



ANNO VICESIMO SECUNDO ET VICESIMO TERTIO

VICTORIÆ REGINÆ.

A.D. 1859.

No. 2.

An Act for consolidating the Statute Law in force in South Australia relating to Indictable Offences of a public nature.

[Assented to, 1st September, 1859.]

WHEREAS it is expedient to consolidate the Statute Law in force in the Province of South Australia relating to indictable offences of a public nature—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province in this present Parliament assembled, as follows:

Preamble.

As to offences against public justice:

1. Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for life or for any less term, with or without hard labor, and with or without solitary confinement.

Taking reward for helping to stolen goods.
7 and 8 G. 4, c. 29, s. 58.

2. Whosoever shall, by color or pretence of process, or, without process, upon color or pretence of any matter of offence against any penal law, make any composition, or take any money, reward, or promise of reward, for himself or to the use of any other, without order or consent of the Supreme Court, shall be guilty of a misde-

Compounding a penal action without leave of the Court.
18 Eliz., c. 5, s. 4.
56 G. 3, c. 138, s. 2.

meanor, and, in addition to any punishment which the Court may award for such misdemeanor, shall for ever be disabled to be plaintiff or informer in any suit or information upon any Statute, popular or penal.

Breach of prison.
1 Ed. 2, st. 2.
7 and 8 G. 4, c. 28.
ss. 8, 9.

3. Whosoever, being committed to or confined in any prison for any treason or felony, shall break prison, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for the term of four years, or for any less term, with or without hard labor, and with or without solitary confinement; and whosoever, being committed to or confined in any prison for any misdemeanor, shall break prison, shall be guilty of a misdemeanor.

Aiding a prisoner to escape.
16 G. 2, c. 31, s. 3.
7 and 8 G. 4, c. 28,
ss. 8, 9.

4. Whosoever shall aid or assist any prisoner to attempt to make his escape from the custody of any constable or other officer or person who shall then have the lawful charge of such prisoner, whether by virtue of a warrant or otherwise, for any felony or any suspicion thereof, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for the term of four years, or for any less term, with or without hard labor, and with or without solitary confinement.

Conveying disguise or instruments, &c., into prison to enable prisoners to escape.
4 G. 4, c. 61, ss. 43, 44.

5. Whosoever shall convey or cause to be conveyed into any prison any mask, vizard, or other disguise, or any instrument or arms, proper to facilitate the escape of any prisoner therein lawfully confined, and the same shall deliver or cause to be delivered to any such prisoner in such prison, or to any other person there for the use of any such prisoner, without the consent or privity of the keeper of such prison, shall be deemed to have delivered such mask, vizard, or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and whosoever shall, by any means whatever, aid and assist any such prisoner to escape or in attempting to escape from any prison (whether an escape be actually made or not), shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding eight years, and with or without hard labor; and any offender escaping, breaking prison, or being rescued therefrom, may be tried, either in the jurisdiction where the offence was committed, or in that where he shall be retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person concerned therein, or aiding, abetting, or assisting the same, a certificate given by the Clerk of Assize or other Clerk of the Court in which such offender shall have been convicted shall, together with due proof of the identity of the person, be sufficient evidence to the Court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced.

6. Whosoever

6. Whosoever shall by force set at liberty or rescue, or attempt to rescue or set at liberty, any person out of prison who shall be committed for or found guilty of murder, or rescue or attempt to rescue any person convicted of murder going to execution or during execution, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

Rescuing a murderer.
25 G. 2, c. 37, s. 9.
1 Vict., c. 91, ss. 1, 2.

7. Whosoever shall, after such execution had, by force rescue or attempt to rescue the body of such offender out of the custody of the Sheriff or his officers, shall be guilty of felony, and being convicted thereof, shall be imprisoned for the term of four years, or for any less term.

Rescuing the body of a murderer after execution.
25 G. 2, c. 37, s. 10.

8. Whosoever shall, before any Court, Judge, or other person lawfully authorized to take any recognizance or bail, acknowledge any recognizance or bail in the name of any other person not privy or consenting to the same, whether such recognizance or bail in either case be or be not filed; or whosoever shall in the name of any other person not privy or consenting to the same, acknowledge any cognovit actionem, or judgment, or any deed to be enrolled or registered, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

Acknowledging recognizance, bail, cognovit, &c., in the name of another.
1 W. 4, c. 66, ss. 11, 26.

