as thereby to inflict upon such person any grievous bodily harm shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in 40 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.

21. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing with intent to injure aggrieve or 45 annoy such person 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 the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour.

22. If upon the trial of any person for any felony in the last but 50 one preceding section mentioned the jury shall not be satisfied that such person is guilty thereof but shall be satisfied that he is guilty of any misdemeanour in the last preceding section mentioned then and in every such case the jury may acquit the accused of such felony and find him guilty of such misdemeanour and thereupon he shall be liable 55 to be punished in the same manner as if convicted upon an indictment for such misdemeanour.

23. Whosoever being legally liable either as a master or a mistress

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- to provide for any apprentice or servant necessary food clothing or lodging shall wilfully and without lawful excuse refuse or neglect to provide the same or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant so that
- 5 the life of such apprentice or servant shall be endangered or the health of such apprentice or servant shall have been or shall be likely to be permanently injured shall be guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned
- 10 for any term not exceeding two years with or without hard labour.
24. Whosoever shall unlawfully abandon or expose any child being under the age of two years whereby the life of such child shall be endangered or the health of such child shall have been or shall be likely to be permanently injured shall be guilty of a misdemeanour and
- 15 being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour.
25. Whosoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance burn maim disfigure disable or do any grievous bodily harm to any person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two
- 20 years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.
26. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing or put or lay at any place or cast or throw at or upon or otherwise apply to any person any corrosive fluid or any destructive or explosive substance with intent in any of the cases aforesaid to burn maim disfigure or disable any person or to
- 30 do some grievous bodily harm to any person shall whether any bodily injury be effected or not be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.
27. Whosoever shall unlawfully and maliciously place or throw in into upon against or near any building ship or vessel any gunpowder or other explosive substance with intent to do any bodily injury to any
- 45 person shall whether or not any explosion take place and whether or not any bodily injury be effected be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two
- 50 years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.
28. Whosoever shall set or place or cause to be set or placed any spring gun man trap or other engine calculated to destroy human life or inflict grievous bodily harm with the intent that the same or whereby
- 55 the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith shall be guilty of a misdemeanour and being convicted thereof shall be liable at the

with food &c. whereby life endangered.
Ib. s. 26.

Exposing children whereby life endangered.
Ib. s. 27.

Causing bodily injury by gunpowder.
Ib. s. 28.

Causing gunpowder to explode or sending to any person an explosive substance or throwing corrosive fluid on a person with intent to do grievous bodily harm.
Ib. s. 29.

Placing gunpowder near a building with intent to do bodily injury to any person.
Ib. s. 30.

Setting spring guns &c. with intent to inflict grievous bodily harm.
Ib. s. 31.

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discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and whosoever shall knowingly and wilfully permit any such spring gun man trap or other engine which may have been set or placed in any place then being in or afterwards coming into his possession or occupation by some other person to continue so set or placed shall be deemed to have set and placed such gun trap or engine with such intent as aforesaid Provided that nothing in this section contained shall extend to make it illegal to set or place any gin or trap such as may have been or may be usually set or placed with the intent of destroying vermin Provided also that nothing in this section shall be deemed to make it unlawful to set or place or cause to be set or placed or to be continued set or placed from sunset to sunrise any spring gun man trap or other engine which shall be set or placed or caused or continued to be set or placed in a dwelling house for the protection thereof.

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Placing wood &c. on a railway with intent to endanger passengers.

24 and 25 Vic. c. 100 s. 32.

29. Whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood stone or other matter or thing or shall unlawfully and maliciously take up remove or displace any rail sleeper or other matter or thing belonging to any railway or shall unlawfully and maliciously turn move or divert any points or other machinery belonging to any railway or shall unlawfully and maliciously make or show hide or remove any signal or light upon or near to any railway or shall unlawfully and maliciously do or cause to be done any other matter or thing with intent in any of the cases aforesaid to endanger the safety of any person travelling or being upon such railway shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and if a male under the age of sixteen years with or without whipping.

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Casting stone &c. upon a railway carriage with intent to endanger the safety of any person therein.

Ib. s. 33.

