



WESTERN AUSTRALIA.

ANNO DECIMO SEXTO

VICTORIÆ REGINÆ.

No. VI.

**An Ordinance for the better prevention of
Offences.**

WHEREAS it is expedient to make further provision for the Preamble.
prevention of Burglary and other offences in the night;
Be it enacted, by His Excellency the Governor of Western
Australia and its Dependencies, by and with the advice and consent
of the Legislative Council thereof, that if any person shall be found

Any person found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit a felony therein; or if any person shall be found by night having in his possession, without lawful excuse, the proof of which excuse shall lie on such person, any pick-lock key, crow, jack, bit, or other implement of housebreaking; or if any person shall be found by night having his face blackened or otherwise disguised, with intent to commit any felony therein, shall be guilty of a misdemeanour.

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every such offender shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding three years.

Persons convicted of such misdemeanour after previous conviction of felony or such misdemeanour, &c.,

Form of indictment.

Certificate of previous conviction.

II. AND be it enacted, that if any person shall be convicted of any such misdemeanour as aforesaid, committed after a previous conviction, either for felony or such misdemeanour as aforesaid such person shall, on such subsequent conviction, be liable, at the discretion of the Court, to be transported beyond the seas for any term not less than seven years, and not exceeding ten years, or imprisoned, with or without hard labour, for any term not exceeding three years; and in any indictment for such misdemeanour, committed after a previous conviction, as aforesaid, it shall be sufficient to state that the offender was at a certain time and place convicted of felony or misdemeanour against the "*Ordinance for the better prevention of Offences.*" 1852 (as the case may be) without otherwise describing the previous felony or misdemeanour; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanour, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted, or by the deputy of such clerk or officer, (for which certificate a fee of five shillings, and no more, shall be demanded or taken,) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same.

Persons using chloroform &c., in order to commit felony, guilty of felony.

III. AND whereas it is expedient to make further provision for the punishment of persons using chloroform or other stupefying things, in order the better to enable them to commit felonies; Be it

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enacted, that if any person shall unlawfully apply or administer, or attempt to apply or administer, to any other person any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent thereby to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing any felony, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

IV. AND whereas it is expedient to make further provision for the punishment of aggravated assaults; Be it enacted, that if any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cut, stab, or wound any other person, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding three years.

V. AND be it enacted, that if upon the trial of any indictment for any felony, except murder or manslaughter, when the indictment shall allege that the defendant did cut, stab, or wound, any person the jury shall be satisfied that the defendant is guilty of the cutting, stabbing, or wounding charged in such indictment, but are not satisfied that the defendant is guilty of the felony charged in such indictment, then, and in every such case, the jury may acquit the defendant of such felony, and find him guilty of unlawfully cutting, stabbing or wounding, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the misdemeanor of cutting, stabbing or wounding.

VI. AND be it enacted, that in all cases in which provision is made or may be made for the more exemplary punishment of persons who shall commit certain offences after one or more previous conviction or convictions for the like or other offences it shall not be lawful on the trial of any person for any subsequent offence when a plea of not guilty shall have been entered on his behalf, to charge the jury to inquire concerning any previous conviction until they shall have

Persons inflicting grievous bodily harm guilty of misdemeanor.

On trial for feloniously cutting, jury may acquit the felony and convict of unlawfully cutting.

Upon the trial of persons for subsequent offences under this Ordinance, the previous conviction not to be stated to the jury until after a verdict of guilty of the subsequent offences,

unless the defendant give evidence of good character. inquired concerning such subsequent offence, and shall have found such person guilty of the same and whenever in any indictment any previous conviction shall be stated, the reading of such statement shall be deferred until after such finding as aforesaid; provided that if upon the trial of any person for any such subsequent offence aforesaid such person shall give evidence of his good character it shall be lawful for the prosecutor in answer thereto, to give evidence of the conviction of such persons for the previous offence or offences, before such verdict of guilty shall have been returned, and the jury shall inquire concerning such previous conviction or convictions, at the same time that they inquire concerning such subsequent offence.

Any person may apprehend persons offending against this Ordinance. VII. AND be it enacted that it shall be lawful for any person whomsoever to apprehend any person who shall be found committing any offence against the provisions of this Ordinance, and to convey him or deliver him to some constable or other peace officer in order to his being conveyed as soon as conveniently may be before a Justice of the Peace, to be dealt with according to law.

Any person may apprehend persons committing indictable offences in the night. VIII. AND whereas doubts have been entertained as to the authority to apprehend persons found committing indictable offences in the night: for remedy thereof, Be it enacted, that it shall be lawful for any person whomsoever, to apprehend any person who shall be found committing any indictable offence in the night, and to convey him or deliver him to some constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a Justice of the Peace, to be dealt with according to law.

Any person assaulting a person entitled to apprehend him, to be guilty of a misdemeanor. IX. AND be it enacted, that if any person liable to be apprehended under the provisions of this Ordinance, shall assault, or offer any violence to any person by law authorised to apprehend or detain him, or to any person acting in his aid or assistance, every such offender shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned, with or without hard labour, for any term not exceeding three years.

Night to be the same as in cases of burglary, X. AND be it enacted, that the time at which the night shall commence and conclude, in any offence against the provisions of this Ordinance, shall be the same as in cases of burglary.

Costs of Prosecution. XI. AND be it enacted, that in all prosecutions for any offence

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against the provisions of this Ordinance, it shall be lawful for the Court before which any such offence shall be prosecuted or tried, to allow the expence of the prosecution in all respects as in cases of felony.

XII. AND be it enacted, that nothing in this Ordinance contained shall be deemed to repeal wholly or in part, the 12th Vic., No. 20, intituled "*An Ordinance for regulating the Police in Western Australia,*" but no person shall be liable to be punished for the same offence both under the said last mentioned Ordinance and this Ordinance. Nothing in this act to repeal 5 Geo. 5., c. 83.

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council the 20th }
day of Dec., 1852. }*

A. O'GRADY LEFROY,
Clerk of the Council.