9. Whosoever, being a Justice of the Peace or other person, shall knowingly administer or cause or allow to be administered, or receive or cause or allow to be received, any oath, affidavit, or solemn affirmation touching any matter or thing whereof such Justice or other person has not jurisdiction or cognizance by some Statute in force at the time being, shall be guilty of a misdemeanor: Provided that nothing in this section contained shall extend to any oath, affidavit, or solemn affirmation before any Justice in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences, or touching any proceedings before either of the Houses of Parliament or any committee thereof respectively, nor to any oath, affidavit, or affirmation which may be required by the Laws of any Foreign Country to give validity to instruments in writing designed to be used in such Foreign Countries respectively.

Justices not to administer oaths, &c., touching matters whereof they have no jurisdiction by Statute.
5 and 6 W. 4, c. 62, s. 13.

10. Whosoever shall be convicted of wilful and corrupt perjury or subornation of perjury, shall be liable, at the discretion of the Court, to be imprisoned for the term of four years, or for any less term, and with or without hard labor; and in all cases in which an oath may lawfully be and shall have been administered to any person, either as a jurymen or a witness, or a deponent, in any proceeding, civil or criminal, in any Court of Law or Equity in the said Province, or an appointment to any office or employment, or on any occasion whatever, such person is bound by the oath administered,

Perjury and subornation.
2 G. 2, c. 25, s. 2.
1 and 2 Vict., c. 105.

administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding, and every such person, in case of wilful false swearing, may be convicted of the crime of perjury, in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted.

False declaration
instead of oath.
5 and 6 W. 4, c. 62,
s. 21.

11. Whosoever, being by Law authorized to make an affirmation or declaration in lieu of an oath, shall wilfully, falsely, and corruptly affirm or declare any matter or thing, which if the same had been sworn in the usual form would have amounted to the crime of wilful and corrupt perjury, shall be guilty of a misdemeanor, and being convicted thereof, shall, at the discretion of the Court, be imprisoned for the term of four years, or for any less term, with or without hard labor.

Forms of indictments
for perjury and like
offences.
14 and 15 Vict., c. 100,
s. 20.

12. In every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what Court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing was taken, made, signed, or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding, either in Law or in Equity, and without setting forth the commission or authority of the Court or person before whom such offence was committed.

Form of indictments
for subornation of
perjury and like
offences.
14 and 15 Vict., c. 100,
s. 21.

13. In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient, wherever such perjury or other offence shall have been actually committed, to allege the offence of the person who actually committed such perjury or other offence in the manner in the last preceding section mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person the said offence, in manner and form aforesaid, to do and commit; and wherever such perjury or other offence shall not have been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things by the last preceding section rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

Court may order
prosecution.
14 and 15 Vict., c. 100,
s. 19.

14. It shall be lawful for the Judges or any Judge of the Supreme Court, or for any Special or Stipendiary Magistrate, or for any Justices of the Peace, Chairman, or other Judge holding any General

or

or Quarter Sessions of the Peace, or for any Commissioner of Bankruptcy or Insolvency, or for any Judge or Deputy Judge of any Local Court or any Court of Record, or for any Justices of the Peace in Special or Petty Sessions, or for any Sheriff or his lawful Deputy, or other officers of the Supreme Court before whom any writ of inquiry or writ of trial from any of the superior Courts shall be executed, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and to commit such person so directed to be prosecuted, until the next Session of Oyer and Terminer or Gaol Delivery for the County or other district within which such perjury was committed, unless such person shall enter into a recognizance with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next Session of Oyer and Terminer or Gaol Delivery, and that he will then surrender and take his trial, and not depart the Court without leave, and to require any person he or they may think fit to enter into a recognizance, conditioned to prosecute or give evidence against such person so directed to be prosecuted, and to give to the party so bound to prosecute a certificate of the same being directed, which certificate shall be given without any fee or charge, and shall be deemed sufficient proof of such prosecution having been so directed; and upon the production thereof, the costs of such prosecution shall and are hereby required to be allowed by the Court before which any person shall be prosecuted or tried in pursuance of such direction, unless such last-mentioned Court shall specially otherwise direct; provided that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon any prosecution so directed.

15. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy, any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever of or belonging to any Court of Record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such Court, or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever of or belonging to any Court of Equity, or relating to any cause or matter begun, depending, or terminated in any such Court, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for the term of four years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award, such imprisonment to be with or without hard labor, and with or without solitary confinement; and it shall not in any indictment for such offence be necessary to allege that

Stealing records or other legal documents. 7 and 8 G. 4, c. 29, ss. 4, 21.

the article in respect of which the offence is committed is the property of any person, or that the same is of any value.

False copies of record, forging signature of officers, or forging seal of the office. 1 and 2 Vict., c. 94, s. 19.

16. Whosoever belonging to or employed in the Supreme Court, or any other Court having the custody of records, shall certify any writing as a true and authentic copy of a record in the custody of the said Court, knowing the same to be false in any material part, or shall counterfeit the signature of any officer of the Court for the purpose of counterfeiting a certified copy of a record, or shall forge or counterfeit the seal of the Supreme Court or such other Court as aforesaid, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term.

False certificate of previous conviction. 7 and 8 G. 4, c. 28, ss. 4, 11.

17. Whosoever, being a clerk or other officer of any Criminal Court whatsoever, and having the custody of the records of such Court, or being the deputy of such clerk or officer, shall utter a false certificate of any indictment and conviction for a previous felony, or whosoever, other than such clerk, officer, or deputy, shall sign any such certificate as such clerk, officer, or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the Court, to be imprisoned for the term of four years, or for any less term, with or without hard labor, and with or without solitary confinement.

See Act of 1850, No. 14.

Penalty for forgery of certificates, &c. 11 and 12 Vict., c. 78, s. 6.

18. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any certificate of or copy certified by a Chief Justice or Judge, or any certificate of or copy certified by a clerk of assize or associate or his deputy, or the clerk of any Local Court, as the case may be, or of any determination of any of the Judges in any criminal case reserved for their opinion upon any question of Law, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of Justice, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding six years, with or without hard labor, and with or without solitary confinement.

See Local Act, No. 3 of 1849.

Forging seal or signature to certain documents, or tendering the same in evidence. 8 and 9 Vict., c. 113, s. 4.

19. Whosoever shall forge the seal, stamp, or signature of any certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or of any certified copy of any document, by-law, entry in any register or other book, or other proceeding receivable in evidence of any particular in any Court of Justice, or before any legal tribunal, or either House of Parliament, or any Committee of either House, or in any judicial proceeding, under any Act of Parliament, passed or to be passed, or shall tender in evidence any such certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding, with

a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, whether such seal, stamp, or signature be that of or relating to any corporation or company already established, or to any corporation or company to be hereafter established, or shall forge the signature of any Judge of the Supreme Court attached or appended to any decree, order, certificate, or other judicial or official document, or shall tender in evidence any order, decree, certificate, or other judicial or official document with a false or counterfeit signature of any such Judge thereto, knowing the same to be false or counterfeit, or shall print any copy of any private Act or of the journals of either House of Parliament, which copy shall falsely purport to have been printed by any of the printers to the Government or to either House of Parliament, or shall tender in evidence any such copy, knowing that the same was not printed by the person by whom it so purports to have been printed, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for the term of four years, or for any less term, and with or without hard labor: Provided that whenever any such document as in this section before mentioned shall have been received in evidence by virtue of any Act of Parliament, the Court, Judge, Commissioner, or other person officiating judicially who shall have admitted the same shall, on the request of any party against whom the same is so received, be authorized, at its or at his own discretion, to direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person, until further order touching the same shall be given, either by such Court, or the Court to which such officer belonged, or by the persons or person who constituted such Court, or by some one of the said Judges, on application being made for that purpose.

20. Whosoever, being an associate, clerk of assize, clerk of the peace, clerk of the Court, or a deputy of any such person, or being any other officer, shall exact any fee or gratuity from any prisoner on his entrance or commitment to or discharge from prison, or from any person who shall be charged with or indicted for any felony, or as an accessory thereto, or with or for any misdemeanor, before any Court of Criminal Jurisdiction, or who on his trial shall be acquitted, or who shall be discharged by Proclamation for want of prosecution, shall be guilty of a misdemeanor, and rendered incapable of holding his office.