30. Whosoever shall unlawfully and maliciously throw or cause to fall or strike at against into or upon any engine tender carriage or truck used upon any railway any wood stone or other matter or thing with intent to injure or endanger the safety of any person being in or upon such engine tender carriage or truck or in or upon any other engine tender carriage or truck of any train of which such first-mentioned engine tender carriage or truck shall form part shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour.

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Doing or omitting anything to endanger passengers by railway.

Ib. s. 34.

31. Whosoever by any unlawful act or by any wilful omission or neglect shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway or shall aid or assist therein shall be guilty of a 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.

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Drivers of carriages injuring persons by furious driving.

Ib. s. 35.

32. Whosoever having the charge of any carriage or vehicle shall by wanton or furious driving or racing or other wilful misconduct or by wilful neglect do or cause to be done any bodily harm to any person whatsoever 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.

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ASSAULTS.

Obstructing or assaulting a clergyman or other minister in

33. Whosoever shall by threats or force obstruct or prevent or endeavour to obstruct or prevent any clergyman or any other minister

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- in or from celebrating divine service or otherwise officiating in any church chapel meeting house or other place of divine worship or in or from the performance of his duty in the lawful burial of the dead in any cemetery or other burial place or shall strike or offer any violence
- 5** to or shall upon any civil process or under the pretence of executing any civil process arrest any clergyman or other minister who is engaged in or to the knowledge of the offender is about to engage in any of the rites or duties in this section aforesaid or who to the knowledge of the offender shall be going to perform the same or
- 10** returning from the performance thereof 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.
- 15** 34. Whosoever shall assault and strike or wound any magistrate officer or other person whatsoever lawfully authorized in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress or of any vessel goods or effects wrecked stranded or cast on shore or lying under water shall be guilty of a 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 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** 35. Whosoever shall assault any person with intent to commit felony or shall assault resist or wilfully obstruct any peace officer in the due execution of his duty or any person acting in aid of such officer or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any
- 25** term not exceeding two years with or without hard labour.
- 30** 36. Whosoever shall beat or use any violence or threat of violence to any person with intent to deter or hinder him from buying selling or otherwise disposing of or to compel him to buy sell or otherwise dispose of any wheat or other grain flour meal malt or potatoes in any market or other place or shall beat or use any such violence or threat to any person having the care or charge of any wheat or other grain flour meal malt or potatoes whilst on the way to or from any city market town or other place with intent to stop the conveyance of the same shall on conviction thereof before two Justices of the Peace
- 35** be liable to be imprisoned and kept to hard labour in any public gaol for any term not exceeding three months Provided that no person who shall be punished for any such offence by virtue of this section shall be punished for the same offence by virtue of any other law whatsoever.
- 40** 37. Whosoever shall unlawfully and with force hinder or prevent any seaman keelman or caster from working at or exercising his lawful trade business or occupation or shall beat or use any violence to any such person with intent to hinder or prevent him from working at or exercising the same shall on conviction thereof before two Justices of
- 45** the Peace be liable to be imprisoned and kept to hard labour in any public gaol for any term not exceeding three months Provided that no person who shall be punished for any such offence by reason of this section shall be punished for the same offence by virtue of any other law whatsoever.
- 50** 38. Whosoever in pursuance of any unlawful combination or conspiracy to raise the rate of wages or of any unlawful combination or conspiracy respecting any trade business or manufacture or respecting any person concerned or employed therein shall unlawfully assault
- the discharge of his duties.
24 and 25 Vic. c. 100 s. 36.
- Assaulting a magistrate &c. on account of his preserving wreck.
Ib. s. 37.
- Assault with intent to commit felony or on peace officers &c.
Ib. s. 38.
- Assaults with intent to obstruct the sale of grain or its free passage.
Ib. s. 39.
- Assaults on seamen &c.
Ib. s. 40.
- Assaults arising from combination.
Ib. s. 41.

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any person 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.

Persons committing any common assault or battery may be imprisoned or compelled by two magistrates to pay fine and costs not exceeding £10.
24 and 25 Vic. c. 100
s. 42.