Clerk of Assize, &c.,
exactng fees from
prisoners acquitted.
55 G. 3, c. 50, s. 9.
8 and 9 Vict., c. 114,
s. 1.

21. Whosoever, being a gaoler, shall exact from any prisoner any fee or gratuity for or on account of the entrance, commitment, or discharge of such prisoner, or shall detain any prisoner in custody for nonpayment of any fee or gratuity, shall be guilty of a misdemeanor, and rendered incapable of holding his office.

Gaoler exactng fees
from prisoners.
55 G. 3, c. 50, s. 13.

As to offences against the public peace:

22. No one from henceforth shall make any entry into any lands and tenements, whether freehold or copyhold, or holden for term of years,

Forcible entry.
5 R. 2, st. 1, c. 8.
See 8 H. 6, c. 9.
21 J. 1, c. 1.
31 El., c. 11.

years, or by elegit, or statute merchant or staple, but in case where entry is given by law, and in that case not with strong hand, nor with multitude of people, but only in peaceable and easy manner; and whosoever shall do the contrary shall be guilty of a misdemeanor: Provided that no restitution upon any indictment of forcible entry, or holding with force, be made to any person if the person so indicted has had the occupation or has been in quiet possession by the space of three whole years together next before the day of such indictment being so found, and his estate therein not ended or determined; which the party indicted may allege for stay of restitution, and restitution to stay until that be tried, if the other will deny or traverse the same; and if the same allegation be tried against the same person so indicted, then the same person so indicted to pay such costs and damages to the other party as shall be assessed by the Judges or Justices before whom the same shall be tried.

Rioters remaining
after Proclamation.
1 G. 1, st. 2, c. 5, ss.
1, 2.
1 Vict., c. 91, ss. 1, 2.

23. If any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any Justice of the Peace, or by the Sheriff, or his Under Sheriff, or by the Mayor, Bailiff, or other Head Officer, or Justice of the Peace of any city or town corporate, where such assembly shall be, by proclamation to be made in the Queen's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall, to the number of twelve or more (notwithstanding such proclamation made), unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation, then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony, and every offender therein, being convicted thereof, shall be liable, at the discretion of the Court, to any one of the punishments in the sixth section of this Act mentioned; and the order and form of the proclamation that shall be made by the authority of this Act shall be as follows, that is to say—the Justice of the Peace, or other person authorized by this Act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be while proclamation is making, and after that shall openly and with loud voice make or cause to be made proclamation in these words, or like in effect:

“OUR Sovereign Lady the Queen chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business.

GOD save the QUEEN.”

And every such Justice of the Peace, Sheriff, Under Sheriff, Mayor, Bailiff and other Head Officer aforesaid, within the limits of their respective jurisdictions, are hereby authorized, empowered, and required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous,

riotous, and tumultuous assembly shall be, of persons to the number of twelve or more, and there to make or cause to be made proclamation in manner aforesaid.

24. Whosoever shall wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt any person that shall begin to proclaim or go to proclaim according to the Proclamation by the last preceding section directed to be made, whereby such Proclamation shall not be made, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to any one of the punishments in the sixth section of this Act mentioned: and also all persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve or more, as in the last preceding section mentioned, to whom Proclamation should or ought to have been made if the same had not been hindered as aforesaid, shall likewise, in case they or any of them, to the number of twelve or more, shall continue together and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to any one of the punishments in the sixth section of this Act mentioned.

Rioters opposing the making of Proclamation;

or remaining after the time it might have been made if not prevented.

1 G. 1., st. 2, c. 5, s. 5.

1 Vict., c. 91, s. 1.

25. If any seamen, keelmen, casters, ship carpenters, or other persons riotously assembled together to the number of three or more, shall unlawfully and with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating, of any ship, keel, or other vessel, or shall unlawfully and with force board any ship, keel, or other vessel, with intent to prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating of such ship, keel, or other vessel, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned and kept to hard labor for any term not exceeding twelve months.

Seamen, keelmen, &c. riotously preventing ship being loaded.
33 G. 3., c. 67, s. 1.

26. Whosoever, after being convicted of any offence in the last preceding section mentioned, shall afterwards offend again in like manner, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to any one of the punishments in the fifth section of this Act mentioned: Provided that no person shall be prosecuted by virtue of either of this or of the last preceding sections for any offence therein mentioned, unless the prosecution be commenced within one year after the offence committed.

Offending a second time.
33 G. 3., c. 67, s. 3.

27. Whosoever shall maliciously publish any defamatory libel shall be guilty of a misdemeanor, and being convicted thereof shall be liable to fine or imprisonment, or both, as the Court may award, such imprisonment not to exceed the term of one year.

Defamatory libel.
6 and 7 Vict., c. 96, s. 5.

28. Whosoever shall maliciously publish any defamatory libel, knowing the same to be false, shall be guilty of a misdemeanor, and

Publishing defamatory libel knowing it to be false.
6 and 7 Vict., c. 99 s. 4.

being convicted thereof shall be liable to be imprisoned for any term not exceeding two years, and to pay such fine as the Court shall award.

Plea in such cases.
6 and 7 Vict., c. 96,
s. 6.

29. On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as in this section mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published; to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof; and if after such plea the defendant shall be convicted on such indictment or information it shall be competent to the Court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or to disprove the same: Provided that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification: Provided also, that in addition to such plea it shall be competent to the defendant to plead a plea of not guilty: Provided also, that nothing in this section contained shall take away or prejudice any defence under the plea of not guilty which it is now competent to the defendant to make under such plea to any action or indictment or information for defamatory words or libel.

Proceedings when
stayed.
3 Vict., c. 9, s. 1.

30. It shall be lawful for any person who now is or hereafter shall be a defendant in any civil or criminal proceeding commenced or prosecuted in any manner soever, for or on account or in respect of the publication by such person or his servant, by or under the authority of either House of Parliament, of any report, paper, votes, or proceedings of either House of Parliament as such House of Parliament shall deem fit or necessary to be published, to bring before the Court in which such proceeding shall have been or shall be so commenced or prosecuted, or before any Judge of the same (if the Supreme Court), first giving twenty-four hours' notice of his intention so to do to the prosecutor or plaintiff in such proceeding, a certificate under the hand of the President of the Legislative Council for the time being, or of the Clerk of the Legislative Council, or of the Speaker of the House of Assembly, or of the Clerk of the same House, stating that the report, paper, votes, or proceedings, as the case may be, in respect whereof such civil or criminal proceeding shall have been commenced or prosecuted, was published by such person, or by his

his servant or servants, by order or under the authority of the Legislative Council or of the House of Assembly, as the case may be, together with an affidavit verifying such certificate; and such Court or Judge shall thereupon immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Act; and in case of any such proceeding for or on account or in respect of the publication of any copy of such report, paper, votes, or proceedings, it shall be lawful for the defendant at any stage of the proceedings to lay before the Court or Judge such report, paper, votes, or proceedings, and such copy, with an affidavit verifying such report, paper, votes, or proceedings, and the correctness of such copy; and the Court or Judge shall immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Act.

3 Vict., c. 9, s. 2.

31. Whensoever, upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part; and in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such report, paper, votes, or proceedings, as in the last preceding section mentioned, it shall be lawful to give in evidence under the general issue such report, paper, votes, or proceedings, and to show that such extract or abstract was published *bonâ fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant.

Evidence.
6 & 7 Vict., c. 96, s. 7

3 Vict., c. 9, s. 3.

32. Upon the trial of any indictment or information for making or publishing a libel where any issue is joined on the plea of not guilty, the jury may give a general verdict of guilty or not guilty upon the whole matter put in issue, and shall not be required or directed by the Court or Judge before whom such indictment or information shall be tried to find the defendant guilty, merely on proof of the publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information: Provided that nothing in this section contained shall extend or be construed to extend to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases: Provided also, that on every such trial the Court or Judge shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue, in like manner as in other criminal cases

Verdict.
32 G. 3, c. 60, s. 1.

33. In the case of any indictment or information by a private prosecutor

Costs in such cases.
6 & 7 Vict., c. 96, s. 8.