39. Where any person shall unlawfully assault or beat any other person two Justices of the Peace upon complaint by or on behalf of the party aggrieved may hear and determine such offence and the offender shall upon conviction thereof before them at the discretion of the Justices either be committed to any public gaol there to be imprisoned with or without hard labour for any term not exceeding two months or else shall forfeit and pay such fine as shall appear to them to be meet not exceeding together with costs (if ordered) the sum of ten pounds and if such fine as shall be so awarded together with the costs (if ordered) shall not be paid either immediately after the conviction or within such period as the said Justices shall at the time of the conviction appoint they may commit the offender to any public gaol there to be imprisoned with or without hard labour for any term not exceeding two months unless such fine and costs be sooner paid. 5 10 15

Persons convicted of aggravated assaults on females and boys under fourteen years of age may be imprisoned or fined.
Ib. s. 43.

40. When any person shall be charged before two Justices of the Peace with an assault or battery upon any male child whose age shall not in the opinion of such Justices exceed fourteen years or upon any female either upon the complaint of the party aggrieved or otherwise the said Justices if the assault or battery is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries may proceed to hear and determine the same in a summary way and if the same be proved may convict the person accused and every such offender shall be liable to be imprisoned in any public gaol with or without hard labour for any period not exceeding six months or to pay a fine not exceeding (together with costs) the sum of twenty pounds and in default of payment to be imprisoned in any public gaol for any period not exceeding six months unless such fine and costs be sooner paid and if the Justices shall so think fit in any of the said cases shall be bound to keep the peace and be of good behaviour for any period not exceeding six months from the expiration of such sentence. 20 25 30 35

If the magistrates dismiss the complaint they shall make out a certificate to that effect.

Ib. s. 44.

41. If the Justices upon the hearing of any such case of assault or battery upon the merits where the complaint was preferred by or on the behalf of the party aggrieved under either of the last two preceding sections shall deem the offence not to be proved or shall find the assault or battery to have been justified or so trifling as not to merit any punishment and shall accordingly dismiss the complaint they shall 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 complaint was preferred. 40

Certificate of conviction shall be a bar to any other proceedings
Ib. s. 45.

42. If any person against whom any such complaint as in either of the last three preceding sections mentioned shall have been preferred by or on the behalf of the party aggrieved shall have obtained such certificate or having been convicted shall have paid the whole amount adjudged to be paid or shall have suffered the imprisonment or imprisonment with hard labour awarded in every such case he shall be released from all further or other proceedings civil or criminal for the same cause. 45 50

These provisions not to apply to certain cases.

Ib. s. 46.

43. Provided that in case the Justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by indictment they shall abstain from any adjudication thereupon and shall deal with the case in all respects in the same manner as if they had no authority finally 56

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to hear and determine the same Provided also that nothing herein contained shall authorize any Justices to hear and determine any case of assault or battery 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.

5 44. Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and whosoever shall be convicted upon an indictment for a common assault shall be liable at the discretion of the Court to be imprisoned for any term not exceeding one year with or without hard labour.

Assault occasioning bodily harm.
23 and 25 Vic. c. 100 s. 47.

15 RAPE ABDUCTION AND DEFILEMENT OF WOMEN.

45. Whosoever shall be convicted of the crime of rape shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour.

Common assault.
Rape.
Ib. s. 48.

20 46. Whosoever shall by false pretences false representations or other fraudulent means procure any woman or girl under the age of twenty-one years to have illicit carnal connection with any man 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.

Procuring the defilement of girl under age.
Ib. s. 49.

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

Carnally knowing a girl under ten years of age.
Ib. s. 50.

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

Carnally knowing a girl between the ages of ten and twelve.
Ib. s. 51.

40 49. Whosoever shall be convicted of any indecent assault upon any female or of any attempt to have carnal knowledge of any girl under twelve years of age shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years with or without hard labour.

Attempt to commit the last two offences.
Ib. s. 52.

45 50. Where any woman of any age shall have any interest whether legal or equitable present or future absolute conditional or contingent in any real or personal estate or shall be a presumptive heiress or coheiress or presumptive next of kin or one of the presumptive next of kin to any one having such interest whosoever shall from motives of lucre take away or detain such woman against her will with intent to marry or carnally know her or to cause her to be married or carnally known by any other person and whosoever shall fraudently allure take away or detain such woman being under the age of twenty-one years out of the possession and against the will of her father or mother or of any other person having the lawful care or charge of her with intent to marry or carnally know her or to cause her to be married or carnally known by any other person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be

Abduction of a woman against her will from motives of lucre.
Ib. s. 53.

Fraudulent abduction of a girl under age against the will of her father &c.

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Offender incapable of taking any of her property. kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest legal or equitable in any real or personal property of such woman or in which she shall have any such interest or which shall come to her as such heiress coheiress or next of kin as aforesaid and if any such marriage as aforesaid shall have taken place such property shall upon such conviction be settled in such manner as the Supreme Court shall upon any information at the suit of the Attorney-General appoint. 5 10

Forcible abduction of any woman with intent to marry her. 24 and 25 Vic. c. 100 s. 54. 51. Whosoever shall by force take away or detain against her will any woman of any age with intent to marry or carnally know her or to cause her to be married or carnally known by any other person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour. 15

Abduction of a girl under sixteen years of age. Ib. s. 55. 52. Whosoever shall unlawfully take or cause to be taken any unmarried girl being under the age of sixteen years out of the possession and against the will of her father or mother or of any other person having the lawful care or charge of her 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. 20 25

CHILD-STEALING.

Childstealing. Ib. s. 56. 53. Whosoever shall unlawfully either by force or fraud lead or take away or decoy or entice away or detain any child under the age of fourteen years with intent to deprive any parent guardian or other person having the lawful care or charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child to whomsoever such article may belong and whosoever shall with any such intent receive or harbour any such child knowing the same to have been by force or fraud led taken decoyed enticed away or detained as in this section before mentioned shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be 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 and if a male under the age of sixteen years with or without whipping Provided that no person who shall have claimed any right to the possession of such child or shall be the mother or shall have claimed to be the father of an illegitimate child shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child or taking such child out of the possession of any person having the lawful charge thereof. 30 35 40 45

BIGAMY.

Bigamy. Ib. s. 57. 54. Whosoever being married shall marry any other person during the life of the former husband or wife shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be 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 and any such offence may be dealt with inquired of tried determined and 50 55

Offences against the Person.

5 punished in any judicial district jurisdiction or place where the offender shall be apprehended or be in custody in the same manner in all respects as if the offence had been actually committed in that judicial district jurisdiction or place Provided that nothing in this section
 10 contained shall extend to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past and shall not have been known by such person to be living within that time or shall extend to any person who at the time of such second marriage shall have been
 15 divorced from the bond of the first marriage or to any person whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

Offence may be dealt with where offender shall be apprehended.

Not to extend to second marriages &c. as herein stated.

ATTEMPTS TO PROCURE ABORTION.

15 55. Every woman being with child who with intent to procure her own miscarriage shall unlawfully administer to herself any poison or other noxious thing or shall unlawfully use any instrument or other means whatsoever with the like intent and whosoever with intent to procure the miscarriage of any woman whether she be or be not with child shall unlawfully administer to her or cause to be taken by her any
 20 poison or other noxious thing or shall unlawfully use any instrument or other means whatsoever with the like intent shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding
 25 two years with or without hard labour and with or without solitary confinement.

30 56. Whosoever shall unlawfully supply or procure any poison or other noxious thing or any instrument or thing whatsoever knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman whether she be or be not with child 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 the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour.

Administering drugs or using instruments to procure abortion. 24 and 25 Vic. c. 100 s. 58.

Procuring drugs &c. to cause abortion. Ib. s. 59.

CONCEALING THE BIRTH OF A CHILD.

35 57. If any woman shall be delivered of a child every person who shall by any secret disposition of the dead body of the said child whether such child died before at or after its birth endeavour to conceal the birth thereof shall be guilty of a misdemeanour and being
 40 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 Provided that if any person tried for the murder of any child shall be acquitted thereof it shall be lawful for the jury by whose verdict such person shall be acquitted to find in case it shall so appear
 45 in evidence that the child had recently been born and that such person did by some secret disposition of the dead body of such child endeavour to conceal the birth thereof and thereupon the Court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth.

Concealing the birth of a child. Ib. s. 60.

UNNATURAL OFFENCES.

50 58. Whosoever shall be convicted of the abominable crime of buggery committed either with mankind or with any animal shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than ten years.