Prosecutor only has costs of special plea.

prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information; and upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea, such costs so to be recovered by the defendant or prosecutor respectively to be taxed by the proper officer of the Court before which the said indictment or information is tried.

As to offenders against public trade:

Destroying granaries &c., or taking grain therefrom.

36 G. 3, c. 9, s. 2.

34. Whosoever, with intent to prevent or hinder any corn, meal, flour, malt, or grain from being lawfully carried or removed from any place whatsoever, shall wilfully and maliciously pull or throw down, or otherwise destroy any storehouse or granary or other place in which corn, meal, flour, malt, or grain shall be then kept, or shall unlawfully enter any such storehouse, granary, or other place, and take and carry away any corn, flour, meal, malt, or grain therefrom, or shall throw abroad or spoil the same or any part thereof, or shall unlawfully enter on board any ship, barge, boat, or vessel, and wilfully and maliciously take and carry away, cast or throw out therefrom, or otherwise spoil or damage, any corn, flour, meal, malt, or grain therein, shall be guilty of felony, and being convicted thereof shall be imprisoned for four years, or for any less term, with or without hard labor, and with or without solitary confinement.

As to offences against public police, morality, and economy:

Bigamy.

9 G. 4, c. 31, s. 22.

Proviso.

35. Whosoever, being married, shall marry any other person during the life of the former husband or wife, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for the term of four years, or for any less term, with or without hard labor, and with or without solitary confinement: Provided that nothing in this section contained shall extend to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

Gaming.

8 & 9 Vict., c. 109, s. 17.

36. Whosoever shall, by any fraud or unlawful device or ill practice in playing at or with cards, dice, tables, or other game, or in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise, win from any other person, to himself or any other, any sum of money or valuable thing, shall be guilty of a misdemeanor, and being convicted thereof shall be liable,

liable, at the discretion of the Court, to be imprisoned for the term of four years, or for any less term with or without hard labor, and with or without solitary confinement, or to pay such fine as the Court shall award, in addition to or without any such other discretionary punishment as aforesaid.

37. Whosoever shall throw, cast, or fire, or be aiding or assisting in the throwing, casting, or firing of any squibs, serpents, rockets, or other fireworks in or into any public street, house, shop, river, highway, road, or passage, shall be guilty of a misdemeanor.

Nuisance by fireworks.
9 & 10 W. 3., c. 7,
s. 1.

As to offences relating to the buying or selling of offices:

38. Whosoever shall sell, or bargain for the sale of, or receive, have, or take any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, or any promise, agreement, covenant, contract, bond, or assurance, or shall by any way, device, or means contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, or purchase or bargain for the purchase of, or give or pay any money, fee, gratuity, loan of money, reward, or profit, or make or enter into any promise, agreement, covenant, contract, bond, or assurance to give or pay any money, fee, gratuity, loan of money, reward, or profit, or shall by any way, means, or device, contract or agree to give or pay any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, for any office, commission, place, or employment in South Australia, specified or described in the next following section of this Act, or for any deputation thereto, or for any part, parcel, or participation of the profits thereof, or for any appointment or nomination thereto or resignation thereof, or for the consent or voice of any person to any such appointment, nomination, or resignation, shall be guilty of a misdemeanor.

Buying or selling offices.
49 G. 3, c. 126, s. 3.
5 & 6 Ed 6, c. 16,
ss. 1, 2.

39. The offices to which the last preceding section shall apply are all offices of profit or emolument under the Crown within the said Province; but this and the last preceding section shall not extend to prevent or make void any deputation to any office in any case in which it is lawful to appoint a deputy, or any agreement, contract, bond, or assurance lawfully made in respect of any allowance, salary, or payment made or agreed to be made by or to such principal or deputy respectively, out of the fees or profits of such office.

What offices.
5 & 6 Ed. 6, c. 16,
s. 2.
49 G. 3, c. 126, s. 3.