Sodomy and bestiality. Ib. s. 61.

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Attempt to commit an infamous crime. 24 and 25 Vic. c. 100 s. 62.

59. Whosoever shall attempt to commit the said abominable crime or shall be guilty of any assault with intent to commit the same or of any indecent assault upon any male person 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. 5

Carnal knowledge defined.

Ib. s. 63.

60. Whenever upon the trial of any offence punishable under this Act it may be necessary to prove carnal knowledge it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge but the carnal knowledge shall be deemed complete upon proof of penetration only. 10

MAKING GUNPOWDER TO COMMIT OFFENCES AND SEARCHING FOR THE SAME.

Making or having gunpowder &c. with intent to commit any felony against this Act.

Ib. s. 64.

61. Whosoever shall knowingly have in his possession or make or manufacture any gunpowder explosive substance or any dangerous or noxious thing or any machine engine instrument or thing with intent by means thereof to commit or for the purpose of enabling any other person to commit any of the felonies in this Act mentioned 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 and with or without solitary confinement and if a male under the age of sixteen years with or without whipping. 15 20

Justices may issue warrants for searching houses &c. for such gunpowder &c.

Ib. s. 65.

62. Any Justice of the Peace of the Colony or of any district or place in which any machine engine implement or thing or any gunpowder or other explosive dangerous or noxious substance is suspected to be made kept or carried for the purpose of being used in committing any of the felonies in this Act mentioned upon reasonable cause assigned upon oath by any person may issue a warrant under his hand and seal for searching for any machine engine implement or thing or any gunpowder or other explosive dangerous or noxious substance in the daytime any house mill magazine storehouse warehouse shop cellar yard wharf or other place or any carriage waggon cart ship boat or vessel in which the same is suspected to be made kept or carried for such purpose as hereinbefore mentioned and every person acting in the execution of any such warrant shall seize every such machine engine implement and thing and all such gunpowder explosive dangerous or noxious substances found upon such search which he shall have good cause to suspect to be intended to be used in committing any such offence and also the barrels packages cases and other receptacles in which the same shall be or be found to be made kept or carried contrary to this Act and shall convey everything so seized with all convenient speed after the seizure to some proper place and there detain the same and the barrels or other receptacles in which the same shall be till it shall be adjudged on a hearing before two or more Justices whether the same shall be forfeited and any two such Justices are hereby empowered to hear and determine whether the same shall or shall not be forfeited and such searcher or seizer shall not be liable to any suit for such detainer or for any loss of or damage which may happen to anything seized other than by his wilful act or neglect Provided that where anything is seized under this provision proceedings for the forfeiture thereof shall be commenced within twenty-eight days after such seizure. 25 30 35 40 45 50

OTHER MATTERS.

A person loitering at night and suspected of any felony against

63. Any constable or peace officer may take into custody without a warrant any person whom he shall find lying or loitering in any highway 55

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yard or other place during the night and whom he shall have good cause to suspect of having committed or being about to commit any felony in this Act mentioned and shall take such person as soon as reasonably may be before a Justice of the Peace to be dealt with according to law.

Act may be apprehended.
24 and 25 Vic. c. 100 s. 66.

64. In the case of every felony punishable under this Act every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this Act punishable and every accessory after the fact to any felony punishable under this Act (except murder) shall be liable to be imprisoned for any term not exceeding two years with or without hard labour and every accessory after the fact to murder shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and whosoever shall counsel aid or abet the commission of any indictable misdemeanour punishable under this Act shall be liable to be proceeded against indicted and punished as a principal offender.

Punishment of principals in the second degree and accessories.

Ib. s. 67.

65. Whenever imprisonment with or without hard labour may be awarded for any indictable offence under this Act the Court may sentence the offender to be imprisoned or to be imprisoned and kept to hard labour in any public gaol.

Hard labour in public gaol.

Ib. s. 69.

66. Whenever solitary confinement may be awarded for any offence under this Act the Court may direct the offender to be kept in solitary confinement for any portion or portions of any imprisonment or of any imprisonment with hard labour which the Court may award not exceeding one month at any one time and not exceeding three months in any one year and whenever under the provisions hereinbefore contained whipping may be awarded for any offence under this Act the Court may sentence the offender to be once privately whipped and the number of strokes and the instrument with which they shall be inflicted shall be specified by the Court in the sentence.

Solitary confinement and whipping.

Ib. s. 70.

67. Where any person is convicted of a crime under the eighteenth section of this Act the Court before whom he is convicted may in addition to the punishment awarded direct that the offender if a male whose age exceeds sixteen years be once twice or thrice privately whipped. Provided the number of strokes do not exceed fifty at each such whipping and that the Court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used. Provided also that in no case shall such whipping take place after the expiration of six months from the passing of the sentence. Provided also that in all cases where the punishment of whipping shall be inflicted under the authority of this or any other provisions of this Act the surgeon or medical officer of the gaol in which the offender is confined shall be present when the said punishment is inflicted and such surgeon or medical officer if he be of opinion that the prisoner is not at any time able to bear the whole or any part of the said punishment so awarded may from time to time order the infliction of the whole or any part of the said punishment to be postponed and shall within seven days after the making of any such order send a report in writing stating his reasons for making such order to the Colonial Secretary.

Whipping for adults in certain cases of violence.

26 and 27 Vic. c. 44 s. 1.

68. Whenever any person shall be convicted of any indictable misdemeanour punishable under this Act the Court may if it shall think fit in addition to or in lieu of any punishment by this Act authorized fine the offender and require him to enter into his own recognizances and to find sureties both or either for keeping the peace and being of good behaviour and in case of any felony punishable under this Act other-

Fine and sureties for keeping the peace in what cases.

24 and 25 Vic. c. 100 s. 71.

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wise than with death the Court may if it shall think fit require the offender to enter into his own recognizances and to find sureties both or either for keeping the peace in addition to any punishment by this Act authorized Provided that no person shall be imprisoned for not finding sureties under this clause for any period exceeding one year.

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No certiorari &c.
24 and 25 Vic. c. 100
s. 72.

69. No summary conviction under this Act shall be quashed for want of form or be removed by *certiorari* into any of Her Majesty's superior courts of record 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.

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Officer of police may be required to prosecute in certain cases of offences against this Act.

Ib. s. 73.

70. Where any complaint shall be made of any offence against section twenty-three of this Act or of any bodily injury inflicted upon any person under the age of sixteen years for which the party committing it is liable to be indicted and the circumstances of which offence amount in point of law to a felony or an attempt to commit a felony or an assault with intent to commit a felony and two Justices of the Peace before whom such complaint is heard shall certify under their hands that it is necessary for the purposes of public justice that the prosecution should be conducted by some officer of police to be named in the certificate such officer on personal service of such certificate or duplicate thereof shall conduct the prosecution.

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On a conviction for assault the Court may order payment of the prosecutor's costs by the defendant.

Ib. s. 74.

71. Where any person shall be convicted on any indictment of any assault whether with or without battery and wounding or either of them such person may if the Court think fit in addition to any sentence which the Court may deem proper for the offence be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution and such moderate allowance for the loss of time as the Court shall by affidavit or other inquiry or examination ascertain to be reasonable and unless the sum so awarded shall be sooner paid the offender shall be imprisoned for any term the Court shall award not exceeding three months in addition to the imprisonment (if any) to which the offender may be sentenced for the offence.

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Such costs may be levied by distress.
Ib. s. 75.

72. The Court may by warrant under hand and seal order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender and paid to the prosecutor and that the surplus (if any) arising from such sale shall be paid to the owner and in case such sum shall be so levied the imprisonment awarded until payment of such sum shall thereupon cease.

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Summary proceedings may be under the Justices of the Peace Act.

Ib. s. 76.

73. Every offence hereby made punishable on summary conviction may be prosecuted in the manner directed by "The Justices of the Peace Act 1866" or in such other manner as may be directed by any Act that may be passed for like purposes and all provisions contained in the said Act or in any such Act as aforesaid shall be applicable to such prosecutions in the same manner as if they were incorporated in this Act.

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Short Title.

74. The Short Title of this Act shall be "The Offences against the Person Act 1867."

Commencement of Act.

75. This Act shall commence and take effect on the first day of one thousand eight hundred and sixty-

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