40. Whosoever shall receive, have, or take any money, fee, reward, or profit, directly or indirectly, or take any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, for any interest, solicitation, petition, request, recommendation, or negotiation whatever, made or to be made, or pretended to be made, or under any pretence of making or causing or procuring to be made any interest, solicitation, petition, request, recommendation, or negotiation

Receiving money for using interest to obtain place.
49 G. 3, c. 126, s. 4.

in or about or in anywise touching, concerning, or relating to any nomination, appointment, or deputation to or resignation of any such office, commission, place, or employment as in the last preceding section mentioned, or under any pretence for using or having used any interest, solicitation, petition, request, recommendation, or negotiation in or about any such nomination, appointment, deputation, or resignation, or for obtaining or having obtained the consent or voice of any person to such nomination, appointment, deputation, or resignation; and whosoever shall give or pay, or cause or procure to be given or paid, any money, fee, gratuity, loan of money, reward, or profit, or make, or cause or procure to be made, any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device contract or agree or give or pay, or cause or procure to be given or paid, any money, fee, gratuity, loan of money, reward, or profit for any solicitation, petition, request, recommendation, or negotiation whatever, made or to be made that shall in anywise touch, concern, or relate to any nomination, appointment, or deputation to or resignation of any such office, commission, place, or employment, or for obtaining or having obtained, directly or indirectly, the consent or voice of any person to any such nomination, appointment, deputation, or resignation; and whosoever shall, for or in expectation of gain, fee, gratuity, loan of money, reward, or profit, solicit, recommend, or negotiate in any manner for any person in any matter that shall in anywise touch, concern, or relate to any such nomination, appointment, deputation, or resignation, or for the obtaining, directly or indirectly, the consent or voice of any person to any such nomination, appointment, or deputation or resignation, shall be guilty of a misdemeanor.

Keeping or advertising places for transacting such negotiations.

49 G. 3, c. 126, s. 5.

41. Whosoever shall open or keep any house, room, office, or place for the soliciting, transacting, or negotiating in any manner whatever any business relating to vacancies in or the sale or purchase of, or appointment, nomination, or deputation to, or resignation, transfer, or exchange of any offices, commissions, places, or employments whatever in or under any public department, shall be guilty of a misdemeanor.

As to offences against religion :

Disturbing ministers or congregations assembled for religious worship.

2 & 3 Ed. 6, c. 1, s. 2.
1 Mary, Sess. 2, c. 3,
s. 2, 3.

1 Eliz., c. 2, s. 9.
52 G. 3, c. 155, s. 12.
31 G. 3, c. 32, s. 10.
9 & 10 Vict., c. 59,
s. 4.
15 & 16 Vict., c. 36.

42. Whosoever shall wilfully and of purpose maliciously or contemptuously interrupt any congregation, meeting, or assembly of persons assembled for religious worship, or shall in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such congregation, meeting, or assembly, or any person present at any such congregation, meeting, or assembly, shall be guilty of a misdemeanor.

Persons pretending to witchcraft, &c.

9 G. 2, c. 5, s. 4.

43. Whosoever shall pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertake to tell fortunes, or pretend from his skill or knowledge in any occult or crafty science to discover where or in what manner any goods or chattels

chattels supposed to have been stolen or lost may be found, shall be guilty of a misdemeanor.

As to other matters:

44. In all cases where any person shall be convicted of a misdemeanor under this Act, it shall be lawful for the Court, if it shall think fit, in addition to or in lieu of any of the punishments by this Act authorized, to fine the offender, and to require him to find sureties for keeping the peace and being of good behaviour, both or either; and in all cases of felonies in this Act mentioned it shall be lawful for the Court, if it shall think fit, to require the offender to find sureties for keeping the peace, in addition to any of the punishments by this Act authorized.

Fine and sureties for the Peace, in what cases.

45. Where imprisonment, with or without hard labor, may be awarded for any offence under this Act, the Court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labor, in any common gaol or labor prison; and where 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 his imprisonment, or of his imprisonment with hard labor, not exceeding one month at any one time, and not exceeding three months in any one year; and where any offender, convicted under any clause of this Act, shall be under the age of fourteen years, the Court may sentence the offender, if a male, but not otherwise, to be once, twice, or thrice publicly or privately whipped.

Hard labor, solitary confinement, and whipping.

46. Throughout this Act, unless there be something in the subject or context repugnant to such construction, every word importing the masculine gender or singular number shall be construed to include the feminine and plural respectively, and *vice versa*, and bodies politic and corporate as well as individuals.

Interpretation clause.

47. This Act shall commence and take effect from the passing hereof.

Commencement of Act.